

ICECAP PTY LTD COMMERCIAL

1 Definitions

In these conditions:

"Agreement" means any agreement or contract entered into for the provision of goods and/or services by Icecap Pty Ltd to the Customer;

"Icecap Pty Ltd" means, Icecap Pty Ltd Pty Ltd (ABN 29 076 796 471) of 22 GalapogosWay, Gaven QLD 4211

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from Icecap Pty Ltd;

"goods" means goods supplied by Icecap Pty Ltd to the Customer;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"Intellectual Property" means all copyright, patents, trade marks, designs, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned or licensed by Icecap Pty Ltd in respect of the goods and services;

"Price List" means the price list issued by Icecap Pty Ltd from time to time; and

"services" means services supplied by Icecap Pty Ltd to the Customer; and

"Terms" means these Terms and Conditions of Sale.

2 Basis of Agreement

2.1 Unless otherwise agreed by Icecap Pty Ltd in writing, these Terms and Conditions of sale apply exclusively to every contract for the sale of goods or services by Icecap Pty Ltd to the Customer and cannot be varied or supplanted by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by Icecap Pty Ltd to the Customer concerning the proposed supply of goods or services is:

(a) valid for 30 days;

(b) an invitation to treat only;

(c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.3 The Terms may include additional terms in Icecap Pty Ltd's quotation, which are not inconsistent with the Terms.

2.4 The Agreement is accepted by Icecap Pty Ltd when Icecap Pty Ltd confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the goods or services.

2.5 Icecap Pty Ltd in its absolute discretion may refuse to accept any offer.

2.6 It is the Customer's responsibility to provide Icecap Pty Ltd with its specific requirements in relation to the goods and services.

2.7 Icecap Pty Ltd may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

3 Pricing

3.1 Prices quoted, whether in the Price List, by written quotation or verbally, for the supply of goods and services, exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 If the Customer requests any variation to the Agreement, Icecap Pty Ltd may increase the

price to account for the variation.

3.3 All prices are subject to change without notice and orders and accepted by Icecap Pty Ltd on the conditioning that they will be invoiced at the prices ruling at the date of despatch. All prices are strictly nett unless otherwise stated.

3.4. Every endeavour will be made to give fourteen (14) days notice of any increase.

4 Payment

4.1 Unless otherwise agreed in writing:

(a) Payment for the goods and/or services must be made within 30 days of the end of month in which Icecap Pty Ltd' invoice is raised (Account holders only) ; and Payment for the goods and/or services must be made within 7 days of the end of month in which Icecap Pty Ltd' invoice is raised (Non- Account holders only) ;

(b) Icecap Pty Ltd reserves the right to require payment in full prior to the delivery of the goods or completion of the services.

4.2 Icecap Pty Ltd, at its sole discretion, may offer a discount on the price of goods (excluding freight charges) for cash payment.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Payment terms may be revoked or amended at the sole discretion of Icecap Pty Ltd immediately upon giving written notice to the Customer.

5 Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Icecap Pty Ltd, then all money which would become payable by the Customer to Icecap Pty Ltd at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Icecap Pty Ltd may, without prejudice to any other remedy available to it:

(a) charge the Customer for, and the Customer must indemnify Icecap Pty Ltd from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;

(b) cease or suspend for such period as Icecap Pty Ltd thinks fit, supply of any further goods or services to the Customer; and

(c) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by Icecap Pty Ltd; without effect on the accrued rights of Icecap Pty Ltd under any agreement.

5.2 Clauses 5.1(b) and (c) may also be relied upon, at the option of Icecap Pty Ltd:

(a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6 Passing of Property

6.1 Until full payment in cleared funds is received by Icecap Pty Ltd for all goods and services supplied by it to the Customer, as well as all other amounts owing to Icecap Pty Ltd by the Customer:

(a) title and property in all goods remain vested in Icecap Pty Ltd and does not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for Icecap Pty Ltd;

(c) the Customer must keep the goods separate from its goods and maintain the labelling of Icecap Pty Ltd;

(d) the Customer is required to hold the proceeds of any sale of the goods on trust for Icecap Pty Ltd in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

(e) Icecap Pty Ltd may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Icecap Pty Ltd, and for this purpose the Customer irrevocably licences Icecap Pty Ltd to enter such premises and also indemnifies Icecap Pty Ltd from and against all costs, claims, demands or actions by any party arising from such action.

7 Risk and Insurance

7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being despatched from Icecap Pty Ltd premises.

7.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by Icecap Pty Ltd, whether such goods are used singularly, or in combination with other substances, or any process.

