

CONDITIONS OF SALE – RESIDENTIAL

These Conditions of Sale apply to the sale and supply of residential HVAC products and related goods by Midea HVAC & Energy Australia (Midea HVAC).

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 sale and supply of Products and Services, comprising:

- (a) these Conditions of Sale;
- (b) any Confirmation of Order issued by Midea HVAC;
- (c) any Purchase Order accepted by Midea HVAC; and
- (d) any written variation or additional terms agreed in accordance with clause 2.

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 the State or Territory in which the relevant Midea HVAC office is located.

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

Confirmation of Order means a written confirmation issued by Midea HVAC confirming acceptance of an order and setting out the Products, quantities, Charges and any other applicable terms.

Customer means the person or entity purchasing Products or Services from Midea HVAC, as identified in the relevant Confirmation of Order, invoice, quotation or other transaction document, and includes its permitted successors and assigns.

Equipment means any equipment, goods, components, spare parts or accessories supplied by Midea HVAC under the Agreement and is included within the meaning of Products.

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 becomes insolvent, bankrupt, enters liquidation or administration, has a receiver or controller appointed,

enters into an arrangement with creditors, or is subject to any substantially similar event.

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

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

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

Purchase Order means any written or electronic order submitted by the Customer requesting the purchase of Products or Services.

Quotation means a quotation, proposal or pricing document issued by Midea HVAC in relation to Products or Services.

Services means any installation, commissioning, inspection, repair, maintenance, technical or other services expressly agreed in writing to be provided by Midea HVAC.

Trade Customer means a Customer purchasing Products:

- (a) for resale or supply to another person;
- (b) for use in connection with a business, trade or profession; or
- (c) otherwise than principally for personal, domestic or household use or consumption.

Warranty Terms means Midea HVAC's applicable written warranty terms and conditions for the relevant Products as published, supplied or otherwise made available by Midea HVAC from time to time.

References to the singular include the plural and vice versa. References to a person include an individual, company, partnership, trust, government body or other legal entity.

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

2. ORDER OF PRECEDENCE AND VARIATION

2.1 Order of Precedence

If there is any inconsistency between documents forming part of the Agreement, the following order of precedence applies, with the document listed earlier prevailing to the extent of the inconsistency:

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

2.2 Customer Terms

Unless expressly accepted by Midea HVAC in writing, any terms contained in or accompanying a Customer's Purchase Order, procurement system, correspondence or other document do not form part of the Agreement.

2.3 Variations

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

3. QUOTATIONS AND FORMATION OF AGREEMENT

3.1 Quotations

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

Midea HVAC may withdraw or amend any such information before an Agreement is formed.

3.2 Purchase Orders

A Purchase Order submitted by the Customer constitutes an offer by the Customer to purchase the Products or Services specified in that Purchase Order.

Midea HVAC is not obliged to accept any Purchase Order.

3.3 Acceptance

An Agreement is formed when Midea HVAC:

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

whichever occurs first.

3.4 Availability

All orders are subject to Product availability.

Midea HVAC may decline or modify an order where Products are unavailable, discontinued or subject to supply constraints, provided that the Customer is notified as soon as reasonably practicable.

4. CANCELLATION OF ORDERS

4.1 Cancellation by Customer

Once an order has been accepted by Midea HVAC, the Customer may not cancel or vary that order without Midea HVAC's prior written consent.

4.2 Cancellation Costs

Where Midea HVAC agrees to a cancellation or variation, Midea HVAC may require the Customer to pay reasonable costs incurred as a result, including:

- (a) administrative and handling costs;
- (b) freight and storage costs;
- (c) costs associated with specially ordered or customised Products; and
- (d) any non-refundable amounts paid or payable to third-party suppliers.

4.3 Consumer Rights

Nothing in this clause limits any right of the Customer under the Australian Consumer Law that cannot lawfully be excluded, restricted or modified.

5. RETURNS AND NON-CONFORMING PRODUCTS

5.1 Inspection

The Customer should inspect the Products as soon as reasonably practicable following delivery.

5.2 Incorrect or Non-Conforming Delivery

If Products delivered have an apparent discrepancy, visible damage or do not correspond with the Products ordered, the Customer should notify Midea HVAC within seven (7) days after delivery.

This clause does not apply to latent defects or rights arising under the Australian Consumer Law or applicable Warranty Terms.

5.3 Investigation

The Customer must provide Midea HVAC with reasonable access and cooperation to investigate any alleged incorrect, damaged or non-conforming Products.

5.4 Returns

Products must not be returned without Midea HVAC's prior authorisation and must be returned in accordance with Midea HVAC's applicable returns procedure.

A change of mind, incorrect product selection or ordering error is a discretionary return.

