

Terms and Conditions of Trade

1. **Definitions:** The following terms and conditions contain references, and are defined for the purpose of an Agreement: -
 - 1.1 "Advanced Air Conditioning" means Advanced Air Conditioning Pty Ltd (ACN 097 378 651);
 - 1.2 "Agreement" means any maintenance, proposal, quotation, contract, agreed Works document
 - 1.3 "Business Day" means any day other than: -
 - (a) A Saturday or a Sunday;
 - (b) A public holiday, special holiday, or bank holiday in the place at which Work is to be performed or Goods delivered;
 - (c) The days between: -
 - (i) 22 to 24 December;
 - (ii) 27 to 31 December and
 - (iii) 2 to 10 January
 including each of days mentioned in subparagraphs (i) to (iii) above.

Work may be performed outside these hours/days, in which case, added costs will be met by The Customer.

 - 1.4 "Customer" means any person with whom Advanced Air Conditioning enters into a Agreement pursuant to which Advanced Air Conditioning is to undertake Work for the supply of Goods for that person. A person includes an individual, body corporate, trust, partnership, unincorporated body or other entity whether or not it comprises a separate legal entity;
 - 1.5 "Goods" means any goods or services that Advanced Air Conditioning has to supply to a Customer, including heating, ventilation, air-conditioners, ducting, or anything reasonably necessary to enable heating, ventilation, air conditioning and/or refrigeration to be installed, repaired or maintained;
 - 1.6 "Latent Condition" means the physical conditions on the Site or its surroundings and includes any building, anything found in a building or an artificial thing that differs materially from: -
 - a. Any plan, specification or other document provided by the Customer, its servants, or agents or on its behalf; or
 - b. Those that Advanced Air Conditioning should reasonably have anticipated at the time it provided its quote or tender from the information supplied by the Customer;
 - 1.7 "Normal Hours" means any business day between the hours of 08:00 and 16:30;
 - 1.8 "Site" means the property or building to which Advanced Air Conditioning is to deliver Goods or in or upon which it is perform Works including the supply and installation of air-conditioning equipment;
 - 1.9 "Work" or "Works" refers to the Goods and materials specified in Advanced Air Conditioning quotations and/or which Advanced Air Conditioning is to manufacture and supply for the purchase and/or Advanced Air Conditioning is to arrange to have manufactured and/or supplied and/or installed for the Customer.
 2. **Validity Period:** The quotation remains valid for a period of thirty (30) calendar days from the date shown on the quote received, and is subject to adjustment thereafter, however Advanced Air Conditioning reserves the right to withdraw this quotation at any time.
 3. **Acceptances:** Acceptance of this offer is to be lodged in writing, official company order, or signed acceptance. Work will not commence until this requirement is met.
 4. **Rise and Fall:** If, after acceptance of this quotation, the completion date for the Works is delayed beyond the original agreed period, due to reasons beyond Advanced Air Conditioning's control, this quotation will become subject to adjustment in accordance with variance in cost of labour and materials, which may have resulted in the course of such delay.
 5. **Cancellation:** Cancellations will be accepted in writing, on the condition that all costs expended by Advanced Air Conditioning at time of cancellation are reimbursed in full by the Customer.
 - 5.1 **Consequences of cancellation the Customer:** If the Customer terminates an Agreement, the Customer must pay Advanced Air Conditioning: -
 - 5.1.1 The reasonable value of any Work, including variations, that it has performed to the date of termination, including an amount for profit and overheads; and
 - 5.1.2 Its costs for quitting the Site, including the removal of its plant and equipment;
 - 5.1.3 The cost of any Goods purchased by Advanced Air Conditioning for provision to the Customer, except to the extent that such Goods may be returned to the person who sold them to Advanced Air Conditioning;
 - 5.1.4 The cost of any Goods ordered by Advanced Air Conditioning for provision to the Customer, except where any such order can be cancelled without penalty. If Advanced Air Conditioning can cancel an order but with a penalty, the amount of the penalty is a debt due and owing by the Customer to Advanced Air Conditioning;
 - 5.1.5 Any other costs or losses incurred by Advanced Air Conditioning directly or indirectly caused by the termination of the Agreement.
 6. **Variations:** If the scope of Work is varied after acceptance of this quotation the Customer will give such direction in writing. Selling price and completion date will be varied accordingly.
 7. **Multiple Items:** If one or more items are deleted from the quotation, when several individual items and prices are listed, Advanced Air Conditioning may adjust the remaining prices, to compensate loss of shared component costs for the Goods (i.e. travel, plant hire, Site establishment, accommodation etc.).
 8. **Ability to Supply:** Every effort will be made to fulfil Advanced Air Conditioning's obligations under this Agreement, but if Advanced Air Conditioning's ability to supply the necessary labour, materials and/or services, is affected directly or indirectly by war, any law, strikes, civil commotion, acts of God, fire, quarantines, disruptions to transport and/or supply chains or any other cause beyond Advanced Air Conditioning's control, Advanced Air Conditioning reserves the right to terminate this Agreement without being liable for any breach. Advanced Air Conditioning will be entitled to payment for any Goods supplied and Works already completed, calculated on the basis of the rates in the quotation.
 9. **Excavation Work:** No responsibility is accepted by Advanced Air Conditioning in the event of striking rock, water table, fill, service pipes, cables or wire during excavation Work. This quotation is based on clear excavation into natural soil conditions, and any additional costs arising from footing redesign, re-engineering or repairs to underground services, will be met by the Customer. Soil tests and service/s location identification may be requested by the Customer at additional costs, prior to excavation.
 10. **Asbestos and Unsafe Conditions:** The Customer must make known to Advanced Air Conditioning all asbestos containing materials or unsafe conditions on Site, before any Works commence. If for any reason Advanced Air Conditioning reasonably forms the opinion that the Site contains asbestos, or unsafe conditions, and is not safe for supply of the Goods, Advanced Air Conditioning may request tests and/or rectification at no cost to Advanced Air Conditioning to confirm the Site is free of asbestos and/or unsafe conditions. Advanced Air Conditioning shall be entitled to delay the supply of Goods until Advanced Air Conditioning is satisfied that it is safe for the supply of the Goods to proceed. Advanced Air Conditioning will be free from and does not accept liability, either directly or indirectly, for any penalties, damages, consequential loss and/or expense (including loss of profit) suffered by the customer due to asbestos, or unsafe conditions, on Site, whether identified before the supply of Goods or not.
 11. **Start and Completion Dates:** Start and completion dates are given in good faith, and are estimated based on conditions, circumstances and information available to Advanced Air Conditioning at that time. Advanced Air Conditioning does not accept liability, either directly or indirectly, for any penalties or damages arising from failure to meet these dates.
 12. **Extensions of time:** Advanced Air Conditioning is entitled to an extension of time in which to complete the Work if the Work is delayed for any reason beyond its control, including, but not limited to:-
 - 12.1.1 Inclement weather;
 - 12.1.2 The effects of inclement weather;

