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South Mackay Qld 4740

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ABN 32 107 715 766

QBCC: 5026021

Master Agreement of Terms and Conditions for Supply of Equipment and Services

Agreement made on the _____, 2017

Between: Mackay Refrigeration Pty Ltd (ACN 107 715 766) of PO Box 4087, South Mackay Queensland 4740 ("Mackay Refrigeration")

And: _____ ("You" or Customer")

And: _____ ("Guarantor/s")

Whereas

- A. You and Mackay Refrigeration are entering into this Master Agreement where all parties agree to the terms and conditions included in this Master Agreement to facilitate the supply of Equipment and/or services.
- B. Each Quotation and Order shall incorporate and be governed by all of the provisions of this Master Agreement.

1. Definitions and Interpretation

1.1. Definitions

(a) In this agreement and in any instrument created pursuant to or in accordance with it, unless the context otherwise requires:

- (i) **"Agreement"** or **"Terms and Conditions"** means this Master Agreement of Terms and Conditions for Supply of Equipment and Services;
- (ii) **"Business Day"** means any day except Saturday or Sunday or a day that is a public or bank holiday in Queensland;
- (iii) **"Commencement Date"** means the date specified in a Quotation for commencement of the Works under a Contract;
- (iv) **"Completion Date"** means the date specified in a Quotation estimated for completion of the Works under a Contract;
- (v) **"Confidential Information"** means all information passing from Mackay Refrigeration to the Customer relating to a Quotation, including but not limited to, trade secrets, drawings, know-how, techniques, concepts, projections, arrangements and Deeds with third parties, Mackay Refrigeration information and information proprietary to Mackay Refrigeration, formulae, concepts not reduced to material form, designs, plans, models, financial data and pricing lists, other than information which is in the public domain for any reason other than by the breach of these terms and conditions by the Customer;
- (vi) **"Contract"** means a contract to carry out the Works between the Customer and Mackay Refrigeration created by the acceptance of a Quotation by the Customer;
- (vii) **"Contract Documents"** includes a Quotation and all drawings, plans and specifications and all other information provided by the Customer to Mackay Refrigeration in relation thereto;
- (viii) **"Deposit"** means the amount specified in a Quotation and which is payable by the Customer to Mackay Refrigeration immediately upon formation of a Contract;
- (ix) **"Equipment"** means the equipment and/or goods and/or materials and, where applicable, includes installation and any other related services, of all which that are either specified in a Quotation or reasonably necessary to complete, comply with and/or fulfil the Quotation;
- (x) **"GST Act"** means the Act titled *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time;
- (xi) **"GST"** has the meaning given to this term by the GST Act;
- (xii) **"Guarantors"** means the person executing this document as Guarantor;
- (xiii) **"Head Contract"** means a contract between the Customer and its customer, which includes the Works as part of its scope of work.
- (xiv) **"Order"** has the meaning given to this term by Clause 3.3;
- (xv) **"Price"** means the price to be paid by the Customer to Mackay Refrigeration for the performance of the Works in accordance with the Quotation;
- (xvi) **"Provisional Sum"** is the amount that is Mackay Refrigeration's estimate of the cost of performing this part of the Works, for which Mackay Refrigeration, after making all reasonable enquiries, cannot determine a definite amount at the time a Contract is entered into;
- (xvii) **"Quotation"** means a written quotation given by Mackay Refrigeration to the Customer which may specify the scope of the Works, any Deposit, the Commencement Date, Completion Date of the Works and the Price of the Works and which is deemed to incorporate and be governed by these Terms and Conditions;
- (xviii) **"Servants"** means and includes servants, employees, agents, contractors and sub-contractors;
- (xix) **"Site"** means where the Works under a Contract are carried out as specified in a Quotation;
- (xx) **"Variation"** means to vary the Works by:
 - (A) carrying out additional work;
 - (B) omitting any part of the Works; or
 - (C) changing the scope of the Works;
- (xxi) **"Works"** means the work to be carried out under a Contract including Variations and Equipment to be consumed in effecting the Works or to be incorporated into the Site;
- (xxii) **"Written"** means communication in written form including by facsimile, email, SMS (Short Message Service) or similar electronic means.

