

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

1 Definitions

"Account Application Form" means an application for credit on the form provided to the Customer by Daikin Australia.

"Agreement" means the agreement for supply of Equipment between Daikin Australia and the Customer consisting of these "Conditions of Sale", the Purchase Order for the Equipment accepted by Daikin Australia, the Confirmation of Order and any variation or additional term agreed in accordance with clause 2.1.

"Daikin Australia" means Daikin Australia Pty Limited, its agents and assigns.

"Charges" includes all monies payable by the Customer to Daikin Australia in relation to the supply of Equipment.

"Confirmation of Order" means a written document issued by Daikin Australia which sets out a description of the Equipment, the Charges and other necessary terms and which may include details of the Customer's offer to purchase the Equipment.

"Customer" means the party identified on the Confirmation of Order as "Customer" and includes the Customer's agents and permitted assigns.

"Equipment" means the goods to be supplied under the Agreement and includes parts and supplies which may subsequently be supplied under any warranty given in relation to the Equipment.

GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Insolvency Event", in respect of a party, is when that party becomes bankrupt or insolvent or becomes subject to the appointment of an administrator, receiver, receiver and manager, liquidator, statutory manager or any other person carrying out an equivalent function, or a mortgagee goes into possession of the whole or part of the party's assets, income or business.

"Manufacturer" means the manufacturer of the Equipment or any parts thereof, its agents and assigns.

"Purchase Order" means the document or communication setting out the Customer's offer to purchase Equipment.

"Quote" means a quote provided by Daikin Australia to the Customer for purchase of the Equipment.

"Services" means installation, repair and/or maintenance work carried out by Daikin Australia.

"Trade Customer" means a Customer purchasing Equipment:

- (a) for resupply; or
- (b) not of a type ordinarily acquired for personal, domestic or household use or consumption.

"Warranty Documentation" means the printed card containing the terms of the Daikin Australia Warranty which is supplied with the Equipment or is offered generally by Daikin Australia to purchasers of like Equipment at the date of the Agreement details of which are available on the website www.daikin.com.au.

Words importing the singular number shall include the plural and vice versa.

Working day means any week day that is not a public holiday.

The use of "includes" or similar means "including but not limited to".

2 Order of precedence and variation

- 2.1 These Conditions of Sale are varied only where such variation is in writing and signed by the Customer and a State Manager or Senior Manager of Daikin Australia and is expressed to be a variation of these Conditions of Sale. If there is any inconsistency between the terms of the Agreement, the following order of precedence will apply to the extent of the inconsistency with the item listed earlier prevailing over a later listed item: (a) any variation agreed in accordance with this clause 2.1, (b) Confirmation of Order, (c) these Conditions of Sale; then (d) the Purchase Order for the Equipment accepted by Daikin Australia.

3 Quotations and Entry into Agreement

- 3.1 Any brochure, catalogue, price list, internet page, Quote or other communication published or forwarded by Daikin Australia to the Customer, whether in writing or not, shall only constitute an invitation by Daikin Australia to the Customer to do business that Daikin Australia may withdraw or alter at any time.

