

“**Agreement**” – means the act of agreeing or coming to mutual acceptance of all parties to a transaction or contract entered into for the provision of the goods and/or services provided by the Supplier to the Customer including payment terms by the Customer to the Supplier.
“**Customer or You**” – means the person, trust, firm, company, partnership, or other entity and Signee whose order for the purchase of the goods is accepted by the Supplier;
“**Supplier or Us**” – means IGLU COLD SYSTEMS AUSTRALIA Pty Ltd (ACN: 163 264 499) – (ABN: 59 163 264 499);
“**Price List**” – means the booklet in which the Supplier publishes and issues equipment and accessory or option accessory prices (excluding Goods & Services Tax ‘GST’ and delivery);
“**Goods**” – means product or service ordered by the Customer from time to time which is delivered by the Supplier under the Terms and Conditions of Trade forming part of the supplied goods;
“**GST**” – the expression “GST” means any tax in the nature of a tax on the supply of goods, real property, services and other things (or similar tax) levied, imposed or assessed by the Commonwealth of Australia which may operate any time during the term of this Agreement; (and includes any supply within the meaning of any Commonwealth, State or Territory legislation imposing or relating to the imposition of GST);
“**POA**” – means ‘Price on Application’ referring to goods or accessories shown in the Suppliers Price List which at the time of printing did not show a Customer purchase price;
“**Terms**” – means the conditions of Sale or Trade as set out by the Supplier to the exclusion of any other term or terms of the Customer or other entity;

1. INTERPRETATION

1.1 The headings used in the Terms and Conditions of Trade do not form part of the Terms and Conditions of Trade and are for convenience and formatting purposes only.

1.2 “Including” is not a term of limitation or restriction.

2. NO LIABILITY FOR THIRD PARTY INTERVENTION

2.1 The Supplier (IGLU COLD SYSTEMS AUSTRALIA Pty Ltd) shall in no circumstance accept any liability arising from any goods or equipment damaged through negligence or poor installation techniques by the Customer, any Contractor, Subcontractor, or any other third (3rd) party whose service/s has not been provided directly by IGLU COLD SYSTEMS AUSTRALIA Pty Ltd.

2.2 The Customer shall bear the full cost of replacement, repair, or any compensation for any such goods or equipment damaged by the Customer, Contractor, Subcontractor/s, or any third (3rd) party not engaged directly through the Supplier and the Customer indemnifies the Supplier against any loss or damage the Supplier may suffer as a result of this damage to the full extent of the law.

3. GENERAL

3.1 These Terms and Conditions of Trade apply to the sale of Goods and/or Services of the Supplier to the Customer. These Terms and Conditions of Trade replace and supersede any previously Supplier issued Terms and Conditions of Trade entered into by the Customer.

3.2 The Supplier reserves the right to accept or refuse any order for goods placed by the Customer and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of or security for the Customer or full payment.

3.3 These terms and conditions shall apply to the exclusion of all others including any terms or conditions set out by the Customer whether documented on a Customer Purchase Order or in any other form which is contrary to, or inconsistent with the Terms and Conditions of the Supplier. Any such contrary Terms and Conditions set out by the Customer shall not constitute a counter offer, nor shall the Supplier Customer Order Confirmation constitute an acceptance of such terms in any circumstance.

3.4 No goods and/or services will be supplied to the Customer on any terms and conditions other than those set out herein and by taking delivery of goods or services the Customer shall be deemed to agree to the Terms and Conditions of Trade as set out by the Supplier hereto and shall apply to the exclusion of all others.

3.5 The Supplier’s Terms and Conditions may be varied at any time by giving the Customer written notice. Notice may also be given via the Suppliers Website; notice may also be sent to the Customer’s last known email address or by ordinary post to the Customers’ last known postal address. It is the responsibility of the Customer to provide up-to-date contact details change should the Customer contact details change. Any varied Terms and Conditions of Trade will not affect any Customer orders confirmed by the Supplier previous to any changes made to the Suppliers Terms and Condition of Trade.

3.6 The Customer acknowledges that no employee, agent, consultant, architect, interior designer, builder, Contractor or Sub-contractor has the right to make any representation, offer any warranty or promise in relation to the goods or services, or sale of good and/or services on behalf of the Supplier contrary to the Suppliers Terms and Conditions of Trade.

3.7 Goods will be invoiced at the prices prevailing at the time an order for goods is accepted by the Supplier.

3.8 The Supplier does not waive any of its rights under this Agreement if it chooses to accept payment from a Customer, or refuses payment from the Customer, fails or neglects to insist on the Customer’s full compliance with the Terms and Conditions of Trade as set out herein. In addition, it will not prevent the Supplier from exercising the Terms and Conditions of Trade set out herein in the future.

3.9 Where the customer trades outside these Terms and Conditions of Trade, or breaches in any way the Terms and Conditions of Trade the Supplier may among other things, refuse to supply products to the customer as its own discretion, irrespective of whether an order has already been accepted and acknowledged previously by the Supplier or not, and the Supplier will not be liable for any loss or damage of any kind resulting directly or indirectly from such action taken.

3.10 The Supplier is authorised to sub-contract the manufacturer and/or any part of the fulfilment of the contract or supply of goods to a third (3rd) party or assign this contract at any time.

