

METALFLEX TERMS AND CONDITIONS

These Terms and Conditions (Terms), as amended or replaced from time to time, apply to any goods or services supplied or to be supplied to the Customer, or any third person on the Customer's behalf. Any reference to the Customer also includes its respective successors or permitted assigns. The singular includes the plural and the converse. If the Customer constitutes more than one person or entity, the Terms bind each of them jointly and severally. A.C. Components; Metalflex Pty Ltd; Metalflex Regional Pty Ltd; Metalflex (W.A.) Pty Ltd; Metalflex (S.A.) Pty Ltd; Air Plus Pty Ltd (Metalflex)

1. Payment:

- (a) The Customer must pay the invoiced amount within 30 days of statement, free of any set off, counterclaim or any other deduction. Credit card payments will attract a fee. Metalflex Pty Ltd ("Metalflex") may allocate payments in any manner it chooses.
- (b) The price of all goods is exclusive of GST except where the price is expressed to be inclusive of GST.
- (c) The Customer will pay interest on any overdue amount calculated on a daily basis until paid in full at the rate prescribed by the *Penalty Interest Rates Act 1983 (Vic)* plus 2%.

2. Risk and Title:

- (a) Risk in any goods passes to the Customer on delivery.
- (b) Title remains with Metalflex until the Customer has paid Metalflex for all goods supplied in full and in cleared funds. Until title passes to the Customer, the Customer will hold them on trust and as bailee for Metalflex.
- (c) The Customer must store any goods belonging to Metalflex separately from other goods in its possession, prevent any deterioration to them and clearly mark them as Metalflex's goods.

3. Orders and Delivery:

- (a) The Customer agrees to pay for so much of any forward order as is from time to time invoiced by Metalflex.
- (b) Each order by a Customer will constitute an offer only, by the Customer to Metalflex.
- (c) Metalflex reserves the right to vary any prices quoted by Metalflex, prior to any order being accepted.
- (d) Metalflex will not be responsible for any failure to fulfil any part of any such order, nor entitle the Customer to cancel or vary any such order
- (e) Delivery to the Customer will be at Metalflex's premises or as requested by the Customer. If the Customer has not collected goods from Metalflex after 14 days of any nominated delivery date, the Customer must pay all storage costs.
- (f) Metalflex will not be liable for any delays. All expenses relating to delivery, insurance, transit or storage of goods after delivery to the Customer will be at the Customer's cost.
- (g) Metalflex may stop goods in transit whether or not delivery has been made if the Customer is in default at any time.
- (h) Metalflex may in its absolute discretion unload goods at any premises that the Customer nominates for delivery. If the Customer is not in attendance at any nominated premises, Metalflex may leave any goods and Metalflex shall not be responsible for any claims, damages, costs, or expenses arising or resulting there from including any claim that the goods were not delivered.
- (i) Delivered goods may not be returned unless defective or damaged in transit. Claims for defective or damaged goods must be notified within 24 hours of delivery and made in writing within 7 days of invoice date. Metalflex will not be liable for any claim advised after that time. Claims are subject to inspection and must be returned in their original packaging.
- (j) Custom made goods or special orders may not be returned.
- (k) The Customer irrevocably authorises Metalflex and any of its lawful agents, at any reasonable time, to enter the Customer's premises or any premises occupied by the Customer or its agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to Metalflex's rights to claim the balance of all moneys due. The Customer indemnifies Metalflex in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.

4. Cylinder Lease

- 4.1 Cylinders remain the sole property of Metalflex and are supplied for the Customer's sole use in the Commonwealth of Australia only unless Metalflex specifically agrees in writing to use elsewhere.
- 4.2 Metalflex will only supply cylinders, consumables gases or refrigerants to Customers who are authorised recipients and users under any applicable legislation and regulations and you agree to provide, at the request of Metalflex such authorities and will ensure that they have insurance to cover the use and transport of cylinders, refrigerant and gases and will provide copies of such policies at the request of Metalflex.
- 4.3 Metalflex leases the cylinders to the Customer to facilitate the regular supply of refrigerant or gases to the Customer. The Customer shall return all leased cylinders to any Metalflex Branch or Depot (freight prepaid) within the State or Territory of delivery as soon as they are empty. (No allowance will be made for residual refrigerant or gases in cylinders.)
- 4.4 For the purpose of Clause 4.3 a cylinder shall be deemed not to have been returned to Metalflex until –
 - (1) it has been received by Metalflex; and
 - (2) a Metalflex Lease cylinder return docket or similar document has been duly issued.
- 4.5 Cylinders are not transferable to any other person and must not be used for any other purpose other than containers for refrigerant or gases sold by Metalflex and must not be recharged other than by Metalflex or be delivered or sent for recharging to any other place other than a Metalflex Branch or Depot.
- 4.6 The Customer shall be responsible for a cylinder from receipt (whether at the delivery point or at Metalflex's premises) until it is returned to Metalflex as set out in Clause 4.3. Any loss or damage shall be reported to Metalflex promptly. The

