

# CONDITIONS OF SALE



- 1. GENERAL** - The general Conditions of Sale shall apply and shall be deemed incorporated into any quotation for goods or services (quotation), any order for goods or services (order) placed by a purchaser (purchaser) notwithstanding any inconsistencies which may be introduced in the purchaser's order or acceptance, unless expressly agreed in writing by Air Radiators Pty Ltd (Air Radiators).
- 2. PRICES** - Unless expressly stated otherwise, all prices quoted are expressed in Australian dollars, exclusive of any amount which Air Radiators is required to pay on account of any excise, tax, stamp duty or any other taxes or charges which may be established or levied by any government or governmental authority (whether Commonwealth, State or foreign) including any GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and ex-works from Air Radiators warehouse in Lara, Victoria.
- 3. PRICE VARIATION** - A quotation is based on the information provided and/or given at the time of the quotation, the current (a) labour rates which are applicable at that time, (b) international monetary exchange rates and (c) costs of bought-in items. Any variation to the information, labour rates, exchange rates or costs will result in the quotation being subject to review and, if applicable, variation to the purchaser's account.
- 4. ORDER ACCEPTANCE** - A quotation is subject to our ability to secure at the time of order the goods and/or materials for the manufacture of the items quoted for. A quotation may be withdrawn without any notice and any order given in respect of a quotation is not binding on Air Radiators until accepted by Air Radiators in writing.
- 5. CANCELLATION** - Any order may be cancelled by the purchaser only with the consent of Air Radiators and upon payment of reasonable cancellation charges. Such charges shall take into account expenses relating to commitments made by Air Radiators and all other losses due to such cancellations. In the event of any national emergency which shall delay either completion of the manufacture, or delivery of such equipment as may be ordered from Air Radiators, it is agreed that at the option of the purchaser the order may either be cancelled in accordance with Air Radiators terms, or completed subsequently, subsequent to the adjusted price having been agreed.
- 6. CESSATION OF WORK** - Extra costs incurred due to cessation of work resulting from the purchaser's instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or work for which Air Radiators is not responsible shall be to the purchaser's account.
- 7. PAYMENT** - Unless otherwise stated, payment shall be made in full for all goods supplied within the terms of nett 30 days, provided that Air Radiators reserves the right to vary the terms of payment or require payment in full prior to delivery if, in the opinion of Air Radiators, the purchaser's creditworthiness becomes unsatisfactory. Neither part nor whole of any invoiced value shall be withheld from Air Radiators due to non-payment to the purchaser by the purchaser's client, or any other reason outside the responsibility of Air Radiators. Interest will be charged on overdue accounts at the rate provided for by the *Penalty Interest Rates Act 1983* (Vic) plus 2% compounded daily from (and including) the date of due payment until (but excluding) the date of payment in full of the overdue account with interest. Air Radiators will treat any default by the purchaser in payment of any monies due to Air Radiators as a breach of these Conditions of Sale. The purchaser must pay to Air Radiators any costs, expenses or losses incurred by Air Radiators as a result of the purchaser's failure to pay to Air Radiators all monies outstanding from the purchaser to Air Radiators (including, without limiting the generality of the obligations set out in these Conditions of Sale, any debt collection, mercantile agent and legal costs).

**8. PROPERTY** - (a) Property in any goods shall not pass from Air Radiators to the purchaser until the purchaser has paid all monies outstanding by the purchaser to Air Radiators on any account in full. (b) The risk of loss or of damage to the goods shall pass to the purchaser on despatch. (c) The purchaser agrees to store the goods separately and mark them so as to render them identifiable as being or being made from or with goods which are the property of Air Radiators. (d) Should the goods (or any part of them) be converted into or incorporated in a new product or products (the new products) whether or not the admixture of any other goods or thing whatsoever and in whatever proportions is involved, the conversion or incorporation (as the case may be) shall be deemed to have been effected on behalf of Air Radiators and the new products shall be the property of Air Radiators. The right of the purchaser to convert or incorporate the goods in a new product or products shall automatically cease if a receiver or receiver and manager is appointed over any of the purchaser's assets or if a winding up order is made against or a resolution is passed for the winding up of the purchaser or if Air Radiators at any time revokes such rights by notice to the purchaser. (e) The purchaser shall have no right to sell or otherwise dispose of the goods or the new products until the price of the goods has been paid in full to Air Radiators unless: (i) the goods or the new products are sold in the ordinary course of the purchaser's business; and (ii) that part of the proceeds of sales of the goods and the new products as represents the price of the goods shall be paid forthwith to Air Radiators and until such part of the proceeds are so paid, they shall be held by the purchaser in trust for Air Radiators. The power of sale hereby conferred on the purchaser shall automatically cease if a receiver or receiver and manager is appointed over any of the purchaser's assets or if a winding up order is made against or a resolution is passed for the winding up of the purchaser or if Air Radiators at any time revokes the power of sale by notice to the purchaser. (f) Upon determination of the purchaser's power of sale under paragraph (e) above Air Radiators shall become entitled to possession of the goods and the new products. The purchaser shall place the goods and the new products at the disposal of Air Radiators who shall be entitled to enter upon any premises of the purchaser and remove the goods and the new products. (g) The purchaser grants to Air Radiators, upon Air Radiators giving notice to the purchaser, the right to bring proceedings in the name of the purchaser to recover monies owing to the purchaser as a result of sales of the goods or the new products. Any amounts recovered as a result of such proceedings shall be retained by Air Radiators to the purchaser. (h) If any provision of these Conditions of Sale creates or constitutes a charge or other security right requiring registration under the provision of any legislation, such provision shall be severed from these Conditions of Sale.