Unless otherwise agreed by Midea HVAC, Products accepted for discretionary return must be:

- (a) unused and uninstalled;
- (b) in saleable condition;
- (c) in their original packaging; and
- (d) accompanied by proof of purchase and any return authorisation required by Midea HVAC.

Midea HVAC may charge a reasonable restocking or handling fee for discretionary returns where permitted by law.

5.5 Exclusions

Midea HVAC may refuse a discretionary return of Products that:

- (a) were specially ordered, customised or manufactured for the Customer;
- (b) have been installed, used, damaged or altered after delivery;
- (c) are incomplete or not in their original packaging; or
- (d) are otherwise unsuitable for resale.

This clause does not limit any rights or remedies available under the Australian Consumer Law.

6. PRODUCT INFORMATION, SPECIFICATIONS AND PERFORMANCE

6.1 Product Information

Unless expressly agreed otherwise in writing, specifications, drawings, illustrations, dimensions, performance data, technical information and other Product information supplied by Midea HVAC are provided for general information and Product selection purposes.

The Customer must not rely on preliminary or general Product information as construction documentation unless Midea HVAC expressly confirms otherwise in writing.

6.2 Product Changes

Midea HVAC may make reasonable modifications to Product specifications, components, appearance or design from time to time. Where a material modification affects an accepted order and materially affects the functionality, performance or agreed specification of the Products, Midea HVAC will notify the Customer and the Customer may cancel the affected order without cancellation charge.



6.3 Performance

Any performance figures provided by Midea HVAC are based on specified or standard test conditions.

Actual Product performance may vary depending on installation, building, environmental, operating and other site-specific conditions.

6.4 Product Selection

Unless Midea HVAC has expressly agreed in writing to undertake system design or Product selection, the Customer is responsible for ensuring that the Products selected are suitable for the intended application.

6.5 Installation and Regulatory Compliance

Products must be installed, commissioned, serviced and maintained by appropriately qualified and licensed persons in accordance with:

- (a) applicable laws and regulations;
- (b) applicable Australian Standards;
- (c) relevant building, electrical and refrigeration requirements; and
- (d) Midea HVAC's applicable installation and technical instructions.

Where Midea HVAC does not perform the installation, the Customer is responsible for ensuring that the installation and installed system comply with applicable laws, standards and regulatory requirements.

7. PRICES, CHARGES AND PAYMENT

7.1 Prices

Unless otherwise stated in writing:

- (a) prices are in Australian dollars;
- (b) GST will be charged where applicable; and
- (c) prices are subject to the terms specified in the relevant Quotation or Confirmation of Order.

7.2 Additional Charges

Unless expressly included in the quoted price, the Customer is responsible for reasonable additional costs arising from freight, special delivery, lifting or crantage, storage, redelivery, installation, commissioning or third-party services.

7.3 Credit Accounts

Credit facilities are available only where:

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

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.

7.4 Payment Terms

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

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

7.5 Overdue Amounts

If an amount is not paid when due, Midea HVAC may, subject to applicable law:

- (a) suspend further deliveries;
- (b) place further orders on hold;
- (c) withdraw or suspend credit facilities;
- (d) require payment in advance for future orders; and
- (e) recover reasonable costs incurred in collecting overdue amounts.

Midea HVAC may 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.

7.6 No Set-Off

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

8. TITLE AND SECURITY INTEREST

8.1 Retention of Title

Legal and equitable title to Products does not pass to the Customer until Midea HVAC has received payment in full of all amounts owing by the Customer to Midea HVAC in respect of those Products and any other amounts then due and payable.

8.2 Risk Distinguished from Title

Retention of title under this clause does not affect the transfer of risk under clause 9.

8.3 Customer Obligations Before Title Passes

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

- (a) keep the Products identifiable as Products supplied by Midea HVAC;
- (b) keep the Products in good condition;
- (c) not create or permit any security interest or other interest in the Products that may materially prejudice Midea HVAC's rights, except as permitted under this Agreement or by law; and
- (d) where the Customer is a Trade Customer, holds any proceeds from resale separately and subject to Midea HVAC's rights under applicable law, to the extent required or permitted by law.

8.4 PPSA

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

The Customer must reasonably assist Midea HVAC to:

- (a) register, perfect, maintain or enforce any security interest;
- (b) provide information and documentation reasonably required for PPSA purposes, and ensure that such information and documentation is accurate and complete; and
- (c) promptly notify Midea HVAC of any change to information relevant to a registration.

8.5 Recovery of Products

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

In relation to Trade Customers, and subject to applicable law, the Customer authorises Midea HVAC or its representatives to enter premises where such Products are reasonably believed to be located for the purpose of recovering them, provided Midea HVAC acts reasonably and complies with applicable law.

