

CONDITIONS OF SALE - APPLIED

These Conditions of Sale apply to the sale and supply of applied and project HVAC and energy-related products, equipment, systems and services by Midea HVAC & Energy Australia, including chillers, air handling equipment, controls, heat pumps, energy solutions and custom or project-specific equipment.

1. DEFINITIONS

In these Conditions of Sale, unless the context otherwise requires:

Account Application Form means an application submitted by the Customer to Midea HVAC for the establishment of a credit account or other credit facilities.

Agreement means the agreement between Midea HVAC and the Customer for the supply of Goods and/or Services, comprising:

- (a) these Conditions of Sale;
- (b) the relevant Quotation;
- (c) any Confirmation of Order issued by Midea HVAC;
- (d) any Order accepted by Midea HVAC; and
- (e) any written variation or additional terms agreed in accordance with clause 4.5.

Australian Consumer Law or **ACL** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*, as amended or replaced from time to time.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

Charges means all amounts payable by the Customer to Midea HVAC in connection with the Goods, Services or Works, including the purchase price, GST, freight, storage, handling, testing, commissioning and other applicable charges.

Confirmation of Order means a written confirmation issued by Midea HVAC setting out the Goods and/or Services accepted by Midea HVAC, the applicable Charges and any other relevant terms.

Customer means the person or entity to whom Midea HVAC has agreed to supply Goods and/or Services under the Agreement and includes its permitted successors and assigns.

Goods means all equipment, products, units, components, spare parts, accessories and other goods supplied or to be supplied by Midea HVAC under the Agreement.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Event means, in relation to a party, where that party:

- (a) becomes insolvent or bankrupt;
- (b) enters liquidation, administration or receivership;
- (c) has a controller, receiver, administrator or liquidator appointed over any material part of its property;
- (d) enters into an arrangement or compromise with creditors;
- (e) ceases or threatens to cease carrying on business; or
- (f) is subject to an equivalent or substantially similar event.

Midea HVAC means **Midea HVAC & Energy Australia**, and where appropriate includes its authorised representatives and permitted assigns.

Order means an order submitted by the Customer requesting Midea HVAC to supply Goods and/or Services.

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

Project means the applied HVAC, energy, infrastructure, commercial, industrial, institutional or other project, development, building, facility or application for which the Goods and/or Services are supplied.

Project Site means the location specified in the Agreement at which Goods are to be delivered or Services or Works are to be performed.

Quotation means a written quotation or proposal issued by Midea HVAC for the supply of Goods and/or Services.

Services means all or any part of the installation, commissioning, testing, inspection, repair, maintenance, technical support or other services expressly agreed to be provided by Midea HVAC.

Works means the work to be carried out by Midea HVAC under the Agreement, including the supply of Goods and/or Services.

Warranty Terms means Midea HVAC's applicable commercial warranty terms and conditions for the relevant Goods.

References to the singular include the plural and vice versa.

The words "including", "includes" and similar expressions mean "including without limitation".

2. QUOTATIONS

2.1 Invitation to Treat

Any brochure, catalogue, price list, website information, Quotation, proposal or other communication issued or provided by Midea HVAC constitutes an invitation to do business only and does not constitute a binding offer unless expressly stated otherwise.

2.2 Quotation Validity

Unless otherwise stated in the Quotation, a Quotation remains valid for **thirty (30) days** from its date of issue.

After that period, the Quotation will automatically lapse unless Midea HVAC agrees otherwise in writing.

2.3 Basis of Quotation

A Quotation is prepared based on information, drawings, specifications, schedules, quantities and other information made available to Midea HVAC at the time the Quotation is issued.

The Customer is responsible for reviewing the Quotation and confirming that:

- (a) the Goods and Services are suitable for the intended Project;
- (b) quantities are correct;
- (c) Product selections are appropriate; and
- (d) the Quotation corresponds with the Customer's requirements.

Unless Midea HVAC has expressly accepted a defined system-design scope in writing, Midea HVAC does not assume responsibility for customer, consultant or contractor design, including heat-load calculations, equipment sizing, hydraulic or electrical design, controls integration, acoustic design, plant-room layout or whole-of-system performance.