**9. GOODS HELD** - Equipment manufactured to order, and then held in our store at your request pending delivery instructions, shall be invoiced as of delivery on the original requested delivery time, and accordingly, become due to payment with Air Radiators standard trading terms. Goods held of a period of thirty (30) days in excess of required delivery date will be charged storage at standard commercial storage rates.

**10. DELIVERY** - The due performance of every order and delivery dates herein quoted are subject to variation and cancellation due to any delay in delivery or failure to deliver arising from or in connection with any act of God, war, defence of the Commonwealth, strikes, lock-outs, fire, tempest, riots, crime, civil commotion, accidents to machinery, variation in Awards or industrial instruments, industrial action or disputes, order or direction of any government authority or other causes beyond our reasonable control. A charge will be made for frustrated delivery to cover Air Radiator s costs and expenses arising from or in connection with attempts to deliver. A carrier s signed docket shall be conclusive evidence of delivery.

**11. TOOLS AND DESIGNS** - All tools and/or dies specifically designed and/or manufactured and separately charged to the purchaser by Air Radiators in connection with the supply of goods shall be the property of the purchaser. Any experimental work carried out at the request of the purchaser will be considered an order and charged for. Any tools or dies designed and/or manufactured by Air Radiators and not separately charged to the purchaser (including, without limitation, the supply shall remain our property and Air Radiators shall have the right to re-use these as seen fit, without any liability to the purchaser. Any designs, specifications, drawings, data, information and attachments comprising any quotation or pertaining to any quotation (quotation materials) are copyright and contain confidential and commercially sensitive information. The quotation materials may only be used for the purpose of evaluating or ordering the goods and services of Air Radiators and for no other purpose. Neither the whole

of the quotation materials nor any part of them may be reproduced or disclosed to any person without the prior written consent of Air Radiators.

**12. PERFORMANCE** - Any figures given for performance, specified weights, measurements, power capacities and other particulars of goods (performance particulars) are provided in good faith. Air Radiators shall not be liable to the purchaser or any other person in any way for any failure to comply with any performance particular unless: (a) Air Radiators specifically and expressly guarantee in writing that goods shall comply with that performance particular within certain specified margins and (b) the goods fail to meet that performance particular within those specified margins, provided always that Air Radiators shall be first given reasonable time to remedy the failure to comply with the relevant performance particular and shall have no other liability if it so remedies that failure within such reasonable time.

**13. PURCHASER RESPONSIBILITY** - The purchaser is responsible to (and acknowledges and agrees that Air Radiators shall have no responsibility or liability to: (a) ensure that the designs and specifications for goods or services submitted by the purchaser to Air Radiators are correct and accurate and (b) satisfy itself that any products made to these designs and specifications will meet its requirements and are fit for the purpose for which they are intended.

**14. CHARGE** - The purchaser agrees upon request to charge with payment of all monies owed and/or owing to Air Radiators from time to time in favour of Air Radiators by way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property and, by way of a floating charge, the whole of its other undertakings, property and assets.

**15. INDIRECT LOSS** - Air Radiators shall not be liable in any way for any indirect, consequential, special, punitive, exemplary or incidental loss or damage of any kind howsoever arising (whether in contract, tort or otherwise).

**16. MANUFACTURE** - All goods are designed and manufactured to standard commercial manufacturing specifications and procedures. Any variation from these standards will be strictly in accordance with the quotation. Air Radiators shall not be bound by any variation from standard manufacturing specifications and procedures unless the said variation is first agreed to in writing. We reserve the right to alter specifications without referral to the purchaser.

**17. INFRINGEMENT INDEMNITY** - The customer, in ordering goods, represents and warrants that in making those goods Air Radiators will not be liable for any infringements of any intellectual property rights (including any patents, trademarks, registered designs, copyright, confidential information or similar rights) and agrees to indemnify and keep indemnified Air Radiators against any and all action, loss or damage or liability of any kind that may be brought against, suffered or incurred by Air Radiators arising from or in connection with such manufacture.

**18. DISPUTE** - If any dispute shall arise between Air Radiators and the purchaser under any contract, either party may give written notice of the existence of such dispute and each party must appoint a senior employee of that party to promptly meet and engage in good faith discussions with the objective of resolving the dispute by agreement.

**19. APPLICABLE LAW** - Any agreement or contract made with Air Radiators by a purchaser shall in all respects be governed by and construed in accordance with the laws of the State of Victoria and the purchaser submits to the non-exclusive jurisdiction of the courts of that State. These Conditions of Sale are to be interpreted so that they comply with all applicable laws in the State of Victoria and if any provision does not comply then it must be read down so as to give it as much effect as possible. If it is not possible to give that provision any effect at all, however, then it is to be severed from these Conditions of Sale in which case the remainder of these Conditions of Sale will continue to have full force and effect.

**20. WAIVER** - A single or partial exercise or waiver of a right relating to these Conditions of Sale will not prevent any other exercise of that right or the exercise of any other right. A party will not be liable for any

loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

**21. REPRESENTATIONS AND IMPLIED TERMS** - The purchaser acknowledges that Air Radiators nor any person acting or purporting to act on its behalf has made any representations, warranties or statements other than those embodied in these Conditions of Sale or expressly provided in writing in any quotation. To the extent permitted by law, any condition or warranty (including, without limitation, any implied warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise be implied in any contract between Air Radiators and the purchaser is hereby excluded.

**22. WARRANTY** - Air Radiators provides to the first purchaser the warranty in the Warranty Sheet attached subject to all conditions and exclusions therein (including, without limitation, exclusions relating to damage caused by corrosion, misuse, abuse, faulty application or repairs not authorised by Air Radiators).