

## Terms and Conditions of Trade – PolyPlan and PolyPricing

### 1. Definitions

- 1.1 “**Australian Consumer Law**” means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010*.
- 1.2 “**Australian Standards**” means the documents based on the Building Code of Australia and written by Standards Australia that set out specifications, procedures and guidelines to ensure that Australian products, services and systems are safe, reliable and consistent.
- 1.3 “**Business Days**” means any day that is not a Saturday, Sunday or public holiday in South Australia.
- 1.4 “**Buyer**” shall mean the purchaser of the Goods from the Seller and includes any servants, agents, or contractors acting on behalf of the Buyer where the context permits.
- 1.5 “**Conditions**” means these terms and conditions of trade of the Seller.
- 1.6 “**Consequential Loss**” includes any loss of data or profits, loss of anticipated savings, economic loss or interruption of business or any other indirect consequential loss.
- 1.7 “**Consumer**” means a “consumer” as that term is defined in Section 3 of the Australian Consumer Law.
- 1.8 “**Consumer Guarantees**” means the consumer guarantees under the Australian Consumer Law.
- 1.9 “**Contract**” means a contract for the supply of the Goods and/or Services in accordance with these Conditions, as evidenced by the acceptance of any Order, Quotation or written request for Goods and/or Services in accordance with clause 3.
- 1.10 “**Guarantor**” means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
- 1.11 “**Goods**” shall mean the Goods supplied by the Seller to the Buyer from time to time including but not limited to any air conditioner/s, air conditioning products and/or air conditioning related products (and where the context so permits shall include any supply of Services) as outlined in any Quotation, Order, invoice, work authorization or any other request made in writing by the Buyer to the Seller for the supply of Goods.
- 1.12 “**GST**” means Goods and Services Tax.
- 1.13 “**Implied Terms**” means any guarantees, conditions, warranties or other terms implied by any Australian Commonwealth, State or Territory laws (excluding the Australian Consumer Law), or the laws of any other jurisdiction.
- 1.14 “**Order**” means any order issued by the Buyer to the Seller for Goods and/or Services.
- 1.15 “**Polyaire Warranties**” means the warranties provided by the Seller for Goods manufactured by them as outlined in clause 17.
- 1.16 “**PolyPlan**” means the PolyPlan system offered by the Seller which is available for registered users at [www.polyairepricebook.com.au](http://www.polyairepricebook.com.au).
- 1.17 “**PolyPricing**” means the Online Pricing system offered by the Seller available for registered users at [www.polyairepricebook.com.au](http://www.polyairepricebook.com.au).
- 1.18 “**PPSA**” means the *Personal Property Securities Act 2009*.
- 1.19 “**Price**” shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 5 of this Contract.
- 1.20 “**Quotation**” means a quotation supplied by the Seller to the Buyer in respect of Goods and/or Services.
- 1.21 “**Seller**” shall mean Polyaire Pty Ltd ACN 007 673 690 and includes its successors and assigns.
- 1.22 “**Services**” shall mean all services supplied by the Seller to the Buyer and includes any advice or

recommendations (and where the context so permits shall include any supply of Goods).

- 1.23 “**User**” for the purposes of clauses 9 to 13 inclusive only, means the person who is using the PolyPricing or PolyPlan systems and will have the same meaning as “**Buyer**”.
- 1.24 “**Warranty Period**” means the warranty period offered by the Seller for the Polyaire Warranties being:
- (a) For flexible ducting – Ten (10) years for domestic use and one (1) year for commercial use;
  - (b) For plastic components – Ten (10) years for domestic use and one (1) year for commercial use;
  - (c) For zone motors and controls – Five (5) years for domestic use and one (1) year for commercial use; and
  - (d) For Derby branded reverse cycle air-conditioning units - Five (5) years for domestic use and one (1) year for commercial use.

### 2. General

- 2.1 These Conditions apply to all Goods and Services supplied and provided by the Seller as from the acceptance date in accordance with clause 3 and the Buyer is deemed to have read and agreed to these Conditions prior to the placing of any Order.
- 2.2 These Conditions shall prevail over all inconsistencies in any Order and Quotation, unless the Seller expressly agrees otherwise and that agreement is acknowledged in writing.
- 2.3 The Seller reserves the right to vary, add or substitute these Conditions from time to time and any such variations to these Conditions will have effect from the date of publication of such change to the Seller’s customers. The Buyer must accept such amendment if the Contract is currently in operation otherwise the terms will not apply to any Contract that is already in operation.
- 2.4 None of the Seller’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer’s name and/or any other change in the Buyer’s details (including but not limited to, changes in the Buyer’s address, email address, or business practice).