2.4 Project Requirements

The Customer must ensure that any Project specifications, drawings, performance criteria, tender requirements or other requirements imposed by consultants, builders, contractors or other Project participants that are intended to apply to Midea HVAC are expressly identified to Midea HVAC before the relevant Order is accepted. Midea HVAC is not responsible for complying with any such requirement unless Midea HVAC has expressly agreed to it in writing.

2.5 Errors and Omissions

Midea HVAC may correct any genuine clerical, typographical or calculation error in a Quotation before acceptance of the relevant Order.

3. PRICE ADJUSTMENTS AND INCREASED COSTS

3.1 Changes in Law

If, after the date of a Quotation or acceptance of an Order, a new or amended law, regulation, tax, levy, tariff, duty, government charge or mandatory regulatory requirement increases Midea HVAC's cost of supplying the Goods or Services, Midea HVAC may adjust the Charges by the amount reasonably necessary to reflect that increased cost.

3.2 Customer-Requested Changes

Midea HVAC may adjust the Charges where additional costs arise because of:

- (a) changes requested by the Customer;
- (b) changes to specifications, quantities, design or delivery requirements;
- (c) incomplete or inaccurate information provided by the Customer;
- (d) delay caused by the Customer or another contractor at the Project Site;
- (e) additional testing, attendance, storage or handling; or
- (f) other circumstances attributable to the Customer.

3.3 Foreign Exchange

Where a Quotation expressly states that pricing is subject to foreign exchange adjustment, Midea HVAC may adjust the applicable price in accordance with the exchange rate mechanism specified in the Quotation.

3.4 Price Basis

Unless otherwise stated in the Quotation or Agreement, the Charges are fixed from the date of acceptance of the Order, subject to any adjustment permitted under clause 3.

4. ORDERS AND FORMATION OF AGREEMENT

4.1 Orders

The Customer must provide an Order containing sufficient information for Midea HVAC to supply the Goods and/or Services, including where applicable:

- (a) Product description;
- (b) quantity;
- (c) requested delivery date;
- (d) Project Site and delivery point;
- (e) Project reference; and
- (f) any other information reasonably required by Midea HVAC.

4.2 Acceptance

Midea HVAC may accept or reject an Order at its discretion, subject to applicable law.

An Agreement is formed when Midea HVAC:

- (a) issues a Confirmation of Order;
- (b) otherwise accepts the Order in writing; or
- (c) commences supply of the Goods or Services,

whichever occurs first.

4.3 Order of Precedence

If there is any inconsistency between documents forming part of the Agreement, the following order of precedence applies:

- (a) any written variation expressly agreed by Midea HVAC and the Customer;
- (b) the Confirmation of Order;
- (c) the Quotation;
- (d) these Conditions of Sale; and
- (e) the Customer's Order.

4.4 Customer Terms

Any terms or conditions contained in or accompanying the Customer's Order, procurement system or other documents will not form part of the Agreement unless expressly accepted by Midea HVAC in writing.

4.5 Variation

No variation to the Agreement is effective unless it is in writing and agreed by authorised representatives of both Midea HVAC and the Customer.

5. SUPPLY OF INFORMATION

5.1 Customer Information

The Customer must provide Midea HVAC with all information reasonably required to manufacture, procure, configure, deliver or commission the Goods or provide the Services.

5.2 Accuracy

The Customer warrants that information supplied by or on behalf of the Customer is accurate and complete.

5.3 Reliance on Customer Information

Midea HVAC may rely on information supplied by the Customer.

Subject to applicable law, Midea HVAC is not responsible for loss, delay, additional cost or performance issues caused by inaccurate, incomplete or late information supplied by the Customer or its consultants, contractors or representatives.

5.4 Additional Costs

Any reasonable additional costs incurred by Midea HVAC as a result of inaccurate, incomplete or delayed information may be charged to the Customer.

6. PRODUCT SPECIFICATIONS AND MODIFICATIONS

6.1 Product Information

Unless expressly agreed otherwise, dimensions, specifications, drawings, technical information, performance data and other information supplied by Midea HVAC are approximate and subject to reasonable manufacturing tolerances.

6.2 Modifications

Midea HVAC may make reasonable modifications to Goods before delivery where required due to:

- (a) Product improvement;
- (b) manufacturing requirements;
- (c) component availability;
- (d) regulatory requirements; or
- (e) discontinuation or replacement of components.