8 Acknowledgments

8.1 The Customer acknowledges that :

(a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Icecap Pty Ltd in relation to the goods or services or their use or application;

(b) it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by Icecap Pty Ltd; and

(c) any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

(d) that it must provide to Icecap Pty Ltd full particulars of its requirements, including but not limited to, its ABN, order number, quantity and model number and any options required, delivery date, delivery address, insurance instructions and freight instructions, before Icecap Pty Ltd will accept any order.

9 Performance of Agreement

9.1 Any period or date for delivery of goods or provision of services stated by Icecap Pty Ltd is intended as an estimate only and is not a contractual commitment. Icecap Pty Ltd will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will in no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.2 A completed Job Sheet with electronic signature, drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

10 Delivery

10.1 Icecap Pty Ltd will nominate and coordinate a carrier on the Customers behalf unless otherwise instructed by the Customer.

10.2 The Customer will inform Icecap Pty Ltd of all necessary details so that Icecap Pty Ltd can affect the delivery of the goods.

10.3 The Customer may nominate its own carrier, in which case it must coordinate the delivery with Icecap Pty Ltd.

10.4 Unless otherwise agreed in writing, the Customer will be responsible for all costs associated with delivery, including any special packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.

10.5 The Customer must provide reasonable and proper access to the location specified for delivery.

10.6 Any extra carrier charges due to difficult access, wrong or misleading instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost plus a 10% service fee plus GST charged by Icecap Pty Ltd.

10.7 The obligation of Icecap Pty Ltd to deliver goods shall be satisfied by the delivery by Icecap Pty Ltd of the quantity of goods ordered or if delivery is by instalments, by the delivery of the quantity of goods to be delivered in each instalment (+/- 10%). The Customer shall only be required to pay for the actual quantity of the goods delivered by Icecap Pty Ltd.

10.8 If Icecap Pty Ltd does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

10.9 Where it is necessary for Icecap Pty Ltd to deliver the goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost and responsibility of assembly and installation will fall to the Customer.

10.10 The Customer must advise Icecap Pty Ltd in writing within 7 days of receipt regarding our Goods and Services provided with:

- (a) of the non arrival of any or all of the goods and services;
- (b) if there is damage to the goods;
- (c) that the wrong goods have been received;
- (d) that the quantity of the goods is incorrect; or
- (e) the goods and services do not meet specifications.

11 Returns

11.1 Goods may only be returned to Icecap Pty Ltd:

- (a) if the request to return is made in writing to Icecap Pty Ltd within 3 days of delivery to site, stating reason for the requested return;
- (b) if the goods are not optioned or customised in any way or produced to a specific Customer requirement in part or in whole;
- (c) with the prior written authority of Icecap Pty Ltd;
- (d) if the Customer pays for all transport and handling costs to Icecap Pty Ltd' warehouse;
- (e) on the acceptance of the application of a restocking and handling charge, such charge being a minimum of 20% of the invoice value, except where the wrong goods were delivered by Icecap Pty Ltd, in which case there will be no restocking or handling charge; and
- (f) if the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of Icecap Pty Ltd.

12 Liability

12.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

12.2 Replacement or repair of the goods or resupply of the services is the absolute limit of Icecap Pty Ltd' liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.

12.3 Icecap Pty Ltd is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of perishables, loss of turnover, profits, business or goodwill or any liability to any other party.

12.4 Icecap Pty Ltd will not be liable for any loss or damage suffered by the Customer where Icecap Pty Ltd has failed to deliver goods or services or fails to meet any delivery date or cancels or suspends the supply of goods or services.

12.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

13 Cancellation

13.1 If, through circumstances beyond the control of Icecap Pty Ltd, Icecap Pty Ltd is unable to affect delivery or provision of goods or services, then Icecap Pty Ltd may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

13.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Icecap Pty Ltd after that order has been accepted.

13.3 Icecap Pty Ltd, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

13.4 If the Customer cancels the order after acceptance by Icecap Pty Ltd, then Icecap Pty Ltd will be entitled to damages for breach of contract. This includes, but is not limited to, compensation in accordance with Icecap Pty Ltd Order Cancellation Policy as in effect at time of Order Confirmation.

14 Specifications

14.1 All specifications, drawings, illustrations descriptive matter and particulars contained in Icecap Pty Ltd' website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

14.2 Icecap Pty Ltd reserves the right to make minor modifications to its goods without notice to the Customer and deliver such modified goods against any existing order, unless such right is waived by Icecap Pty Ltd in writing to the Customer.

14.3 The Customer must not reverse engineer any goods provided to it by Icecap Pty Ltd.

14.4 All drawings, descriptive matter and particulars supplied, remain Icecap Pty Ltd' property and are to be returned to Icecap Pty Ltd on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without Icecap Pty Ltd' prior consent in writing.

