

Client Terms and Conditions

These Terms and Conditions (**Terms**) govern your use of our services offered by A GRADE AIR CON SERVICES PTY LTD (ACN 682 959 959) (**we, us, our**), and form a binding contractual agreement between us, and you.

These Terms are important and should be read carefully. Any questions about these Terms must be directed to us in writing at hello@agradeaircon.com.au before engaging our services.

Subject to any subsequent agreements you may be required to enter with us, these Terms constitute the entire agreement between you and us and supersedes all prior agreements, conduct, representations and understandings. You confirm you have not entered into this agreement on the basis of any representation that is not expressly incorporated into these Terms.

1 DEFINITIONS

- 1.1 **Air Conditioner Disconnection** means disconnection services we may provide in accordance with clause 17 of these Terms.
- 1.2 **Air Conditioner Reconnection** means relocation and reconnection services we may provide in accordance with clause 17 of these Terms.
- 1.3 **Air Conditioner Old Unit Replacement Installation** means the installation of new air conditioners and replacement of old units.
- 1.4 **Air Conditioner System New Installation** means the installation of new conditioners (is not an Air Conditioner Old Unit Replacement Installation).
- 1.5 **Air Conditioner Fault Findings and Repairs** means the diagnosis of a fault air conditioner and repair of that fault as required.
- 1.6 **Air Conditioner System Servicing** means the service of split systems, window air conditioners, floor standing units, VRV systems, multi head systems, bulk head systems and ducted systems.
- 1.7 **Deposit** means a deposit in relation to our Services.
- 1.8 **General Service Fee** means the general service fee payable in relation to Air Conditioner System Servicing.
- 1.9 **Services** means:
 - (a) Air Conditioner Disconnection;
 - (b) Air Conditioner System Servicing;
 - (c) Air Conditioner Old Unit Replacement Installation;
 - (d) Air Conditioner System New Installation;

- (e) Air Conditioner Reconnection;
- (f) Air Conditioner Fault Findings and Repairs; and
- (g) any other services offered by us from time to time.

1.10 **Quote** means a quote we issue you for our services.

1.11 **Revised Quote** means a quote we may issue to you following the provision of the Quote, in the event additional Services are required beyond the agreed upon scope of works included in the Quote.

1.12 **Workmanship Warranty** means the warranty we provide in accordance with clause 11 of these Terms.

2 ACCEPTANCE OF TERMS AND QUOTE

2.1 We will provide you with a copy of these Terms and with a detailed Quote before you engage our Services.

2.2 You understand that any amounts included in the Quote have been determined in accordance with information made available to us at the time of assessment.

2.3 Should unforeseen circumstances arise at the time of installation and additional work not contemplated for in the Quote is required, we reserve the right to provide you with a Revised Quote.

2.4 Prior to issuing you with a Revised Quote, we will discuss the variations with you and will only proceed with completing any additional work as contemplated in the Revised Quote subject to mutual agreement between us and you.

2.5 By paying any amount to us in respect to the Services or otherwise instructing us to proceed with the Services in writing, you acknowledge that you have read and understood the Terms, the Quote and Revised Quote (if applicable) and agree to be bound by them, and all our other policies.

3 VARIATIONS TO TERMS

3.1 We reserve the right to update and change these Terms from time to time without notice.

3.2 You will be subject to the Terms in force at the time when you engage our Services, unless agreed otherwise by both parties in writing.

4 PRE – EXISTING DAMAGE

4.1 Without limiting the generality of clauses 5 and 6 of these Terms, you acknowledge that we are not liable for the exacerbation of any pre-existing damage or defects during installation, including where we are hammer drilling any structure.

4.2 For the sake of clarity, a reference to “any pre-existing damage” is a reference to any of the following which are present prior to the commencement of Services:

- (a) structural weaknesses;
- (b) cracks; and
- (c) other structural defects.

4.3 In the event that pre-existing damage does exist, you must disclose that damage to us prior to Service commencement so that we may assess that damage, as required.

5 GENERAL DISCLAIMER

5.1 You acknowledge and agree that we, our employees, affiliates and representatives are not responsible for decisions that you may make, or for any consequences, undesired or otherwise, that may flow from your engagement of the Services.

