

# T and B Air Conditioning Services Pty Ltd Standard Terms and Conditions

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	annexure, appendix or exhibit of or to this agreement;		or withdraw the Quotation at any time before communication by the Customer to T & B of its acceptance of the Quotation in writing.	5.2.4.1	the change in the Price by reason of the Variation; or
1.2.6	a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of this agreement;			5.2.4.2	where it is not practicable to state the change in the Price by reason of the Variation; or where no agreement is reached by the Customer and T & B as to the value of the variations, then additions shall be charged at cost (exclusive of GST) plus 15%, plus any and all GST payable with respect to the addition; and the actual cost of deletions are to be deducted with any and all GST payable with respect to the deletion;
1.2.7	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;	3.3	The Customer may accept a Quotation including by signing and returning a copy of the Quotation to the Contractor or otherwise acknowledging and agreeing to the terms of the Quotation (an "Order").		
1.2.8	where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;	3.4	The parties will be deemed to have formed a Contract on the terms of this Contract together with the Quotation, upon acceptance by the Customer of the Quotation.	5.2.5	State the revised Completion Date (if applicable and practicable).
1.2.9	where an expression is defined anywhere in this agreement it has the same meaning throughout;	<b>4.</b>	<b>DUTIES OF T &amp; B</b>	5.3	The Price is to be adjusted accordingly in the next payment made after the commencement of the Works the subject of the Variation.
1.2.10	a reference to "dollars" or "\$" is to an amount in Australian currency.	4.1	T & B must carry out and complete the Works in the best trade practice and professional manner and in compliance with the terms and provisions of the Contract Documents by the Completion Date.	<b>6.</b>	<b>T &amp; B'S WARRANTY</b>
1.3	Headings			6.1	T & B warrants that:-
	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.	4.2	T & B may employ its Servants or any third party for the purpose of completing the Works provided such person(s) are careful, skilled and experienced in their respective trades or occupations. T & B will be solely responsible for any and all payments to any Servant or third party for that part of the Works performed by it.	6.1.1	all materials to be supplied for use in the Works:
<b>2.</b>	<b>LAW</b>			6.1.1.1	will be good and having regard to the generally accepted practices or standards applied in the building industry for the materials or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, will be suitable for the purpose for which they are used; and
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.	<b>5.</b>	<b>VARIATIONS</b>	6.1.1.2	unless otherwise stated, are new;
<b>3.</b>	<b>FORMATION OF AGREEMENT</b>	5.1	Any person seeking a variation to the Contract shall notify the other party of the details of the required changes to the Works.	6.1.2	the Works will be carried out:-
3.1	The Customer may accept a Quotation within thirty (30) days of its receipt which period T & B may, at its option, extend..	5.2	Where practicable, a variation document will be prepared by T & B which will:	6.1.2.1	in accordance with all relevant laws and legal requirements;
		5.2.1	be signed by both the Customer and T & B;	6.1.2.2	in an appropriate and skilful way; and
		5.2.2	state the scope of the Variation;	6.1.2.3	with reasonable care and skill;
3.2	T & B may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise	5.2.3	state the reason for the Variation;	6.1.3	if applicable, each Provisional Sum has been calculated with reasonable care and skill, having regard to all the information reasonably available when
		5.2.4	state:-		

- materials and owes T & B the duties and liabilities of a bailee.
- 10.6 The property of T & B in the materials remains with T & B until T & B has received payment in full of the Price and any other moneys due to T & B under this agreement or any Contract between the parties.
- 10.7 The Customer is a bailee of the materials until such time as property in them passes to the Customer and this bailment continues in relation to all of the materials until the Price of the Contract has been paid in full.
- 10.8 Pending payment in full of the Price under the Contract, the Customer:
- 10.8.1 must not allow any person to have or acquire any security interest in the materials;
- 10.8.2 must insure the materials for their full insurable or replacement value (whichever is the higher) with any insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business and the insurance company must be notified of T & B's interest in the materials.
- 10.8.3 must not remove, deface or obliterate any identifying plate, mark or number on any of the materials.
- 10.9 Despite clause 10.8, if the Customer supplies any of the materials to any person before all moneys payable by the Customer have been paid to T & B (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:
- 10.9.1 it holds the proceeds of re-supply of the materials on trust for and as agent for T & B immediately when they are receivable or received;
- 10.9.2 it must either pay the amount of the proceeds of re-supply to T & B 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 T & B;
- 10.9.3 any accessory or item which accedes to any of the materials by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of T & B until T & B is paid in accordance with clause 10.6 when the property in the materials passes to the Customer;
- 10.9.4 if the Customer fails to pay the Price within the period as stated in the Contract or is otherwise indebted to T & B, T & B may recover possession of the materials at any site owned, possessed or controlled by the Customer and the Customer agrees that T & B has an irrevocable licence to do so and to dispose of the equipment to recover costs.
- 11. ACCESS**
- 11.1 T & B's Quotation is based on a continuous work programme, unless otherwise stated. If the Customer causes the Works to be delayed or delays are caused by any of the events in clause 9, then the performance of T & B's obligations under this agreement or any Contract between the parties shall be suspended for the period of such delay and the Completion Date shall be extended accordingly.
- 11.2 Where T & B is entitled to an extension of time under this clause, the Customer shall pay to T & B such extra costs as are reasonably incurred by T & B by reason of the delay including compensation for loss of profit, additional overheads or administrative expenses incurred as a result.
- 12. PRACTICAL COMPLETION AND DEFECTS LIABILITY PERIOD**
- 12.1 T & B shall complete the Works to Practical Completion on or before the Completion Date (as amended or varied by the terms hereof).
- 12.2 When, in the opinion of T & B, the Works have been completed to a stage of Practical Completion, T & B may give the Customer notice thereof.
- 12.3 Within five (5) days after receipt of such notice, the Customer, if not satisfied that the Works are practically complete, shall give to T & B notice of those matters, which the Customer requires to be carried out in order for the Works to reach Practical Completion. If the Customer does not do so then the Works shall be deemed to be practically complete without any omissions or defects.
- 12.4 Upon receipt of a notice from the Customer in accordance with clause 12.3 T & B must give the Customer a notice that:
- 12.4.1 lists the minor defects and minor omissions that both the Customer and T & B agree exist and provide a value of the cost to rectify those defects and/or omissions; and
- 12.4.2 T & B is to use all reasonable endeavours to rectify, as soon as is reasonably practicable, the listed defects and omissions referred to in the list issued pursuant to Clause 12.4.1 and in any event, by the end of the Defects Liability Period; and
- 12.4.3 lists the minor defects and omissions the Customer claims exist, but which are not agreed by T & B to exist; and
- 12.4.4 is signed by T & B.
- The Customer shall then immediately pay T & B all moneys forming part of the Price (as may have been varied) which have not then been paid save

