



Air & Energy Solutions

TBS AIR & ENERGY SOLUTIONS

TBS Air & Energy Solutions Pty Ltd

ABN 81 633 817 035

Suite 53 / 139 Cardigan Street

Carlton VIC 3053

Tel: 1800 TBS AIR (1800 827 247)

Email sales@tbsairandenergy.com.au

Web www.tbsairandenergy.com.au

TERMS AND CONDITIONS

1. Quotations and Orders

- a. Receipt of the Buyer's order shall not bind TBS Air & Energy Solutions until TBS Air & Energy Solutions has confirmed acceptance of the order and approved terms of TBS Air & Energy Solutions credit policy.
- b. A quote is valid for a period of thirty (30) days (unless otherwise stated on the quote or by TBS Air & Energy Solutions staff); after this period, TBS Air & Energy Solutions reserves the right to revise the quotation. Prices given are applicable to that quotation only and will not necessarily apply in any other circumstance.
- c. Prices are subject to change as necessary

2. Modifications

- a. If TBS Air & Energy Solutions is asked to carry out additions or modifications to the equipment and/or perform additional services or more frequent services, these will be deemed a variation and the quotation will be adjusted accordingly.
- b. Any variation will take into consideration the nature and extent of such additions or modifications and the cost TBS Air & Energy Solutions incurs in performing these, but (subject to this) all other conditions of the quotation will continue to apply.
- c. Variations shall apply if:
 - i. Additional equipment or labour is required that has not been identified on the Quotation; or
 - ii. Work is required outside of the Standard Site Hours; or
 - iii. Site inductions exceed one hour in total per person; or
 - iv. Unreasonable restrictions or no access is provided; or
 - v. Delays on site outside of TBS Air & Energy Solutions control, prevent TBS Air & Energy Solutions technicians from carrying out work; or
 - vi. Delays on site outside of TBS Air & Energy Solutions control require TBS Air & Energy Solutions technicians to return to site at a later time or date; or
 - vii. There are any other unexpected Site conditions.

3. Auxiliary Components

- a. When auxiliary components are included in the quotation and not expressly named, TBS Air & Energy Solutions reserves the right to supply from the source considered most suitable. If, after quotation, components of a nominated make are requested by the Buyer, the price will be adjusted by the difference between the cost to TBS Air & Energy Solutions of those components and that allowed by TBS Air & Energy Solutions in the quotation. The date of dispatch will be adjusted by the period of delay, if any, in availability of such components.

4. Transferring of title

- a. Ownership in and title to any of the goods or materials supplied pursuant to this Quotation shall remain with TBS Air & Energy Solutions until such time as full payment has been received for all goods and / or materials and / or services covered by this Quotation but risk shall pass to the Purchaser on delivery.
- b. Upon or at any time after a default in payment, TBS Air & Energy Solutions shall have the right, with or without prior notice, to recover possession of the whole or any part of the goods (and the Purchaser agrees that TBS Air & Energy Solutions may enter any premises occupied by the Purchaser to satisfy that purpose) without prejudice to other rights and remedies.
- c. The Purchaser acknowledges that TBS Air & Energy Solutions will have one or more security interests for the purpose of the PPSA and that:
 - i. TBS Air & Energy Solutions may register any security interest contemplated by this Contract on the PPS Register in any manner TBS Air & Energy Solutions chooses;
 - ii. The Purchaser irrevocably and unconditionally waives its right to receive notice of a verification statement under section 157 PPSA;
 - iii. The Purchaser agrees that sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA shall not apply to any collateral arising from or in connection with this Contract;
 - iv. The Purchaser shall promptly take any steps, or provide any such information and execute and deliver any such documents, as TBS Air & Energy Solutions reasonably requires to perfect or otherwise protect and enforce the security interests granted to TBS Air & Energy Solutions by the Purchaser or under this Contract.
- d. The Purchaser warrants and agrees that the goods are not, and will not become, a fixture for the purposes of the PPSA until 14 days after payment in full has been made for the goods. TBS Air & Energy Solutions shall be entitled to remove the goods from any premises owned, occupied or accessed by the Purchaser (whether or not the goods are affixed) following a default by the Purchaser under this Contract, and the Purchaser agrees:
 - i. To procure appropriate acknowledgements from any owner, landlord or mortgagee of the premises to ensure that TBS Air & Energy Solutions interest in the goods, its rights to remove the goods from the premises, and its right to enter the premises for that purpose, are acknowledged; and
 - ii. To detach, or procure the detachment of, the goods from the premises following a default by the Purchaser under this Contract.

