

Terms of Sale

Definitions:

Jackson & Jackson Refrigeration means Jackson & Jackson Refrigeration Pty Ltd ABN 52 122 222 486

Buyer means the person with whom Jackson & Jackson Refrigeration have entered into a contract for the supply of any Goods and/or Services pursuant to these Terms of Sale;

Goods mean heating, ventilation, refrigeration, electrical and/or air-conditioning equipment and all other goods or other property which, in each case, are supplied by Jackson & Jackson Refrigeration to the Buyer;

Services mean start-up, service, maintenance and/or repair works in respect of the Goods supplied by Jackson & Jackson Refrigeration to the Buyer;

Start-Up means the commissioning of the Goods pursuant to the contract;

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under the Act.

1. Quotations and Orders

- 1.1 No quotation given by Jackson & Jackson Refrigeration to the Buyer shall constitute an offer. Any order from the Buyer to Jackson & Jackson Refrigeration for the supply of Goods or Services shall not be binding upon Jackson & Jackson until accepted by Jackson & Jackson Refrigeration.
- 1.2 Prices given in any quotation by Jackson & Jackson Refrigeration are applicable to that quotation only and will not apply in any other instance.
- 1.3 Quotations are valid for a period of thirty (30) days from date of issue by Jackson & Jackson Refrigeration or otherwise specified in the quotation.
- 1.4 When ordering, a written order is to be submitted by the Buyer to Jackson & Jackson Refrigeration quoting an order number, full description of the Goods and Services to be purchased and the delivery time and address. Reference to Jackson & Jackson Refrigeration's quotation number to the Buyer should also be made (where applicable).
- 1.5 These Terms of Sale apply to the Buyer and to Jackson & Jackson Refrigeration in respect of Goods and/or Services ordered by the Buyer and any terms and conditions set out in the Buyer's order deviating from or inconsistent with these Terms of Sale will not bind Jackson & Jackson Refrigeration notwithstanding any statement by the Buyer in its order that its terms and conditions shall prevail over these Terms of Sale. A contract shall only be or be deemed to have been entered into between Jackson & Jackson Refrigeration and the Buyer for the supply of Goods when the Buyer's order has been accepted by Jackson & Jackson Refrigeration in writing.

2. Modifications

If Jackson & Jackson Refrigeration is asked to carry out additions or modifications to the Goods and/or perform additional Services or more frequent Services than those set out in Jackson & Jackson's quotation, these will be deemed a variation and the quotation will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost Jackson & Jackson Refrigeration incurs in performing these, but (subject to this) all other conditions of the quotation and these Terms of Sale will continue to apply.

3. Auxiliary Components

When auxiliary components are included in the quotation and not expressly named, Jackson & Jackson Refrigeration reserves the right to supply from the sources considered most suitable. If, after quotation, components of a particular make are requested by the Buyer, the price will be adjusted by the difference between the cost to Jackson & Jackson Refrigeration of those components and that allowed by Jackson & Jackson Refrigeration in the quotation. The date of delivery will be adjusted by the period of delay, if any, in availability of such components.

4. Terms of Payment

- 4.1 Property and ownership in the Goods will not pass to the Buyer but will remain in Jackson & Jackson Refrigeration until payment in full of the purchase price of the Goods and Services and all other amounts owing to Jackson & Jackson Refrigeration by the Buyer. The Goods are to be clearly identified by the Buyer as remaining the property of Jackson & Jackson Refrigeration until they are paid for in full.
- 4.2 The Buyer may sell or deal in the ordinary course of business with the Goods and with the interest of Jackson & Jackson Refrigeration in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Buyer on trust for Jackson & Jackson Refrigeration. The Buyer hereby agrees to accept this appointment as bailee and fiduciary.
- 4.3 Notwithstanding the above, Jackson & Jackson Refrigeration reserves the following rights in relation to the Goods until all amounts owed by the Buyer to Jackson & Jackson Refrigeration are fully paid:
 - a) Legal and equitable ownership of the Goods;