- necessary licence to import such goods or parts thereof.
- 19. CUSTOMS DUTY**
- 19.1 Customs Duty is not included in the Quotation unless specified.
- 20. NOTICES**
- 20.1 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.
- 21. SECURITY OF PAYMENT**
- 21.1 The provisions of clauses 21 and 22 shall not apply to a Customer or Guarantor which is a corporation or in respect of Works to which the *Domestic Building Contracts Act (Qld)* applies.
- 21.2 The Guarantor unconditionally guarantees to T & B the due and punctual performance and observance by the Customer of all the obligations of the Customer under this agreement including the payment of all moneys due and payable to T & B at the time and in the manner provided in this agreement. The Guarantor unconditionally indemnifies and will keep T & B indemnified against any loss or damage it suffers by reason of or as a result of the breach by the Customer of this agreement.
- 21.3 The Customer and each Guarantor hereby charges all of their respective real and personal property where so ever situated with the amount of moneys owed by the Customer to T & B under this Contract or otherwise. As further and better security for the payment of all money from time to time owing by the Customer to T & B the Customer and each Guarantor mortgages and charges to and in favour of T & B all right, title, estate and interest which they hold or may hold hereafter in any real or personal property in Australia. The Customer and each Guarantor shall, at the request of T & B, sign execute and deliver in favour of T & B such mortgage or charge over the Customer's and/or Guarantor's real or personal property in registerable form as T & B may require, such document or documents incorporating such terms as determined by the T & B's solicitors, to protect the interest of T & B herein, within 10 days of T & B requesting the same of the Customer and/or the Guarantor.
- 21.4 For the purpose of giving full effect to this agreement and the powers hereby conferred, whilst any moneys now or from time to time are owing by the Customer to T & B, the Customer and each Guarantor appoints T & B and any of its authorised officers, jointly and each of them severally, the true and lawful attorney and attorneys of the Customer and/or Guarantor, as the case may be, to do anything in the name of the Customer and/or the Guarantor, as the case may be, or of T & B, which the Customer and/or the Guarantor, should do or should have done hereunder and to do all such acts, matters and things (including the execution of any deed, mortgage, bill of sale, charge, share transfer, transfer of land and other documents whatsoever) as such attorney or attorneys may deem expedient for carrying out, or in connection with the exercise of all or any of the rights or powers herein contained or implied, to give effect to this agreement or for the enforcement thereof and this power of attorney is deemed irrevocable and given by way of security.
- 22. CAVEAT**
- 22.1 For the avoidance of any doubt, the Customer and each Guarantor confirms that T & B has a caveatable interest in any land of which they are the registered proprietor for the purposes of the *Land Title Act 1994* and its equivalent in another jurisdiction.
- 23. SUPPLY PRICE FLUCTUATIONS**
- 23.1 Where materials and goods to be supplied have increased in price after this Contract was formed, then the Contract Price shall be varied by the amount of the difference between the price of those materials and goods at the time the Contract was entered into and the actual cost to the Contractor including any duty or tax payable thereon.
- 24. CREDIT CARD SURCHARGE**
- 24.1 T & B will charge a fee for accepting payment of moneys due under this agreement by way of credit card. The amount of the fee will be equivalent to 4% of the amount of any such payment(s).
- 25. PATENTS AND COPYRIGHT**
- 25.1 The Customer hereby assigns to T & B:
- 25.1.1 All inventions, discoveries and novel designs whether or not registerable as designs under the *Design Act 2003 (Cth)*, patents under the *Patent Act 1990 (Cth)* and trade marks under the *Trade Marks Act 1995 (Cth)* in respect of the Works and the Contract Documents.
- 25.1.2 The entire copyright in all Works, including but not limited to all literary and other works as defined in the *Copyright Act 1968 (Cth)*;
- 25.1.3 Any other intellectual property, rights, title or interests created by T & B as a result of and in the course of this Contract with the Customer.