5. Terms of Payment

- a. Property and ownership in the goods will not pass to the Buyer but will remain with TBS Air & Energy Solutions until payment in full of the purchase price of the goods by the Buyer has been received by TBS Air & Energy Solutions.
- b. The Buyer's debt to TBS Air & Energy Solutions shall be reduced to the extent of the proceeds actually received by TBS Air & Energy Solutions and, to the extent (if any) that any proceeds received by TBS Air & Energy Solutions exceed the Buyer's debt, TBS Air & Energy

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Solutions shall be indebted to the Buyer in the amount of the surplus, but nothing in this clause shall constitute TBS Air & Energy Solutions a trustee of the Buyer with respect to any proceeds, or constitute TBS Air & Energy Solutions a mortgagee.

- c. The Buyer shall as bailee of the goods:
 - i. to the extent required by TBS Air & Energy Solutions keep the goods separate from other goods in the possession of the Buyer;
 - ii. account to TBS Air & Energy Solutions in specie in respect of any proceeds received by the Buyer; and
 - iii. concur in directing any sub-purchaser to pay proceeds to TBS Air & Energy Solutions.
- d. Should the Buyer's cheque not be cleared, TBS Air & Energy Solutions has the right to retake possession of the goods. To this extent, after giving forty-eight (48) hour's notice to the Buyer, TBS Air & Energy Solutions shall be entitled to enter upon the Buyer's premises between 9:00am and 5:00pm to retake possession of the goods.
- e. Invoices for:
 - i. the supply of equipment shall be payable in full by the Buyer thirty (30) days from the end of the month of purchase (subject to credit approval).
 - ii. parts, site services and other similar services shall be payable in full by the Buyer thirty (30) days from the date of the invoice (subject to credit approval).
- f. If payment is not received by the due date interest may be charged at TBS Air & Energy Solutions current bank overdraft rate plus four per cent on the sum outstanding for the period from the due date until the date payment is received by TBS Air & Energy Solutions. 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.
- g. The Buyer shall be liable for all costs of whatsoever nature of and associated with the exercise of TBS Air & Energy Solutions rights under this clause, which costs shall be payable on demand.
- h. 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 TBS Air & Energy Solutions until payment in full of the purchase price of the goods by the sub-purchaser to the Buyer.
- i. Risk in the goods passes to the Buyer at the time of delivery and the Buyer shall keep the goods insured.
- j. Parts credit policy: If ordered and purchased from another supplier, no credit. If out of our stock, handling and re-stocking fee charged of freight plus 15%.
- k. Any part-payment or deposit made in respect of this agreement shall be deemed as appropriated first towards the cost of services with any remaining balance towards payment of goods.
- l. Where goods are custom ordered, a 50% deposit of the goods' price is required before manufacturing will commence. The balance of the goods' price is payable on shipment.
- m. Liquidated damages for any delay in delivery of goods or completion of works shall be payable by TBS Air & Energy Solutions at the rate of \$100 per week for every week where the delivery or completion is later than the **contract** date for delivery or completion, and shall be capped at a maximum amount of 2% of the Quotation value.
- n. All payment claims are made under the Building and Construction Industry Payments Act in force in each State or Territory.

6. Retention Moneys

- a. TBS Air & Energy Solutions does not in the normal course of business agree to retention of moneys owing to TBS Air & Energy Solutions. However, if retentions are specified and agreed to by TBS Air & Energy Solutions, 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 of the goods or services.