6.3 Material Modifications

Where a modification materially affects the functionality or performance of Goods included in an accepted Order, Midea HVAC will notify the Customer where reasonably practicable.

If the modification materially changes the agreed functionality and is reasonably unacceptable to the Customer, the parties will work in good faith to agree an alternative Product or solution.

7. TESTING AND COMMISSIONING

7.1 Testing

Unless expressly included in the Agreement, the cost of additional testing requested by the Customer, consultant, builder, engineer or other Project participant will be borne by the Customer.

Any testing requested by the Customer must be agreed by Midea HVAC in advance.

7.2 Factory or Witness Testing

Where factory testing, witness testing or special performance testing is required, the scope, standards, timing, location and Charges must be agreed in writing.

7.3 Commissioning by Midea HVAC

Where Midea HVAC has expressly agreed to commission the Goods, Midea HVAC will notify the Customer when commissioning has been successfully completed.

Unless otherwise agreed, successful completion of commissioning constitutes acceptance of the commissioned Goods, subject to any rights that cannot be excluded under applicable law.

7.4 Commissioning by Others

Where commissioning is carried out by a person other than Midea HVAC, acceptance will be deemed to occur when that person certifies that commissioning has been successfully completed.

7.5 Customer Responsibilities

The Customer must ensure before commissioning that:

- (a) installation has been completed correctly;
- (b) electrical supply is available and compliant;
- (c) refrigerant and hydraulic systems, where applicable, are complete;
- (d) controls and communications wiring are ready;
- (e) safe access is available; and
- (f) all other pre-commissioning requirements reasonably specified by Midea HVAC have been satisfied.

7.6 Additional Attendance

If commissioning cannot proceed because the Project Site is not ready or because of circumstances attributable to the Customer or another contractor, Midea HVAC may charge reasonable additional attendance, travel and associated costs.

8. CREDIT FACILITIES AND PAYMENT

8.1 Credit Facilities

Credit facilities are available only where:

- (a) the Customer has submitted an Account Application Form; and
- (b) Midea HVAC has approved the application in writing.

8.2 Credit Limit

Midea HVAC may from time to time review the Customer's credit limit, payment history and credit arrangements and may, subject to applicable law and any written credit agreement, establish, vary, suspend or withdraw the Customer's credit limit or credit facilities, or require payment in advance or on a cash-on-delivery basis.

8.3 Payment Without Approved Credit

Where the Customer does not have approved credit facilities, payment must be made in accordance with the applicable Quotation, Confirmation of Order or invoice.

8.4 Approved Credit Customers

Where approved credit facilities apply, payment must be made within the payment period specified in Midea HVAC's approved credit terms or relevant invoice.

8.5 Progress and Instalment Invoices

Where Goods are supplied in installments or Services or Works are performed progressively, Midea HVAC may issue interim or progress invoices.

8.6 Overdue Amounts

If the Customer fails to pay an amount when due, Midea HVAC may, subject to applicable law:

- (a) suspend further deliveries or Services;
- (b) place Orders on hold;
- (c) withdraw credit facilities;
- (d) require advance payment for future Orders;
- (e) charge interest on overdue amounts at the rate specified in the applicable credit terms or, where no rate is specified, at a rate of 3% per annum above the Reserve Bank of Australia cash rate, calculated daily from the due date until payment; and
- (f) recover reasonable debt collection costs.

8.7 No Set-Off

To the maximum extent permitted by law, the Customer must pay amounts owing to Midea HVAC without set-off, deduction, withholding or counterclaim unless Midea HVAC agrees otherwise in writing.

9. CANCELLATION AND VARIATION OF ORDERS

9.1 Cancellation

Following Midea HVAC's acceptance of an Order, the Customer may not cancel or materially vary the Order without Midea HVAC's prior written consent.

9.2 Cancellation Costs

Where Midea HVAC accepts a cancellation or variation, the Customer must reimburse Midea HVAC for reasonable costs and losses directly arising from the cancellation or variation, which may include:

- (a) administrative and engineering costs;
- (b) manufacturing costs;
- (c) labour costs;
- (d) freight and return freight;
- (e) storage costs;
- (f) Goods or components specifically procured for the Order;
- (g) cancellation charges imposed by suppliers; and
- (h) other committed third-party costs.