- 12.1.3 Any variation to the Works;
- 12.1.4 An act of God, fire, explosion, earthquake or civil commotion;
- 12.1.5 An industrial dispute;
- 12.1.6 A dispute with the owner of any property or a neighbour;
- 12.1.7 Anything done or not done by the Customer;
- 12.1.8 A delay in obtaining any approval relating to the Work;
- 12.1.9 Quarantines
- 12.1.10 Disruptions to transport and/or supply chains
- 12.1.11 The industry shutdown period, being a 3-week period commencing on/about 22 December in each year if undertaking the Works in that period was not required or contemplated by the Agreement;
- 12.1.12 A delay in the supply of Goods to be supplied by Advanced Air Conditioning.

Advanced Air Conditioning may claim more than one extension of time if a particular delay has more than one effect on the carrying out of the Works. Advanced Air Conditioning may claim an extension of time at any time up to and including the date on which it claims payment for having completed the Works or the date on which the Works are completed. This condition survives termination of the Agreement.

13. **Latent Condition:** If a Latent Condition becomes apparent before or during the time in which Advanced Air Conditioning is supplying Goods then the following conditions apply: -
 - 13.1.1 The Customer must pay Advanced Air Conditioning the reasonable cost for Advanced Air Conditioning having to deal with the Latent Condition, including the cost of any additional Work or additional resources that may be needed to deal with the Latent Condition;
 - 13.1.2 Advanced Air Conditioning is entitled to an extension of time to any date set by the Agreement for the completion of its Works for the time it takes for it to deal with the Latent Condition.
 14. **Responsibility:** Risk will pass to The Customer upon delivery or installation of The Goods, notwithstanding that ownership remains with Advanced Air Conditioning until payment is made in full.
 - 14.1 Risk in goods: If Advanced Air Conditioning notifies the Customer of the date on which Goods are to be delivered to the Site, the Goods are at the risk of the Customer upon their being loaded upon any vehicle for the purpose of delivery to the Customer or the Site. Otherwise risk in the Goods passes to the Customer upon their delivery to the Site. The Customer must ensure that it takes out appropriate insurance to cover the risk of damage to or destruction of any Goods to be supplied by Advanced Air Conditioning from the time risk passes to the Customer. The Customer indemnifies Advanced Air Conditioning against any loss or damage that it or Advanced Air Conditioning may suffer, including consequential loss or damage, arising out of the loss of or damage to Goods being supplied by Advanced Air Conditioning from the time that risk in the Goods has passed to the Customer. The Customer must provide Advanced Air Conditioning with a copy of any insurance policy or confirmation of insurance cover within two (2) Business Days of receiving a written request from Advanced Air Conditioning.
 - 14.2 Storage: Should storage by Advanced Air Conditioning of Goods or materials be necessary due to The Customer being unable to accept delivery on the agreed delivery date, a progress payment equal to 100% of the cost of such Goods or materials stored will be payable by The Customer within the agreed terms of credit, from the original agreed date. The Customer will pay all storage, relocation, insurance, handling and additional attendance charges in relation to The Goods and materials which are stored by Advanced Air Conditioning on The Customers behalf. Furthermore, Advanced Air Conditioning accepts no responsibility for deterioration, loss or damage that may occur to The Goods during Advanced Air Conditioning's day to day operations.
 15. **Subcontracting:** Advanced Air Conditioning may subcontract all or any part of the Work.
 16. **Notification of Claims:** No claim for faulty Goods will be considered unless written notice thereof is received by Advanced Air Conditioning within seven (7) days after receipt of The Goods by the Customer, and under no circumstances shall any claim be greater in value than the actual invoice value of The Goods claimed to be faulty. If such notification is not received by Advanced Air Conditioning, all monies owing for The Goods will be paid in full by the Customer within the agreed credit terms.