### 3. Acceptance of the Contract

- 3.1 The Buyer is deemed to have accepted any Quotation or Order, and entered into a Contract with the Seller, by:
- (a) signing and returning any acceptance contained in a Quotation or Order to the Seller;
  - (b) making any payment or part-payment to the Seller for the Goods and/or Services;
  - (c) instructing the Seller verbally to commence or continue providing the Goods and/or Services;
  - (d) creating an online account and pressing submit on any online acknowledgement on a website of the Seller that states you have read and accepted these Conditions;
  - (e) providing a written acceptance, whether by post, email correspondence, fax or other means, stating that you accept any Quotation or Order or instructing the Seller to commence supplying the Goods or providing the Services; or
  - (f) making payment of any invoices for payment issued by the Seller calculated by the terms of this Contract.

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- 3.2 Where more than one Buyer has entered into a Contract, the Buyers' shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon entering into a Contract the Conditions are irrevocable and can only be rescinded in accordance with these Conditions or with the written consent of the manager of the Seller.

### 4. Quotations

- 4.1 All Quotations are valid for twenty-eight (28) days from the date of the Quotation.
- 4.2 If the Buyer does not accept a Quotation within the timeframe outlined in clause 4.1 then the Seller reserves the right to vary the Quotation or reject any late acceptance of the Quotation.

### 5. Price, GST and Payment

- 5.1 All amounts payable to the Seller by the Buyer must be paid in Australian dollars without set-off of any amounts that may be due from the Seller on or before the due date for payment.
- 5.2 Unless otherwise stated any prices quoted by the Supplier are exclusive of GST.
- 5.3 GST is to be applied to all provision of Goods and Services made by the Seller and the amount payable by the Buyer will be increased by a percentage equal to the prevailing of GST rate at the time of delivery of the Goods and/or Services.
- 5.4 At the Seller's sole and absolute discretion;
- (a) The Price shall be as indicated on any invoices or Orders provided by the Seller to the Buyer; or
- (b) The Price shall (subject to clause 5.5) be the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's Quotation in accordance with clause 3 within the timeframe outlined in clause 4.1.
- 5.5 The Seller reserves the right to charge the Buyer for costs incurred resulting from the Buyer varying its instructions, correcting any errors or omissions or requiring Goods or Services urgently. The Seller also reserves the right to charge for any additional Goods that may be requested by the Buyer. The Seller may set a credit limit for the Buyer and if the Buyer has reached this credit limit then until such time as the total amount owing to the Seller has been paid in full all further Orders placed by the Seller will be due and payable at the time that the Order is placed.
- 5.6 Time for payment for the Goods and/or Services shall be of the essence and will be stated on any invoice, Quotation or Order. If no time is stated then payment shall be due on delivery of the Goods or provision of the Services.
- 5.7 At the Seller's sole and absolute discretion, payment for approved Buyers will be offered on credit and shall be due on 30th day of each month following the end of month in which the Goods and/or Services are purchased or according to any other trading terms that are agreed to in writing by the Seller.
- 5.8 Payment is to be made by the Buyer to the Seller by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller and payment shall not be taken to occur until all cheques tendered or electronic funds transfer have been received and cleared in full.
- 5.9 For ongoing Contracts, the Seller reserves the right to update any pricing subject to providing the Buyer twenty-eight (28) days written notice of such change and allowing the Buyer the opportunity to cancel any Goods or Services not already paid for if the new pricing is not accepted.

### 6. Default and Consequences of Default

- 6.1 Any costs or charges incurred by the Seller in collecting or attempting to collect overdue amounts must be paid by the Buyer to the Seller on demand, including any costs incurred by the Seller to enforce its rights under the PPSA.
- 6.2 The Seller reserves the right to charge interest at a rate of 2.5% per calendar month on all overdue amounts owing to it. Such interest will accrue daily and is payable on demand.
- 6.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods and/or Services to the Buyer and any of its other obligations under a Contract. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