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

- 3.2 Any Purchase Order submitted by the Customer with Daikin Australia constitutes an offer by the Customer to purchase Equipment from Daikin Australia. Notwithstanding any prior communication between Daikin Australia and the Customer, there shall be no obligation by Daikin Australia to accept an offer to purchase Equipment made by a Customer. The Customer's order may be accepted by issue to the Customer of a Confirmation of Order.
- 4 Cancellation**
- Without limiting the Customer's rights, protections and remedies referred to in clause 10, following Daikin Australia issuing a Confirmation of Order, no purported cancellation of that order by the Customer will be effective unless and until accepted by Daikin Australia in writing.
- 5 Return of Equipment**
- 5.1 Without limiting the Customer's rights, protections and remedies referred to in clause 10, the following terms apply to returns:
- (a) If any Equipment is delivered to the Customer which does not comply with the Customer's order, the Equipment shall be deemed to have been accepted by the Customer unless notice of non-compliance is received by Daikin Australia within seven (7) days of delivery.
 - (b) The Customer must cooperate in allowing Daikin Australia to undertake any investigation into alleged non-compliant Equipment.
 - (c) All returns of Equipment by the Customer must be made in accordance with Daikin Australia's procedures for returns and refunds, published from time to time.
- 6 Functionality and Performance**
- 6.1 All information, specifications or other data provided by Daikin Australia in relation to the Equipment represent approximations only and should not be used for construction purposes. All drawings and specifications shall remain the sole property of Daikin Australia and must not be copied or divulged to any third party without the prior written consent of Daikin Australia.
- 6.2 The Equipment may contain small deviations or slight variations from the information, specifications or data referred to in clause 6.1. Where such deviations or variations do not substantially affect the functionality of the Equipment, the Customer is not entitled to reject the Equipment or make any claim due to such deviation or variation.
- 6.3 Any information provided by Daikin Australia in relation to the performance of Equipment represents only a guide as to the performance of the Equipment under standard industry operating conditions. Factors which may affect performance of the Equipment may be obtained from Daikin Australia on request.
- 6.4 Daikin Australia may make reasonable modifications of any kind to the Equipment prior to its delivery. If that occurs, Daikin Australia will notify the Customer prior to delivery of any modifications. If such modifications are unacceptable to the Customer, the Customer may cancel the Purchase Order by providing written notice.
- 6.5 Daikin Australia does not warrant that the Equipment supplied by Daikin Australia will, as installed, comply with the Building Code of Australia or any other similar standard or code. The Customer is solely responsible for ensuring that the Equipment, as installed, complies with any relevant code or standard.
- 7 Charges**
- 7.1 Clause 7.2 applies to Customers other than Trade Customers who are approved for credit facilities. Clauses 7.3 and 7.4 apply to Trade Customers who are approved for credit facilities.
- 7.2 Unless otherwise agreed in writing, the Customer must pay to Daikin Australia:
- (a) the deposit amount identified in the Confirmation of Order within 7 days of the Confirmation of Order; and
 - (b) the balance of the amount payable for the Equipment on delivery.
- 7.3 Credit facilities are only available to Trade Customers if the Trade Customer has completed an Account Application Form and the Account Application Form has been approved by Daikin Australia in writing.

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

- 7.4 The provision of a credit account to the Trade Customer may be withdrawn by Daikin Australia at any time.
- 7.5 Where an Account Application Form:
- 7.5.1 has not been applied for or approved by Daikin Australia, payment for Goods must be made as at the date that Daikin Australia accepts the Order; or
- 7.5.2 has been approved by Daikin Australia, payment for Goods supplied under the credit facilities must be paid to and received by Daikin Australia within 30 days from the end of the month in which all the Goods are invoiced or where the Goods are delivered in part, then payment for those received Goods will be paid within 30 days from the end of the month in which the received Goods are delivered.
- 7.6 The total purchase price, unless otherwise stated in the Order, includes GST (unless stated otherwise), delivery charges the nominated delivery address and packaging but does not include any lifting or crange costs, assembly costs, installation costs, costs and charges of third party suppliers, all of which will be paid by the Customer.
- 7.7 Unless otherwise agreed, if the Customer does not pay an amount by the due date for payment, or a payment made by the Customer fails to be honoured, without prejudice to any other rights which it may have against the Customer, the Customer shall be liable to pay to Daikin Australia interest thereon at the rate of 3% above the indicator lending rate from time to time and charged by Daikin Australia's bankers as nominated by Daikin Australia at the relevant time. Interest payable hereunder shall be compounded monthly and calculated from the due date for payment to the date upon which payment is actually made.
- 7.8 The Customer must not set off any money owing or alleged to be owing by Daikin Australia against money due by the Customer to Daikin Australia.
- 7.9 Without prejudice to any other rights which Daikin Australia may have against the Customer, if the Customer fails to pay any amount by the due date for payment or a payment made by the Customer fails to be honoured, Daikin Australia shall be entitled to:
- (a) withhold or delay delivery of any remaining Equipment; or
- (b) terminate the Agreement by written notice to the Customer.
- 8 Property in Equipment Purchased**
- 8.1 No legal or equitable title to the Equipment shall pass to the Customer until payment in full has been made by the Customer not only of all Charges for all Equipment the subject of the Agreement (unless waived in writing by Daikin Australia) but also until payment has been made of all other sums due to Daikin Australia by the Customer on any account whatsoever. Until all such sums due to Daikin Australia by the Customer have been paid in full, Daikin Australia has a security interest in all Equipment and their proceeds.
- 8.2 If the Equipment is attached, fixed or incorporated into any property of the Customer, title in the Equipment will remain with Daikin Australia until the Customer has made payment for all Equipment, and where that Equipment is mixed with other property so as to be part of or a constituent of any new equipment, title to that new equipment shall be deemed to be assigned to Daikin Australia as security for the full satisfaction by the Customer of the full amount owing between Daikin Australia and the Customer.
- 8.3 Subject to clause 8.7, until the legal and equitable title to the Equipment passes to the Customer, the Customer:
- (a) shall hold the Equipment as bailee of Daikin Australia returnable at will and without prior demand by Daikin Australia;
- (b) shall, upon demand by Daikin Australia, immediately deliver up the Equipment to Daikin Australia; and
- (c) hereby authorises Daikin Australia to enter upon the premises upon which the Equipment are stored for the purpose of taking possession thereof.
- 8.4 Daikin Australia shall not be liable for, and the Customer expressly releases Daikin Australia from any liability for, any damage, costs or losses arising from or in connection with the

