



PO BOX 112  
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[accounts@maslen.com.au](mailto:accounts@maslen.com.au)  
ABN 84 108 127 895

## TERMS & CONDITIONS OF SALE February 2016

### Payment Terms

1. The terms of payment are strictly 30 days (or such shorter period as nominated by the supplier herein) from the date of invoice and payment is due and payable on that date.
2. Should the Applicant not pay for the goods or services supplied by Advanced Refrigeration Technology Pty Ltd ACN 108 127 895 ("the Supplier") in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge interest calculated at 1.5% of the amount of the invoice payable per month, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

### Purpose of Credit

3. The credit facilities provided by the Supplier are not transferable by the Applicant without the prior written consent of the Supplier. The Supplier may assign its rights pursuant to this agreement to another party without prior notice to the Applicant. The Supplier will give the Applicant notice when the assignment has been effected.

### Formation of Contract

4. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Applicant will be charged for the goods or services at the price ruling at the date of dispatch.
5. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

### Retention of Title

6. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied.
7. Until payment in full has been made and received in cleared funds by the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and must not mix the goods with other similar goods.
8. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
9. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 8 unless and until the funds held on trust are remitted to the Supplier.
10. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control or to direct that the Applicant must deliver up the goods to the Supplier when payment is overdue.
11. If the goods are resold or other products are manufactured or created using the goods supplied to the Applicant then the Applicant holds such part of the proceeds from any such sale on trust for the Supplier and must pay such amount outstanding to the Supplier at its direction.
12. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clauses 10 and 11. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
13. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants and irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.

### Return of Goods

14. The Supplier is not under any duty to accept the any goods returned to it and will do so only on terms agreed in writing between the parties in each case and if the goods are received within 30 days from the date of the invoice.
15. If goods are returned to the Supplier then the Supplier may request proof of delivery and other relevant documents.
16. If faulty goods are returned then they will be subject to an inspection by the Supplier and a credit note for the price of the goods will only be issued once the Supplier is satisfied with the results of the inspection.

### Orders

17. All orders of non-standard goods will require the Applicant to pay a 30% non-refundable deposit to the Supplier upon making the order.
18. Early delivery of goods will incur additional charges which are calculated and charged at the discretion of the Supplier.
19. Any alteration to an order once production has commenced will incur additional charges which are calculated and charged at the discretion of the Supplier.
20. Cancellation of all orders will not be accepted by the Supplier once production of the goods has commenced.

### Cancellation of Terms of Credit

21. The Supplier may cancel the credit facilities at any time by providing notice in writing to the Applicant.
22. The Supplier may cancel the credit facilities without notice in the following circumstances:
  - (a) the Applicant becomes insolvent;
  - (b) the Applicant is convicted of a serious offence;
  - (c) the Applicant is fraudulent in connection with the operation of any agreement;
  - (d) the Applicant breaches any of the terms or conditions of this agreement;
  - (e) the Applicant fails to pay any money due to the Supplier; or
  - (f) the Applicant breaches any other agreement with the Supplier.
23. Upon cancellation with notice or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.
24. In the event that these terms of credit are cancelled this does not affect the Supplier's right to institute legal proceedings for the recovery of all money owed to the Supplier.

### Limitation of Liability

25. The total liability of the Supplier for loss or damage of every kind:
  - (a) whether arising pursuant to these terms and conditions; or
  - (b) out of or in relation to the goods, their sale, delivery or the way they behave, in tort or contract or in any other cause of action or in any other way whatsoever,is limited to the amount paid by the Applicant to the Supplier pursuant to these terms and conditions at the date when such liability arises subject to any statutory rights of the Applicant.

### Indemnity

26. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

### Personal Property Securities Act

27. The parties agree to do all things necessary in order to register the Supplier's security interest on the Personal Property Securities Register in accordance with the *Personal Property Securities Act 2009* (Cth). This agreement is a security agreement for the purposes of section 20(2) of the Act and the collateral under this agreement are the goods provided by the Supplier to the Applicant from time to time. The Applicant must not register any Security interest or financing statement in relation to the goods in favour of a third party without the prior written consent of the Supplier.

### Provision of Further Information

28. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
29. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

### Corporations

30. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

### Trustee Capacity

31. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to sign this agreement; and



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(d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

If the Supplier asks, the Applicant must give it a copy of the trust deed.

### Partnership

32. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

33. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

### Insolvency

34. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

### Waiver

35. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorized officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorized officer in writing or orally. If the waiver is made orally it must be communicated to the Supplier.

### Costs

36. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

37. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

### Taxes & Duty

38. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

39. If as a result of:

(a) any legislation becoming applicable to the subject matter of this agreement; or

(b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

### Interest Rates

40. The interest rate on any outstanding debts is a fixed rate of 1.5% per month.

### Power of Attorney

41. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any State or Territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

### Set-Off

42. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

43. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

### Miscellaneous

44. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

### Severance

45. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

46. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

### Jurisdiction

47. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Queensland, and each party hereby submits to the non exclusive jurisdiction of the Courts of Queensland.

48. The Applicant submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this agreement or to the supply of goods to the Applicant.

### Variation

49. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorized officer of the Supplier at any time without notice to the Applicant.