### 7. Delivery of Goods / Services

- 7.1 Delivery of the Goods shall be made to the address provided by the Buyer. Subject to clause 7.5, the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Where no address is specified, or when requested by the Buyer, delivery of the Goods shall be made to the Buyer at the Seller's address. The Seller will specify whether or not the cost of delivery is included in the Price.
- 7.2 The Seller may at its option deliver Goods by portion unless otherwise agreed in writing by the parties.
- 7.3 When the Seller delivers by portion, the Seller may issue invoices to the Buyer pro rata with such deliveries.
- 7.4 Delivery of the Goods to a third party carrier, either named by the Buyer or if the Buyer fails to name a carrier, then a carrier at the discretion of the Seller, is deemed to be a delivery of the Goods to the Buyer. This will be at the Buyer's own expense.
- 7.5 Goods delivered to site shall be at the Buyer's risk and will be deemed to be delivered upon appearing on a delivery schedule.
- 7.6 The Buyer is responsible to insure the Goods from the time that they are delivered to them.
- 7.7 Subject to clause 7.8, the Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5% of the total number of Goods ordered by the Buyer; and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 7.8 If the total number of Goods received is in excess of the number ordered by the Buyer then the Buyer can choose to return the excess Goods to the Seller or can elect to keep these Goods at the additional cost payable for such Goods. If the additional Goods received are not returned to the Seller by the Buyer within seven (7) days of delivery.
- 7.9 The failure of the Seller to deliver the Goods shall not entitle either party to treat this contract as repudiated unless such failure to deliver exceeds ninety (90) days of any proposed timeframe for delivery as outlined in clause 22.2(a).
- 7.10 Timeframes for delivery are estimates only, and the Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them promptly or at all

### 8. Shortage and Non-conforming Supply

- 8.1 The Seller will endeavour to ensure that the Goods

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conform with descriptions contained in any drawings, catalogues, literature and advertising materials.

8.2 The Seller reserves the right to supply Goods which do not conform with descriptions referred to in clause 8.1 or the Buyer's order for the Goods provided that such non conformity is not material.

8.3 The Buyer waives any claim for shortage of any Goods delivered or failure to supply Goods conforming with the Order if a claim for short delivery or failure to supply Goods conforming with any Order has not been lodged with the Seller within seven (7) days from the date of delivery of Goods by the Buyer. Any claim must be submitted in writing in a form approved by the Seller.

### 9. PolyPricing

The User acknowledges and agrees that in producing the customised price books through the PolyPricing system:

9.1 the customised price books will include these

Conditions which the User agrees to comply with;

9.2 the pricing outlined in the price books will only be current at the time that it is produced and will be subject to amendment by the Seller, which pricing can be updated at any time without the prior written notice of the Seller;

9.3 as the pricing can be updated at any time, it is the User's responsibility to ensure that all price books in their possession contain the correct pricing by checking the current pricing on the PolyPricing system before placing an Order. For the avoidance of doubt, any Orders placed will be charged at the currently advertised pricing of the Seller, and the pricing outlined in price books previously produced by the User will not be honoured;

9.4 if the User has in their possession price books which contain incorrect pricing, they will ensure that such price books are either returned to the Seller or destroyed, and they guarantee that such price books will no longer be distributed; and

9.5 the price books will be produced based on the approved levels of discounts provided by the Seller to the User and the User agrees that the level of discount provided to them is confidential and not to be discussed with third parties, including other people within the Users entity as different staff members may have varied levels of discount.

### 10. PolyPlan

The User accepts that when they are using the PolyPlan system the following terms will apply:

#### 10.1 Use of plans

(a) The PolyPlan system requires the User to upload plans of the site where it intends to design the air-conditioning ducting system to order through the Seller.

(b) By uploading the plans of the site to PolyPlan, the User hereby acknowledges and agrees that it is the owner of the plans or the intellectual property in the plans, or it has been granted a licence by the owner of the plans to upload them to PolyPlan for this purpose.

(c) The Seller will hold these plans in the PolyPlan system for the User but will not use or disseminate these plans.

(d) The User hereby indemnifies and releases the Seller from any and all liability, loss, damage or claim that may be made by an owner of the plans or the intellectual property in the plans if the User uploads such plans to the PolyPlan system without a licence or consent.

#### 10.2 Collection of Data

(a) The Seller will collect data from the User's use of

the PolyPlan system for research purposes, which will include but is not limited to collecting data about products chosen, materials used etc.

(b) The User hereby permits the Seller to collect this data for research and marketing purposes.

#### 10.3 Scaling and Measurements

(a) The User is responsible for the scaling set on the plans uploaded to the PolyPlan system.

(b) The User accepts all risk in ensuring that this scaling is accurate and indemnifies the Seller from any and all loss, damage and expense that may be incurred if the User fails to scale the plans appropriately and this results in the incorrect Goods being produced.

(c) It is the User's responsibility to ensure that all measurements input into the PolyPlan system are accurate and the Seller bears no responsibility for incorrect measurements that are provided by the User.