9.3 Custom or Special-Order Goods

Custom-manufactured, specially configured or specifically imported Goods may not be cancelled once production or procurement has commenced unless Midea HVAC agrees otherwise in writing.

10. RETURN OF GOODS

10.1 Authorisation

Goods may not be returned without Midea HVAC's prior written authorisation.

10.2 Conditions of Return

Any discretionary return accepted by Midea HVAC may be subject to:

- (a) inspection;
- (b) return freight;
- (c) handling charges;
- (d) restocking fees;
- (e) reimbursement conditions; and
- (f) other reasonable conditions specified in Midea HVAC's written return authorisation.

10.3 Non-Returnable Goods

Unless otherwise agreed, Midea HVAC may refuse return of Goods that:

- (a) are specially manufactured or ordered;
- (b) have been installed or commissioned;
- (c) have been used;
- (d) are damaged or incomplete; or
- (e) are not in original resaleable condition.

Nothing in this clause limits rights that cannot lawfully be excluded under the Australian Consumer Law.

11. DELIVERY, ACCESS AND STORAGE

11.1 Delivery Dates

Following acceptance of an Order, Midea HVAC may provide an estimated delivery or consignment date.

All delivery dates are estimates unless expressly agreed in writing as fixed dates.

11.2 Delay

Midea HVAC will use reasonable efforts to meet estimated delivery dates but is not liable for delays caused by circumstances outside its reasonable control.

11.3 Delivery Point

Unless otherwise agreed, delivery occurs when the Goods are delivered to the nominated delivery point at the Project Site or other agreed location.

Unless specifically included in the Quotation, delivery does not include:

- (a) crane or lifting services;
- (b) unloading beyond normal delivery arrangements;
- (c) positioning Goods within the building or Project Site;
- (d) special traffic management; or
- (e) installation.

11.4 Delivery Hours

Unless otherwise agreed, delivery will take place during normal business hours.

Additional costs arising from delivery outside normal business hours may be charged to the Customer.

11.5 Partial Deliveries

Midea HVAC may deliver Goods by instalments where reasonably necessary and may invoice each instalment separately.

11.6 Unloading

The Customer is responsible for providing:

- (a) safe access to the delivery location;
- (b) adequate unloading space;
- (c) forklifts, cranes or other lifting equipment where required;

- (d) appropriately trained personnel; and
- (e) any site permits or access approvals required for delivery.

11.7 Failed Delivery

Where delivery cannot be completed because:

- (a) the Project Site is not ready;
- (b) access is unavailable or unsafe;
- (c) required unloading equipment is unavailable;
- (d) the Customer refuses or is unable to accept delivery; or
- (e) circumstances attributable to the Customer prevent delivery,

Midea HVAC may store the Goods and charge reasonable costs of storage, handling, redelivery and any associated costs.

11.8 Site Access for Services

The Customer must provide Midea HVAC and its authorised representatives with safe and reasonable access to the Project Site and provide facilities, equipment and services reasonably required to perform the Services.

11.9 Customer Delay

Where the Customer fails to provide required access, facilities, information or site readiness, Midea HVAC is entitled to:

- (a) a reasonable extension of time; and
- (b) reimbursement of reasonable additional costs caused by the delay.

11.10 Risk

Risk in the Goods passes to the Customer upon delivery in accordance with this clause.

Where the Customer collects the Goods or appoints its own carrier, risk passes when the Goods are collected by or released to the Customer or its carrier.

11.11 Completion of Goods Supply

Where the Agreement provides for the supply of Goods only and does not include installation or other Services by Midea HVAC, Midea HVAC's supply obligations in respect of those Goods are taken to be completed upon delivery in accordance with this clause 11.

12. TITLE AND SECURITY INTEREST

12.1 Retention of Title

Legal and equitable title to Goods does not pass to the Customer until Midea HVAC has received payment in full of:

- (a) all Charges relating to those Goods; and
- (b) all other amounts then due and payable by the Customer to Midea HVAC.

12.2 Security Interest

Until all amounts owing have been paid in full, the Customer acknowledges that Midea HVAC has a security interest in the Goods and their proceeds for the purposes of the PPSA, including, to the extent applicable, a purchase money security interest (PMSI).