5.2 Any testimonials and examples of our Services, wherever published (online or in print) are not to be taken as a guarantee that you will achieve the same or similar results.

5.3 We make no warranty, representation, or guarantee regarding the suitability of our Services for any particular purpose, nor do we assume any liability whatsoever arising out of the application or use of any Service. It is your responsibility to independently determine suitability of any Service and to test and verify the same.

5.4 Any timelines or delivery dates are provided by us on an estimated basis only. We make no guarantee that these timelines or delivery dates will be met as there may be interfering factors beyond our control, and we are not responsible for any delay in the delivery of our Services.

6 SERVICE SPECIFIC DISCLAIMERS

6.1 You acknowledge that we will not be held liable for any faults, damage or failures arising from any of the below circumstances:

- (a) where ordinary wear and tear has occurred in relation to the air conditioner;
- (b) the air conditioner has corrosion, oxidation and/ or discolouration which has arisen by no fault of our own;
- (c) any malicious damage or damage which has arisen as a result of any intentional or accidental acts by you, including but not limited to any negligent acts or omissions, or misuse of the unit which is inconsistent with its intended purpose;
- (d) you have failed to maintain the air conditioner (including general maintenance) as required. Without limitation, this includes blocked filters, insufficient cleaning or failure to comply with recommended servicing schedules;

- (e) damages or faults arising from vermin and pets, such as rodents, insects, birds and any other animals which may interfere with the air conditioner;
 - (f) damages or faults arising from any acts of God, including but not limited to natural disasters such as hail, lightning strikes, storms, floods, and/ or any other event;
 - (g) damages or faults arising from electrical issues such as improper voltage supply, power surges and any other electrical issues that are outside our reasonable control;
 - (h) where you have supplied any goods to us for installation or Servicing (which are also excluded from our Workmanship Warranty) ("**Customer Supplied Goods**"). You acknowledge that we are not liable for any defects arising from Customer Supplied Goods, including any mechanical failures;
 - (i) any water damage and leaks, including damage to floors, furniture, unless clearly proven to be caused by us;
 - (j) any damage to any adjacent property or equipment, such as televisions and electrical devices. You are required to ensure such items are adequately protected at all times;
 - (k) any electrical faults, compressor failures, refrigerant leaks or component malfunctions occurring after Service completion, unless such faults are attributable to us;
 - (l) any act or omission by a technician not provided by us;
 - (m) the removal of an old unit; and
 - (n) damage arising from any refurbished or reconditioned goods.
- 6.2 Should any of the above have occurred, you acknowledge that any required replacements or repairs are not covered under any warranty. Any repairs or Services required to rectify the above may incur additional charges and we will issue you a Quote for those works prior to Service commencement.

7 AIR CONDITIONER SYSTEM SERVICING

- 7.1 Our Air Conditioner System Servicing does not include fault finding or repairs but does include those inclusions listed in our Quote.
- 7.2 Should you require Air Conditioner System Servicing beyond our General Service Fee ("**Additional System Services**"), you acknowledge that additional fees will be payable for the Additional System Services.
- 7.3 You may wish to reschedule an agreed upon booking for this Service once at no additional cost, subject to the provision of notice within 24-48 hours of the agreed upon booking time. Any further rescheduling requests may result in the forfeiture of the Deposit at our sole discretion.
- 7.4 In the event that your air conditioner has faults or issues following the provision of the Air Conditioner System Servicing, you acknowledge that we will not be liable in such

circumstances. You are however, able to contact us at the email address listed in these terms and a member of our team will attend the premises to conduct an Air Conditioner Fault Finding and Repair.