3.11 These terms set out the entire terms on which the Supplier agrees to supply goods to its customers. Any other terms which may be implied by the operation of statute or common law are expressly negated to the fullest extent permitted by law.

3.12 Prices are correct at the time of printing and are subject to change without notice. All prices whether printed in the Price List or quoted in written form or verbally exclude delivery charges unless otherwise indicated in written form by the Supplier, exclude Good and Services Tax (GST), installation, joinery and/or finishes, stainless steel worktops (unless otherwise indicated), local or council fees, electrical, hydraulic, mechanical, fire services, waste services or remote connections, condensing units, refrigerant gas for remote units.

4. FITNESS FOR PURPOSE

4.1 To the maximum extent permitted by law, the Customer agrees that it does not rely on the judgment, advice or recommendations made by the Supplier, its representatives or agents in relation to the suitability of any goods for a particular purpose, use, or function. Any judgment, advice, recommendations, information or assistance provided to the Customer by the Supplier is not done as a contractual obligation but done on the understanding there is no liability to the Supplier arising from such action. It is the sole responsibility of the Customer or purchaser to ensure suitability and/or compliance of any goods for any particular purpose, use, or function.

5. QUOTATION AND ORDERS

5.1 A Quotation is valid for a period of no more than 30 days from the time of issue and shall not at any time constitute an offer of sale to the Customer and the Customer must have the quotation confirmed by way of Customer Order Confirmation before it is binding.

5.2 Customer orders must include with any order the following information;

- a) *Equipment Model Number/s and Accessory Codes (if applicable);*
- b) *Description, Quantity, and Customers Cost;*
- c) *Official Purchase Order with Billing and Delivery Details;*

5.3 Project related specification must be matched against relevant documented tender specification. Ensuring compliance, accuracy, and suitability of the Supplier quote (whether Tender related specification or Otherwise) is the sole responsibility of the Customer in every circumstance. Any cost, loss, liability (including any special or consequential loss) incurred of any kind, or expenses directly or indirectly arising from non-compliance or lack of suitability shall be payable by the purchasing Customer and the Supplier to the full extent permitted by Law shall be indemnified.

5.4 No Contract for the supply of goods and/or services shall exist between the Customer and Supplier until such time as the Customer order has officially been accepted by the Supplier. Any order from the Customer for the supply of goods and/or services shall not be binding on the Supplier until accepted by the Supplier in writing by way of written ‘Customer Order Confirmation’, or by other overt act of acceptance.

5.5 Pricing quoted and discounts given are subject to the Customer taking delivery of all the items as stated in the quotation relevant to the order. In the event, the Customer excludes an item, or a number of items listed within the said quote prices are subject to change without notice.

5.6 Any quotation submitted by the Supplier to a Customer shall be open for acceptance by the Customer for a period of no less than, and no more than 30 days from the date shown on the Supplier quotation unless previously withdrawn or extended by notice to the Customer from the Supplier.

5.7 A Customer order can only be made by way of official Customer Purchase Order (approved account holders), otherwise full payment by way of EFT, Bank Cheque, Bank Issued Irrevocable Letter of Credit, and Cash all without any deduction.

5.8 The Customer may at any time cancel any order prior to acceptance by the Supplier, wherein the discretion of the Supplier cancellation is otherwise acceded to the Customer, the Customer shall pay to the Supplier an amount equivalent to twenty percent (20%) of the total ordered, or invoice value of the good and/or services inclusive of GST by way of liquidated damages (Excludes Custom Builds or Optioned Equipment) refer PAYMENT TERMS Clause 6. Sub-clause 6.6 a), b) and c) and DEFAULTS Clause 8. Sub-clause 8.2

5.9 Payments received without a remittance advice may be first applied to the oldest owing balance or in an alternative at the Supplier’s absolute discretion.

5.10 The Supplier may at its own discretion set off against any monies owed to the Customer amounts owed to the Supplier by the Customer on any account whatsoever. However, the Customer may not set off any amounts allegedly owing by the Supplier to it against any monies due by it to the Supplier.

5.11 Prices indicated in quotes provided to the Customer from the Supplier are only applicable to that specific quotation and will not apply in any other instance unless otherwise agreed so by the Supplier in writing.

5.12 Priced quoted are based on pick-up or ex-warehouse from the Supplier's warehouse and doesn't not include delivery unless otherwise stated in the Supplier order confirmation.

5.13 All prices quoted by the Supplier are in AUD\$ (Australian Dollars) and exclude GST. GST shall be added to the amount to be paid where applicable.

6. PAYMENT TERMS

6.1 Unless otherwise agreed by the supplier in writing by way of 'Letter of Credit Approval' all orders will only be supplied on cash before delivery basis.

6.2 Unless otherwise agreed in writing, payment for the goods and/or services must be made within 30 days of the Tax Invoice date (for approved 30 day account holders only).

6.3 The Supplier reserves the right to withdraw the Customer's credit facilities or at its own discretion, vary the Customer credit limit at any time without prior notice and for any reason whatsoever if the Supplier deems it necessary for the protection of the Supplier.