- b) To enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- c) To keep or resell any of the Goods repossessed pursuant to (b) above.
- 4.4 The Buyer must so long as Jackson & Jackson Refrigeration is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of Jackson & Jackson Refrigeration.
- 4.5 In the event that the Goods are resold, or goods manufactured using the Goods are sold, by the Buyer, the Buyer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in manufacture of the Goods sold in a separate and identifiable account as the beneficial property of Jackson & Jackson Refrigeration and must pay such amount to Jackson & Jackson Refrigeration on request. Notwithstanding the provisions above Jackson & Jackson Refrigeration is entitled to maintain an action against the Buyer for the purchase price of the Goods and/or Services.
- 4.6 Where the Buyer incorporates the Goods or with any other product before property has passed to the Buyer, the new product shall be separately store or marked in a manner which makes such new product readily identifiable as the Goods of Jackson & Jackson Refrigeration.
- 4.7 If payment for the Goods is not made by the Buyer by the due date specified by Jackson & Jackson Refrigeration to the Buyer then the Buyer shall return the Goods to Jackson & Jackson Refrigeration upon demand. If the Buyer does not return the Goods to Jackson & Jackson Refrigeration within 48 hours or receipt of the demand, Jackson & Jackson Refrigeration shall be entitled to enter upon the Buyer's premises at any time to do all things necessary to recover the Goods. The Buyer shall be liable for any costs associated with the exercise by Jackson & Jackson Refrigeration of its rights under this clause, which shall be repayable on demand.
- 4.8 If payment is not received by the due date, interest may be charged at Jackson & Jackson Refrigeration's current financier Lending Rate plus four percent on the sum outstanding for the period from the due date until the date payment is received. If at any time moneys are overdue and owing upon any invoice then outstanding the whole of the amount of all invoices then outstanding becomes immediately due and payable.
- 4.9 The Buyer shall be liable for all costs of whatsoever nature of and associated with the exercise of Jackson & Jackson Refrigeration's rights under this clause, which costs shall be payable on demand.
- 4.10 Should the Buyer sell the Goods to any sub-purchaser, the Buyer must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with Jackson & Jackson Refrigeration until payment in full of the purchase price of the Goods by the sub-purchaser to the Buyer.
- 4.11 Risk in the Goods passed to the Buyer at the time of delivery and the Buyer shall keep the Goods insured.

5. Retention Monies

Jackson & Jackson Refrigeration do not in the normal course of business agree to retention of monies owing to Jackson & Jackson Refrigeration. However, if retentions are specified and agreed to by Jackson & Jackson Refrigeration in writing, such retentions shall be in the form of a bank guarantee. Such guarantee shall be held for a period not in any event to exceed a maximum of the period of warranty provided in respect of the Goods or Services.

6. Buyer Delayed Delivery

Should the Buyer delay delivery of the Goods, Jackson & Jackson Refrigeration reserves the right to store the Goods and to obtain payment as though the Goods had been delivered and to recover storage, insurance and handling costs incurred due to the delay. Jackson & Jackson Refrigeration shall be entitled to make progress claims when components and/or Services are required ahead of schedule delivery dates or when payment in full for the Goods and/or Services will be delayed.

7. Default Of The Buyer

- 7.1 Should the Buyer fail to make due payment for any Goods supplied by Jackson & Jackson Refrigeration or commit a breach of any term of the sale, or being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrators, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Buyer pursuant to a mortgage or other security, Jackson & Jackson Refrigeration may, without prejudice to any other rights it may have, do any or all of the following:
- Withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all moneys owing or accrued;
 - Withhold any further deliveries of Goods or performance of Services required under the accepted order;
 - In respect of Goods already delivered, enter into the Buyer's premises to recover and resell same for its own benefit;
 - Suspend and/or terminate performance of any other contracts which Jackson & Jackson Refrigeration have with the Buyer.
- 7.2 A certificate signed by the Director, Accountant, Credit Controller or other authorised person of Jackson & Jackson Refrigeration, stating the sum due and payable by the Buyer under the contract at the date mentioned in that certificate, will be prima facie evidence that the sum so stated is the sum due and payable by the Buyer to Jackson & Jackson Refrigeration under the contract at the date. Without limiting clause 4.9, the cost of collection of any monies due and payable, including but not exclusively the fees of any mercantile agent or solicitor engaged by Jackson & Jackson Refrigeration will be recoverable on a full indemnity basis against the Buyer.