1.2. Interpretation

(a) In this agreement and in any instrument created pursuant to or in accordance with this agreement, unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) a reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
- (iii) a person includes the legal personal representatives, successors and assigns of that person;



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- (iv) a reference to any gender includes all genders;
- (v) a reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to this agreement;
- (vi) a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of this agreement;
- (vii) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (viii) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (ix) where an expression is defined anywhere in this agreement it has the same meaning throughout;
- (x) a reference to "dollars" or "\$" is to an amount in Australian currency; and
- (xi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- (xii) All headings throughout this agreement have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of this agreement or of any instrument created pursuant to or in accordance with this agreement.

2. Law

- 2.1. This agreement and any Contract made between the parties shall be governed by and construed in accordance with the laws of Queensland and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of this agreement and any Contract made between the parties.

3. Formation of Agreement

- 3.1. The Customer may accept a Quotation within the period specified in a Quotation or as extended pursuant to this sub-clause. If requested, Mackay Refrigeration may, at its option and absolute discretion, extend the period of a Quotation by notice in writing to You. For the sake of clarity, if the period of a Quotation (as specified in a Quotation or as extended pursuant to this sub-clause) lapses/ expires, then acceptance of the relevant Quotation by the Customer does not create, and is incapable of creating, a Contract.
- 3.2. Mackay Refrigeration may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw a Quotation at any time before communication by the Customer to Mackay Refrigeration of its acceptance of a Quotation in writing.
- 3.3. The Customer may accept a Quotation including by signing and returning a copy of a Quotation to Mackay Refrigeration or otherwise acknowledging and agreeing to the terms of a Quotation (an "Order").
- 3.4. The parties will be deemed to have formed a Contract on the terms of this Agreement together with a Quotation, upon acceptance by the Customer of a Quotation.
- 3.5. In the event of any inconsistency between a Quotation and this Agreement, the Quotation will prevail.

4. Head Contract Terminated

- 4.1. If a Head Contract (if applicable) is terminated for any reason then Mackay Refrigeration will be relieved of its obligation to perform the respective Contract, without prejudice to any claim Mackay Refrigeration may have against the Customer for loss and damage suffered by Mackay Refrigeration as a result of the termination of the Head Contract.

5. Variations

- 5.1. Any party seeking a variation to a Contract shall notify the other party of the details of the required changes to the Works.
- 5.2. Where both parties consent to varying a Contract, a variation document will be prepared by Mackay Refrigeration ("Variation") (where practicable) which will:
- (a) be signed by both the Customer and Mackay Refrigeration;
 - (b) state the scope of the Variation;
 - (c) state the reason for the Variation;
- 5.3. If a Variation varies the Price then the Price is to be adjusted accordingly in the next payment made after the commencement of the Works the subject of the Variation.

6. Defects in Existing Installation

- 6.1. For the purposes of a Quotation, it is assumed (unless otherwise specified in a Quotation) that the existing installations comply with statutory regulations and are in a reasonable state of repair.
- 6.2. Should Mackay Refrigeration in the course of any Work, discover any defect or non-compliance in any part of the Site, premises or the existing installation therein or connection thereto which makes it impracticable, unlawful or inexpedient for Mackay Refrigeration to continue work under a Contract without repairing or replacing any part of the said Site, premises, installation or connection (and Mackay Refrigeration shall be the sole judge thereof) Mackay Refrigeration shall be entitled to suspend work on the job and shall immediately notify the Customer thereof and submit the price of such additional work in accordance with clause 5 herein and if the Customer shall fail to sign the Variation for Mackay Refrigeration to carry out the same the Contract shall be deemed at an end and Mackay Refrigeration shall be entitled to payment for all work done and materials supplied to date of the suspension of the Work, notwithstanding anything to the contrary contained in the Contract or this Agreement.

7. Manufacturer's Warranty

- 7.1. Mackay Refrigeration does not warrant the quality or performance of any Equipment supplied or installed by Mackay Refrigeration. It is the Customer's responsibility to establish the warranty relationship with the manufacturer by ensuring that warranty cards or other registration requirements of the manufacturer of any Equipment supplied or installed by Mackay Refrigeration are complied with.