#### 10.4 Australian Standards and Building Code of Australia

(a) It is the User's sole and absolute responsibility to ensure that the final designs prepared through the system are compliant with the Australian Standards and the Building Code of Australia. The Seller does not provide any representation or guarantee that designs prepared through the system will be compliant with the Australian Standards or the Building Code of Australia.

(b) The system does not take into consideration variables which would normally be considered (including but not limited to the climate of where the site is, ceiling heights, materials used in the building, insulation of the building, exposure to sunlight etc.) and it is up to the User to consider these variables when creating any design or ordering Goods through the PolyPlan system.

#### 10.5 No Warranty as to Performance

(a) The PolyPlan system is a tool which assists the User in calculating the requirements for certain works. Whilst the PolyPlan system has been designed to streamline the design process, the Seller does not warrant or guarantee that the final designs prepared will be suitable for the purpose which the User intends and it is the User's responsibility to ensure that these designs are fit for the purpose they intend to use them for.

(b) Recommendations made by the PolyPlan system are recommendations only and it is up to the User to ensure that they are suitable.

(c) Notwithstanding clause 10.5(b), the User acknowledges and agrees that by placing any Order based on the recommendations made by the PolyPlan that it has checked the suitability of the recommendations to ensure that they are fit for the purpose they intend to use them for and that they have not relied upon the recommendations made by the PolyPlan system. The Seller will not accept any liability if any product or system recommended by the PolyPlan system is not suitable for the purpose intended by the User.

(d) The User agrees that any final designs produced by the PolyPlan system are at their own risk.

#### 10.6 Ownership of Design

(a) The User will become the owner of the designs they produce by the PolyPlan system subject to clause 10.1.

(b) Notwithstanding clause 10.6(a), the User acknowledges that the underlying intellectual property in the PolyPlan system, including but not limited to its components, data and design, remain



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with the Seller.

### 10.7 Fees

- (a) The Seller may, in its sole and absolute discretion, charge a fee to the User for their use of the PolyPlan system.
- (b) If the fee charged to the User for their use of the PolyPlan system is to increase the Seller will give the User seven (7) Business Days notice of such fee increase.

### 10.8 Indemnity and Release

- (a) The User hereby releases and indemnifies the Seller from any and all liability for any fault or failure in the PolyPlan system, including but not limited to any loss or damage that may result from any downtime, hacking or other malfunction of the PolyPlan system, whether such fault was or was not caused by the Seller.
- (b) The Seller is under no obligation to backup any data uploaded or created by the User on the PolyPlan or PolyPricing systems and it is in the User's sole and absolute discretion to ensure that they keep any backups that they may require.
- (c) These clauses 10.8(a) and 10.8(b) are in addition to the limitation of liability on the Seller as outlined in clause 19 and are in no way meant to substitute the provisions of that clause.

### 11. Accounts Created on the PolyPlan and PolyPricing systems

- 11.1 Any account for PolyPricing or PolyPlan must be registered by the User directly with the Seller and the User must provide to the Seller all details requested to establish an account.
- 11.2 The User is responsible for ensuring that the accounts that they create on the PolyPlan and/or PolyPricing systems are secure and that they keep the details of these accounts confidential to ensure that they are not accessed by third parties who do not have the authority to do so.
- 11.3 It is up to the User to authorise who they permit to use their accounts created on the PolyPlan and PolyPricing systems.
- 11.4 Irrespective of who may access the account of the User, the User will be liable for any Order processed with their account.
- 11.5 The Seller may, in its sole and absolute discretion, at any time prohibit or limit the User's use of the PolyPricing or PolyPlan systems without notice and such prohibition or limitation may be temporary or permanent.

### 12. Intellectual Property in the PolyPlan system

- 12.1 The Seller has designed the PolyPlan system. All copyright and other intellectual property rights in the PolyPlan system remain vested in the Seller.
- 12.2 The User cannot by any means (whether by reverse manufacturing, copying of code etc.) copy and replicate the PolyPlan system.
- 12.3 The User will be granted a non-exclusive, non-transferrable, revocable licence to use the PolyPlan system. Notwithstanding this grant, ownership of the PolyPlan system will at all times remain with the Seller.

### 13. Specific Terms for PolyPlan and PolyPricing

- 13.1 In the event of any discrepancy between the terms outlined in clauses 9 to 13 (inclusive) and the remaining terms of these Conditions, the terms of clauses 9 to 13 (inclusive) shall prevail over any inconsistency.