- 7.5 Without limiting clause 7.4, this includes any faults, damages or failures arising from:
- (a) faulty remote controls, exhausted batteries or corrosion;
 - (b) faulty printed circuit boards in the evaporator or condenser;
 - (c) where the air conditioner is over 5 years of age;
 - (d) faulty or damaged electrical cabling or circuit isolating switches;
 - (e) condensate pump failure or leakage following cleaning; and
 - (f) poorly mounted or unprofessionally fixed evaporators to walls and ceilings
- 7.6 In the event that you do not wish for us to conduct the Air Conditioner Fault Finding and Repair as provided for at clause 9 of these Terms, you are able to contact the manufacturer direct for assistance.
- 7.7 You are required to make payment for the Air Conditioner System Servicing upon project completion, by cash or card.
- 7.8 We will not issue any refunds for Air Conditioner System Servicing upon project commencement.

8 AIR CONDITIONER OLD UNIT REPLACEMENT INSTALLATION

- 8.1 You are required to pay a Deposit in relation to the Air Conditioner Old Unit Replacement Installation which will be outlined in our Quote to you.
- 8.2 The Deposit will also reflect a portion of our labour cost, work material and supply of the air conditioner unit. You acknowledge that the Deposit will be payable prior to the provision of this Service.
- 8.3 We will provide you with all required work material and the air conditioner on the agreed upon date of installation (subject to your payment of the Deposit).
- 8.4 You may reschedule an agreed upon booking for this Service once at no additional cost to you, subject to the provision of notice within 24-48 hours of the agreed upon booking time. Any further rescheduling requests may result in the forfeiture of the Deposit at our sole discretion.
- 8.5 You acknowledge that you are required to provide an active electrical power supply so that we can provide this Service provision. In certain circumstances, we may require a contractor electrician to attend. If this occurs, you accept that this will be reflected in the Quote we issue to you for this Service, or as otherwise indicated by us.

- 8.6 In the event you provide us with your own products for supply, such as an air conditioner, you are required to attend to any waste removal associated with that product, including but not limited to packaging.
- 8.7 Our Workmanship Warranty as set out at clause 11 of these Terms applies to this Service provision.
- 8.8 We will not issue any refunds for this Service and the remainder of the balance payable for this Service remains owing at the time of project completion. You are required to make payment upon project completion, by cash or card.
- 8.9 In the event that an old air conditioning unit needs to be disposed of, we may charge you for the cost of disposal (“**Disposal Fee**”). We will provide you with the Disposal Fee at the time of the provision of the Quote to you.
- 8.10 Should you require any variations to a Quote which has been issued to you after project commencement (during installation), you acknowledge that we may issue you a Revised Quote in accordance with the agreed upon varied costs.
- 8.11 The removal of an old unit may involve drilling, cutting and or modifications to walls. You accept that we are not liable for any cosmetic repairs required in such circumstances.
- 8.12 If a new unit requires additional modifications such as pipework, electrical upgrades, or wall bracket adjustments, we will issue you a Revised Quote.
- 8.13 If you supply a unit, you agree that:
- (a) we are not responsible for the unit’s condition, warranty or performance; and
 - (b) additional labour or materials may be required should the unit be faulty, such costs to be borne by you.
- 8.14 We will not install the outdoor unit above 1.8metres, in accordance with Council regulations.
- 8.15 Any systems supplied by us will be covered by us under the manufacturer’s warranty and our installation labour warranty as provided under our Workmanship Warranty. However, any units supplied by you will only be covered under our installation labour warranty. You acknowledge that any faults in the unit itself, manufacturer defects or improper operation need to be referred to the manufacturer.

9 AIR CONDITIONER FAULT FINDINGS AND REPAIR

- 9.1 Should you require Air Conditioner Fault Findings and Repair:
- (a) you are required to contact us and inform us of the fault;