8. Progress Payments

- 8.1. The Customer shall pay to Mackay Refrigeration the Deposit (if any) upon the formation of a Contract.
- 8.2. The Customer will pay Mackay Refrigeration the Price by way of progress payments, calculated in accordance with Clause 8.3 (in addition to paying the Deposit pursuant to Clause 8.1).
- 8.3. Mackay Refrigeration may submit to the Customer written progress claims which may be in the form of a Tax Invoice, under the GST Act, and consist of:
- (a) the amount payable for Works carried out and which have not previously been charged; and
 - (b) any other amounts then payable to Mackay Refrigeration under a Contract.
- 8.4. The Customer must pay the progress claim within seven (7) business days of submission of the progress claim (the "Due Date").
- 8.5. Should the Customer neglect or refuse to pay the amount of any progress claim by the Due Date, then Mackay Refrigeration may, at its option, with or without notice to the Customer, suspend performance of the Works until such payment has been received in full.
- 8.6. Mackay Refrigeration shall be entitled to charge interest on any moneys not paid when due at the rate specified in the Quotation or if no rate is

specified in the Quotation, calculated in accordance with section 67P(3)(a) of the *Queensland Building Services Authority Act 1991* (Qld).

9. Increased and Cancellation Costs

- 9.1. If, after 30 days from the formation of a Contract, Mackay Refrigeration's costs in connection with a Contract are increased as a result of the introduction of new, or changes to existing, government taxes or charges or Provisional Sums (or under Clause 10) then the Price shall be increased to reflect such changes and the Customer shall pay the increased Price to Mackay Refrigeration in accordance with the provisions of clause 8.
- 9.2. If any Contract, or any part of the Works is postponed or cancelled by the Customer, then the Customer shall reimburse to Mackay Refrigeration all costs and expenses actually incurred by it in relation to its preparation for undertaking the Works together with (at the election of Mackay Refrigeration) an amount equivalent to the profit which Mackay Refrigeration would have made had the Works not been so cancelled or postponed.

10. Supply Price Fluctuations

- 10.1. Where Equipment to be supplied has increased in price after a Contract was formed, then the Price shall be varied by the amount of the difference between the price of such Equipment at the time the Contract was entered into and the actual cost to Mackay Refrigeration including any duty or tax payable thereon.

11. Excepted Risks

- 11.1. Mackay Refrigeration shall not be liable for any failure to perform its obligations under this Agreement or any Contract between the parties if such failure or delay results directly or indirectly from any cause, matter or thing beyond the reasonable control of Mackay Refrigeration, including but not limited to:

- (a) any act, default or omission on the part of the Customer, its employees and or agents or any third party carrying out work on the Site;
- (b) the timing of work performed or not performed on the Site by other contractors;
- (c) damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;
- (d) electric power supply failure;
- (e) inclement weather;
- (f) unavailability of suitable Equipment;
- (g) failure of transportation affecting Mackay Refrigeration, its supplier or any other person, company or firm;
- (h) variations directed by the Customer or required to complete the Works safely and effectively;
- (i) changes in the law; or
- (j) directions or delays by municipal, public or statutory authorities.

12. Risk and Ownership

- 12.1. Risk of loss, damage or destruction to the Works or any part thereof shall pass to the Customer as and when each part thereof is completed.
- 12.2. If any fixtures, fittings, or Equipment are supplied by the Customer all care will be taken but fixtures, fittings and Equipment so supplied will be stored, handled and installed at the Customer's risk.
- 12.3. The Customer has no right or claim to any interest in the Equipment to secure any liquidated or unliquidated debt or obligation Mackay Refrigeration owes to the Customer.
- 12.4. The Customer cannot claim any lien over the Equipment.
- 12.5. The Customer will not create any interest in the Equipment in relation to any third party except as may be authorised by Mackay Refrigeration.
- 12.6. Where the Customer is in actual or constructive possession of the Equipment the Customer will not deliver them or any document of title to the Equipment to any person except as directed by Mackay Refrigeration and is in possession of the Equipment as a bailee of those Equipment and owes Mackay Refrigeration the duties and liabilities of a bailee.
- 12.7. The property of Mackay Refrigeration in the Equipment remains with Mackay Refrigeration until Mackay Refrigeration has received payment in full of the Price and any other moneys due to Mackay Refrigeration under this agreement or any Contract between the parties.
- 12.8. The Customer is a bailee of the Equipment until such time as property in them passes to the Customer and this bailment continues in relation to all of the Equipment until the Price of a Contract has been paid in full.
- 12.9. Pending payment in full of the Price under a Contract, the Customer must not allow any person to have or acquire any security interest in the Equipment.
- 12.10. Despite clause 12.9, if the Customer supplies any of the Equipment to any person before all moneys payable by the Customer have been paid to Mackay Refrigeration (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer or Third Party), the Customer agrees that:
- (a) it holds the proceeds of re-supply of the Equipment on trust for and as agent for Mackay Refrigeration immediately when they are receivable or received;
 - (b) it must either pay the amount of the proceeds of re-supply to Mackay Refrigeration immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for Mackay Refrigeration;
 - (c) any accessory or item which accedes to any of the Equipment by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of Mackay Refrigeration until Mackay Refrigeration is paid in accordance with clause 12.7 when the property in the Equipment passes to the Customer;
 - (d) if the Customer fails to pay the Price or any part thereof, at the time or times required in a Contract or is otherwise indebted to Mackay Refrigeration, Mackay Refrigeration may recover possession of the Equipment at any site owned, possessed or controlled by the Customer and the Customer agrees that Mackay Refrigeration has an irrevocable licence to do so and to dispose of the Equipment to recover costs.