7. Buyer Delayed Delivery

- a. Should the Buyer delay delivery of the equipment, TBS Air & Energy Solutions reserves the right to store the equipment and to obtain payment as though the equipment had been delivered and to recover storage, insurance and handling costs incurred due to the delay. TBS Air & Energy Solutions reserves the right to make progress claims when components and/or services are required ahead of scheduled delivery dates or when payment in full for the goods and/or services will be delayed

8. Default of the Buyer

- a. If the Buyer does not comply with the Standard Terms and Condition of TBS Air & Energy Solutions, the granting of the credit facility to the Buyer is at the absolute discretion of TBS Air & Energy Solutions to refuse the supply of further products or services to the Buyer.
- b. This will include any products subject to an order acceptance by TBS Air & Energy Solutions prior to the date of exercise of TBS Air & Energy Solutions discretion, within the meaning of this paragraph. TBS Air & Energy Solutions will not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of TBS Air & Energy Solutions refusing to supply the products or services. TBS Air & Energy Solutions may at any time terminate the Buyer's right to purchase products and have services provided on credit, without the necessity of giving prior notice.
- c. A certificate, signed by the Director, Accountant, Credit Controller or other authorised person of TBS Air & Energy Solutions stating the sum due and payable by the Buyer under this agreement 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 TBS Air & Energy Solutions under this agreement at the date. The cost of collection of any moneys due and payable, including but not exclusively the fees of any mercantile agent or Solicitor engaged by TBS Air & Energy Solutions, will be recoverable on a full indemnity basis from the Buyer.

9. Returns and Cancellation Fees

- a. If at any time the Buyer purports to terminate and/or cancel the contract entered into, then and without prejudice to any other rights or remedies TBS Air & Energy Solutions may have hereunder or at law, TBS Air & Energy Solutions will be entitled to recover from the Buyer such proportion of the total contract price (including GST), equivalent to the proportion of labour, skill and materials used by TBS Air & Energy Solutions in its performance of the contract at the date of such termination or repudiation.
- b. Returns shall only be accepted within 30 days of the date of invoice if the invoice, or selected Goods on the invoice, are marked 'Returns Permitted'. Credits will only be granted after inspection of goods. Damaged goods will not be accepted.
- c. All returns are subject to 15% re-stocking fee on product.
- d. Returns or cancellations are not available on products ordered from overseas, custom-made products or products not held in stock by TBS Air & Energy Solutions.

10. Delivery

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- a. The Purchaser is obliged to carry out their inspection of Goods upon delivery and prior to installation by TBS Air & Energy Solutions and to sign a delivery receipt which shall constitute acceptance of the Goods by the Purchaser.
- b. The date of completion set forth in the quotation is made in good faith and is subject to TBS Air & Energy Solutions not being delayed by instructions or lack of instructions from the Buyer, and Act of God, war, government, award, industrial disturbance, delays or damage to goods in transit, shortage of materials or any other cause beyond TBS Air & Energy Solutions control. In the event of a delay arising from, or contributed to, by any cause beyond TBS Air & Energy Solutions reasonable control, the delivery time will be extended commensurately and such delay in delivery will not constitute a breach of contract, nor will it affect other provisions of the contract to TBS Air & Energy Solutions disadvantage. TBS Air & Energy Solutions will accept no liability for loss of use or for any indirect or consequential damages arising from delays in delivery.

11. Inspection During Maintenance

- a. If desired, the Buyer will be allowed access to TBS Air & Energy Solutions premises for the purpose of inspecting the goods and works being carried out under the terms of the order. Such inspection will be by prior arrangement with TBS Air & Energy Solutions and occur during normal business hours.

12. Product Change

- a. TBS Air & Energy Solutions reserves the right to make reasonable modifications in goods of any kind without notice to the Buyer and to deliver revised designs or models of products against any order, unless the right is specifically waived by TBS Air & Energy Solutions 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.

13. Noise and Vibration

- a. Information provided by TBS Air & Energy Solutions concerning noise and vibration is given in an advisory capacity and is not part of the TBS Air & Energy Solutions guarantee. Notwithstanding anything to the contrary contained within this document, TBS Air & Energy Solutions will not accept any responsibility for noise and/or vibration unless specifically requested by the Buyer and agreed to by TBS Air & Energy Solutions in writing.