9. DELIVERY, RISK AND ACCEPTANCE

9.1 Delivery Dates

Any delivery date or timeframe advised by Midea HVAC is an estimate only unless Midea HVAC expressly agrees in writing that a delivery date is fixed.

Midea HVAC will use reasonable efforts to meet estimated delivery dates but is not liable for delay to the extent permitted by law where the delay is outside Midea HVAC's reasonable control.

9.2 Partial Deliveries

Midea HVAC may make delivery in installments where reasonably necessary and may invoice each instalment separately.

9.3 Delivery Site & Special Delivery Requirements

The Customer must ensure that the nominated delivery location is safe, reasonably accessible and suitable for the relevant delivery vehicle and unloading requirements. Any special delivery, lifting or access requirements may be charged separately unless expressly included in the agreed price.

9.5 Failed Delivery

If delivery cannot be completed because of an act or omission of the Customer, including inadequate access, absence of required unloading equipment or refusal or inability to accept delivery, Midea HVAC may charge the Customer reasonable costs associated with:

- (a) failed delivery;
- (b) redelivery;
- (c) storage; and
- (d) handling.

9.6 Risk

Subject to any rights that cannot be excluded under the Australian Consumer Law, risk in the Products passes to the Customer upon delivery to the Customer or its nominated delivery location.

Where the Customer arranges collection or appoints its own carrier, risk passes when the Products are collected by or released to the Customer or its carrier.

9.7 Acceptance

Acceptance of Products does not affect any statutory guarantee or other right that the Customer may have under the Australian Consumer Law.

10. AUSTRALIAN CONSUMER LAW AND NON-EXCLUDABLE RIGHTS

10.1 Australian Consumer Law

Products and Services supplied by Midea HVAC may come with guarantees that cannot be excluded under the Australian Consumer Law.

Nothing in the Agreement excludes, restricts or modifies any guarantee, condition, warranty, right or remedy imposed or conferred by law where it would be unlawful to do so.

10.2 Consumer Guarantees

Where the Customer is a "consumer" for the purposes of the Australian Consumer Law, the Customer may be entitled to statutory remedies where Products or Services fail to comply with applicable consumer guarantees.

These rights exist independently of, and are in addition to, any express manufacturer's warranty provided by Midea HVAC.

10.3 Limitation Where Permitted

Where:

- (a) Products 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 to:

For Products:

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

For Services:

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

This clause applies only to the extent permitted by law.

11. WARRANTY

11.1 Warranty

In addition to any rights and remedies available under the Australian Consumer Law, eligible Products may be covered by Midea HVAC's applicable express manufacturer's warranty.

The scope, duration, exclusions, claim procedure and other conditions of that warranty are set out in the applicable Warranty Terms.

11.2 Separate Statutory Rights

Midea HVAC's express warranty is additional to, and does not replace or limit, any rights or remedies that cannot be excluded under the Australian Consumer Law.

11.3 Installation and Maintenance

Where permitted by law and subject to the applicable Warranty Terms, warranty coverage may be affected where a defect or failure is caused by:

- (a) incorrect installation;
- (b) installation by an unqualified or unlicensed person where licensing is required;
- (c) misuse, abuse or accidental damage;
- (d) unauthorised modification or repair;
- (e) failure to maintain the Product appropriately;
- (f) use contrary to Midea HVAC's instructions; or
- (g) external causes not attributable to the Product.

Nothing in this clause excludes rights available under the Australian Consumer Law.

12. LIMITATION OF LIABILITY

12.1 Non-Excludable Liability

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

12.2 Indirect Loss

Subject to clause 12.1 and to the maximum extent permitted by law, Midea HVAC is not liable to a Trade Customer for indirect, incidental, special or consequential loss arising out of or in connection with the Agreement.

12.3 Business Losses

Subject to clause 12.1 and to the maximum extent permitted by law, Midea HVAC is not liable to a Trade Customer for:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business opportunity;
- (d) loss of anticipated savings;
- (e) loss of production; or
- (f) business interruption,

except to the extent such liability cannot lawfully be excluded.

12.4 Liability Cap for Trade Customers

Subject to clause 12.1, where the Customer is a Trade Customer and to the extent permitted by law, Midea HVAC's aggregate liability arising out of or in connection with a particular Agreement will not exceed the total amount paid or payable by the Customer for the Products or Services giving rise to the claim.

12.5 Exclusions from Liability Cap

The limitation in clause 12.4 does not apply to liability to the extent arising from:

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

13. TERMINATION AND SUSPENSION

13.1 Termination for Breach

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

13.2 Insolvency

To the extent permitted by applicable law, a 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 Products and any security interest.

13.3 Notice of Insolvency Event

The Customer must notify MD 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 MD 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.