8. Cancellation Fees

Orders may not be altered or cancelled without the written consent of Jackson & Jackson. If Jackson & Jackson agrees to alter or cancel the order, the Buyer shall indemnify Jackson & Jackson Refrigeration against any loss, damage and expense incurred by Jackson & Jackson Refrigeration in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to factory or origin, items purchased from third parties for inclusion in Goods and all labour and engineering costs incurred by Jackson & Jackson Refrigeration in the execution or part execution of the Goods and including compensation payable to any supplier of Jackson & Jackson Refrigeration and loss of profit.

9. Delivery

All quoted delivery or consignment dates and estimates only. Jackson & Jackson Refrigeration is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.

10. Inspection During Maintenance

If requested, the Buyer will be allowed access to Jackson & Jackson Refrigeration's relevant facility for the purpose of inspecting the Goods and Services being carried out under the terms of the order. Such inspection must be by prior arrangement with Jackson & Jackson Refrigeration.

11. Product Change

Jackson & Jackson Refrigeration reserve the right to make reasonable modification in Goods of any kind without notice and to deliver revised designs or models of Goods against any order, unless the right is specifically waived by Jackson & Jackson Refrigeration in writing. Prior to making modifications of a major nature which may affect the Buyer in its contractual responsibilities, such modifications will be referred to the Buyer for acceptance.

12. Noise and Vibration

Notwithstanding anything to the contrary contained within these Terms of Sale, Jackson & Jackson Refrigeration will not accept any responsibility for noise and/or vibration including without limitation any information given by Jackson & Jackson Refrigeration regarding noise and/or vibration unless such information is specifically requested by the Buyer and provided by Jackson & Jackson Refrigeration in writing as part of the contract.

13. Access for Services and Ownership of Goods

13.1 It is the Buyer's responsibility to provide adequate access for entry and installation of Goods and/or Services covered by the contract, together with adequate access and rigging facilities for future Services. The Buyer will maintain the area in which the Goods are (or are to be) located free of extraneous materials and move any contents, fixtures, fittings or moveable partitions as required to facilitate the performance of Services by Jackson & Jackson Refrigeration.

13.2 The Buyer will grant Jackson & Jackson entry to the premises and access to the Goods at any time when required for the performance of the Services and allow Jackson & Jackson Refrigeration to make use of all existing building services and maintenance facilities at the premises in the performance of the Services, and to remove any item of the Goods from the premises (if in Jackson & Jackson Refrigeration's opinion necessary) for the purpose of undertaking any repair or replacement thereof. The Buyer will only permit persons duly qualified to undertake service and repair work on the Goods other than in connection with its normal daily operation.

13.3 The Buyer warrants to Jackson & Jackson Refrigeration that the Buyer of the Services is the beneficial owner of the Goods or has obtained from the beneficial owner consent for Jackson & Jackson Refrigeration to carry out such Services and will indemnify and hold harmless Jackson & Jackson Refrigeration in respect of any claim made against Jackson & Jackson Refrigeration based on, or in any way arising from, a lack of such consent. Unless otherwise stated it is the Buyer's responsibility to obtain and provide access, services, facilities, permits, approvals or licences as may be required for the performance of the Services.

14. Assembly

When it is necessary to dispatch the Goods in other than fully assembled condition (which facts shall be stated in the quotation), assembly and erection will be the Buyer's responsibility and at the Buyer's cost except where nominated in writing in the quotation.

15. Start-Up

It is the Buyer's responsibility to have the Goods installed and all auxiliary services operative in accordance with the Jackson & Jackson Refrigeration check-list prior to requesting start-up (if included in the contract). If upon arrival on site the engineer finds that the Goods are not ready for start-up, any extra costs incurred, including costs of traveling and accommodation, will be payable by the Buyer. Quoted price for start-up and other site Services are based on normal working hours. Overtime, penalty rates and site allowances will be payable by the Buyer and added to the quoted price.

16. Progress Claims

Jackson & Jackson Refrigeration reserve the right to issue partial payment invoices as materials are supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services under the contract (less progress claims). Such progress claims will show material made available and/or Services provided. Payment is to be made by the Buyer in accordance in terms of these Terms of Sale.