13. Access

- 13.1. Any Completion Date stated in a Quotation is an estimate only. Mackay Refrigeration will not be liable for any delays in completion or late delivery and will not be liable for any loss, damage or delay occasioned by You or any other persons arising from the late completion or delivery.
- 13.2. Mackay Refrigeration's Quotation in respect of the Works is based on a continuous works programme, unless otherwise stated. If the Customer causes any of the Works to be delayed or delays are caused by any of the events in Clause 11, then, without prejudice to Mackay Refrigeration's other rights hereunder, the Customer shall pay to Mackay Refrigeration such extra costs as are reasonably incurred by Mackay Refrigeration by reason of the delay including compensation for loss of profit, additional overheads or administrative expenses incurred as a result.

14. Hours of Work

All work will be carried out during normal working hours, being 8 am to 4.30 pm Monday to Friday, unless otherwise stated. Should the



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Customer require Mackay Refrigeration to carry out any of the Works outside the nominated hours, or it otherwise be reasonably necessary to do so, then Mackay Refrigeration may carry out the Works outside those hours in which event, the Price will be increased to reflect any increased costs, such as payment of wages at a higher rate, for that part of the Works performed outside of the nominated hours and the Customer shall pay the increased Price to Mackay Refrigeration in accordance with the provisions of Clause 8.

15. Customer Responsibilities

- 15.1. You acknowledge that where the Equipment has been supplied to You the features of the Equipment are not designed to be a substitute for operator vigilance and adherence to safety operating procedures, ensuring that the components of the Equipment are correctly configured,
- 15.2. Any instruction provided in relation to the Equipment relates to the features of the Equipment only. You are entirely responsible for training all operators of your equipment and for ensuring that they are competent and appropriately supervised.
- 15.3. You agree to comply with all applicable laws and best practice standards for the regular inspection or maintenance of the Equipment.
- 15.4. You agree to follow the instructions provided by Mackay Refrigeration in using the Equipment. We will not be responsible for any collision, accident, explosion, damage, death or injury caused or contributed to by any person under your direction or control failing to follow the operating instructions for the Equipment.

16. Damages

- 16.1. To the extent permitted by law, any liability of Mackay Refrigeration to the Customer under a Contract shall be limited as follows:-
 - (a) in the case of Equipment supplied, to the replacement of the Equipment or the supply of equivalent Equipment, the payment of the costs of replacing the Equipment or of acquiring equivalent Equipment or the payment of the costs of having the defective Equipment rectified, at the election of Mackay Refrigeration;
 - (b) in the case of services provided, the resupply of the services or the payment of the costs of having the services supplied again, at the election of Mackay Refrigeration;
- 16.2. Mackay Refrigeration, notwithstanding any right the Customer may have at law or in equity or otherwise under this Contract, shall not be liable for any loss or damages suffered by the Customer for any economic loss or consequential loss or damage including but not limited to, loss of profits, loss of opportunity or loss of use of the Site or of the benefit of the Works or any part thereof.

17. GST

- 17.1. Mackay Refrigeration warrants that as at the date of this agreement, Mackay Refrigeration is registered under the GST Act and that Mackay Refrigeration is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.
- 17.2. Unless expressly stated to the contrary, any Price, Provisional Sum or the costs of any Variation (for the purposes of this clause, referred to collectively and individually as, "costs") is exclusive of GST. The Customer shall pay any GST applicable to any supply in terms of the GST Act in addition to any costs.

18. Insurance

- 18.1. The Customer shall effect and maintain at all times whilst any work is being carried out by Mackay Refrigeration under a Contract, Public Liability Insurance covering any loss or damage or injury sustained by Mackay Refrigeration or any of its Servants as a consequence of any defect with the Site or any part thereof.
- 18.2. The Customer shall provide Mackay Refrigeration with, if requested, evidence of the existence of such policies.