6.4 The Customer is liable for all purchases made under its account name. It is not the responsibility of the supplier to confirm authority for the purposes of supplying or delivering goods and/or services to the Customer, its employee's or those who the Supplier deems to be the Customer's agent(s). It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account.

6.5 Any payment made by way of cheque will not be deemed to have been made until such time the relevant cheque is cleared by the bank and the funds have been received in full by the Supplier.

6.6 Any and all equipment classified as a Full Customised Build, or Custom Optioned is subject to the following payment terms;

a) **FULL CUSTOM BUILD:** is subject to a 50% non-refundable deposit confirming the Customer order with the 50% balance due two (2) days prior to dispatch (no exceptions);

b) **OPTIONAL ACCESSORY FITTED EQUIPMENT:** is subject to a 30% non-refundable deposit confirming the Customer order with the balance due thirty (30) days from invoice date for account holders, with the full balance of payment being payable prior to dispatch of goods from the Supplier warehouse for all non-account holders;

c) **FULL CUSTOM BUILD or ACCESSORY OPTIONED:** orders are validated and confirmed only once the deposit payment is received in cleared funds, the relevant workshop drawings have been signed & dated by the Customer, and only once the Supplier confirms by way of Customer Order Confirmation which will be sent via email to the Customer last known email address.

7. CREDIT

7.1 If in the opinion of the Supplier the credit worthiness of the Customer alters from that indicated by the Customer in its credit application, the Supplier has the express right to immediately stop supply, or any further credit to the Customer without being obligated to give the Customer any reason whatsoever.

7.2 Should the Supplier choose to exercise the right referred to in clause 7(7.1), the Supplier may refuse to deliver any goods and/or services which may be pending orders or 'Back Orders'.

7.3 Should the Customer have any queries or dispute regarding the supply or specification of any goods and/or services delivered on the invoice, the Customer must within ten (10) days of the issue of the relevant invoice, lodge with the Supplier in writing all details of the Customer queries or dispute, failing which the Customer will be deemed to have accepted the Supplier invoice in its totality without dispute.

7.4 The extension of credit to the Customer by the Supplier shall be at the absolute discretion of the Supplier, which may be varied from time to time, and where extended unless otherwise advised in writing by the Supplier, the Supplier requires payment in full by the due date shown on each invoice. A signed letter issued by the Director representing the Supplier will be sufficient evidence as to the Terms of Credit applicable to the Customer at any point in time.

7.5 Should payment owed by the Customer to the Supplier not be received by its due date, the supplier may at its own discretion;

a) Immediately cease any extension of credit;

b) Immediately at its own discretion without attracting any liability withhold any pending delivery of goods and/or services to the Customer on any orders received by the Customer even if the Supplier has accepted the Customer Purchase Order and has sent confirmation of acceptance to the Customer by way of Customer Order Confirmation;

c) Charge the Customer compounding interest on monies due charged at 20% per annum calculated on a daily basis for any monies owed exceeding 45 days (also chargeable for dishonoured cheque/s until full payment is received in cleared funds);

d) Charge the Customer for all costs and expenses incurred resulting from a payment default including without limitation legal costs (on an indemnity basis), collection agency costs, administration fees, stamp duties, any bank charges, merchant fees, or like charges levied on the Supplier by any bank or credit providers whose banking credit card facilities are utilised by the Customer for the purposes of paying the Supplier any amount on any account and any other related expenses payable of and incidental to the performance of enforcement of any litigation on these Terms and Conditions of Trade or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs associated in any way to monies owed exceeding 45 days from invoice.

e) The acceptance of any Customer payment by the Supplier under the specified due date shall not constitute a waiver of the Customer obligation to make further payments to the Supplier of other due invoices.

8. DEFAULTS

8.1 Should the Customer fail to make payment to the Supplier of any due invoices or commit a breach of any Term of Trade or being a natural person commit an act of Bankruptcy or being a Corporation by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other persons authorised to enter into the possession or assume control of any property of the Customer pursuant to a mortgage or other security, then:

a) The right of the Customer to sell the goods and/or services in the ordinary course of business or otherwise immediately terminates without the need for the Supplier to provide written notification or confirmation; and

b) The Supplier may without prejudice to any other rights it may have, do any and all the following:

I. Immediately withdraw or suspend any credit facilities which may have been extended to the Customer and require immediate payment of all monies accrued or owing to the Supplier; or

II. Withhold any further deliveries of goods or performance of any service required under the Terms and Conditions of Trade contract; or

III. Recover from the Customer the cost of materials, goods and/or services acquired for the purpose of future deliveries; or

IV. In respect to goods already delivered; enter into the Customer premises with such force as is reasonably necessary and at any or all necessary time(s), without being guilty of any manner of trespass in any Australian State or Territory to recover and resell same for its own benefit; or

V. Immediately suspend and/or terminate performance of any other contract which the Supplier has with the Customer.

8.2 Any non-refundable deposits paid by the Customer to the Supplier for any FULL CUSTOM BUILD or ACCESSORY OPTIONED will be retained and withheld by the Supplier and the goods will not be delivered until such time full payment is received prior to dispatch, cancellations will not be accepted and non-refundable deposit forfeited, (4 week grace period applies for the benefit of the purchasing customer).