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

- recovery of possession of the Equipment by Daikin Australia.
- 8.5 The Customer agrees that ss. 95, 96, 117, 118, 120, 121, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 (Relevant Sections) of the Personal Property Securities Act 2009 (PPSA) do not apply to the enforcement by Daikin Australia of any security interest created or provided for by the Agreement to which the PPSA applies. The Customer waives any right it may have under the Relevant Sections of the PPSA on such enforcement.
- 8.6 The Customer acknowledges receipt of a copy of this Agreement and waives any right it may have to receive from Daikin Australia a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Agreement.
- 8.7 Until title of the Equipment passes to the Customer, the Customer will not purport to assign any right or interest therein to any other person other than by sale of the Equipment in the usual course of business (upon which title will pass to the purchaser). The proceeds of any such sales will be the property of Daikin Australia and must be held by the Customer on a fiduciary basis in a separate bank account for the benefit of Daikin Australia, and will be payable to Daikin Australia immediately without demand.
- 8.8 The Customer shall promptly do whatever Daikin Australia reasonably requests of the Customer to:
- (a) ensure Daikin Australia's rights in relation to the Equipment are enforceable, perfected and effective; and
 - (b) enable Daikin Australia to apply for any registration, or give any notification, in connection with the Agreement to preserve Daikin Australia's rights in relation to the Equipment.
- 8.9 The Customer must pay all of Daikin Australia's costs and expenses in relation to compliance with any demand under the PPSA, or in relation to any application for, or the obtaining of, any Court order to maintain any registration in respect of any security interest created under the Agreement and the serving of such Court order on the Customer or the Registrar of Personal Property Securities.
- 8.10 The Customer must supply all details requested by Daikin Australia to enable Daikin Australia to register a financing statement in respect of the Equipment, including providing notice to Daikin Australia if those details change.
- ### 9 Delivery and Risk
- 9.1 Delivery dates represent only an estimation of the date of delivery of the Equipment and are not binding on Daikin Australia.
- 9.2 If Daikin Australia determines that it is or may be unable to deliver the Equipment within a reasonable time (which shall not be less than seven (7) working days) of the estimated date of delivery, Daikin Australia or the Customer may by written notice terminate the Agreement. In the event of termination under this clause the Customer shall have no claim against Daikin Australia for any damage, loss or expense whatsoever other than for the refund of any amount paid for the Equipment.
- 9.3 Daikin Australia reserves the right to deliver the Equipment by instalments and to invoice the Customer for each instalment of Equipment delivered where, in the opinion of Daikin Australia, it is reasonable to do so.
- If Daikin Australia has agreed to make delivery and the Customer is unwilling or unable to accept delivery, Daikin Australia may store the Equipment and charge the Customer for all reasonable costs and expenses associated with such storage and delayed delivery, including, if applicable, any additional financing costs incurred by Daikin Australia by reason of a fixed price having been agreed for the Equipment with the Customer or otherwise.
- 9.4 Where delivery to the Customer's premises is delayed by reason of:
- (a) the Customer's fault or unpreparedness; or
 - (b) other reasons outside the control of Daikin Australia,

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

and the time for payment by Daikin Australia to the Manufacturer is linked to the anticipated time for such delivery, then Daikin Australia in its discretion may at any time after such anticipated time deem delivery to have occurred for the purposes of payment from the Customer in accordance with the Agreement.

9.5 If Daikin Australia is commissioning the Equipment, Daikin Australia will certify to the Customer when the commissioning is completed successfully.

9.6 If a party other than Daikin Australia is commissioning the Equipment, the Customer will be taken to have accepted the Equipment once that party has certified that the commissioning has been completed successfully.