### 14. Risk

- 14.1 Whilst the Seller may retain title in the Goods as per clause 21, all risk for the Goods passes to the Buyer on delivery.
- 14.2 If any of the Goods are damaged or destroyed prior to

title in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become due and payable under the Contract. The production of a Contract by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds.

### 15. Returns and Defects

- 15.1 The Buyer must inspect all Goods provided on delivery to the Buyer, as well as any Services when completed, and within seven (7) Business Days of delivery of the Goods or completion of the Services notify the Seller in writing of any evident defect/damage, shortage in quantity or failure to comply with the description or Quotation. The Buyer must provide the Seller with a reasonable opportunity to modify and/or repair any defect or damage to the Goods and/or Services. Failure to notify the Seller within this timeframe will deem the Goods and/or Services to be defect free and accepted by the Customer.
- 15.2 The Seller is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- 15.3 Nothing in clause 15.2 affects the Buyer's rights under the Australian Consumer Law or in respect of any breach of Implied Terms.
- 15.4 Goods made to special order for the Buyer or non-catalogue items are not eligible to be returned.

### 16. Australian Consumer Law

- 16.1 Notwithstanding anything in these Conditions to the contrary, where the Buyer purchases Goods as a Consumer:
  - (a) the Goods are supplied subject to the Consumer Guarantees;
  - (b) if the Goods fail to meet any Consumer Guarantee, the Buyer will be entitled to such rights and remedies as are permitted or provided in the Australian Consumer Law for such failure, to the extent that such rights and remedies cannot be lawfully excluded;
  - (c) the Buyer may only exercise any right or remedy for breach of a Consumer Guarantee strictly in accordance with the rights and responsibilities of the Buyer under the Australian Consumer Law;
  - (d) where Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption then, unless the Seller is a manufacturer of the Goods under the Australian Consumer Law, the Seller's liability for breach of a Consumer Guarantee subject to the Australian Consumer Law is limited at the Seller's option to repairing or replacing the Goods, supplying equivalent goods or paying the costs of the repair or replacement of the Goods or of acquiring equivalent goods.
- 16.2 Where the Buyer resupplies Goods to a Consumer and the Goods are not ordinarily acquired for personal, domestic or household use or consumption, the Seller's liability to the Buyer in connection with any breach of a Consumer Guarantee in respect of the Goods is subject to the Australian Consumer Law, is limited to paying to the Buyer an amount equal to the costs of replacing the Goods, supplying equivalent goods or having the Goods repaired, whichever is the lowest amount.

### 17. Polyaire Warranties

- 17.1 Nothing in this clause 17 affects the Buyer's rights under the Australian Consumer Law as outlined in