 17. **Property of The Goods:**
 - 17.1.1 Notwithstanding delivery of The Goods to The Customer, property of The Goods will not pass to The Customer until The Customer has paid to Advanced Air Conditioning all sums owing by The Customer to Advanced Air Conditioning under the Agreement.
 - 17.1.2 Until such payment is made. The Customer holds The Goods as bailee for Advanced Air Conditioning and will store The Goods separately from other Goods on the premises of The Customer or in some other way as to render them capable of separate identification.
 - 17.1.3 Where payment is not made on or before the due date, The Customer will, upon demand by Advanced Air Conditioning, deliver up The Goods to Advanced Air Conditioning, failing which Advanced Air Conditioning is hereby irrevocably authorised to enter upon the place where The Goods are situated and remove the same and The Customer will indemnify Advanced Air Conditioning against any action claim or demand arising out of this exercise by Advanced Air Conditioning of its powers under this sub-clause.
 - 17.1.4 The parties agree that the provisions of this clause apply notwithstanding any Agreement between the parties under which Advanced Air Conditioning gives The Customer credit.
 - 17.1.5 Where the Agreement is for delivery of Goods by instalments, the property will not pass in any instalment until payment has been made to Advanced Air Conditioning for the whole Agreement quantity.
 18. **Default:** Advanced Air Conditioning shall be entitled to suspend delivery of Goods or terminate the Agreement if: -
 - 18.1.1 The Customer fails to observe the conditions of the terms and conditions of trade.
 - 18.1.2 The Customer is declared bankrupt.
 - 18.1.3 The Customer has a receiver or official manager appointed for any part of its assets.
 - 18.1.4 The Customer has a winding up order made against it or a resolution is passed for its winding up.
 - 18.1.5 The Customer enters into any Agreement or scheme of arrangement with its creditors under any law relating to bankruptcy.
 - 18.1.6 Any such suspension, discontinuance or termination shall not affect any rights of The Company accrued against The Customer prior thereto.
 19. **Normal Working Hours:** This quotation is based on Work being performed during normal hours, unless specified otherwise within the quotation. If The Customer requests, the Work may be performed outside these hours, in which case, additional costs will be met by The Customer.
 20. **Design Responsibility** - When The Goods have been manufactured and installed in accordance with a design and/or specification provided by The Customer, Advanced Air Conditioning accepts no responsibility and will not be liable for any loss, damage or costs arising for any design or specification faults in operation of The Goods.
 21. **Invoicing:** Advanced Air Conditioning may invoice the Customer when it has completed the Works. If the Works have commenced and are yet to be completed, Advanced Air Conditioning may invoice the Customer progressively for the value of the Work it has performed.
 22. **Payment:** The Customer must pay: -
 - 22.1.1 The price payable pursuant to an Agreement without any deductions whatsoever;
 - 22.1.2 Any money invoiced by Advanced Air Conditioning or claimed in a progress claim no later than the due date stated on Advanced Air Conditioning's invoice or progress claim.
- To avoid doubt: -
- (i) The Customer is not entitled to retain any retention monies, whether by way of security or otherwise; and
 - (ii) Any amount invoiced by Advanced Air Conditioning or contained in a progress claim becomes due and payable as per invoice terms or progress claim.
23. **Default Interest:** If the Customer fails to pay Advanced Air Conditioning any money that is due, payable or due and payable pursuant to an Agreement, then at Advanced Air Conditioning's discretion, the Customer must pay interest on the monies not paid at the rate provided for by s.58 of the *Civil Proceedings Act 2011* plus two percent (2%) from the date on which the monies were payable.