- (b) we will send a technician to investigate and diagnose the fault (“**Investigation Service**”);
 - (c) the technician may repair the air conditioner at the time of attendance, or, determine more parts are required to repair the air conditioner;
 - (d) we will issue you a Quote for repair if required;
 - (e) once accepted, the technician will attend the premises to repair the air conditioner as quoted.
- 9.2 You are required to make payment for labour and parts prior to the provision of this Service. You acknowledge that no refunds will be issued if the air conditioner is still not operational after a repair has been provided.
- 9.3 Upon completion of the Investigation Service, you are required to pay us \$150 to \$170 (incl. GST) (“**Investigation Service Fee**”). We will inform you on the fee payable at the time of Service completion.
- 9.4 Should you not pay the Investigation Service Fee, we reserve the right to not provide any further Services, including any repairs to you.
- 9.5 Our Workmanship Warranty as set out at clause 11 of these Terms applies to this Service provision.
- 9.6 In the event we have provided repair Services in accordance with this clause and the Workmanship Warranty applies, we recommend contacting us directly so we can ascertain whether a fault which has arisen is due to our Service provision. Any new faults which are not covered by the Workmanship Warranty or related to our Service Provision may require an additional diagnosis fee to be paid of \$170 (incl. GST).
- 9.7 Should the fault be deemed to be a new Fault, we will not be required to comply with the Workmanship Warranty.
- 9.8 Nothing in our Air Conditioner Fault Finding and Repairs should be taken as a guarantee that your air conditioner unit will be fixed upon the provision of only one repair job and you acknowledge that multiple repairs may be required to diagnose and remedy an underlying problem. You are liable to pay us all repair costs, even if the initial repair does not resolve the issue.
- 9.9 If the issue is attributable to a third party installation, we are not liable for this and you acknowledge that additional costs to rectify this will be charged and quoted for separately.
- 9.10 As some faults may be interconnected and a single repair may only partially rectify an issue. You acknowledge that any additional faults will attract further costs.
- 9.11 You are liable to pay us all fees in full upon completion of works, even in circumstances where further work is required.

10 NEW AIR CONDITIONER SYSTEM INSTALLATION

- 10.1 We will install the air conditioner in accordance with the Quote. Any further work beyond the scope of works provided for in the Quote will be subject to a Revised Quote.
- 10.2 Unless otherwise agreed by us, the following items of work are covered in our installation Services:
- (a) mounting of indoor and outdoor units;
 - (b) electrical connections to an existing and compliant power source;
 - (c) refrigerant piping and pressure testing;
 - (d) drainage connection as required; and
 - (e) system testing to ensure proper operation.
- 10.3 Unless otherwise agreed by us, the following items of work may attract a Revised Quote and are not covered by this Service:
- (a) structural modifications, such as wall reinforcements;
 - (b) electrical upgrades or new circuit installations;
 - (c) roof penetrations or specialised access requirements; and
 - (d) removal and disposal of old units, unless agreed in writing.
- 10.4 In the event that an existing system is being used, including ducting or any other infrastructure, you acknowledge that we will not be liable for any defects, failures or issues arising from those existing structures.
- 10.5 You may reschedule an agreed upon booking for this Service once at no additional cost to you, subject to the provision of notice within 24-48 hours of the agreed upon booking time. Any further rescheduling requests may result in the forfeiture of the Deposit at our sole discretion or a cancellation fee.
- 10.6 Following the completion of the Services:
- (a) you are required to comply with any manufacturers guidelines;
 - (b) ensure routine maintenance, such as cleaning filters and proper airflow; and

- (c) should you require any service calls beyond our Workmanship Warranty, pay us a call out fee of \$170 incl. GST.
- 10.7 In some cases, we may be required to hire specific equipment to complete installation of the air conditioner. You acknowledge that the cost of that equipment will be included in the final invoice issued to you, where applicable.
- 10.8 We reserve the right to cease this Service should we identify a safety issue at Service commencement, such as electrical hazards or other unforeseen events.
- 10.9 If a safety issue referred to at clause 10.8 requires additional materials or equipment, we will issue you a Revised Quote. We will not proceed with further work until you have accepted the Revised Quote and will undertake our reasonable efforts to minimise any disruptions.
- 10.10 Should there be insufficient electrical capacity to support the new unit, we may issue a Quote for any required electrical upgrades.
- 10.11 Our Workmanship Warranty as set out in clause 11 of these Terms applies to this Service provision.