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- clause 16. The benefits to the Buyer under the Polyaire Warranties are in addition to the rights and remedies of the Buyer under any Consumer Guarantee.
- 17.2 The Polyaire Warranties only apply for Goods that are manufactured by the Seller and do not apply to Goods that are manufactured by a third party.
- 17.3 Subject to clauses 17.1 and 17.2, the Seller warrants that the Goods will be free of manufacturing defects.
- 17.4 The benefit of the Polyaire Warranties extend only to the original and first owner of the property in which the Goods are installed (**Owner**) for the duration of the Warranty Period.
- 17.5 The Polyaire Warranties commence on the date of purchase of the Goods and apply for the Warranty Period.
- 17.6 If, within the Warranty Period, a manufacturing defect is discovered in the Goods or the Goods fail to perform to the Seller's specifications as a result of some defect in material or workmanship in the Goods (**Defect**) then the Seller will, at its election, either repair or replace the Goods at the cost of the Seller (excluding costs of de-installation, re-installation and testing including but not limited to labour and travel costs) or refund the all or part of the price paid by the Buyer (which will be pro-rated by the Buyer taking into consideration the number of years since the Buyer originally purchased the Goods). Goods repaired or replaced under the Polyaire Warranties will be warranted for the remainder of the Warranty Period.
- 17.7 The Polyaire Warranties will not apply to Goods:
- (a) installed, repaired or maintained by any person other than a qualified tradesperson; or
  - (b) subjected to misuse, neglect, negligence, accidental damage or act of God (including but not limited to damage caused by fire, flood, infestation by insects, vermin or rodents); or
  - (c) operated in any way contrary to any operating or maintenance instructions, quote or order form; or
  - (d) improperly handled, installed or maintained; or
  - (e) altered or modified prior to or after installation; or
  - (f) used after any Defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (g) exposed to any operating circumstances that could cause damage (including but not limited to damage caused to external surfaces and refrigeration coils in a corrosive environment); or
  - (h) removed and reinstalled at another site; or
  - (i) fitted with any non genuine spare part; or
  - (j) hired to any person; or
  - (k) installed in a mobile application (including but not limited to a caravan or boat); or
  - (l) damaged as a result of faulty or incorrect wiring, incorrect power supply, voltage fluctuations, over voltage transients, electromagnetic interference, or replaced fuses, improper storage; or
  - (m) in respect of which any serial number is altered or removed.
- 17.8 The Polyaire Warranties do not apply to:
- (a) faulty or defective design of Goods unless the Seller has designed the Goods and the Seller expressly accepts responsibility for such design in writing; or
  - (b) fair wear and tear of Goods (including but not limited to fair wear and tear of consumables such as batteries, filters, and air purifiers); or
  - (c) discolouration of any plastic components.
- 17.9 In order to make a claim under the Polyaire Warranties, the Owner must return the Goods to one of the Seller's retail stores together with proof of purchase, or on such other terms as may be agreed in writing by the Seller.
- 17.10 The Seller will examine any returned Goods and if the Seller determines that there is an apparent defect through no fault of the Owner and the Goods are otherwise undamaged, the Seller will:
- (a) record the Owner's contact details (including postal address, email address and telephone number);
  - (b) record details of the apparent defect;
  - (c) take possession of the returned Goods and determine within a reasonable time of return whether the returned Goods are defective;
  - (d) notify the Owner within a reasonable time of return whether it accepts or rejects the return of the Goods; and
  - (e) if the Seller accepts the return of the Goods, repair or replace the Goods or refund the all or part of the purchase price (in accordance with clause 17.6) in accordance with the Polyaire Warranties.
- 17.11 The Seller reserves the right to not accept any Goods which have not been returned in accordance with the Polyaire Warranties.
- 17.12 The Owner will be responsible for all costs of returning Goods to the Seller and for collection or re-delivery of the Goods (whether original or repaired and/or replacement Goods) once they are repaired or replaced and any other expenses of the Owner in claiming under the Polyaire Warranties.
- 17.13 The Seller will not be responsible for:
- (a) any loss or damage to the Goods occurring while the Goods are in transit (either on return to the Seller or upon redelivery to the Owner of the original, repaired or replacement Goods); or
  - (b) any loss or damage caused by any delay assessing the Buyer's claim; or
  - (c) any loss or damage caused by any delay repairing or replacing any Goods.
- ### 18. Access to Property
- 18.1 The Buyer must grant the Seller access to enter and remain at any property where there are Goods installed for the following purposes:
- (a) to inspect the Goods in respect of any claim made by the Buyer under clauses 15, 16 and 17 inclusive; or
  - (b) to repossess any Goods where payment has not been received in full and title has not passed to the Buyer.
- 18.2 Where Goods are to be installed on a property not owned by the Buyer, the Buyer must use its best efforts (including by the inclusion of a term similar to this clause 18 in its own terms and conditions) to procure the property owner to grant access to the Seller to the location where the Goods are installed for the purposes of clause 18.1,
- 18.3 The Seller will endeavour to provide the property owner at least 48 hours notice prior to its access to the property for the purpose of clause 18.1.
- 18.4 The Buyer must ensure that agents and representatives of the Seller have convenient, unobstructed and safe access to all parts of the property necessary to conduct anything required by clause 18.1.
- ### 19. General Limitation on Liability
- 19.1 This clause 19 does not limit the liability of the Seller under the Australian Consumer Law.
- 19.2 The Seller shall not be liable for any guarantee, warranty or representation as to the quality, performance, and fitness for purpose or otherwise of any Goods unless expressed in writing and any such