19. Guarantee

- 19.1. The Guarantors hereby guarantee to Mackay Refrigeration:
 - (a) the punctual payment by You to Mackay Refrigeration of all sums of money becoming due, owing or payable by You to Mackay Refrigeration under the terms of and or as a result of this Agreement, including without limitation, in relation to Future Equipment and any Quotation ("the Guaranteed Monies") at the times and in the manner as set out in this Agreement or otherwise on demand; and
 - (b) the due and punctual performance and observance by the Customer of all and any of the covenants, provisions and stipulations on the part of You to be performed and observed under and pursuant to this Agreement ("the Guaranteed Obligations").
- 19.2. The Guarantors further indemnify Mackay Refrigeration against and in respect of any damage, loss, claim, demand, cost, expense or obligation direct or indirect which Mackay Refrigeration has or may suffer incur or sustain as a result of the Customer's failure to pay the Guaranteed Monies when due or to perform the Guaranteed Obligations when due.
- 19.3. This guarantee and indemnity shall be a continuing guarantee and indemnity until the whole of the Guaranteed Monies are paid and the whole of the Guaranteed Obligations performed and shall be independent of and in addition to and in no way affected by any other security instrument or document which Mackay Refrigeration may hereafter obtain or hold for any indebtedness or liability whatsoever of the Customer or other Guarantors to Mackay Refrigeration.
- 19.4. The liability of the Guarantors shall not be affected or discharged in any way whatsoever in the event that Mackay Refrigeration grants or agrees to grant the Customer any time or any other indulgence or consideration or in the event that Mackay Refrigeration compounds with or releases or assents to the winding up of the Customer or wholly or partially releases or discharges the Customer from any of the terms of the Agreement or in the event that Mackay Refrigeration varies any of the terms of the Agreement.
- 19.5. Mackay Refrigeration shall not be bound at any time to exercise any of its rights under the Agreement or in any collateral or other contract and any omission failure of refusal by Mackay Refrigeration so to do shall not prejudice, affect, discharge or diminish any of the liabilities of the Guarantors hereunder and the liability of the Guarantors hereunder shall not be affected or discharged by any other laches or mistakes on Mackay Refrigeration's part.
- 19.6. For the purposes of this guarantee, the Guarantors may be treated as the principal debtors under the Agreement and the Guarantors waive all rights either at law or under any statute that the Guarantors might otherwise be entitled to claim or enforce in respect thereof.
- 19.7. The Guarantor hereby acknowledges and permits the Customer to place Orders pursuant to these Terms and Conditions and that the guarantee herein shall include any liability or obligation owing by You to Mackay Refrigeration under such Orders.

20. PPSA

- 20.1. This clause applies to the extent that these Terms and Conditions (or any contract arising subject to these terms and conditions) provide for a Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law").
- 20.2. In this Clause the following terms shall have the meaning defined herein:
 - (a) **Controller, Proceeds and Security Interest** have the same meaning as in the PPSA.
 - (b) **Documentation Costs** means all fees and outlays associated with the registration of any Security Interest on the PPSR.
 - (c) **Grantor** means the Customer.
 - (d) **Personal Property** has the same meaning as in the PPSA as it relates to:
 - (i) all personal property of the Grantor, including without limitation present and after acquired property of the Grantor;
 - (ii) any personal property provided by the Secured Party to the Grantor on a retention of title basis;