14. Access

- a. It is the Buyer's responsibility to provide adequate access for entry and installation of goods and/or services covered by this quotation, together with adequate access and rigging facilities for future service work. The Buyer will maintain the area in which the equipment is (or is to be) located free of extraneous materials and move any contents, fixtures, fittings or moveable partitions as required to facilitate the performance of work by TBS Air & Energy Solutions.
- b. The Buyer will grant TBS Air & Energy Solutions entry to the premises and access to the equipment at any time when required for the performance of the work and allow TBS Air & Energy Solutions to make use of all existing building services and maintenance facilities at the premises in the performance of the work, and to remove any item of the equipment from the premises (if in TBS Air & Energy Solutions opinion necessary) for the purpose of undertaking any repair or replacement thereof; the Buyer will only permit persons duly qualified to undertake work of the relevant nature on that Equipment other than in connection with its normal operation.
- c. The Buyer warrants to TBS Air & Energy Solutions that the Buyer of the service is the beneficial owner of the equipment or has obtained from the beneficial owner consent for TBS Air & Energy Solutions to carry out such work and will indemnify and hold harmless TBS Air & Energy Solutions in respect of any claim made against TBS Air & Energy Solutions 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 work.

15. Assembly

- a. 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 to the Buyer's account except where nominated in the quotation.

16. Start-Up

- a. It is the Buyer's responsibility to have the goods installed and all auxiliary services operative in accordance with the TBS Air & Energy Solutions checklist 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 but not limited to costs of travelling and accommodation will be charged to the Buyer's account.
- b. Quoted figures for start-up and other site services are based on normal working hours. Overtime, penalty rates and site allowances will be added to the Buyer's account if such expenses are incurred by TBS Air & Energy Solutions.

17. Progress Claims

- a. TBS Air & Energy Solutions reserves the right to issue partial payment invoices as materials are supplied and certain services are completed and will issue a final invoice on finalisation of the work which is the subject of the quotation (less progress claims). Such progress claims will clearly define work completed or material made available. Payment is to be made by the Buyer in accordance with these Standard Terms and Conditions.

18. Freight and Insurance

- a. Where quotations state that goods will be delivered free on truck ex-company premises, unless stated in writing to the contrary, means TBS Air & Energy Solutions will be responsible for any damage to goods up to the point of TBS Air & Energy Solutions premises, after which it shall be the Buyer's risk in all respects. Upon written request, TBS Air & Energy Solutions will act as agents on behalf of the Buyer to dispatch and insure the goods. Charges for freight and insurance arranged by TBS Air & Energy Solutions in this respect will be billed to the Buyer's account directly by the carrier and/or insurer. The Buyer will insure the goods until paid for in full against loss or damage and will receive and hold the proceeds of any such insurance in trust for TBS Air & Energy Solutions.

19. Price Variation (Equipment only)

- a. Unless stated to the contrary, goods offered will be subject to a Cost Adjustment based on the "Air Conditioning Material Index" as published by the Australian 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 dispatch.

20. Price Variation (Site Services)

- a. Site service including installation, start-up and maintenance will be subject to a 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 or Territory of Australia where the site services are performed for the balance of the work to be performed under the contract.

21. Price Variation

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- a. Sales Tax or Import Duty (statutory requirements) (if any) included in the quotation is based on the ruling rate of all items as at the date of the quotation. All variations, whether they are due to amendments of the relevant Acts or changes in interpretations of classifications, will be added to the Buyer's account. Variations to rates of exchange, freight, insurance, primage and cartage on imported equipment or components, affecting the amount paid by TBS Air & Energy Solutions for the actual equipment or components supplied will be added to the Buyer's account.

22. Price Increases

- a. Price Escalation. Prices payable are subject to CPI increase by TBS Air & Energy Solutions on 1 January each year. In the event of any increase in labour or material cost to TBS Air & Energy Solutions, TBS Air & Energy Solutions may at any other time increase such prices by written notice to the Buyer.