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- warranty or representation is limited to its express terms.
- 19.3 None of the Implied Terms apply to any Contract except to the extent that they cannot be lawfully excluded.
- 19.4 The Seller's liability for breach of any provision of any such Contract or for breach of any Implied Terms which by force of law cannot be excluded from applying to any Contract is limited at the option of the Seller to repairing or replacing Goods which have been found defective, or paying the cost of repairing or replacing Goods which have been found defective.
- 19.5 The Seller is not liable in tort for any loss or damage suffered by the Buyer or by any third party.
- 19.6 In no circumstance whatsoever shall the Seller be liable to the Buyer or to any third party for any Consequential Loss arising out of the late delivery of Goods or any failure to perform or observe the Seller's obligations under these Conditions or any Contract or Implied Terms and the Buyer will keep the Seller fully indemnified against any claim made against the Seller by a third party for any Consequential Loss.
- 19.7 In no circumstance is the Seller liable to the Buyer or to any third party for any costs incurred in providing safe access to the Goods.
- 20. Intellectual Property**
- 20.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 20.2 Where the Buyer has supplied drawings, the Buyer acknowledges and agrees that is it the owner of such drawings or the intellectual property in such drawings, or it has been granted a license to provide these drawings to the Seller, and the Buyer will indemnify and release the Seller from any and all liability, loss, damage or claim that may be made by the owner of the drawings if such drawings are provided to the Seller without the owner's consent or licence.
- 20.3 Where any designs or specifications have been supplied by the Buyer for manufacture, by or to the order of the Seller, then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 20.4 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 21. Title to Goods and PPSA**
- 21.1 Title to and property in the Goods will not pass until the Buyer has paid all monies owed to the Seller on any account whatsoever and the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
- 21.2 Until the Buyer has paid all moneys owed to the Seller:
- (a) the Buyer must indemnify the Seller against any loss, theft or damage to the Goods arising after delivery to the Buyer;
  - (b) the Seller retains a purchase money security interest in the Goods and the proceeds of the sale of the Goods under the PPSA;
  - (c) the relationship of the Buyer to the Seller is a fiduciary in respect of the Goods and accordingly:
    - i. the Buyer must store the Goods in such a way that can be recognised as the property of the Seller;
    - ii. upon any resale of the Goods by the Buyer the Seller will have the right to trace the full proceeds of the sale; and
- iii. the Buyer must account to the Seller for such proceeds of sale and the Seller may recover from such proceeds of sale any moneys then owing to the Seller on any account whatsoever.
  - (d) the Seller reserves the right to enter upon any premises for the purpose of repossessing the Goods without prejudice to any other right of recovery available and the Buyer grants the Seller a licence to enter such premises for the purpose of exercising such right.
- 21.3 The Buyer must do all things reasonably required by the Seller in respect of the registration of the Seller's interest in the Goods under this clause or the enforcement of the Seller's rights under the PPSA in respect of the Goods.
- 21.4 To the extent permitted under the PPSA, the Buyer waives any rights the Buyer has to:
- (a) receive notices and statements from the Seller under the PPSA;
  - (b) claim damages against the Seller under section 271 of the PPSA;
  - (c) redeem the Goods under section 142 of the PPSA; and
  - (d) reinstate the Seller's security interest in the Goods under section 143 of the PPSA.
- 21.5 To the extent permitted under the PPSA:
- (a) the enforcement of the Seller's security interest in the Goods shall be governed by these Conditions or a Contract; and
  - (b) the Seller and the Buyer contract out of the provisions of the PPSA in respect of the enforcement of such security interest.
- 21.6 It is further agreed, without prejudice to the Seller's rights under the PPSA, that:
- (a) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease;
  - (b) the Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller;
  - (c) upon resale of the Goods by the Buyer the Seller will have the right to trace the full sale proceeds; that receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then, the Seller's ownership in respect of the Goods shall continue;
  - (e) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
  - (f) until such time the Buyer has the Seller's authority to convert the Goods into other products and if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.
  - (g) Upon the sale of the Goods to a third party by the Buyer, the legal and equitable title shall pass directly from the Seller to the third party purchaser, and these Conditions and the terms of a Contract will apply until such time as the Buyer has made payment in full to the Seller for the Price.
- 22. Cancellation**
- 22.1 The Seller may cancel this Contract or delivery of Goods or Services at any time before the Goods or Services are delivered by giving written notice to the