11 WORKMANSHIP WARRANTY

- 11.1 We pride ourselves on the Services we provide and as such, offer our customers the Workmanship Warranty as set out in this clause.
- 11.2 We guarantee the quality of our installation work for 5 years, and 6 months for all parts replacements/ repairs from the date of Service completion.
- 11.3 Our Workmanship Warranty (including installation labour and parts replacement warranties) is as follows:
 - (a) we warrant that all Services performed by us will be performed with due care, skill, diligence and in accordance with the best industry practice and Australian Standards, including but not limited to AS3000, AS5141 and any applicable laws or regulations;
 - (b) the scope of our installation labour warranty is as follows:
 - (i) installation faults – such as misalignment, poor connections or incorrect set up;
 - (ii) reinstallation and adjustments – including any necessary connections due to installation errors;
 - (iii) performance issues – such as system inefficiency or failures due to improper installation;

- (c) we will, at our own cost, repair or rectify those defects that have arisen during the warranty period.
- (d) the installation labour warranty referred to at clause 11.3(a) to (c) does not include;
 - (i) defects arising from any misuse, improper maintenance or any other factor beyond our reasonable control such as power surges, environmental factors or any other interference;
 - (ii) defects, faults or issues with respect to any materials or equipment which is covered by the manufacturers warranty. You are required to contact the manufacturer directly in such circumstances;
 - (iii) any issues arising from any works which have been conducted by a party other than us;
 - (iv) pre-existing structural or electrical faults; and
 - (v) any consequential or incidental damages.
- (e) We also provide a parts replacement labour warranty for 6 months on repairs and part replacements which were performed by our technicians, this includes:
 - (i) labour for manufacturer warranted parts – if any part falls within a manufacturer warranty, we will replace it with no labour cost, subject to the issue being deemed to attributable to our workmanship;
 - (ii) faulty workmanship in repairs – if an issue arises due to incorrect repair work, we will fix it free of charge;
 - (iii) this parts replacement labour warranty, does not include:
 - (A) the cost of replacement parts;
 - (B) normal wear and tear, such as filters, batteries and remotes;
 - (C) damages arising from misuse, poor maintenance and other external factors; and
 - (D) third party modifications and repairs.

11.4 To make a claim for a Workmanship Warranty under this clause, you are required to:

- (a) make a claim within 5 business days for any installation labour claims under clause 11.3(a) to (c);
 - (b) make a claim within 30 business days of service for any parts replacement labour claims under clause 11.3(e); and
 - (c) provide us access to inspect and rectify the issue. If no fault is found, we will charge a \$150 travel and labour cost fee.
- 11.5 Upon being informed by you in accordance with clause 11.4, we will assess the issue to determine whether it complies with the terms of our Workmanship Warranty. If we deem it so, we will complete the necessary repairs or rectification within a reasonable period of time.
- 11.6 Should you experience any issues with the Services provided by us, you should stop using the air conditioner as soon as the fault arises and contact us via phone or direct to the email address listed in these Terms and provide us with details of that Service failure.
- 11.7 Our details are as follows:
- (a) **name:** A GRADE AIR CON SERVICES PTY LTD (ACN 682 959 959);
 - (b) **address:** Pagewood, Australia;
 - (c) **phone number:** 0435179269; and
 - (d) **email:** hello@agradeaircon.com.au.
- 11.8 Any benefits conferred onto you under this Workmanship Warranty are in addition to any other rights and remedies available to you under a law in relation to the Services to which the warranty relates.
- 11.9 Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- (a) to cancel your Service contract with us; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.
- 11.10 You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

12 YOUR OBLIGATIONS

12.1 During the delivery of our Services, you agree to:

- (a) respond promptly to our communications in relation to the Services;
- (b) pay our fees as stipulated in these Terms;
- (c) ensure the site on which the Services will be provided is unencumbered at the time of project commencement;
- (d) move any furniture, fixtures, or obstacles prior to any booking time so that we may provide our Services. We may charge additional fees for any rescheduling that occurs should this obligation not be complied with;
- (e) where applicable, ensure the air conditioner is in working condition prior to us providing our Services. If it is not in working condition, you must notify us promptly prior to Service commencement;
- (f) where applicable, ensure there is sufficient electrical supply such that we can provide our Services;
- (g) provide, within a reasonable amount of time, accurate, complete and current information or documentation reasonably required by us to perform the Services; and
- (h) act in good faith.