23. Goods and Services Tax

- a. Any quote issued by TBS Air & Energy Solutions does not include an amount on account of GST payable by TBS Air & Energy Solutions unless otherwise specifically stated. If any supply made under or in connection with the Agreement is subject to GST, the Buyer must pay to TBS Air & Energy Solutions an additional amount equal to the GST payable.
- b. The Buyer must pay the additional amount at the same time as the Buyer must pay the purchase price, or if a partial payment invoice is issued, at the same time as the buyer must make the first partial payment.
- c. TBS Air & Energy Solutions will issue a tax invoice within twenty-eight (28) days after receiving payment from the Buyer.

24. Warranty

- a. Save and except as required by law, no warranty is given where TBS Air & Energy Solutions is not the manufacturer of products other than the warranty offered by the manufacturer of the goods supplied.
- b. Service Warranty: unless otherwise noted, warranty for labour service is ninety (90) days from the date of service. Warranty on parts is that which is specified by the parts manufacturer's warranty terms and conditions. Unless otherwise noted, these warranties are normally twelve (12) months from the date of purchase.
- c. TBS Air & Energy Solutions warranty does not extend to fair wear and tear, negligent or otherwise incorrect use of our product. Fault or failure caused, or indirectly caused, by acts of God, terrorism, accidental damage, maltreatment or interference with the goods is specifically excluded. TBS Air & Energy Solutions shall not be liable for any special indirect, incidental or consequential damages or any kind or nature (such as refrigerant gas leaks and loss).
- d. This warranty is in lieu of all other warranties either expressed or implied.
- e. Where installation of goods is not affected by TBS Air & Energy Solutions, installation of goods must be in accordance with TBS Air & Energy Solutions installation, operation and maintenance instructions.
- f. The Purchaser acknowledges and agrees:
 - i. That it is satisfied that the goods are suitable for its intended purpose;
 - ii. That in all matters relating to the goods, the Purchase has relied and will rely entirely upon the Purchaser's own judgement;
 - iii. That no warranty as to fitness for purpose will apply to this contract.
 - iv. That to the maximum extent permitted by law, any implied warranty or condition, whether in equity, under statute or otherwise at law, and whether as to the quality, state, condition or fitness of any particular purpose or as to any other matter or thing whatsoever is hereby expressly excluded from this contract.

25. Exclusions

- a. TBS Air & Energy Solutions does not assume contingent liabilities for:
 - i. Damages, losses or injuries direct or consequential, that may arise from use of or inability to use product supplied.
 - ii. Abuse, neglect, or costs where product is installed, operated or applied contrary to installation and operating instructions produced by TBS Air & Energy Solutions.
 - iii. Damage by fire, water, flood, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials or deterioration due to extremes of environment.
 - iv. Refrigerant lost during shipment or during the warranty period.
 - v. Equipment manufactured by others.

26. Laws to Apply

- a. The laws of the State or Territory of Australia where TBS Air & Energy Solutions acceptance of the order is issued shall apply to the interpretation of these Standard Terms and Conditions and any matters arising therefrom.

27. Alternative dispute resolution

- a. A party claiming that a dispute has arisen under this Contract shall within five (5) Business Days of the dispute arising, give written notice to the other party providing particulars of the dispute and nominating a person with authority to settle the dispute and the other party shall within three (3) Business Days give written notice to the first party of its representative with authority to settle the dispute.
- b. The authorised persons shall meet at least once within ten (10) Business Days of giving the notice of dispute, in good faith and without prejudice, and seek to resolve the dispute.
- c. If the dispute is not resolved within twenty (20) Business Days of giving the notice of dispute, either party may within a further five (5) Business Days and by giving written notice to the other party refer the dispute to arbitration under the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations, where the arbitration shall be conducted in Sydney, New South Wales.
- d. Notwithstanding the existence of a dispute, both parties shall continue to perform their obligations under the Contract.