12.3 Customer Obligations

Until title passes, the Customer must, so far as reasonably practicable:

- (a) keep the Goods identifiable as Goods supplied by Midea HVAC;
- (b) maintain the Goods in good condition;
- (c) not create or permit any security interest or other interest in the Goods that may materially prejudice Midea HVAC's rights, except as permitted under this Agreement or by law; and
- (d) immediately notify Midea HVAC of any event that may materially affect Midea HVAC's interest in the Goods.

12.4 Resale

The Customer may resell Goods in the ordinary course of its business.

To the extent permitted by law, Midea HVAC's security interest will attach to the proceeds of any such resale, and the Customer must not deal with those proceeds in a manner that materially prejudices Midea HVAC's rights.

12.5 PPSA Cooperation

The Customer must promptly do anything reasonably required by Midea HVAC to:

- (a) register, perfect, maintain or enforce a security interest;
- (b) enable Midea HVAC to register a financing statement or financing change statement;
- (c) preserve Midea HVAC's rights under the PPSA; and
- (d) ensure that any information or documentation provided by the Customer for PPSA purposes is accurate and complete.

12.6 Customer Information

The Customer must provide information reasonably required by Midea HVAC for PPSA registration purposes and promptly notify Midea HVAC if that information changes.

12.7 Recovery

Where permitted by law and where the Customer is in default, Midea HVAC may require the Customer to return Goods in which Midea HVAC retains title.

Subject to applicable law, the Customer authorises Midea HVAC to enter premises where such Goods are reasonably believed to be located for the purpose of recovering them.

13. INSURANCE

From the time risk in the Goods passes to the Customer until title passes to the Customer, the Customer must maintain appropriate insurance over the Goods against risks ordinarily insured against for Goods of that nature.

Where an insured loss occurs before title passes, the Customer must apply insurance proceeds attributable to the Goods towards amounts owing to Midea HVAC in respect of those Goods, to the extent permitted by law.

14. AUSTRALIAN CONSUMER LAW

14.1 Non-Excludable Rights

The Customer may have rights, guarantees, protections and remedies under the Australian Consumer Law or other applicable laws which cannot lawfully be excluded, restricted or modified.

Nothing in the Agreement excludes, restricts or modifies such rights or remedies.

14.2 Implied Terms

Subject to clause 14.1 and to the maximum extent permitted by law, all other terms, warranties and conditions implied by statute, common law, custom or otherwise are excluded.

14.3 Limitation of Statutory Guarantees

Where:

- (a) Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) it is lawful to limit liability for failure to comply with a statutory guarantee,

Midea HVAC's liability may, at Midea HVAC's option, be limited:

For Goods:

- (i) to replacement of the Goods or supply of equivalent Goods;
- (ii) to repair of the Goods;
- (iii) to payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- (iv) to payment of the cost of having the Goods repaired.

For Services:

- (i) to supplying the Services again; or
- (ii) to payment of the cost of having the Services supplied again.

15. WARRANTY

15.1 Commercial Warranty

In addition to any rights and remedies available under applicable law, eligible Goods may be covered by Midea HVAC's applicable Warranty Terms.

The relevant warranty period, scope, exclusions, limitations and claims procedure are set out in the Warranty Terms applicable to the relevant Goods.

15.2 Third-Party Components

Where equipment or components supplied by Midea HVAC are manufactured by a third party, any applicable third-party manufacturer's warranty may apply in accordance with its terms.

To the extent permitted by law, Midea HVAC may transfer or facilitate the benefit of such warranty to the Customer.

15.3 Warranty Exclusions

Subject to applicable law and the relevant Warranty Terms, warranty coverage may not apply where a defect, failure or damage is caused by:

- (a) incorrect installation;
- (b) unauthorised alteration or repair;
- (c) misuse, neglect or abuse;
- (d) erosion or corrosion not attributable to a defect in the Goods;
- (e) fire, flood, lightning or other external causes;
- (f) incorrect electrical supply;
- (g) unsuitable operating conditions;
- (h) inadequate maintenance;
- (i) operation contrary to Midea HVAC's instructions; or
- (j) work performed by persons who are not appropriately qualified or authorised where such qualification or authorisation is reasonably required.

15.4 Notification of Defects

The Customer must notify Midea HVAC of an alleged defect within a reasonable time after becoming aware of it and provide reasonable information requested by Midea HVAC to investigate the claim.