Customer shall indemnify Metalflex against the cost of replacing a cylinder or the cost of repairing same upon any loss, destruction or damage occurring to a cylinder from any cause or reason whatsoever. Metalflex is entitled, at any time, to raise an invoice for the replacement cost of any cylinder that is lost, damaged or not returned to Metalflex, including after an appointment of a receiver, administrator, liquidator or trustee in bankruptcy to the Customer.

4.7

4.8 Payment of an invoice for cylinder lease shall be conclusive evidence (subject to transactions prior to the date of invoice which have not been included in the invoice and to Clause 4.8) of the Customer's holding at the date of such invoice of the number and type of cylinders on lease from Metalflex as shown on such invoice.

4.9 If a cylinder transaction or notification by the Customer indicates a cylinder holding different to that recorded, Metalflex reserves the right to amend its records and charge the Customer accordingly.

4.10 Unless otherwise agreed, cylinder lease is due in advance at the beginning of each lease period on the Customer's Metalflex cylinder holding as shown in Metalflex's records at the beginning of the lease period. If a cylinder holding is increased during a lease period the increased lease amount will be charged on the extra cylinders at the rates then current for that Customer.

4.11 The Customer shall be responsible for any loss, damage or injury to property or to persons caused by the cylinder for any reason whatsoever, during the period of lease (except loss, damage or injury directly arising out of the negligence of Metalflex, its agents or employees) and the Customer shall indemnify Metalflex in respect of all such claims, damages and expenses in relation thereto.

4.12 If for any reason, a cylinder needs to be repaired, the Customer shall forthwith return them to Metalflex premises and under no circumstances repair or attempt to repair them itself.

4.13 If, upon return of a cylinder to Metalflex, it is necessary for Metalflex to clean them, Metalflex may charge and the Customer shall pay the cost of such cleaning on demand.

4.14 The lease of cylinders by the Customer shall be determined upon an Event of Default.

4.15 Upon any repossession of cylinders the Customer shall be required to pay on demand to Metalflex a fee for the cost of collection and repossession of those cylinders.

4.16 For the purpose of condition 4.13 the Customer shall allow Metalflex full and free access to the cylinders without any liability on the part of Metalflex for any loss or damage suffered as a consequence of retaking possession of same and the Customer shall be responsible for and indemnify Metalflex against all such loss and damage and/or claims relating to same.

4.17 Where a Customer requests Metalflex to top up a cylinder with refrigerant or gases matching the identification of such gas on the cylinder brought in by the Customer, then the Customer shall hold harmless Metalflex, indemnify Metalflex and keep Metalflex indemnified in respect of all claims which may flow from the handling, storage or use of such topped up cylinder of refrigerant or gases. Metalflex does not accept any responsibility for the quality or identification of any residual gas which may be in a cylinder presented by the Customer for top up.

5. Security agreement

The Customer agrees that these Terms, including any order and invoice covering any goods ordered by the Customer, constitute a security agreement for the purposes of the PPSA.

6. Security Interest

6.1 The Customer gives Metalflex a security interest in:

- (a) all goods Metalflex supplies whether by way of sale or lease to the Customer that are described in any invoice, delivery or shipping documents of Metalflex's and/or order documents that the Customer gives Metalflex; and
- (b) all present and future property of the Customer including real property. The Customer agrees that Metalflex may lodge a caveat against any of its real property and agrees to give Metalflex a mortgage in respect of the relevant property in registrable form if required by Metalflex. The security interest given by the Customer is given as beneficial owner. If the Customer is trustee of any trust, the Customer acknowledges that the security interest given by it applies to the assets of the trust and its personal assets. The Customer irrevocably appoints Metalflex as its attorney by way of security for the purposes of this clause and in respect of any enforcement powers.