28. Entire Agreement

- a. Subject to the terms of the Agreement, these Standard Terms and Conditions contained within this document embody the entire understanding and agreement between the parties to this Agreement as to the subject matter of these Standard Terms and Conditions.
- b. Subject to the terms of the Agreement all previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of these Standard Terms and Conditions are merged in and superseded by these Standard Terms and Conditions and shall be of no force or effect whatever and no party to the Agreement shall be liable to any other party to these Standard Terms and Conditions in respect of those matters.
- c. No oral explanation or information provided by any party to these Standard Terms and Conditions to another shall affect the meaning or interpretation of these Standard Terms and Conditions or constitute any collateral agreement, warranty or understanding between any of the parties to these Standard Terms and Conditions.

29. Credit Policy

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- a. TBS Air & Energy Solutions may at its discretion, as a condition of acceptance of such order for sale, service or repair works require the Buyer to:
 - i. Provide personal guarantees as to payment
 - ii. Enter into an assignment of progress payments due to the Buyer for the supply of the said goods, service or repair work. The form shall be in accordance with the Credit Policy.

30. Form of Notice

- a. Any notice, consent or other communication ("Notice") required or permitted by these Standard Terms and Conditions shall be in writing and shall be deemed sufficiently served if delivered by hand or sent by facsimile or certified mail, postage prepaid and addressed to the party as outlined in the main contract.

31. Service

- a. Unless later time is specified in the Notice, a Notice takes effect from the time it is actually received or taken to be received:
 - i. In the case of a letter – on the third Business Day after posting
 - ii. In the case of email – where a confirmation of receipt is obtained.
 - iii. In the case of a facsimile:
 1. if transmitted before 5:00pm on a Business Day – on that Business Day
 2. if transmitted after 5:00pm on a Business Day – on the next following Business Day
 3. if transmitted on a day not being a Business Day – on the next day being a Business Day.
 - iv. 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.

32. Validity

- a. If any covenant or obligations of the Agreement or the application thereof to any person or circumstances shall be or become invalid or unenforceable, the remaining covenants and obligations shall not be affected thereby and each covenant and obligation of these Standard Terms and Conditions shall be valid and enforceable to the fullest extent by law.

33. Intellectual property

- a. All drawings, blueprints, sketches, specifications, quotations, tooling and copies of any kind whatsoever supplied by TBS Air & Energy Solutions to the Purchaser remain the property of TBS Air & Energy Solutions and shall not be copied or used by the Purchaser for any purpose other than for fulfilling its obligations under the Order. Unless otherwise agreed, all such drawings, blueprints, sketches, specifications, tooling and copies thereof must be returned to TBS Air & Energy Solutions with the delivery of the Goods.
- b. All patent, design rights, trade marks, copyright, original works and any other intellectual property in any design, specification, process, method of working or other information relating to the Goods, including that provided by the Purchaser to TBS Air & Energy Solutions associated with the supply of the Goods, shall remain the property of TBS Air & Energy Solutions.
- c. The Purchaser agrees that it will not now or at any time in the future reproduce for or sell to any person or corporation other than TBS Air & Energy Solutions, whether for profit or otherwise, Goods or any part of the work in progress manufactured by the Purchaser to specifications provided by TBS Air & Energy Solutions or its related entities. The Purchaser shall not divulge to any other person or corporation any information, specifications, drawings or other intellectual property received from or provided by TBS Air & Energy Solutions or its related entities without the prior written consent of TBS Air & Energy Solutions.

34. Time bar for claims

- a. Unless this Contract expressly states otherwise, TBS Air & Energy Solutions shall not be liable for any Claim by the Supplier arising out of or associated with the Contract, unless the Supplier has given notice to TBS Air & Energy Solutions in writing including to the maximum extent practicable particulars of the event or circumstances on which the claim is or will be based, the provision of the Contract or other basis for the claim or proposed claim, and the quantity or likely quantity of the claim within seven (7) days of the claim arising.
- b. Nothing in clause limits the operation or effects of any other provision for notice, time bar, condition precedent or limitation or exclusion clause in the Contract.
- c. Any notice to a party shall be sufficiently served by posting it by registered pre-paid mail to or leaving it at the address shown on the Order and shall be deemed to have been received on the date two (2) Business Days after posting.