15 Intellectual Property

15.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

15.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

15.3 The Customer must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property.

15.4 Any Intellectual Property provided to the Customer by Icecap Pty Ltd in connection with the goods and services remains the exclusive property of Icecap Pty Ltd and must be returned to Icecap Pty Ltd on demand and must not be copied or communicated to any third party without the express written consent of Icecap Pty Ltd.

16 Warranty

16.1 Subject to clause 16.3,

(a) Icecap Pty Ltd, in its reasonable discretion if it deems necessary, will repair or replace any goods to remedy any failure due to faulty workmanship or materials, provided that the goods may have acceptable variance; and

(b) any replacement or repaired goods will only be warranted for the unexpired portion of the warranty period attached to the original goods.

(c) The following warranty exclusions apply:

(i). Any product which Icecap Pty Ltd publishes as excluded from application of this warranty: and

(ii). Any product for which the warranty period published by Icecap Pty Ltd (in advertising material or otherwise) differs from the warranty period outlined below..

16.2 Provision of the Warranty is subject to:

(a) the Customer not being in breach of these Terms and Conditions of Sale or any additional Agreement as may be in place;

(b) proof of purchase of the Equipment being directly from Icecap Pty Ltd or an authorised distributor or agent of Icecap Pty Ltd;

(c) no longer than 12 months having elapsed from the date of installation of the goods at a purchaser's premises or 12 months from the despatch of the goods from Icecap Pty Ltd' warehouse, whichever is the sooner;

(d) Icecap Pty Ltd' or its representative, at its option, having access to the goods for the purposes of inspection and verification of any claim;

(e) the Customer accepting an invoice for any replacement parts claimed under Warranty, which be reimbursed, excluding freight costs, only after confirmation of claim pursuant to clause 16.2(c);

(f) the Customer has not repaired or undertaken to repair the goods without prior authorisation from Icecap Pty Ltd nor altered the goods in any way;

(g) service calls and on-site Warranty repair work being on the Australian mainland and within 50kms of the service operators premises, if not, then any distance be charged to the customer on the excess at commercial rates;

(h) the Customer uses and maintains the goods in accordance with Icecap Pty Ltd' instructions and in accordance with commonly accepted operating practices;

(i) the Customer providing written notice within 3 days of delivery of any goods that it believes do not meet specifications or goods that are defective; and

(j) correct storage, siting and installation of the goods in accordance with Icecap Pty Ltd' instructions.

16.3 The Warranty excludes:

(a) defects or malfunctions that are the result of incorrect or poor maintenance by the customer;

(b) damage or alteration to the goods arising from circumstances outside the direct control of Icecap Pty Ltd, including, without limitation, power surges, disruptions or where the goods are not used for their intended purpose;

(c) any part of a refrigeration cabinet which has been subject to misuse, neglect, alteration or changed in any manner, incorrect installation or accident that has been caused by the purchaser or its invitee;

(d) the failure of goods that have been supplied to a Customer's specification or design and that failure was caused by a Customer specification or design fault;

(e) any problem that might arise due to poor installation or siting of the goods, including but not limited to, lack of sufficient fresh air circulation;

(f) any problem that might arise out of the installation of remote cabinets, including but not

limited to, leaks in the refrigeration system and components including Tx valves, and wiring issues with controllers;

(g) any third party equipment that the Customer might have specified;

(h) any installation or removal costs necessary to access or service equipment;

(i) damage to, or breakage of, glass doors, gaskets, hinges, lights or plastic components;

and

(j) the failure of gaskets, fluorescent lights, hinges, locks, TX valves and batteries;

16.4 The Customer warrants to use the goods in accordance with:

(a) any instructions provided to it by Icecap Pty Ltd from time to time;

(b) all government and local regulations, including but not limited to all relevant environmental laws and regulations governing the storage, installation, use, handling, maintenance and disposal of the goods.

(c) all necessary and appropriate precautions and safety measures relating to the storage, installation, use, handling and maintenance of the goods.

16.5 Icecap Pty Ltd approved warranty work undertaken by authorised service agents is arranged during normal working hours only. (Monday – Friday, 8am to 4.30pm, excluding public holidays).

16.6 In the case of goods not manufactured by Icecap Pty Ltd but are sourced from third parties and supplied by Icecap Pty Ltd, this Warranty will not operate to extend the terms of the original manufacturer of those goods.

17 Miscellaneous

17.1 The law of Queensland from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 Failure by Icecap Pty Ltd to enforce any of these Terms shall not be construed as a waiver of any of Icecap Pty Ltd' rights.

17.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.

17.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.

18 Privacy

18.1 Icecap Pty Ltd is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Icecap Pty Ltd in accordance with the Privacy Act.

18.2 Icecap Pty Ltd requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Icecap Pty Ltd in connection to this agreement