6.2 Any security interest that arises in respect of these Terms is a continuing security interest and in respect of any goods supplied by Metalflex applies to all goods and their proceeds. It is not extinguished or in any way diminished even if the goods or any part of them is processed or commingled with or becomes part of a product or a mass as part of a manufacturing, assembling or commingling process.

6.3 Any security interest arising secures the due and punctual payment of all moneys payable by the Customer under the Terms. Any account arising by virtue of any sale of any goods supplied to the Customer takes effect as a transfer.

6.4 Metalflex may register a financing statement including any financing change statement on the PPSR. The Customer will reimburse Metalflex for any costs and expenses and other charges incurred by Metalflex in registering them. The Customer irrevocably waives any rights to receive a copy of any verification statement.

6.5 The Customer acknowledges that until it has paid for all goods it is not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms, then the Customer contracts out of the enforcement provisions in s 115(1) except sections 120 and 121.

7. Enforcement

7.1 If an Event of Default occurs or is continuing, Metalflex may immediately enforce these Terms. Without limitation this includes:

- (a) retaking possession of any goods not paid for by the Customer;
- (b) suspending delivery of any goods on order and/or refusing to process any unfulfilled order.
- (c) enforcing any security interest.
- (d) requiring payment of any proceeds held by the Customer in a separate account or otherwise.

(e) appointing a receiver and manager of any of the Customer's real or personal property. The Customer agrees that any such receiver and manager has the powers conferred by the *Corporations Act*.

7.2 The powers exercisable by Metalflex are those given by these Terms including by statute, at law or in equity.

7.3 In the event that the Customer has not been paid for the sale of Metalflex's goods by any of its own customers, at Metalflex's option, Metalflex may in addition to the powers in s 120 of the PPSA, collect that account on giving, to that customer, notice in writing to that effect. Metalflex will be entitled to issue proceedings in the Customer's name against its customer for recovery of that account for Metalflex's benefit. The Customer appoints Metalflex as its attorney for that purpose. The Customer indemnifies Metalflex in respect of any such action and proceedings. For the purposes of this clause, the Customer must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identity of such customer and Metalflex's goods.

7.4 Metalflex may in its discretion despite s 14(6) of the PPSA apply any moneys received in respect of any PMSI obligations of the Customer on a pro rata basis.

7.5 The Customer will pay Metalflex for its expenses, including mercantile agent's fees and any fees and commission paid to mercantile agents engaged by Metalflex in relation to the actual or contemplated enforcement of the supply agreement including legal costs and expenses on a full indemnity basis.

8. Negative pledge

The Customer agrees not to grant:

- (a) any security interest over any of its personal property except in the ordinary course of business; or
- (b) a security interest in any account as original collateral under s 64 of the PPSA.

9. Force Majeure

Metalflex is not liable for any delay or the failure to perform any obligation in the Customer's favour arising as a result of any event beyond Metalflex's control.

10. Confidentiality

Any security agreement that arises under these Terms is confidential. Despite this, the Customer agrees that Metalflex may disclose any information concerning it to any interested person under s 275(6) of the PPSA.

11. General

11.1 The Customer will advise Metalflex in writing, if it changes its name, its structure or officers or management, its registered office, become a trustee of any trust or if the constitution of any partnership of which it is a member changes.

11.2 Any certificate signed by Metalflex, any director or any person authorised by Metalflex as to the amount due and payable by the Customer or as to the delivery of goods is conclusive evidence of such matters as at the date of any such certificate unless proven wrong.

11.3 If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provision which will remain in full force and effect despite that invalidity.

11.4 These Terms contain the entire agreement in respect of the supply of goods or services to the Customer.

11.5 Metalflex may at any time set off any amount Metalflex owes the Customer against any amount payable by the Customer to Metalflex whether or not the amount owed to Metalflex is due and payable or actually or contingently payable by the Customer.

12. Governing law

These Terms are governed by the laws of Victoria. The Customer submits to the non-exclusive jurisdiction of any Victorian court and waives any rights to claim that courts there are an inconvenient forum.