12.2 When providing our Services, we may request that you provide us with responses, feedback, completed questionnaires, copy content, images and other information so we can best deliver our Services. You agree that you will provide any such information in a timely manner. Any delays in receiving this information may result in information not being provided by us to you.

13 COPYRIGHT AND TRADE MARK NOTICES

13.1 All material provided by us during the provision of our Services, including (but not limited to) documents, templates, questionnaires anything else (**Our Content**), is our intellectual property and subject to copyright. You must obtain our prior written permission if you would like to copy or reproduce our Content. Modification of our Content is a violation of our copyright and other proprietary rights, and is strictly prohibited.

13.2 You acknowledge that you do not acquire any ownership rights by using our Content.

13.3 The trade marks, logos, and service marks displayed on our Content to denote our brand are either our registered or unregistered trade marks (**our Marks**). Our Marks, whether registered or unregistered, may not be used in connection with any product or service that does not belong to us, in any manner that is likely to cause confusion with customers, or in any manner that disparages us.

- 13.4 Nothing contained in our Content or our Services should be construed as granting, by implication, estoppel or otherwise, any license or right to use any our Marks without our express written permission.
- 13.5 You agree that damages may be an inadequate remedy to a breach of these Terms and acknowledge that we will be entitled to seek injunctive relief if such steps are necessary to prevent violations of its intellectual property rights.
- 13.6 This clause survives termination of these Terms.

14 RIGHT TO CANCEL, SUSPEND, TERMINATE AND REFUND

- 14.1 We reserve the right to cancel any agreed upon bookings due to unforeseen circumstances and reschedule at our discretion.
- 14.2 We reserve the right to suspend or terminate your use of our Services generally if you breach these terms, as determined by us in our sole discretion.
- 14.3 Either party may terminate your use of our Services by providing to the other party a minimum of 14 days' written notice (**Notice Period**).
- 14.4 If you terminate our Services early (prior to your Services being completed), you acknowledge and agree that the outstanding fees for those Services are payable. We will issue an invoice for all work completed up to the end of the Notice Period.
- 14.5 Refunds are not provided for our Services, other than in accordance with the Australian Consumer Law, as set out in Schedule 2 to the *Australian Competition and Consumer Act, 2010* (Cth).
- 14.6 Any Deposits paid to us for the provision of Services to you are non-refundable.
- 14.7 Final payments are non-refundable after at the completion of our Services.
- 14.8 Any refund requests will be assessed on a case-by-case basis, in accordance with the costs associated with each Service delivered by us.

15 PAYMENTS

- 15.1 All Deposits and fees paid are non-refundable after project commencement.
- 15.2 If you fail to pay our fees when due, as indicated in these Terms, you acknowledge that we reserve the right to suspend or terminate the delivery of our Services. We will not be liable for any loss suffered by you as a result of such suspension or termination.
- 15.3 We reserve the right to on-sell or otherwise authorise a debt-collection or other authorised agency to collect any amount not paid by you, should any fees remain outstanding beyond 7 days of the due date.

15.4 You must pay us all fees and other amounts without set-off or claim under any circumstances, including if a dispute exists in relation to the Services provided.

16 SUPPLY OF AIR CONDITIONER UNIT

16.1 If we have supplied an air conditioning unit to you, all equipment supplied will be covered by the manufacturer's warranty and installed as per the manufacturer's guidelines.

16.2 If you provide us with an air conditioning unit, we will not be responsible for defects, compatibility issues and/ or any warranty claims related to that unit. While we will install the unit as agreed, no warranties will apply to that unit as supplied.

16.3 Without limiting clause 16.2, you also agree that any performance issues, failures or manufacturer defects arise, any additional work will be incurred as an additional cost.

17 DISCONNECTION AND RECONNECTION

17.1 The following terms apply to our Air Conditioner Disconnection Services:

- (a) by disconnecting or reconnecting an air conditioner, you acknowledge this may lead to operational issues such as refrigerant leaks, electrical faults or system inefficiencies. We are not liable to you for such issues arising;
- (b) you acknowledge that we are also not liable for any structural damage that may occur in performing this Service such as minor damages to walls, plaster or paint;
- (c) if the system falls under a manufacturer's warranty, we recommend that you consult with the manufacturer prior to disconnection.