17. Freight and Insurance

All Goods are on an ex-works basis. Delivery of the Goods will occur when the Goods are placed at the disposal of the Buyer (including its nominee or agent) at Jackson & Jackson Refrigeration's premises or in the case of Services, are supplied to the Buyer. Where Jackson & Jackson Refrigeration agrees in writing to deliver the Goods to the site nominated by the Buyer, the Buyer agrees that all charges for freight and insurance arranged by Jackson & Jackson Refrigeration on behalf of the Buyer will be Jackson & Jackson Refrigeration's election, payable directly by the Buyer to the carrier and/or insurer or added to prices payable by the Buyer to Jackson & Jackson Refrigeration.

18. Price Variation (Equipment only)

Unless stated to the contrary, Goods offered will be subject to cost adjustment based on the "Air Conditioning Material Index" as published by the Australia Bureau of Statistics Catalogue 6407. The cost adjustment shall be the "percentage change" in cost calculated from the difference in Price Indices at the date of quotation and the date of delivery.

19. Price Variation (Site Services)

Service including installation, start-up and maintenance will be subject to cost adjustment based on the "percentage change" in hourly rate (including fringe benefits and allowances) based on the weekly Metal Industry Award Rate for a fitter in the State where the Services are performed for the balance of the Services to be performed under the contract.

20. Price Variation (Taxes, Freight and Insurance)

20.1 GST or Import Duty (if any) or any other taxes or duties included in the quotation are based on the rate applicable on all the items as at the date of the quotation. All variations, whether they be due to amendments of the relevant Acts or changes in interpretations of classifications, will be payable by the Buyer and will be added to the quoted price.

20.2 Variations to rates of exchange, freight, insurance, primage and cartage on imported equipment or components, affecting the amount paid by Jackson & Jackson Refrigeration for the actual Goods or components supplied will also be payable by the Buyer and will be added to the quoted price.

21. Goods and Service Tax

21.1 Any quotation issued by Jackson & Jackson Refrigeration does not include an amount on account of GST, unless otherwise specifically stated. If any supply made under or in connection with the Agreement is subject to GST, the Buyer must pay to Jackson & Jackson Refrigeration an additional amount equal to the GST payable.

21.2 The Buyer must pay the GST amount at the same time as the Buyer must pay the contract price, or if partial payment invoices are issued, at the same time as the Buyer must make the partial payment.

22. Warranty

- 22.1 Jackson & Jackson Refrigeration warrants the Goods to be free of defect in workmanship and/or materials under normal use and service and will repair or replace at its option, any part of components which upon Jackson and Jackson Refrigeration's inspection prove to have such defects, within a period of one year from date of installation or eighteen months from date of shipment which ever occurs first. Freight for such items will be at the cost of the Buyer, to the nearest Jackson & Jackson Refrigeration's repair facility. Any replacement part is covered by warranty for the unexpired portion of the warranty period covering the original Goods or for a period of ninety (90) days, whichever is the greater. Labour costs for removal and replacement of faulty components and diagnosis of faults is specifically excluded.
- 22.2 Labour Warranty: Where "Labour Warranty" is offered and is purchased separately, the cost of removal and replacement of faulty components by Jackson & Jackson Refrigeration is included. If the location of the premises where the Goods is situation and/or Services are to be provided is more than 50km from Jackson & Jackson Refrigeration's place of business which issued the quotation, travel time and accommodation expenses will be invoiced separately to the Buyer. All labour rates quoted are based on Jackson & Jackson Refrigeration's standard labour rates applicable at the date of the quotation for work between 8:00am and 4:30pm, on business days and do not include any site allowances or special conditions.
- 22.3 Service Warranty: Unless otherwise noted, warranty for labour service is thirty (30) days from the date of service. Warranty on parts is ninety (90) days.
- 22.4 Where the Goods are manufactured by a third party or the Goods include products manufactured by a third party, any warranty which may be given by Jackson & Jackson Refrigeration only applies to the extent Jackson & Jackson Refrigeration receives the benefit of that third party manufacturer's warranty, except otherwise agreed in writing by Jackson & Jackson Refrigeration.