15.5 Unauthorised Intervention

The Customer must not undertake or permit material alterations, fault resets, repairs or other intervention that may prevent Midea HVAC from reasonably identifying the cause of an alleged defect before consulting Midea HVAC, except where reasonably necessary for safety or to prevent further damage.

15.6 Labour and Access Costs

Unless expressly included in the applicable Warranty Terms, costs associated with site access, lifting equipment, cranes, scaffolding, removal of building structures or other extraordinary access requirements are not included in Midea HVAC's express commercial warranty.

Nothing in this clause excludes any right that cannot lawfully be excluded.

16. LIMITATION OF LIABILITY

16.1 Non-Excludable Liability

Nothing in the Agreement excludes or limits Midea HVAC's liability to the extent that such liability cannot lawfully be excluded or limited.

16.2 Contributory Acts

To the extent permitted by law, Midea HVAC's liability will be reduced to the extent that loss or damage was caused or contributed to by an act or omission of:

- (a) the Customer;
- (b) the Customer's consultants;
- (c) contractors or installers engaged by the Customer; or
- (d) any third party for whom Midea HVAC is not legally responsible.

16.3 Indirect and Consequential Loss

Subject to clause 16.1 and to the maximum extent permitted by law, Midea HVAC is not liable for indirect, special, incidental or consequential loss arising out of or in connection with the Agreement.

16.4 Business Loss

Subject to clause 16.1 and to the maximum extent permitted by law, Midea HVAC is not liable for:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of production;
- (d) loss of business;
- (e) loss of opportunity;
- (f) loss of contract;
- (g) loss of goodwill;
- (h) loss of anticipated savings;
- (i) business interruption; or
- (j) loss or corruption of data.

16.5 Liability Cap

Subject to clause 16.1, and to the maximum extent permitted by law, Midea HVAC's aggregate liability, whether in contract, tort (including negligence), statute or otherwise, arising out of or in connection with an Agreement shall not exceed the total amount paid or payable by the Customer for the Goods and Services supplied under the Agreement giving rise to the claim.

16.6 Exclusions from Liability Cap

The liability cap in clause 16.5 does not apply to the extent liability arises from:

- (a) fraud or fraudulent misrepresentation by Midea HVAC;
- (b) wilful misconduct by Midea HVAC; or
- (c) liability that cannot lawfully be limited or excluded.

17. CUSTOMER INDEMNITY

To the maximum extent permitted by law, the Customer indemnifies Midea HVAC against reasonable losses, liabilities, claims, damages, costs and expenses arising directly from:

- (a) a material breach of the Agreement by the Customer;
- (b) negligent or unlawful acts or omissions of the Customer;
- (c) incorrect installation or modification of the Goods by the Customer or its contractors;
- (d) unsafe conditions at the Project Site for which the Customer is responsible; or
- (e) inaccurate information supplied by the Customer,

except to the extent that the relevant loss or liability was caused or contributed to by Midea HVAC's negligence, breach of contract or wrongful act or omission.

18. EXPORT AND RESALE

18.1 Australian Market

Unless otherwise agreed in writing, Goods supplied under the Agreement are intended for use in Australia.

18.2 Export

Where the Customer exports Goods outside Australia, the Customer is responsible for ensuring compliance with applicable laws, technical requirements, import requirements and regulations at the destination.

18.3 Warranty Outside Australia

Unless expressly agreed otherwise in writing, Midea HVAC's Warranty Terms and Services apply only to Goods installed at Project Sites in Australia.

18.4 Resale Representations

The Customer must not make any false, misleading or unauthorised representation concerning Midea HVAC or the Goods.

19. ANTI-BRIBERY AND COMPLIANCE

19.1 Anti-Bribery

In connection with the Agreement or resale of the Goods, the Customer must not directly or indirectly offer, promise, give, request or accept:

- (a) any bribe;
- (b) secret commission;
- (c) kickback; or
- (d) other improper payment or benefit.

19.2 Government Officials

The Customer must not provide money or anything of value to any government official, public authority, political party, candidate for public office or any other person for the purpose of improperly influencing a decision or obtaining an improper advantage.