24. **Debt Collection costs:** The Customer must pay any costs incurred by Advanced Air Conditioning in relation to or associated with the costs of recovering or attempting to recover any amount Advanced Air Conditioning claims is due or payable to it pursuant to the Agreement. The costs payable by the Customer include legal costs on a full indemnity basis. To avoid doubt, the Customer's liability for costs pursuant to this clause is not limited to costs on an indemnity basis as contained in the *Uniform Civil Procedure Rules* 1999 and the Customer must pay the actual amount paid by Advanced Air Conditioning to a legal practitioner or owed by it to a legal practitioner in relation to the recovery or attempted recovery of money pursuant to this clause.
25. **Suspension of Works:** If the Customer fails to pay any amount due or payable to Advanced Air Conditioning, then in addition to any other rights Advanced Air Conditioning may have, it may immediately suspend the Works by giving the Customer notice in writing.
26. **Access:** The Customer must give Advanced Air Conditioning or any of its subcontractors full access to the Site sufficient to enable it to undertake the Work. Notwithstanding any other term of an Agreement, Advanced Air Conditioning is entitled to an extension of time to complete any Works it is required to undertake if it is delayed because full access to the Site is not provided. To avoid doubt, full access to the Site includes sufficient possession of it to enable Advanced Air Conditioning to undertake any Work required of it pursuant to an Agreement.
27. **Warranty:** Advanced Air Conditioning warrants its workmanship for a period of twelve (12) months from date of installation. Extent of warranty on raw materials is limited to the extent of warranties given to Advanced Air Conditioning by the Suppliers of such Goods / materials, but is often restricted to replacement costs of materials claimed to be faulty, and may not include labour to replace such materials. Clarification should be sought from Advanced Air Conditioning on the specific content of the Goods in question.
28. **Defects Liability Period:** Advanced Air Conditioning must rectify any defects in the Works of which it receives notice from the Customer only for the period of six (6) months after the Works are carried out. The Customer must provide full access to site without penalty, including loss of profit claims, to Advanced Air Conditioning. The Customer must give Advanced Air Conditioning full access to the Site during Advanced Air Conditioning's normal business hours to enable it to carry out any rectification Work pursuant to this clause.
29. **Interpretation:** It is The Customer's responsibility to check the content of this quotation to confirm that our interpretation of types, quantities, dimensions and materials are correct and compatible to The Customers' requirements. The Customer will meet costs for any alterations to this quote.
30. **Notices:** Any notice between Advanced Air Conditioning and The Customer may be given by:
 - 30.1.1 Delivering it by hand to the other party;
 - 30.1.2 Posting it by express post to the other party's last known address or, in the case of a company, its registered office;
 - 30.1.3 Sending it by facsimile transmission to the party's last known facsimile number; or
 - 30.1.4 Emailing it to the party's last known email address.For the purposes of this clause: -
 - (i) A party's last known address includes: -
 - (A) Any address that forms part of the records kept by the Queensland Building and Construction Commission; and
 - (B) Any address that is included in any website maintained by or apparently maintained by the party to whom the notice is to be given.
 - (ii) A party's last known email address includes: -
 - (A) The last email address appearing on an email sent by the party to whom the notice is to be given; and
 - (B) Any email address appearing on a website maintained by or apparently maintained by the party to whom the notice is to be given.
 - (iii) A notice sent by express post is deemed to have been delivered on the date that appears in the records kept by Australia Post as the date on which it was delivered;
 - (iv) A notice sent by facsimile transmission is deemed to have been delivered on the date and at the time recorded on a confirmation of transmission;