35. General

- a. Unless modified in writing and signed by both parties by persons having authority to sign the same, these Standard Conditions of Sale together with the Quotation constitutes the entire agreement between TBS Air & Energy Solutions and the Purchaser and supersedes all prior or contemporaneous, oral or written contracts, agreements or understandings of the parties relating to the Quotation.
- b. The Purchaser acknowledges and agrees that advice, recommendation, information, assistance or service provided by TBS Air & Energy Solutions or its employees in relation to goods or services sold or installed by it and their use or application is provided solely to assist the Purchaser to make and rely upon their own enquiries. The Purchaser further acknowledges and agrees that such advice, recommendation, information, assistance or service is provided without liability or responsibility on the part of TBS Air & Energy Solutions to the full extent permitted under statute, equity or otherwise at law.
- c. The Purchaser agrees that, regardless of any negligence on the part of TBS Air & Energy Solutions, to release, hold harmless, indemnify and keep indemnified TBS Air & Energy Solutions, its successors and administrators, from and against all liabilities, claims, damages, losses, costs and expenses of whatever nature, however occurring which may accrue against or be suffered by TBS Air & Energy Solutions arising out of or in any way connected with the performance of TBS Air & Energy Solutions services, unless caused by wilful misconduct of TBS Air & Energy Solutions.
- d. Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and may be severed and such illegality, voidness or unenforceability will not invalidate any other provision of this Contract.
- e. Unless otherwise stated in writing the Quotation Price excludes any freight charges.

36. GLOSSARY OF TERMS

- a. In this Contract, except where the context otherwise requires:
 - i. Business Day: A standard day for conducting business, with the exception of Saturday and Sunday and public holidays of the State or Territory of Australia where TBS Air & Energy Solutions accepted the offer.
 - ii. Buyer/Purchaser: The buyer of the equipment, spare parts service or repair work subject of a quotation submitted by or on behalf of TBS Air & Energy Solutions
 - iii. Contract means these Standard Conditions of Sale together with the annexed Quotation

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- iv. Default includes but is not limited to failure to make a payment due and payable pursuant to the Contract or if any other secured party seizes, or becomes entitled to seize, the goods or materials (whether under the PPSA or otherwise).
- v. Equipment: Plant or machinery to be supplied, installed, repaired, replaced, serviced or maintained
- vi. GST: Goods and Services Tax (within the meaning of a new tax system Goods and Services Tax Act 1999 and associated legislation as amended from time to time)
- vii. PPSA means the Personal Property Securities Act 2009 (Cth). Words and expressions which are not defined in this document, but which have a defined meaning in the PPSA have that same meaning.
- viii. Quotation means the entire statement annexed to these Standard Conditions of Sale setting out the costs of goods and / or services proposed by TBS Air & Energy Solutions.
- ix. Quotation Price means the sum total of the cost of the goods and / or services offered by TBS Air & Energy Solutions as set out in the Quotation subject to adjustment as provided for in the Contract.
- x. Sales: TBS Air & Energy Solutions supplies Chillers, Unitary, Air systems and Refrigeration Products, Silver Recovery, Humidification, Retail Food Equipment and associated parts and consumables
- xi. Seller: TBS Air & Energy Solutions Pty Ltd ("TBS Air & Energy Solutions") ACN 633 817 035.
- xii. Service Operations: TBS Air & Energy Solutions supplies Installation, Service and Repair, Labour and Parts
- xiii. Site means the address where the goods are to be delivered and / or where the installation is to be carried out.
- xiv. Start-Up: Commissioning of the equipment for the purpose and manner intended

TBS Air & Energy Solutions Pty Ltd

ABN 81 633 817 035

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Carlton VIC 3053

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IF YOU DO NOT UNDERSTAND THIS DOCUMENT, SEEK INDEPENDENT ADVICE

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We are nationally focused on customer service, energy efficiency and cash flow positive solutions.