23. Limitation of Liability

- 23.1 The Buyer acknowledges and agrees that Jackson & Jackson Refrigeration has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect special or consequential loss or damage whatsoever.
- 23.2 Notwithstanding any other provision to the contrary, Jackson & Jackson Refrigeration will not be responsible or liable for any breach of warranty or claim where such breach or claim arises as a result of:
- damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Buyer or a third party;
 - refrigerated projects lost during shipment or during any warranty period; or
 - mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of Jackson & Jackson Refrigeration.
- 23.3 This clause 23 does not exclude or modify any condition or warranty implied into the contract or these Terms of Sale by any law (including the *Trade Practices Act 1974*) where to do so would contravene that law or cause any part of this clause to be void.
- 23.4 To the maximum extent permitted by law, Jackson & Jackson Refrigeration excludes all conditions and warranties implied into these Terms of Sale and limit its liability for breach of any non-excludable condition and warranty, at Jackson & Jackson Refrigeration's option, to:
- in respect of Goods:
 - repairing the relevant Goods;
 - paying the cost of having the relevant Goods repaired;
 - resupplying the relevant Goods or equivalent Goods; or
 - paying the cost of having the relevant Goods or equivalent Goods resupplied;
 - in respect of Services:
 - resupplying the relevant Services; or
 - paying for the cost of having the relevant Services resupplied
- 23.5 Jackson & Jackson Refrigeration's total liability under any contract and these Terms of Sale shall not exceed ten percent of total dollar amount of the Goods and/or Services purchased by the Buyer under the contract.
- 23.6 The parties agree that if any limitation or exclusion of liability under these Terms of Sale is held to be invalid under any applicable statute or rule of law, it will to that extent be omitted.

24. Laws to Apply

The laws of the State or Territory of Australia where Jackson & Jackson Refrigeration's written acceptance of the order is issued shall apply to the interpretation of these Terms of Sale and any matters arising there from.

25. Entire Agreement

- 25.1 The agreement between Jackson & Jackson and the Buyer shall be constituted in its entirety by these Terms of Sale together with the Jackson & Jackson Refrigeration's quotation and any credit approval and/or guarantee required to be provided by the Buyer to Jackson & Jackson Refrigeration ("the contract").
- 25.2 All previous negotiations, understandings, representations, warranties, memoranda, or commitments in relation to, or in any way affecting, the subject matter of the contract are merged in and superseded by the contract and shall be of no force or effect whatever and neither party shall be liable to the other party in respect of those matters.
- 25.3 Where there is more than one Buyer then the liability of each shall be joint and several.
- 25.4 The contract shall be binding on the heirs, successors and assigns of the parties.
- 25.5 No variation, waiver or cancellation of the contract will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.

26. Form of Notice

Any notice, consent or other communication ("Notice") required or permitted by these Terms of Sale shall be in writing and shall be deemed sufficiently served if delivered by hand or sent by facsimile or certified mail; postage prepaid, addressed to the party who it is to be given at its then principal place of business or registered office.

27. Credit Policy

- 27.1 Jackson & Jackson Refrigeration may at its discretion, as a condition of acceptance of such order for sale, service or repair works require the Buyer to:
- Provide personal guarantees as to payment; and/or
 - Enter into an assignment of progress payments due to the Buyer.
- 27.2 The Buyer agrees to pay any recovery costs to mercantile agents, payable by the Supplier as a result of delinquent payments, made 30 days past due date.

- 27.3 The Buyer agrees to pay any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying Jackson & Jackson Refrigeration any amounts on any accounts.
- 27.4 The Customer agrees to pay any legal costs (on a full indemnity basis), costs incurred in the use of commercial agents, stamp duties and any other expenses payable of and incidental to the performance or enforcement of any litigation on these terms and conditions, or any credit application or security documents signed by the Supplier, or any Guarantor, together with any other collection costs and dishonoured cheque fees.

28. Service

Unless later time is specified in it, a Notice takes effect from the time it is actually received or taken to be received:

- a) In the case of a letter, on the third business day after posting;
- b) In the case of a facsimile, if transmitted before 5:00pm on a business day, on that business day;
- c) If transmitted after 5:00pm on a business day, on the next following business day;
- d) If transmitted on a day not being a business day, on the next day being a business day provided that, in any instance, the sender can produce a transmission report by the machine from which the facsimile was sent which indicated the time and date of transmission and that the facsimile was sent in its entirety to the facsimile of the recipient.

29. Validity

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms, but the rest of these Terms of Sale is not affected.