9.7 When certified, the Customer will be taken to have accepted the Equipment. For the avoidance of doubt nothing in this clause alters the obligation of the Customer to make payment to Daikin Australia in accordance with the Agreement.

10 No exclusion of consumer protections

10.1 The Customer may be entitled to certain non-excludable rights, protections and remedies under law including under the *Australian Consumer Law* contained in the *Competition and Consumer Act 2010* (Cth). Nothing in the Agreement is intended to restrict the effect of any rights, protections or remedies imposed by law which cannot be excluded, restricted or modified. The non-excludable rights, protections and remedies under law available to the Customer may vary depending on whether the Customer is a Trade Customer and whether the Trade Customer is purchasing Equipment for resupply.

11 Warranty

11.1 In addition to the rights, protections and remedies referred to under clause 10, the Customer is entitled to the warranties that are described and referred to in the Warranty Documentation (subject to the exclusions and limitations).

12 Limitation of Liability

12.1 If the Equipment being supplied is not of a type ordinarily acquired for personal, domestic or household use or consumption, to the extent

permitted by law, Daikin Australia limits its liability for failure to comply with statutory guarantees applying under the Australian Consumer Law at Daikin Australia's option:

- (a) the replacement of the Equipment or the supply of equivalent Equipment;
- (b) the repair of the Equipment;
- (c) the payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or
- (d) the payment of the cost of having the Equipment repaired.

13 Termination

13.1 In addition to any other right of termination in the Agreement, either party ("terminating party") may terminate the Agreement upon the occurrence of any of the following events:

- (a) failure by the other party to perform any obligation of the Agreement where such failure is not rectified within thirty (30) days of notice from the terminating party requesting rectification;
- (b) an Insolvency Event occurs in respect of the other party; or
- (c) any event occurs outside the reasonable control of Daikin Australia which in Daikin Australia's estimate makes it impracticable or impossible for Daikin Australia to fulfil its obligations under the Agreement.
- (d) immediately upon Daikin Australia becoming aware of a breach by the Customer of clause 15.1 The Customer breaches clause 15.1.

14 Force Majeure

14.1 Subject to clause 14.2, neither party will be liable for any loss or damage suffered by the other party due to any delay or any breach or default under the Agreement in circumstances to the extent that such delay, breach or default results from causes beyond the party's reasonable control including but not limited to any breach or default under the Agreement by the other party, any change in laws, regulations, orders, acts, instructions or priority requests of governments, acts of God,

DAIKIN AUSTRALIA: CONDITIONS OF SALE - RESIDENTIAL

fires, floods, weather, strikes, lockouts, factory shutdown or alterations, embargoes, wars, riots, delay or shortage in transportation or inability to obtain labour, manufacturing facilities, electricity, oil or other materials from Daikin Australia's or the Manufacturer's usual sources.

- 14.2 This clause 14 does not apply to any obligation of the Customer to pay any amount under the Agreement.
- 14.3 Any delay resulting from such cause shall immediately extend the date for the performance of any impacted obligation under the Agreement by the period of delay.
- 14.4 If performance under the Agreement is delayed for more than 60 consecutive working days as a result of circumstances described in clause 14.1 above, either party may terminate the Agreement.

15 Miscellaneous

- 15.1 If the Customer resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or anything of value to any government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, for the purpose of influencing purchasing decisions or for any other improper purpose.
- 15.2 Any indulgence, latitude or extension of time which Daikin Australia may show towards the

Customer in relation to any of the provisions of the Agreement or any matter or thing relating thereto or arising therefrom shall not in any way prejudice or interfere with Daikin Australia's rights under the Agreement and shall not be claimed to constitute a waiver thereof.

- 15.3 Without limiting the Customer's rights, protections and remedies referred to in clause 10, the Customer acknowledges that no oral terms or representations form part of the Agreement unless they have been reduced to writing prior to entering into the Agreement,.
- 15.4 Neither party will assign their rights or obligations under the Agreement without the other party's prior written consent.
- 15.5 Any notice to be given to a party shall be in writing and shall be sent by post, facsimile or by email to the address of that party as shown in the Purchase Order or Confirmation of Order or as subsequently notified by that party to the party giving the notice and shall be deemed to have been given at the time it would have been received in the normal course of post if forwarded by post and if otherwise given at the time it was actually received.
- 15.6 The Agreement shall be governed by the laws of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.