8.3 Any and all costs (including without limitation, legal or other debt collection costs) actually incurred by the Supplier of and incidental to the performing, or enforcing of or any litigation on the Terms and Conditions of Trade in this agreement, including any and all action taken by the Supplier to recover monies or property invoiced to the Customer, due from the Customer will be payable by the Customer to the Supplier on a full indemnity basis.

8.4 The Customer shall accept compounding interest on monies due on all outstanding and overdue tax invoices will be charged to the Customer at 20% per annum calculated on a daily basis until full payment is received in cleared funds and acknowledges this is a reasonable pre-estimate of liquidated damages.

9. RETURN OR CANCELLATION OF GOODS

9.1 The goods and/or services provided by the Supplier to the Customer may come with guarantees that cannot be excluded under Australian Consumer Law. If this law applies, the Customer is entitled (in the instance of 'Goods') to have the goods repaired by the Supplier or its appointed authorised service agent, or replaced if the goods fail to be of acceptable quality and the failure amounts to a major failure.

9.2 In the instance whereby the Customer believes the goods do not comply with statutory guarantees, they must contact the Supplier and make arrangements for the return of the goods. Any request to do so must be accompanied by the Customers 'Proof of Purchase', and the copy of the Customer purchase order and any relevant service report from any of the Supplier appointed authorised service agents declaring the goods fail to be of acceptable quality, and that the failure amounts to a major failure. The Supplier agrees to refund, or replace the goods, and bear the cost of freight charges on the return of the faulty goods to the Supplier warehouse and, in all other respects, act in accordance with its obligations under the Australian Consumer Law (as it may be).

9.3 No other guarantee or warranties apply to the goods unless further or additional warranty is provided, in writing, to the Customer by the Supplier.

9.4 Guarantee is given under Australian Consumer Law are given by the Supplier to the Consumer. Any claims for the Suppliers' failure to comply with the Customer order whether due to defect, incorrect delivery, incorrect specification, shortfall, damage or otherwise must be given to the Supplier in writing within 48hrs from the time of delivery. If the Customer fails to provide such written notice then the Customer shall be deemed to have accepted the goods in full and complete accordance with the order as required and expected.

9.5 The Supplier's liability for any breach of non-excludable condition or warranty is limited to the Supplier's option, of any of the following;

a) the suitable repair of the goods; or

b) the payment for the cost of having the goods repaired; or

c) the replacement of the goods, or supply of acquiring equivalent goods.

9.6 Any goods supplied in accordance with the Customer order which are subsequently returned to the Supplier, can only be credited by the Supplier if the Supplier has given prior written consent for the return of the goods, and the goods are returned to the Supplier in the same condition that they were in when supplied to the Customer including all original unbroken packing and labelling. Any related freight or carrier charges are to be paid by the Customer. Any goods that are returned to the Supplier will incur a 20% restocking fee of the total sale value of the return goods including freight, and inclusive of GST (except in the instance of Full Customised Build, or Custom Optioned equipment refer Clause: 9.6 Sub-clause a) and b). The restocking fee is payable no later than 24hrs prior to the return of the goods to the Supplier, the Customer shall retain full risk in the goods until such time as the goods have been unloaded into the nominated Supplier warehouse and inspected by the Supplier or its nominated agent. The Customer will bear the full freight cost of the goods to be returned.

a) Any goods that are classed as Full Custom Build that is returned through any form of cancellation of order will incur a 50% restocking fee. The restocking fee is payable no less than 24hrs prior to the return of the goods to the Supplier regardless of the Account type or status - no exceptions, the Customer shall retain full risk in the goods until such time as the goods have been unloaded into the nominated Supplier warehouse and inspected by the Supplier or its nominated agent. The Customer will bear the full freight cost of the goods to be returned.

b) Any goods order by way of Accessory Optioned equipment, indent or non-stocked items that is returned through any form of cancellation of order will incur a 25% restocking fee. The restocking fee is payable no less than 24hrs prior to the return of the goods to the Supplier the Customer shall retain full risk in the goods until such time as the goods have been unloaded into the nominated Supplier warehouse and inspected by the Supplier or its nominated agent. The Customer will bear the full freight cost of the goods to be returned.

c) No orders may be returned to the Supplier or cancelled at any time without the specific written consent from the Supplier. In the event the Supplier shall accept a cancellation on any item/s which are classified as either a Full Custom Build or Customised Optioned equipment items prior to delivery the Customer understands and accepts that any non-refundable deposit payment or any other payment made by the Customer shall automatically be retained in full by the Supplier as a default payment on the cancellation as set out in DEFAULTS Clause 8. Sub-clause 8.2

9.7 The Supplier shall at no time be liable for any direct or indirect damage or losses whatsoever including, but not limited to; loss of profits, loss of opportunity, loss of use, or any consequential losses whatsoever.