17.2 The following terms apply to our Air Conditioner Reconnection Services:

- (a) the outdoor unit must be installed below 1.8 metres as required by regulations. We will not relocate or install units above this height;
- (b) air conditioning units are not designed to be relocated numerous times, and you accept performance issues may arise. We are not liable for such issues arising following a relocation;
- (c) we are not liable for any structural damage arising from the relocation process, such as damage arising from drilling and other works;
- (d) older air conditioning units may experience ordinary wear and tear due to age, you accept that relocation will increase risks such as refrigerant leaks, compressor failure or electrical malfunctions. We are not liable to you if this occurs; and
- (e) if unforeseen structural or electrical modifications are required to complete the relocation, you will be notified and we may issue a Revised Quote.

18 TITLE

- 18.1 You accept that we retain title in any goods supplied to you until you have paid for our Services in full. However, the risk on those goods passes to you on installation.
- 18.2 Should you not pay in full upon Service completion, we reserve the right to:
- (a) enter into any premises on which goods have been installed and retake possession of those goods as required;
 - (b) remove and repossess any installed goods; and
 - (c) disable the unit (either remotely or physically), until full payment is received.
- 18.3 You agree to provide us with access to the site on which the goods are installed to perform the above where required.
- 18.4 In the event of this clause applying, you agree to indemnify us in accordance with clause 21.

19 DISCOUNTS, PROMOTIONS AND OFFERS

- 19.1 From time to time, we may offer the opportunity to purchase our Services at a discounted or promotional price, subject to these Terms.
- 19.2 Any discounts, promotions and offers will be confined to the time period and additional terms of sale in accordance with the details of that respective discount, promotion and/or offer as communicated to you by us.

20 LIABILITY IS LIMITED

- 20.1 We provide the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by Law. Subject to the other terms of this clause, we exclude all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by Law.
- 20.2 Without limiting the generality of clause 20.1, we expressly exclude any liability in contract, tort or otherwise for any injury, damage, loss, delay or inconvenience caused directly or indirectly by your use of our Services.
- 20.3 Subject to the other terms of this clause, our maximum aggregate liability owed to you in for any loss or damage or injury arising out of or in connection with the supply of our Services under these Terms, including any breach by us of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by you under these Terms in the one month period preceding the matter or the event giving rise to the claim.

- 20.4 The disclaimers, limitations of liability and indemnities within these Terms do not exclude rights that may not be excluded by law, including but not limited to, those rights under the *Australian Consumer Law*.
- 20.5 If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the *Australian Consumer Law* that cannot be excluded, our total liability to you for that failure is limited to, at our option, to the resupply of the Services or the payment of the cost of resupply.
- 20.6 Subject to the other terms of this clause, we exclude any liability owed to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms, including any loss of profits, loss of sales or business, loss of production, loss of agreements, loss of business opportunity, loss of anticipated savings, loss of or damage to goodwill or reputation or loss of use or corruption of data or information.
- 20.7 This clause applies to the fullest extent permitted by law and shall survive termination of these Terms.

21 INDEMNITY

- 21.1 You agree to indemnify us and our officers, agents, partners, directors, shareholders and employees and subcontractors, against any direct losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by us arising out of or in connection with:
- (a) any claim made against us or you by a third party arising out of or in connection with the provision of our Services and/or these Terms;
 - (b) any breach of these Terms by you, including any failure to pay any fees on time;
 - (c) any reliance by you or a third party on our Services or any advice or information provided in connection with the provision of our Services and/or these Terms; and
 - (d) the enforcement of these Terms.
- 21.2 You must make payments under this clause in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by Law.
- 21.3 We are not responsible, and expressly limit our liability to the extent permitted by law, which is without limitation to your rights under the *Australian Consumer Law*, for damages of any kind arising out of use, reference to, or reliance or use on any information provided during the provision of our Service.
- 21.4 This clause survives the termination of these Terms.