19.3 Compliance with Law

Each party must comply with applicable anti-bribery, anti-corruption, fraud and trade compliance laws in connection with the Agreement.



20. NOISE, VIBRATION AND SYSTEM PERFORMANCE

20.1 Technical Information

Any noise, vibration, capacity, efficiency, airflow, sound pressure, sound power, energy consumption or other performance information supplied by Midea HVAC is based on specified testing or reference conditions and does not constitute a guarantee of whole-of-system performance unless expressly agreed in writing.

20.2 Site Conditions

Actual system performance may be affected by matters outside Midea HVAC's control, including:

- (a) equipment selection;
- (b) system design;
- (c) installation;
- (d) building structure;
- (e) acoustics;
- (f) ambient conditions;
- (g) equipment location;
- (h) ductwork and pipework;
- (i) vibration isolation; and
- (j) maintenance and operation.

20.3 Consultant and Design Responsibility

Unless Midea HVAC has expressly agreed in writing to undertake responsibility for system design, acoustic design or engineering design, the Customer remains responsible for ensuring that the overall system and installation satisfy Project-specific requirements.

20.4 Third-Party Equipment and Interfaces

Unless expressly agreed otherwise, Midea HVAC is not responsible for the performance, compatibility or integration of third-party equipment, systems or services not supplied or controlled by Midea HVAC.

21. TERMINATION AND SUSPENSION

21.1 Material Breach

Either party may terminate an Agreement by written notice if the other party materially breaches the Agreement and fails to remedy the breach within thirty (30) days after receiving written notice requiring it to do so, where the breach is capable of remedy.

21.2 Insolvency

To the extent permitted by applicable law, either party may terminate the Agreement if an Insolvency Event occurs in relation to the other party.

Where an Insolvency Event occurs in relation to the Customer, Midea HVAC may, to the extent permitted by applicable law, immediately suspend or cease further supply, require payment in advance or on a cash-on-delivery basis, withdraw or reduce any credit facility, and take any steps reasonably necessary to protect its rights in Goods and any security interest.

21.3 Notice of Insolvency Event

The Customer must notify Midea HVAC in writing as soon as reasonably practicable, and in any event within two (2) Business Days, after becoming aware of any Insolvency Event affecting the Customer or taking any step that may reasonably lead to such an event, including the appointment of an administrator, liquidator, receiver or controller, the commencement of a winding-up application, the entry into an arrangement with creditors, or any substantially similar event.

The Customer must also promptly provide Midea HVAC with reasonable details of the relevant Insolvency Event, including the identity and contact details of any administrator, liquidator, receiver or other external administrator appointed in relation to the Customer.

21.4 Suspension by Midea HVAC

Midea HVAC may suspend supply of Goods or Services where:

- (a) the Customer fails to pay an undisputed amount when due;
- (b) the Customer exceeds its approved credit limit;
- (c) the Customer materially fails to provide required access, information or cooperation;
- (d) continued performance would expose Midea HVAC personnel to an unsafe condition; or
- (e) continued supply would cause Midea HVAC to breach applicable law.

21.5 Accrued Rights

Termination does not affect rights and obligations accrued before termination.

22. CONFIDENTIALITY

22.1 Confidential Information

Each party must keep confidential all non-public commercial, financial, technical and proprietary information received from the other party in connection with the Agreement.

22.2 Permitted Disclosure

A party may disclose Confidential Information:

- (a) to its employees, professional advisers, insurers, auditors and contractors who need the information and are subject to confidentiality obligations;
- (b) where required by law, court order or regulatory authority; or
- (c) with the other party's prior written consent.

22.3 Exclusions

Confidentiality obligations do not apply to information that:

- (a) is or becomes publicly available other than through breach of the Agreement;
- (b) was lawfully known to the receiving party before disclosure; or
- (c) is independently developed without use of the other party's Confidential Information.

23. INTELLECTUAL PROPERTY

23.1 Ownership

All intellectual property rights in or relating to:

- (a) Midea HVAC Goods;
- (b) technical documentation;
- (c) drawings;
- (d) software;
- (e) specifications;
- (f) manuals;
- (g) designs; and
- (h) proprietary materials

remain owned by Midea HVAC or the applicable rights holder.

23.2 Limited Use

The Customer may use documentation supplied by Midea HVAC only to the extent reasonably necessary for installation, operation, maintenance, servicing or resale of the relevant Goods.