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- Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Goods or Services but the Seller will not have any other liability to the Buyer in respect of such cancellation.
- 22.2 The Buyer may cancel this Contract by providing written notice to the Seller of such cancellation if any of the following occurs:
- (a) the Seller is unable to deliver the Goods and/or Services within ninety (90) days of any specified timeframe for the delivery of Goods or provision of Services; or
  - (b) in accordance with clause 5.9 of this Contract.
- 22.3 The Buyer may also cancel this Contract by mutual agreement in writing with the Seller.
- 22.4 In the event that a Buyer cancels a Contract otherwise than under clauses 22.2 or 22.3:
- (a) the Seller may retain any deposit or other sums paid for the Goods and/or Services; and
  - (b) if payment is not already made in full, the Buyer will be responsible for any losses incurred by the Seller in respect of such cancellation (including loss of profits, loss of anticipated savings, economic loss or interruption of business loss or other incidental, consequential or indirect damages).
- 22.5 In the event that a Buyer cancels a Contract under clause 22.2, the Seller will repay to the Buyer any sums paid in respect of the Goods and/or Services. The Seller will not have any other liability in respect of such cancellation.
- 22.6 Under no circumstances can a Buyer cancel a Contract for Goods that are special order once production of these Goods has commenced.
- 23. Privacy**
- 23.1 The Buyer hereby authorises the Seller to collect, retain, record, use and disclose consumer and/or commercial information about the Buyer, in accordance with the *Privacy Act 1988* (Cth), to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Seller including but not limited to a debt collector, financial advisor, accountant, credit check organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 23.2 The Buyer also authorises the Seller to make enquiries with respect to the Buyer's consumer and commercial credit worthiness, to exchange information with other credit providers in respect of previous consumer and commercial defaults of the Buyer and to notify other credit providers of a consumer and/or commercial default by the Buyer.
- 23.3 For all other privacy matters please refer to the Seller's Privacy Policy on their website, as may be amended from time to time.
- 24. Display Stands**
- 24.1 Any display stands and associated equipment loaned to the Buyer from the Seller for the purpose of displaying the Goods for resale ("**the Equipment**") shall at all times remain the property of the Seller and will be returnable on demand by the Seller.
- 24.2 In the event that the Equipment is not returned to the Seller in the condition in which it was delivered to the Buyer, the Seller retains the right to charge the reasonable costs for repair or replacement of the Equipment.
- 24.3 The Buyer acknowledges that the Equipment is to only be utilised for the display of Goods provided by the Seller or any of its associated entities and related bodies corporate.
- 24.4 The Buyer shall:
- (a) keep the Equipment in their own possession and control and shall not at any time assign the benefit of the Equipment to any third party nor be entitled to register any lien over the Equipment;
- (b) accept full responsibility for the safekeeping of the Equipment and indemnify the Seller for any and all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Buyer;
  - (c) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment; and
  - (d) comply with all occupational health and safety laws relating to the Equipment and its operation.
- 24.5 The Buyer acknowledges and agrees that it loans the Equipment from the Seller at its own risk and the Buyer is responsible for theft or damage to the Equipment whilst on loan from the Seller.
- 25. Dispute Resolution**
- 25.1 Any dispute between the parties arising from the performance of the provisions of these Conditions or a Contract and any invoices for payment issued by the Seller to the Buyer must be attempted to be settled between the parties by an authorised representative with authority from each party meeting within thirty (30) days of notification of a dispute in writing from one party to the other party. Such meeting is to take place within the state of South Australia at a place nominated by the Seller.
- 25.2 If the meeting referred to in clause 25.1 does not result in the settlement of the dispute between the Seller and the Buyer, the dispute may then be referred to mediation, if agreed by both parties. The mediator is to be appointed by agreement between the parties and in the event that the parties agree to mediate but within seven (7) days of agreeing to such mediation cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the parties.
- 25.3 If the dispute cannot be settled through mediation or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.
- 25.4 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of a Contract not under dispute.
- 26. Guarantee**
- 26.1 The Guarantor provides the guarantee as outlined in this clause 26 at the request of the Buyer and expressly acknowledges and agrees that the Guarantor receives no benefit in doing so.
- 26.2 The Guarantors personally guarantee (jointly and severally if there is more than one) to pay as required by these Conditions or a Contract immediately on demand all monies now or in the future owed to the Seller by the Buyer including any costs incurred in the collection of those monies (**Debt**) and the punctual performance of any other obligation between the Seller and the Buyer under these Conditions or a Contract.
- 26.3 This guarantee will continue following the termination of a Contract until all monies owing to the Seller are paid in full.
- 26.4 This guarantee is a continuing guarantee and will not be discharged by any payments to the Seller other

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than the payment and acceptance by the Seller of the whole of the Debt.

### 27. General

- 27.1 If any term of these Conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 All Goods supplied by the Seller are subject to the laws of South Australia and the Seller takes no responsibility for changes in the law which affect the Goods supplied.
- 27.3 This Contract is made in the State of South Australia and the Buyer and the Seller agree that, unless otherwise stipulated by the Seller, all disputes arising between them shall be submitted to the court of the State of South Australia and any court competent to
- hear appeals from those courts of first instance.
- 27.4 In the event of any breach of these Conditions or a Contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price.
- 27.5 The Seller may license or sub-contract all or any part of its rights and obligations of a Contract without the Buyer's consent however if the Buyer wishes to do the same it must first obtain the written consent of the Seller.
- 27.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.