

## DAWSON HEATING & COOLING PTY LTD TERMS AND CONDITIONS

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2016

**BETWEEN:** **DAWSON HEATING & COOLING PTY LTD (ABN 11 126 821 083) (“DHC”)**

**AND:** The person specified in Quote (“**Client**”)

These terms and conditions govern the agreement between DHC and the Client for the supply of Services which may include the supply of Goods as specified in the Quote.

### 1. Quote

- 1.1 The Quote is valid for acceptance by the client for 30 days unless specified otherwise in writing.
- 1.2 The Client has received, read and understood the Quote and acknowledges that the Quote forms part of the Agreement.
- 1.3 Any variation to the Quote must be agreed to in writing by both parties and may incur a variation fee at the discretion of DHC.
- 1.4 By signing the Quote, paying a Deposit or emailing DHC confirming quote acceptance, the Client:
  - (a) engages DHC to carry out the Services specified in the Quote; and
  - (b) agrees to all terms of the Agreement.

### 2. Provision of the Services

- 2.1 The Quote specifies the Services, which may vary as follows:
  - (a) Supply and/or Installation Services;
  - (b) Maintenance, Breakdown and Repair Services;
  - (c) Counter Sales; and
  - (d) any combination of the above.
- 2.2 Where the Client requires further services (“Additional Services”) DHC may at its discretion agree to provide the Additional Services and will provide an updated quote.
- 2.3 Provision of the Services is at all times subject to the Client:
  - (a) Obtaining the necessary approval to carry out the Services;
  - (b) providing a safe work place in accordance with 2.4 below; and
  - (c) Ensuring:
    - (i) any provided equipment or existing plant complies with any government regulations;
    - (ii) proper control of any and all children, pets and other animals at the premises;
    - (iii) adequate gas and electricity supply to the property.
- 2.4 The Client agrees to provide a safe workplace, including:
  - (a) Providing clear and free access to all work areas and equipment;
  - (b) Informing DHC prior to the commencement of work about any known hazardous materials, risks, health and safety issues onsite; and
 acknowledges that any additional costs to ensure a safe workplace, including but not limited to roof anchor points and fall protection, are the responsibility of the Client and are payable in addition to the Fees.
- 2.5 Services will be provided Monday - Friday, 8.00am - 4.30pm unless specified otherwise.
- 2.6 Services will comply with relevant codes, standards and specifications required under applicable law, and the conditions of any relevant development consent, development or construction certificate.
- 2.7 DHC can advise the Client about applicable standards and regulatory requirements, but will not be liable for any failure to comply with 2.6 if the failure relates solely to a design or specification prepared by or on behalf of the Client (but not on behalf of DHC), or a design or specification required by the owner, if DHC has advised the Client in writing that the design or specification contravenes 2.6.
- 2.8 Where the Services include the installation of an outdoor unit, the location of the unit is at the Client’s discretion, and:
  - (a) DHC takes no responsibility for failure to comply with noise regulations if the Client does not accept DHC’s recommended location; and

(b) in the event that a unit requires relocation, this will be at the Client’s expense.

### 3. Provision of Goods

- 3.1 Where the Services include the provision of Goods, the Client:
  - (a) accepts responsibility for the Goods following delivery; and
  - (b) releases and indemnifies DHC from any personal or property damage caused by the Goods that occurs following delivery.
- 3.2 Where the provision of Goods includes attaching new equipment to the Client’s existing system, DHC will not be responsible for any costs associated with repairing or replacing faulty parts of the existing system.
- 3.3 The times quoted for delivery of Goods are estimates only and DHC:
  - (a) accepts no liability for failure or delay in delivery of goods;
  - (b) may deliver Goods by instalments;
  - (c) will not be liable for any cost incurred as a result of unavailability of ordered Goods.
- 3.4 DHC retains legal and equitable title to any Goods supplied to the Client until full payment is made for all Goods and Services supplied by DHC pursuant to clause 4 below. The Client gives irrevocable authority to DHC to enter any premises occupied by the Client, or any other location on which the Goods are situated, at any reasonable time after default by the Client, in order to remove and repossess any Goods, and to sell those Goods if necessary to recover unpaid monies.

### 4. Fees

- 4.1 As consideration for providing the Services, the Client will pay the fees specified in the Quote (“**Fees**”) via an accepted payment method identified on the footer of the Quote and/or invoice.
- 4.2 If DHC determines that further work that was not allowed for in the Quote is necessary, DHC will immediately notify the Client of any additional fees and which will become part of the Fees.
- 4.3 Where the Services are Installation Services:
  - (a) the Client will pay a deposit of 30% on acceptance of the Quote (“**Deposit**”). The Deposit is non-refundable. DHC may, in its discretion, refund the Deposit to the Client on hardship grounds, less any restocking or handling fees;
  - (b) DHC may issue invoices up to a total of 30% at specified milestones during the contract period;
  - (c) Payment of the balance of the Fees is due on or before completion of the Work;
  - (d) Payment terms for approved account holders will be specified in a separate account agreement.
- 4.4 Where the Services are Maintenance, Breakdown or Repair Services, Fees are payable as specified on the day of performance of the Services;
- 4.5 Where the Services are Counter Sales only, payment is required in full on pick-up or delivery.
- 4.6 Where a combination of Services are provided under clause 2.1(d), DHC will specify the Fees attributable to each Service and the manner in which they must be paid.
- 4.7 The Fees do not include the cost of removing any dangerous waste materials, such as asbestos, that DHC
  - (a) have not specified as being included in the Agreement
  - (b) could not reasonably identify at the time of entering into the Agreement
- 4.8 If the Client fails to pay any amount of Fees by the applicable due date under clauses 4.3-4.6, the Client agrees that DHC may