13. Notices

13.1 Any notice required under these Terms may be given by any party, including any director or authorised person of that party.

13.2 Any notice may be given at that party's registered address or other address stipulated in any application in connection with these Terms or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified to the other party.

14. Time

For the purposes of any payment obligation under these Terms, time is of the essence.

15. Survival of indemnities

15.1 Each indemnity and payment obligation of the Customer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.

15.2 It is not necessary for Metalflex to incur expense or make a payment before enforcing a right of indemnity.

16. Exclusion of implied terms

To the extent permitted by law, Metalflex excludes all conditions, warranties, terms and consumer guarantees implied by law (including the *Australian Consumer Law*) arising in connection with a supply of goods or services. To the extent permitted by law, Metalflex limits its liability in its discretion to replacing the goods or supplying equivalent goods, or, in the case of services, by supplying the services again. The Customer will rely entirely on its own knowledge, skill and judgment in selecting goods which it orders from Metalflex from time to time.

17. Limitation of liability

To the extent permitted by law, Metalflex excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case Metalflex's liability is limited as under clause 16.

18. Disputes

If a dispute arises in connection with the supply of any goods or otherwise, the Customer agrees to pay Metalflex as a condition of any dispute the amount of any disputed invoice. Such invoiced amount is to be held by Metalflex in an interest bearing deposit account until resolution of the dispute. To the extent permitted by law, until complied with, the obligation to pay the invoiced amount shall operate as an absolute bar to any defence, claim or action by the Customer.

19. Consent

The Customer agrees that Metalflex may, subject to the Privacy Act, disclose commercial credit-related information of the Customer, or in the case of a Company, of the proprietors of the Customer, to credit reporting bodies for the purposes of assessing credit worthiness and providing the credit to the Customer. The Customer consents to the collection of commercial credit-related information about the Customer, from credit reporting bodies and other sources in accordance with the Metalflex Privacy (Credit Information) Policy, located on its website.

The Customer also agrees that Metalflex may use personal information other than commercial-credit related information for direct marketing in accordance with Metalflex's Privacy Policy located on its website.

20. Dictionary

Default means:

- (a) the Customer fails to pay when due any moneys owing to Metalflex under these Terms;
- (b) the Customer gives any third party a security interest in accounts as original collateral in respect of the proceeds of any goods supplied by Metalflex;
- (c) an Insolvency Event occurs or is continuing;
- (d) the Customer breaches any other provision of these Terms; or
- (e) upon any member of Metalflex's Credit Team, posting by ordinary pre paid post, emailing or faxing a letter advising that all money owing to Metalflex is, despite any agreement to the contrary, immediately due and owing.

goods mean any goods Metalflex supplies to the Customer whether on consignment or otherwise under these Terms. They include goods described on any invoice, quotation, work authorisation or any other forms Metalflex provides the Customer or any order the Customer gives Metalflex.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge. **Tax invoice, taxable supply** and **value** have the meaning given to them by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Guarantor means that person, or entity, who agrees to be liable for the Customer's debts whether on a principal debtor basis or who is otherwise a surety of the Customer.

Insolvency Event:

- (a) An administrator is appointed to the Customer or any Guarantor.
- (b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by Metalflex:
 - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) the Customer's winding up, dissolution or administration or of any Guarantor; or
 - (ii) the Customer or any Guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them; or
 - (B) the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets.
- (c) the Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.
- (d) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Customer or any Guarantor.
- (e) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customer's assets or of any Guarantor and is not discharged or stayed within 14 business days.
- (f) A security interest becomes enforceable or is enforced.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

The expressions **account, financing statement, financing change statement, PPSR, proceeds, purchase money security interest (pmsi), security agreement, security interest, verification statement** have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning and applies to all land and licences and personal property that is not personal property covered by the PPSA. and **value** have the meaning given to them by the GST Law.

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 - (i) the Customer's winding up, dissolution or administration or of any Guarantor; or

- (ii) the Customer or any Guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them; or
- (B) the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets.
- (c) the Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.
- (d) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Customer or any Guarantor.
- (e) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customer's assets or of any Guarantor and is not discharged or stayed within 14 business days.
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