10. DELIVERY

10.1 The Supplier is not liable for any claims for non-fulfilment, or late delivery of goods and/or services, liquidated damages, or for any loss or damage (including consequential loss or damage) arising from delay in delivery, or failure to deliver. The Customer shall accept, and pay for the goods and/or services in full notwithstanding late delivery. Time is not of the essence for the delivery;

a) the Supplier is entitled to deliver the goods and/or services in one, or more lots;

b) where the delivery of goods and/or services is effected by way of part delivery, the Supplier shall be entitled to invoice the Customer in, for pro rata progress payments in respect thereof;

c) Failure by the Customer to deliver on time any instalment, or deliver any instalment for any part thereof delivery any instalment on time shall not entitle the Customer to repudiate the contract in part, or in whole. The Supplier shall accept no liability (including without limitation, legal costs, or liquidated damages, or late fees or penalties) arising from delayed deliveries should the goods not be delivered at the time or on the date advised due to circumstance outside the Suppliers control including but not limited to; inclement weather, goods not paid for by the Customer as required by the Supplier, lack of access on site, requests by primary contractor, or appointed builder to delay delivery at the time of delivery, freight delays, breakdowns, traffic accidents.

10.2 The Customer shall at no time be relieved of their obligation to accept, and pay for goods and/or services by reason of any delay in delivery.

10.3 The Customer hereby irrevocably agrees to pay for all freight costs for standard, or special deliveries including all costs for rescheduling of deliveries, or any costs resulting from multiple attempts to effect the delivery. Any allocated time that is given, or quoted for the by of the Supplier, its agents or representatives of any goods and/or services is an estimate only and shall not be binding against the Supplier at any time.

10.4 Any claim by the Customer to the Supplier for defective goods and/or services, incorrect delivery, incorrect specification, shortfall, damage or otherwise must be given to the Supplier in writing within 48hrs from the time of delivery (no exceptions);

a) If the Customer fails to provide such written notice then the Customer shall be deemed to have accepted the goods in accordance with the order as required and expected, in accordance with Clause 10. Sub-clause 10.9 - 10.10 Sub-clause a), b) and c)

10.5 The Supplier reserves the right to request a reasonable charge for storage if the Customer delayed delivery more than seven (7) days of originally agreed on the delivery date, regardless of the circumstance. Goods will be delivered, or deemed to be delivered, at the time they are delivered to the delivery place nominated by the Customer in their purchase order or by way of written confirmation whether in the form of a letter or email to the Supplier from the Customer or its authorised representative. If no such delivery address is nominated, then delivery will be deemed to have occurred at the time when the goods are ready for collection at the Supplier premises and will be invoiced at such time, whether collected by the Customer at the time or at a later date. The Customer authorises the Supplier to deliver goods to the place nominated by the Customer and authorises the Supplier, or their nominated freight carrier to leave the goods at the Customer nominated place of delivery whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place has been executed, or after the Customer has arranged to pick-up the goods from the Supplier nominated pick-up address. The Supplier is not obliged to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment from any person at the nominated place for delivery. If in the instance the Supplier or their nominated freight carrier does obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment is obtained from any person/s believed by the Supplier or their nominated freight carrier to be authorised by the Customer to take delivery and obtains a signed receipt, Proof of Delivery (POD), or other acknowledgment, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer acceptance of the goods delivered;

a) it is the sole responsibility of the Customer to ensure a suitably authorised person is at the point of delivery, at the advised estimated time and date of the delivery; and

b) if the Supplier or their nominated freight carrier is unable to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment, and yet the Supplier nominated freight carrier can provide confirmation delivery was effected the Customer shall accept full responsibility of the possession of such goods delivered; or

c) in the event the Supplier is able to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment, from any person/s at the place nominated by the Customer for delivery the Supplier or its nominated freight carrier shall understand the signee is an authorized and was nominated by the Customer to do so, and that such a signed receipt, Proof of Delivery (POD), or other acknowledgment shall be conclusive evidence that the goods were delivered and in saleable and usable condition perfectly fit for their intended use as quoted and invoiced to the Customer.

11. PASSING OF RISK AND RETENTION OF TITLE

11.1 Risk in the goods shall pass on the delivery to the Customer; however, the title will remain with the Supplier until such time as full payment is received in cleared funds.

11.2 In the event payment is received by the Supplier in cleared funds prior to dispatch and delivery of such goods, legal and equitable title shall remain with the Supplier until such time as the delivery has been effected to the nominated and Supplier agreed point of delivery.

11.3 The Customer agrees and acknowledges that payment is not deemed to have been made for any invoice, or for any/all debts accrued, or owed to the Supplier until all amounts have been received by the Supplier in 'clear funds'.

11.4 The Customer accepts and acknowledges that the Supplier shall remain at all times the legal and equitable owner of the goods until the agreed payment as set out in the Customer purchase order and Supplier Tax Invoice has been received in full by the Supplier in respect of all the goods and/or services supplied, including any/all other amounts owed to the Supplier are paid in full and until such time;

a) the Supplier may require the Customer to return the goods to the Supplier nominated warehouse on demand, the Customer bearing all associated costs to do so; or

b) the Supplier or its nominated agents may enter the premises of the Customer to inspect and repossess the goods; or

c) allow the Customer to retain the goods as Bailee and fiduciary and hereby agrees to accept this appointment as Bailee and fiduciary for the Supplier; or

d) allow the Customer to sell the goods in the ordinary course of business as Bailee and fiduciary for the Supplier and agrees to pay the Supplier the proceeds of the sale to any amounts owed to the Supplier; and

e) the Customer agrees to retain the goods in good and merchantable conditions at all times; and

f) the Customer must, as long as the Supplier is entitled to the property in goods, store the goods so they are clearly identifiable as the property of the Supplier; and

g) although title in the goods will not pass until full payment is made by the Customer, the risk of loss or damage to goods passes to the Customer upon delivery to the Customer' nominated, and Supplier agreed with point of delivery.