### Emission Reduction Fund

50. The Supplier may, in conjunction with a third party facilitator, register a project with the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* to create claims for Australian carbon credit abatement units (ACCUs) in relation to goods supplied by the Supplier to the Applicant. The Applicant irrevocably consents and agrees to the Supplier providing to the third party facilitator and the Clean Energy Regulator such information as is required to be provided under that project with respect to the goods supplied to the Applicant, to the Supplier (or its nominated agent) having access to the goods whenever reasonably required to take data from those goods and supplying that data to the third party facilitator and the Clean Energy Regulator and the Supplier (or its nominated agent) taking photographs of the goods and the installation to verify the data that is collected. The Applicant irrevocably agrees that it has no right or entitlement to any ACCUs with respect to the goods supplied by the Supplier and that it will not make any application, by itself or through any other party, for any ACCUs with respect to any goods for which the Supplier (or its third party facilitator) has registered a project.

51. The Applicant confirms that it understands and agrees that the information contained in this agreement and in relation to any order form or delivery notice created with respect to the goods may be disclosed to service providers of the Supplier (including the third party facilitator) for the purpose of creating, applying for or trading ACCUs under the *Carbon Credits Act 2011* and for related verification, audit and scheme monitoring purposes.

52. The Applicant agrees that it will not dispose of any of the goods forming part of a project without obtaining from the acquirer of those goods a covenant in favour of the Supplier in terms contained in clause 50, 51 and 52.

### Entire Agreement

53. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.



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- The Applicant hereby applies for the opening of an account and provides the above information in support thereof.
- I/We am/are authorized to sign this Credit Application Form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.
- These terms and conditions form a binding agreement between the Applicant and the Supplier.

Signature: \_\_\_\_\_ Position: \_\_\_\_\_

Name: Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Position: \_\_\_\_\_

Name: Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Name: \_\_\_\_\_

### **FOR COMPLETION BY THE SUPPLIER**

The Applicant's credit application is accepted.

Signed for an on behalf of the Supplier by:

\_\_\_\_\_, a duly authorised officer.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

**Account Approved for: ..... days**

**Account Approved for: ..... value**

(Supplier to nominate)

### **PRIVACY ACT 1988 AUTHORISATION**

1. To enable the Supplier to assess the credit application or to review any existing credit, the Applicant and Guarantors authorise the Supplier to obtain:
  - (a) from a credit reporting agency a credit report containing personal information about the Applicant and Guarantors in relation to credit provided by the Supplier (Section 18K(1)(a) of the Privacy Act);
  - (b) a report from a credit reporting agency containing personal information about the Applicant and the Guarantors (Section 18K(1)(b) of the Privacy Act); and
  - (c) a report containing information about the Applicant's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier ((Section 18L (4) of the Privacy Act).
2. The Applicant authorises the Supplier to provide certain personal information about the Applicant under Section 18E(8)(c) of the Privacy Act. The information which may be given to an agency is covered by Section 18E(1) of the Act and includes:
  - (a) the fact that application for credit has been made;
  - (b) the fact that the Supplier is a credit provider to the Applicant;
  - (c) payments which become overdue more than 60 days;
  - (d) advice that payments are no longer overdue;
  - (e) cheques drawn by the Applicant in excess of \$100.00 which have dishonoured more than once;
  - (f) in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
  - (g) that the credit provided to the Applicant by the Supplier has been discharged.
3. In accordance with Section 18N(1)(b) of the Privacy Act, the Applicant authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangement. The Applicant acknowledges that the information can include any information about the Applicant's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.



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**The Applicants and Guarantors have read and understand the information given to the Supplier in this application and declare that it is true, complete and correct.**

Signature of Applicant: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of First Guarantor: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Second Guarantor: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

## DEED OF GUARANTEE & INDEMNITY

To: **Advanced Refrigeration Technology Pty Ltd ACN 108 127 895** ("the Supplier")

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

("the Guarantors") hereby covenants and undertakes and if more than one, jointly and severally, as follows:



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### Consideration

1. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

### Guarantee & Indemnity

2. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a Court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
3. This Guarantee and Indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and will be available as a guarantee and indemnity for the whole of the sums referred to in clauses 1 and 2 of this guarantee and indemnity.
4. Where two or more persons execute this guarantee and indemnify the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
5. The Supplier will have the right to proceed against the Guarantors under the guarantee and indemnity upon the default, refusal or inability or the Applicant to pay as if the primary liability for any money owing was the Guarantors' own. Further the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
6. This guarantee and indemnity will continue in force until such time as the Supplier releases the guarantors in writing, and notwithstanding the fact that the guarantors are no longer directors, shareholders or owners of the Applicant.
7. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - (a) any other security taken by the Supplier from the Applicant or from any other person;
  - (b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
  - (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
  - (d) any person named in this guarantee and indemnity as guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

### Insolvency of Applicant

8. No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantor's liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

### Costs

9. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - (a) the account of the Applicant;
  - (b) this guarantee;
  - (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
  - (d) the preparation, completion and stamping of this deed; or
  - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed; and the same will be part of the monies secured by this deed.
10. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis

### Power of Attorney

11. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any State or Territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

### Variation

12. The Guarantors authorize the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
13. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Suppliers making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.



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### **Jurisdiction**

14. The Guarantors acknowledge and agree that this guarantee and indemnity will be governed by the laws of Queensland, and each party hereby submits to the non exclusive jurisdiction of the Courts of Queensland.
15. The Applicant submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this guarantee.

### **Severance**

16. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

**Dated** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

### **Signed sealed and delivered by the Guarantor:**

\_\_\_\_\_

Guarantor name:

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Witness name:

\_\_\_\_\_

### **Signed sealed and delivered by the Guarantor:**

\_\_\_\_\_

Guarantor name:

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Witness name:

\_\_\_\_\_