 - (v) A notice that is sent by email is deemed to have been delivered on the date on which it was transmitted to the email server of the party to whom it was addressed;
 - (vi) If a notice is served after 4pm on a day, it is deemed to have been received by the party to whom it was being delivered on the next Business Day.
31. **Application:** These terms apply to any Agreement entered into by a Customer with Advanced Air Conditioning, including where Advanced Air Conditioning commences Work in the absence of any specific acceptance of its quotation or Agreement terms being agreed.
32. **Approvals of Statutory Authorities:** If requested by The Customer, Advanced Air Conditioning will lodge applications to local Statutory Authorities for approval to erect or install the Goods at the Customers cost. When The Customer instructs Advanced Air Conditioning to carry out this installation prior to approvals by such authorities, Advanced Air Conditioning accepts no liability for any costs arising as a result of such approvals being denied after completion of the Works. All costs for modification or removal in such cases to be met by The Customer.
33. **Governing law:** The law governing an Agreement and the Conditions of Contract and their interpretation is the law of the State of Queensland. The Parties agree to the non-exclusive jurisdiction of the Courts in the State of Queensland.
34. **PPSA & PMSI;**
 - (a) Defined terms in this clause have the same meaning as given in the Personal Properties Securities Act 2009 ("PPSA")
 - (b) The Customer acknowledges that these conditions constitute a Security Agreement and give rise to a Purchase Money Security interest ("PMSI") in favour of Advanced Air Conditioning as Secured Party over the Goods supplied or to be supplied to the Customer or Grantor pursuant to these Conditions.
 - (c) The Parties acknowledge that Advanced Air Conditioning is entitled to register its interest in the Goods supplied to the Grantor under these Conditions on the PPSA Register as Collateral.
 - (d) The Customer waives its right to receive notification of any such registration by Advanced Air Conditioning.
35. **Terms of Trade:** These terms and conditions of trade override all other terms inconsistent herewith, notwithstanding that they are printed on, included, or contradicted in The Customer order or other documents provided by the Customer or Advanced Air Conditioning.
36. **Electrical Works:** This certifies that where electrical equipment has been installed or repaired in relation to the Works carried out by Advanced Air Conditioning, it has been tested in accordance with the prescribed Work procedure and that such Work complies with the requirements of the Electrical Safety Regulations 2002.
37. **Anti-Corruption;**

Advanced Air Conditioning represents, warrants and undertakes that:

 - a. Neither it nor any of its employees has taken or will take any action, directly or indirectly, that would result in a violation of any applicable laws and regulations relating to bribery or corruption (together the "Anti-Corruption Laws"), and Advanced Air Conditioning will take all reasonable measures to conduct its businesses in conformity with the Anti-Corruption Laws to prevent its employees from violating the Anti-Corruption Laws with the intent of obtaining or retaining business or an advantage for the benefit of the Customer or any of its affiliates;
 - b. it will use reasonable endeavours to ensure that all specialists, sub-contractors, consultants or anyone used by Advanced Air Conditioning in the provision of the Services provide (for the benefit of the Customer and its affiliates) the same representations, warranties and obligations as in clause 33.1a; and
 - c. if subject to the Customer's approval, Advanced Air Conditioning appoints or delegates its or part of its functions or obligations under this Agreement to a third party to act on behalf of or for the benefit of the Customer or any of its affiliates, then Advanced Air Conditioning will use reasonable endeavours to ensure that all such third parties provide (for the benefit of the Customer and its affiliates) the same representations, warranties and obligations as per this Agreement.