- (a) cease the Services immediately and clause 7 will apply;
  - (b) charge interest at the rate a 1% per month (12% Per Annum), accrued daily;
  - (c) pass on to the Client in full any debt collection charges incurred as a result of non-payment of any account.
- 4.9 Credit card payments will incur applicable charges in accordance with ANZ merchant charges at the time of payment. DHC may at our discretion, choose to waive this charge if accounts are paid on or before the due date.

## 5. Warranty

- 5.1 Installation Services: 12 month installation workmanship warranty unless otherwise specified on the Quote. No warranty is given on existing, re-used or customer supplied materials.
- 5.2 Maintenance and Repair Services: 28 day workmanship warranty unless otherwise specified on the Quote.
- 5.3 Products, plant and equipment may be covered by a manufacturer's warranty, and product failure will only be covered under the terms of such a warranty as stated on the manufacturer's brochure. DHC labour costs for removal and re-installation of these parts or equipment will be at the Client's expense if not covered by the warranty.
- 5.4 Any warranty provided by DHC may be void should DHC works be interfered with, damaged, tampered with, modified, or relocated by anyone not employed or authorised by DHC.
- 5.5 All warranties commence on the date of installation or completion of the Services, and apply only to the work performed by DHC and/or those components of systems, products or equipment worked on by DHC.

## 6. Refunds and Returns

- 6.1 DHC will not provide a refund or replacement as a result of a change of mind by the Client.
- 6.2 If a warranty pursuant to Clause 5 applies to a faulty product or service DHC will, at their discretion:
  - (a) Repair the item; or
  - (b) Replace the item;
 depending on the nature of the fault or defect.

## 7. Termination

- 7.1 DHC may terminate the Agreement by giving 7 days' notice in writing.
- 7.2 DHC may terminate the Agreement immediately by giving notice in writing and at any time after the Client:
  - (a) breaches any of the terms and conditions of the Agreement which is not remedied within 7 days;
  - (b) commits an act of bankruptcy, voluntary or compulsory liquidation, appointment of a controller or administrator, order or resolution to wind up; or
  - (c) dies.
- 7.3 If the Agreement is terminated in accordance with either clause 7.1 or 7.2 above:
  - (a) DHC must stop providing the Services and take all reasonable steps to minimise loss resulting from that termination;
  - (b) subject to clause 4.3(a) the Deposit will not be refunded to the Client;
  - (c) the Client will be liable for payment for any Services provided up to and including the date of Termination.

## 8. Insurance

- 8.1 DHC will effect and maintain workers' compensation insurance and public liability insurance for an amount of not less than twenty million dollars (\$20,000,000).

## 9. Limitation of Liability, Indemnity and Release

- 9.1 To the maximum extent permitted by law, DHC will not be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, good-will, or other intangible losses ("Consequential Loss").
- 9.2 Insofar as DHC may be liable, the maximum liability of DHC, whether in contract, tort, equity, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any breach of DHC's obligations under the Agreement is, except where applicable law expressly requires otherwise, limited, at the discretion of DHC, to any one or more of the following:
  - (a) If the breach relates to Goods:
    - (i) The replacement of the Goods or the supply of equivalent Goods;
    - (ii) The repair of such Goods;
    - (iii) The payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - (iv) The payment of the cost of having the Goods repaired;
  - (b) If the breach relates to Services:
    - (i) The supplying of the Services again; or
    - (ii) The payment of the cost of having the Services supplied again.
- 9.3 Under no circumstances will DHC be liable for any claims, damages, obligations, losses, liabilities, costs, debt and expenses (whether consequential or indirect and including but not limited to business interruption, lost profits or lost data) arising from:
  - (a) the Client's conduct including but not limited to any violation of any term of the Agreement;
  - (b) the Client's violation of any third party right, including but not limited to any copyright, property, or privacy right;
  - (c) the conduct, action or omission of any Third Party, including without limitation, any defamatory, offensive or illegal conduct of any Third Party; and
  - (d) any action by the Client which voids or decreases DHC's benefits under its public liability insurance policy.
- 9.4 The Client agrees to defend, indemnify, release from liability and hold harmless DHC (including its officers, directors, employees and agents) from and against any and all claims, damages, obligations, losses, liabilities, costs, debt and expenses (including consequential loss) arising from 9.3(a) - 9.3(d) above.

## 10. Entire Agreement

The Agreement and Quote contains the entire Agreement and there are no other promises or conditions whether oral or written. The Agreement supersedes any prior agreements and may only be modified in writing by agreement.

## 11. Applicable Law

The Agreement will be governed by the laws for the time being in force in NSW or the ACT (whichever is applicable) and the parties agree to submit to the non-exclusive jurisdiction of the courts of NSW or the ACT (whichever is applicable).

## 12. Severability

If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

## 13. Waiver of contractual right

The failure of either party to enforce any provision of the Agreement will not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.