13.4 Suspension by Midea HVAC

Subject to applicable law, Midea HVAC may suspend supply where:

- (a) the Customer fails to pay an undisputed amount when due;
- (b) the Customer exceeds an approved credit limit;
- (c) Midea HVAC reasonably believes, on reasonable grounds, that the Customer may be unable to meet its payment obligations; or
- (d) continued supply would cause Midea HVAC to breach applicable law.

13.5 Accrued Rights

Termination does not affect any rights or liabilities accrued before termination.

Amounts properly due and payable before termination remain payable.

14. FORCE MAJEURE

14.1 Force Majeure Events

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 natural disasters, fire, flood, extreme weather, epidemic or pandemic, war, terrorism, civil unrest, governmental action, industrial disputes, transportation or port disruption, supply chain interruption, shortages of materials or energy, import or export restrictions, factory shutdowns and changes in law or regulatory requirements.

14.2 Notification

The affected party must notify the other party within a reasonable time after becoming aware of a material force majeure event and use reasonable efforts to mitigate its effects.

14.3 Extension of Time

The time for performance of an affected obligation will be extended for the period reasonably necessary due to the force majeure event.

14.4 Extended Force Majeure

If a force majeure event materially prevents performance for more than **60 consecutive days**, either party may terminate the affected Agreement by written notice without liability for the termination itself.

This does not affect accrued payment obligations or rights arising before termination.

15. COMPLIANCE WITH LAWS

15.1 General Compliance

Each party must comply with applicable laws and regulations relevant to its obligations under the Agreement.

15.2 Customer Responsibilities

Without limiting clause 15.1, the Customer is responsible for ensuring that any resale, installation, commissioning, servicing or use of the Products undertaken by or on behalf of the Customer complies with applicable:

- (a) licensing requirements;
- (b) electrical and refrigeration requirements;
- (c) workplace health and safety requirements;
- (d) environmental requirements;
- (e) building requirements; and
- (f) Australian Standards and other mandatory technical standards.

15.3 No Unauthorised Representations

A Trade Customer must not make any representation, warranty or commitment concerning Midea HVAC or the Products that:

- (a) is false or misleading;
- (b) is inconsistent with information authorised by Midea HVAC; or
- (c) purports to bind Midea HVAC without Midea HVAC's written authority.

The Customer must ensure that its employees, agents and resellers comply with this clause.



15.4 Product Integrity

A Trade Customer must not alter, modify, remove or obscure any Product, serial number, safety label, compliance label or other identification or information supplied with the Product, except with Midea HVAC's prior written approval or as permitted by law.

16. ANTI-BRIBERY AND ETHICAL CONDUCT

16.1 Anti-Bribery

In connection with the purchase, resale or supply of Midea HVAC Products, a Trade Customer must not directly or indirectly offer, promise, give, request or accept any bribe, secret commission, kickback or other improper benefit.

16.2 Government Officials

Without limiting clause 16.1, a Trade Customer must not provide money or anything of value to any government official, public authority, political party, candidate for public office or other person for the purpose of improperly influencing a decision or obtaining an improper business advantage.

16.3 Compliance

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

17. MISCELLANEOUS

17.1 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 or misleading or deceptive conduct or otherwise excludes any right that cannot lawfully be excluded.

17.2 Waiver

A failure or delay by a party to exercise a right under the Agreement does not constitute a waiver of that right.

A waiver is effective only if given in writing.

17.3 Assignment

The Customer must not assign or transfer its rights or obligations under the Agreement without Midea HVAC's prior written consent, such consent not to be unreasonably withheld where applicable.

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

17.4 Severability

If any provision of the Agreement is invalid, illegal or unenforceable, that provision will be severed or read down to the minimum extent necessary, and the remaining provisions will continue in effect.

17.5 Notices

Any notice under the Agreement must be in writing and may be delivered personally, by post or by email to the address or email address specified in the relevant Agreement documentation or subsequently notified in writing.

17.6 Electronic Communications

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

17.7 Intellectual Property

All intellectual property rights in Midea HVAC's drawings, specifications, technical documents, manuals, software, trademarks, marketing materials and other proprietary materials remain the property of Midea HVAC or the relevant rights holder.

The Customer must not reproduce, modify or disclose such materials except:

- (a) as reasonably necessary for the proper installation, operation, servicing or resale of the Products;
- (b) with Midea HVAC's prior written consent; or
- (c) as otherwise permitted by law.

17.8 Survival

Any provision which by its nature is intended to survive termination or expiry of the Agreement will continue to apply, including provisions concerning:

- (a) payment obligations;
- (b) title and security interests;
- (c) intellectual property;
- (d) limitation of liability; and
- (e) accrued rights.

18. GOVERNING LAW AND JURISDICTION

18.1 Governing Law

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

18.2 Jurisdiction

Subject to any rights available under applicable consumer law, 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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