11.5 The Customer shall insure the goods against loss, theft or damage until the goods have been paid for in full to the Supplier, or the until such time as the goods are sold whichever occurs first, the Supplier will be entitled to call for the details of the Customers insurance policy at any time.

11.6 The Customer expressly and irrevocably agrees that the Supplier is granted permission to enter any premises where the goods are located or installed for the express purpose of repossessing, or removing such goods and sell the goods in order to recover any monies owed by the Customer to the Supplier. The Customer, its successors and/or its assignee/s including but not limited to receivers, external managers, or administrator, shall not object to the Supplier or its agents, or representatives, entering the premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and/or costs that may arise against the Supplier in relation to the purpose of repossessing, or removing such goods and the sale of the goods pursuant to these Terms and Conditions of Trade including any claims brought against the Supplier by third parties.

11.7 The Customer expressly and irrevocably indemnifies the Supplier in entering the premises with such force as is reasonably necessary and at any or all necessary time(s), without being guilty of any manner of trespass in any Australian State or Territory, to recover and resell same for its own benefit; or authorizes the Supplier to enter or re-enter the site in which the goods are being stored.

12. PERSONAL PROPERTY SECURITIES ACT (PPSR)

12.1 The Customer acknowledges and agrees that it grants the Supplier a security interest in the goods and their proceeds including any accounts and accessions by virtue of the retention of title pursuant to clause 11.

12.2 The Customer acknowledges and agrees that:

a) these terms and conditions of sale are subject to Us giving You at least 30 days' notice, such other terms and conditions as the Supplier may adopt from time to time, apply to the supply of goods by Us to You to the exclusion of all other terms and conditions of sale or purchase;

b) no variation to the Supplier's terms and conditions of sale will be of any effect unless agreed to by the Supplier in writing;

c) the goods supplied by the Supplier secure the payment of the purchase price of those goods and of any other goods supplied by the Supplier;

d) it will do all the things necessary including providing all information we require to register a Financing Statement or Financing Change Statement. or other document, on the Personal Properties Securities Register (PPSR) as a security interest and a purchase money security interest pursuant to the Personal Property Securities Act 2009 (PPSA);

e) it will not change its name, ACN or ABN or other details required on the PPSR without first notifying the Supplier in writing;

f) it waives its rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the security interest created pursuant to these terms and conditions;

g) it must pay the Supplier's costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.

12.3 To the maximum extent permitted by law, the Customer agrees that the following sections of the PPSA will not apply:

- a) Section 130;
- b) Section 142; and
- c) Section 143.

12.4 To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and hereby contract out of the following sections of the PPSA:

- a) Section 95;
- b) Section 129(2);
- c) Section 132;
- d) Section 134(2); and
- e) Section 135.

12.5 Unless otherwise defined in these terms and conditions of sale, the terms and expressions used in this clause have the meanings given to them by virtue of the PPSA.

13. WARRANTY & EXTENDED WARRANTY CONDITIONS

13.1 The voluntary EXTENDED WARRANTY offered by the Supplier to the Customer for an period of 5 years parts and 2 years labour is strictly subject to:

- a) The goods are installed as per the manufacturers recommendations as set out in the Operation, Installation and Service Manual relevant to the specific equipment item;
- b) Customer full compliance with the Terms and Conditions as set out herewith;
- c) Customer is required to complete in full the Supplier WARRANTY & EXTENDED WARRANTY TERMS & CONDITIONS form, a copy of the Supplier WARRANTY & EXTENDED WARRANTY TERMS & CONDITIONS form is supplied with all goods delivered to the Customer also available on request to the Supplier;
- d) The Customer to submit completed WARRANTY & EXTENDED WARRANTY TERMS & CONDITIONS to IGLU COLD SYSTEMS Via: Website Contact Form: <http://www.iglucoldsystems.com.au/contact-us> Email: sales@iglucoldsystems.com.au or by ordinary Post to: PO BOX 554, Narrabeen NSW, 2102 Australia
- e) Supplier acceptance for the registration of the EXTENDED WARRANTY period of 5 years' parts & 2 years' labour upon satisfactory completion of the Supplier Terms & Conditions the Supplier is to notify the Customer of their (Supplier) acceptance.
- f) The claim not being in breach of any Term set out herein;
- g) Confirmation of proof of purchase from the Supplier, its dealers, contractors, agents and distributors;
- h) Access by the Supplier or the Supplier nominated service agent allowing reasonable access for the inspection of the goods for confirmation and validation of the claim;
- i) Confirmation that no claim under warranty is made due to unauthorised repairs, or attempted repairs by any of the following: the Customer, Consumer, Operator, and/or unauthorised or unlicensed service or use by agents or persons or any third party;
- j) Defects not being a result, or contributing factor of any failure to maintain the refrigeration unit in a manner as specified by the Supplier or the failure to implement a regular Service & Maintenance program with intervention being no less than every four (4) months from the time of purchase;
- k) Satisfaction on behalf of the Supplier or Suppliers authorised representative that the refrigeration has not been subject to alteration, incorrect installation, neglect, use of corrosive or abrasive chemicals and materials, damage caused by vermin infestation, water damage, open flame or extreme heat or sun damage, attempts by any Operator or Customer to alter any part/s, any component/s, flood, fire or acts of God.