23.3 Restrictions

The Customer must not reproduce, modify, reverse engineer, distribute or disclose Midea HVAC proprietary materials except:

- (a) with Midea HVAC's written consent; or
- (b) as permitted by law.

24. DISPUTE RESOLUTION

24.1 Notice of Dispute

Before commencing court proceedings, a party claiming that a dispute has arisen under or in connection with the Agreement must give the other party written notice describing the dispute.

24.2 Good Faith Negotiation

Within fourteen (14) days after receipt of a dispute notice, representatives of the parties with authority to resolve the dispute must meet or otherwise communicate in good faith and use reasonable efforts to resolve the dispute.

24.3 Further Proceedings

If the dispute has not been resolved within twenty-one (21) days after the dispute notice, either party may commence court proceedings.

24.4 Urgent Relief

Nothing in this clause prevents either party from seeking urgent interlocutory, injunctive or other protective relief.

24.5 Payment During Dispute

Unless the dispute concerns the amount itself, the Customer must continue paying undisputed amounts when due.

25. FORCE MAJEURE

25.1 Force Majeure Event

Neither party is liable for delay or failure to perform an obligation, other than an obligation to pay money already due, to the extent caused by circumstances beyond that party's reasonable control.

Such circumstances may include:

- (a) natural disaster, fire, flood, storm or extreme weather;
- (b) epidemic or pandemic;
- (c) war, terrorism or civil unrest;
- (d) governmental action;
- (e) industrial disputes not limited to the affected party's own workforce;
- (f) factory shutdown;
- (g) port congestion or transportation disruption;
- (h) supply chain interruption;
- (i) shortage of components, materials, labour, electricity or transport;
- (j) embargo or trade restriction; and
- (k) changes in law or regulatory requirements.

25.2 Notification and Mitigation

The affected party must notify the other party within a reasonable time and use reasonable efforts to mitigate the impact of the force majeure event.

25.3 Extension of Time

The time for performance of any affected obligation will be extended for the period reasonably necessary as a result of the force majeure event.

25.4 Extended Force Majeure

If a force majeure event materially prevents performance for more than **sixty (60) consecutive days**, either party may terminate the affected Agreement by written notice.

Termination under this clause does not affect accrued rights or amounts already due.

26. MISCELLANEOUS

26.1 Entire Agreement

The Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes prior discussions, representations, agreements or communications concerning that subject matter. Subject to applicable law, no oral representation or agreement forms part of the Agreement unless confirmed in writing by Midea HVAC.

Nothing in this clause excludes liability for fraud, misleading or deceptive conduct or any other liability that cannot lawfully be excluded.

26.2 Waiver

Failure or delay by a party to exercise a right does not constitute a waiver.

A waiver is effective only if given in writing.

26.3 Severability

If a provision of the Agreement is illegal, invalid or unenforceable, it must be read down to the extent necessary to make it valid and enforceable.

If it cannot be read down, it will be severed without affecting the remaining provisions.

26.4 Notices

A notice under the Agreement must be in writing and may be delivered personally, by post or by email to the contact details specified in the relevant Agreement documentation.

26.5 Electronic Communications

The parties agree that Orders, Confirmations of Order, invoices, notices and other documents may be issued electronically.

26.6 Assignment

The Customer must not assign or transfer its rights or obligations under the Agreement without Midea HVAC's prior written consent.

Midea HVAC may assign or transfer its rights to a related body corporate or as part of a genuine corporate restructuring or sale of business, subject to applicable law.

26.7 Joint and Several Liability

Where the Customer comprises more than one person or entity, the obligations and liabilities of those persons or entities are joint and several.

26.8 Cumulative Rights

Rights and remedies under the Agreement are cumulative and do not exclude rights or remedies available under law.

26.9 Survival

Any provision which by its nature is intended to survive termination or expiry of the Agreement will continue to apply, including provisions concerning payment, title and security interests, limitation of liability, indemnity, confidentiality, intellectual property and accrued rights.

27. GOVERNING LAW AND JURISDICTION

27.1 Governing Law

The Agreement is governed by the laws of **Victoria, Australia**.

27.2 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of Victoria and courts competent to hear appeals from those courts.

Midea HVAC & Energy Australia

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