- (iii) any personal property leased or provided on bailment by the Secured Party to the Grantor; and
 - (iv) including without limitation, any Proceeds associated with the above personal property.
 - (e) **PMSI** means a purchase money security interest as defined in the PPSA.
 - (f) **PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.
 - (g) **PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
 - (h) **Secured Moneys** has the same meaning as defined in this clause.
 - (i) **Secured Party** means Mackay Refrigeration or any lawful assignee, transferee or successor of Mackay Refrigeration in relation to the Security Interest, this agreement and any other related document(s).
- 20.3. The rights of Mackay Refrigeration under this document are in addition to and not in substitution for Mackay Refrigeration's rights under other law (including PPS Law) and Mackay Refrigeration may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 20.4. The Customer acknowledges that if Mackay Refrigeration's interest under this agreement, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and this agreement is a security agreement for the purposes of the PPSA.
- 20.5. Mackay Refrigeration may register its Security Interest on the PPSR (including, without limitation, as a PMSI). You must do anything (such as obtaining consents and signing documents) which Mackay Refrigeration requires for the purposes of:
- (a) ensuring that Mackay Refrigeration's Security Interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling Mackay Refrigeration to gain first priority (or any other priority agreed to by Mackay Refrigeration in writing) for its security interest; and
 - (c) enabling Mackay Refrigeration to exercise rights in connection with the security interest.
- 20.6. You must pay on demand to Mackay Refrigeration the Documentation Costs.
- 20.7. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with this agreement and to the maximum extent permitted by law, You agree that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- 20.8. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- 20.9. The Customer waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 20.10. The Customer must not assign or grant a Security Interest in this agreement or any contract arising subject to these terms and conditions or any of its rights or obligations under this agreement or any contract arising subject to these terms and conditions without the prior written consent of Mackay Refrigeration.
- 20.11. The Customer must not create, purport to create or permit to be created any Security Interest in the Equipment or lease, hire, bail, sell or give possession of the Equipment to anyone else other than with the express written consent of Mackay Refrigeration.
- 21. Notices**
- 21.1. Except otherwise provided herein, any notice under this agreement shall be given in writing. If delivered by prepaid post to the address stated in this agreement or to such other address the party to whom the notice is given may thereafter have notified, such notice shall be deemed to have been received two (2) business days after the date of posting.
- 22. Confidentiality**
- 22.1. The attached Quotation and any documents attached thereto contain Confidential Information for the use of the Customer only.
- 22.2. The Customer shall not disclose the Confidential Information or suffer or permit it to be disclosed to any person or company whatsoever except with the prior written consent of Mackay Refrigeration and then only on the basis that it is respected in the same manner as herein provided.
- 22.3. Without limiting the generality of clause 22.2 the Customer shall not:
- (a) take any action or use any process based on the Confidential Information without the consent in writing of Mackay Refrigeration; or
 - (b) use or disclose to a third party any aspect of the Confidential Information for any purpose whatsoever.
- 22.4. The obligations of the Customer under this clause 22 shall survive the finalisation or discontinuance by Mackay Refrigeration of its negotiations with the Customer in respect to a Quotation and shall continue for so long as a Quotation shall remain Confidential Information.
- 23. Intellectual Property**
- 23.1. Mackay Refrigeration owns all copyright throughout the world in a Quotation and any documents attached thereto which have been prepared by Mackay Refrigeration for the purposes of a Quotation including any drawings, plans, designs or pricings.
- 24. Privacy Act 1988 (Cth)**
- 24.1. The personal information provided by the Customer or any Guarantor will be held by Mackay Refrigeration.
- 24.2. Mackay Refrigeration may use the personal information provided by the Customer or any Guarantor for the purposes of completing the Works and for direct marketing of products and other services offered by Mackay Refrigeration or an organisation it is affiliated with or represents. The Customer or any Guarantor have the right to request not to receive direct marketing material.
- 24.3. The Customer and any Guarantor consent to Mackay Refrigeration collecting and using its personal information as specified above.
- 25. Credit Card Surcharge**
- 25.1. Mackay Refrigeration will charge a fee for accepting payment of moneys due and owing under this agreement by way of credit card. The amount of the fee will be equivalent to one and a half percent (1.5%) of the amount of any such payment(s).
- 26. Set-off**
- 26.1. Mackay Refrigeration may set-off against any moneys owing by it to the Customer or any Guarantor, any moneys owing by the Customer or any Guarantor to Mackay Refrigeration.
- 27. Unenforceable Provisions and Severance**
- 27.1. If a provision of a Contract or this Agreement is void, voidable, unenforceable or illegal but would not be if it was read down, it shall be read down and if it would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed, but should the provision nevertheless be void, voidable, unenforceable or illegal, it shall be severed yet the remainder of the relevant Contract or this Agreement will remain in full force and effect.



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ACN: 107 715 766

Executed as a Deed

Signed on behalf of **Mackay Refrigeration Pty Ltd (ACN 107 715 766)**
by its authorised representative(s) this _____ day of _____ 20__

Print name: _____

Print name: _____

Capacity: _____

Capacity: _____

In the presence of

Witness

Witness

Signed on behalf of the **Customer**
by its authorised representative(s) this _____ day of _____ 20__

Print name: _____

Print name: _____

Capacity: _____

Capacity: _____

In the presence of

Witness

Witness

Signed by the **Guarantor**

Signed by the **Guarantor**

Print name: _____

Print name: _____

Capacity: _____

Capacity: _____

In the presence of

In the presence of

Witness

Witness