13.2 Warranty or Extended Warranty does not apply if the identification/manufacturers plate, stickers, badges, plates or marks are altered or removed.

13.3 The Supplier obligation under its Warranty terms is to repair or replace any part which under normal and proper use and maintenance proves to the Supplier, or Supplier authorised representative satisfaction to be defective in material or workmanship within the warranty period which commences from the date of purchase, or 6 months from the date of manufacture (whichever expires first).

13.4 All goods shall be subject to a parts and labour warranty following delivery in any case where the goods are found to have a defect in workmanship or materials.

13.5 This warranty applies only for the benefit of the Customer and is void if installation, operation, is not in accordance with the manufacturer instructions and recommendations as set out in the Operation, Installation and Service Manual provide with the equipment at the time of sale.

13.6 Failure to provide documented proof by way of an official service log will void the Supplier Extended Warranty.

13.7 All 'remote' unit installations must be carried out by licensed refrigeration mechanics and warranty does not extend to remote condensing units, copper lines and/or any component/s not supplied or installed by the Supplier or the Supplier authorised representative.

13.8 All warranty work must be carried out by a Supplier authorised service agent/s only.

13.9 All warranty work will be undertaken during the working hours of 8:00am – 5pm Monday to Friday excluding public holidays. Applicable penalty rates will apply to work performed outside these hours and will be charged to the Customer at normal commercial rates to the Customer or Operator.

13.10 To the full extent permitted by law all implied conditions and warranties are expressly excluded.

13.11 The Supplier will not be liable for respect or any claims for parts modified in any way without the written approval of the Supplier.

14. WARRANTY & EXTENDED WARRANTY EXCLUSIONS

14.1 Weekend call out, service calls outside the hours of 8:00am to 5:00pm Monday to Friday, and Public Holidays (will be charged to the Operator/Customer at normal commercial rates and is payable at the time of the service call to the service agent or authorised representative of the Supplier).

14.2 Public Holiday call out; (will be charged to the Operator/Customer at normal commercial rates and is payable at the time of the service call to the service agent or authorised representative of the Supplier).

14.3 Travelling distance in excess of 100kms or travelling time in excess of 1hr of the authorised service agent premises. Any travel charges incurred over and above the set 100kms distance, or 1hrs travel time will be charged to the Operator/Customer at normal commercial rates and is payable at the time of the service call to the service agent or authorised representative of the Supplier.

14.4 Any goods purchased second hand.

14.5 Any non-Supplier manufactured or supplied equipment connections whether mechanical or otherwise connected post positioning and installation.

14.6 Damage to electrical leads, cables and plugs, copper pipes, door seals and gaskets, door locks, glass doors, door hinges, TX valves, solenoid valves, inline ball valves, lighting, batteries, fuses, plastic components, electrical or wiring damage or otherwise due to electrical surges, overloads or blackouts, remote connections, or remote condenser related installation work and associated parts, components or connections.

14.7 Any defects or failure, or major failure including but not limited to; poor installation and positioning, poor maintenance, lack of regular Service & Maintenance Plan (required every 4 months from the date of installation and monthly condenser cleaning), failure due to blocked condensers, misuses, overloading, operator error in use, abuse, neglect, physical damage, lack of fresh air circulation, water damage, damage resulting from electrical surges, chemical cleanser damage or corrosion, unauthorised alterations, maintenance or service work carried out by an unauthorised refrigeration service mechanic, consumer, contractor, builder, engineer, manager, owner, end user employee.

14.8 Loss of food, beverage or contents of any kind of the product due to failure for any reason.

14.9 Any claim in excess of the original purchase price.

14.10 Any additional damaged caused by the delay or failure by the Customer or Operator to notify the Supplier of any existing defect/s.

14.11 The Supplier shall not be liable for expenses (including special or consequential losses, damage or loss of profit or potential profits) whether direct or indirect arising from the use or inability to use Goods or from any other cause such as a breach of contract by the Supplier, its employees or agents, cost of repairing or replacing other property which is damaged, loss of goodwill or any other incidental damage of any kind.

14.12 Product where the Customer has not properly maintained the goods in accordance with instructions, literature, operation manuals, installation manuals or directions issued by the Supplier such as failing to regularly clean the condenser on a monthly basis and a failure by the Operator to implement a Service & Maintenance Plan as set herein.

14.13 Save and except for the warranty set out above, and to the maximum extent permitted by law, all conditions and warranties which may at any time be implied by the Common Law, the Trade Practices Act, the Fair Trading Act or any other State or Federal Act are excluded. To the extent that these cannot be excluded and where the law permits, the Supplier liability in respect of any such condition or warranty shall be limited at the option of the Supplier to the repair or replacement of the goods or the supply of equivalent goods or the payment of costs of repairing or replacing the Goods or having them repaired or replaced.