22 NO DISPARAGEMENT

- 22.1 At all times, you must not make any public or private statement or comment, whether oral or in writing, which in our reasonable opinion is adverse to the interest, reputation or commercial standing of or is in any respect a disparaging remark or representation about us and/or any of our Services nor any statement that is false and does or has the tendency to damage our reputation of by any method including but not limited to any social media platform or review website anywhere in the world.
- 22.2 Should you breach this clause, you hereby indemnify us in accordance with clause 21 above.

23 FORCE MAJEURE

- 23.1 We will not be in breach of these Terms or liable to you for any Loss as a direct result of our failing or being prevented, hindered or delayed in the performance of our obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.
- 23.2 If a Force Majeure Event occurs, we will notify you in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 23.3 On providing the notice in the above clause, we will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, we will continue to use all reasonable endeavours to perform those obligations.
- 23.4 The performance of the affected obligations will be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.
- 23.5 References to a Force Majeure Event in this clause means: events, circumstances or causes beyond a party's reasonable control including (but not limited to):
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, cyber-attack, service attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (c) fire, explosion, storm, flood, earthquake, subsidence or other natural disaster;
 - (d) epidemic, pandemic, health emergencies, disease;
 - (e) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (f) interruption or failure of utility services (including the inability to use public, private telecommunications networks, servers or third party hosting platforms); and
 - (g) the acts, decrees, legislation, regulations or restrictions of any Government Agency;
- however does not include a lack of funds.

23.6 References to Loss in this clause means: any loss, liability, cost, charge, expense, Tax, Duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).

24 SEVERABILITY

24.1 If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

25 NO ASSIGNMENT

25.1 You cannot transfer or assign your rights in accordance with these Terms, including any membership or registration with us, without our prior written consent.

25.2 We may assign or transfer our rights and obligations under these Terms at any time, upon prior written notice to you of at least 4 calendar weeks.

26 SUB-CONTRACTING

26.1 We are free to sub-contract any of our obligations under these Terms, but such sub-contracting will not release us from our liabilities under these Terms.

27 BINDING ON SUCCESSORS

27.1 These Terms shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

28 DISPUTE RESOLUTION

28.1 If a dispute arises between the parties in relation to these Terms, the dispute must be dealt with in accordance with this clause.

28.2 Any party claiming that a dispute exists must notify the other party to the dispute (Second Party) in writing of the nature of the dispute. If the matter relates to installation, you must provide us with a reasonable opportunity to rectify the issue.

28.3 In the case of claims against us, all notices are to be provided to hello@agradeaircon.com.au.

28.4 If the dispute is not resolved by agreement within 10 business days of the Second Party receiving the notice referred to above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further 10 business days or failing agreement within that period, as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited.

28.5 Once a mediator is appointed, the parties agree that:

- (a) The costs of the mediator shall be borne equally between the disputing parties.

- (b) The chosen mediator shall determine the procedures for mediation.
- (c) The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.

28.6 If the parties have not mediated a resolution of the dispute within 10 business days of the selection of a mediator, neither party shall be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it considers fit in relation to the dispute.

28.7 Nothing in this clause prevents a party from commencing proceedings seeking urgent interlocutory relief from a court of competent jurisdiction to hear the matter, if, in that party's reasonable opinion, it is necessary to protect their rights.

28.8 Despite the existence of a dispute the parties must continue to comply with their obligations under the contract.

28.9 This clause survives termination of these Terms.

29 APPLICABLE LAW

29.1 These Terms shall be construed in accordance with and governed by the laws of New South Wales, Australia. You consent to the exclusive jurisdiction of the courts in New South Wales, Australia to determine any matter or dispute which arises between us.

30 YOUR FEEDBACK

30.1 We welcome enquiries or feedback. Unless specifically stated by you, we shall treat any information you provide us with, as non-proprietary and non-confidential. Please see our Privacy Policy for further details.

30.2 If you have questions or comments regarding our Services, please email us at hello@agradeaircon.com.au.

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EXECUTED AS AN AGREEMENT

Full Name (Please Print)

Signature

Date: _____