14.14 Cost associated with installation, or removal of any stainless steel, benching, joinery or any other equipment which inhibits access to the Goods requiring repair or servicing the Goods or from any other cause such as a breach of contract by the Supplier or any negligence of the Supplier, its employees or agents, cost of repairing or replacing other property which is damaged, loss of goodwill or any other incidental damage of any kind.

15. DISPUTES

15.1 Any disputes arising between the Supplier and Customer, or Customer and Supplier arising from the performance of the provisions of the Terms and Conditions of Trade which cannot be resolved through friendly consultation by the parties within ten (10) days of issue of the invoice will finally be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce,



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by a single arbitrator appointed in accordance with the said Rules. The place of Arbitration will be in the Australian Capital City in which the goods were invoiced to the Customer. The procedural Law applicable to the arbitration will be that of New South Wales. The decision of the arbitration is final and on both parties.

16. APPLICABLE AUSTRALIAN LAW

The following provisions apply if the Supplier Warranty is subject to Australian Consumer Law (ACL) as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (Australia) and any or all corresponding provisions of any State or Territory Fair Trading Legislation;

- a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
b) The Supplier Warranty shall be read and construed having regard to the ACL. If the ACL is in any way inconsistent with these Terms and Conditions the provisions of the ACL are intended to apply and these Terms Conditions shall be automatically amended accordingly.
c) If any Warranty, part thereof, or any provision of the Suppliers Warranty or Extended Warranty Terms and Conditions shall be invalid, unenforceable, void or illegal then that Warranty will automatically be deleted.

17. DISPUTES

17.1 Any disputes arising between the Supplier and Customer, or Customer and Supplier arising from the performance of the provisions of the Terms and Conditions of Trade which cannot be resolved through friendly consultation by the parties within ten (10) days of issue of the invoice will finally be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by a single arbitrator appointed in accordance with the said Rules. The place of Arbitration will be in the Australian Capital City in which the goods were invoiced to the Customer. The procedural Law applicable to the arbitration will be that of New South Wales. The decision of the arbitration is final and on both parties.

18. SEVERANCE

18.1 In the event that whole or any part or parts of any provision or condition set out this Agreement is, or should be held by a court to be unlawful, unenforceable or void in whole or in part such provision or condition or part thereof shall to that extent be severed from these Terms and Conditions of Trade but the validity and enforceability of the remainder of these Terms and Conditions of Trade shall not be affected.

19. FORCE MAJEURE

19.1 If a party is prevented in whole or in part from carrying out its obligations in the Terms and Conditions of Trade as a result of Force Majeure, it must promptly notify the other party.

19.2 Following this notice, and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure.

19.3 Force Majeure means an event or cause beyond the reasonable control of the party claiming Force Majeure including but not limited to the following:

- a) act of God, lightning, storm, flood, fire, earthquake or explosion;
b) major disruption to financial markets that result in large unexpected movements in currency and/or raw material or supply prices that make it impracticable to supply;
c) strike, lockout or other labour difficulty;
d) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic;
e) the effect of any applicable laws, orders, rules or regulations of any government or other competent authority; and embargo, power or water shortage, or lack of transportation.

20. CUSTOMER WARRANTY AND REPRESENTATIONS

20.1 The Customer or its appointed representative, and/or Signee/s hereby represents and warrants to the Supplier the following;

- a) the Customer or its appointed representative, and/or Signee/s are duly authorised to enter into this Agreement and is/are empowered to do so;
b) the signing of this agreement constitutes acceptance of the terms of this Agreement in full by the Customer and is a valid and binding Agreement between the Supplier and Customer enforceable in accordance with its respective terms.

21. IMPORTANT NOTICES TO CUSTOMER / SIGNEE

1.1 By signing this document, even if Sections, Clauses and/or Sub-clauses are deleted in part or in full to indicated non-acceptance by the Signee on behalf of the Customer either by written hand or electronically by way of 'drawing a line through words and/or sentences' or deletion electronically or in any other manner, these 'Deleted' conditions of the Supplier Terms & Conditions of Trade and all parts thereof shall apply regardless should the Supply not expressly consent to such amendments in written form.

CUSTOMER ACCEPTANCE IN FULL OF THE SUPPLIER TERMS & CONDITIONS OF TRADE

I,(clearly print name) hereby acknowledge, affirm and agree that before Signing acceptance of the Supplier Terms and Conditions of Trade I have carefully read and understand the Terms and Conditions of Trade as set out herein, I accept all of the Terms Conditions of Trade outlined herein. I fully understand and comprehend the obligations between the Supplier and Customer, or Customer and Supplier (as the case may be, subject only to the Supplier terms and to the exclusion of all others).

I also accept by signing this version (Version.110803.17) of the Supplier Terms & Conditions of Trade I do so accept and understanding it will replace and supersede any previously agreed and accepted Supplier Terms and Conditions of Trade.

SIGNEE:

Signature of Customer (director or duly authorised representative):

Date: / / 20..... Print Name: Position:

Customer Company & Trading Name: ACN: or ABN:

Signed in the presence of:

WITNESS:

Signature of Witness:

Date: / / 20..... Print Name: Position:

Relationship to Signee: Position: