



Air Conditioning Terms and conditions of trade

These air conditioning terms and conditions of trade apply to the supply of all air-conditioning (heating and cooling) goods and associated installation services by BSR Franchising Pty Ltd ACN 122 556 094 trading as Camberwell Air to any person.

1 Acknowledgement

The Customer's placement of an order to purchase Products from Camberwell Air or acceptance of Camberwell Air's quote for Products constitutes acceptance of these Terms & Conditions. These Terms & Conditions supersede and are not modified by any conditions of sale, including payment terms, used by or appearing on any document that the Customer may provide, except for any executed Agreement between Camberwell Air and the Customer.

2 Definitions

In these Terms & Conditions the following definitions apply whether or not the word or phrase is capitalised:

Approved Installer means a licensed installer engaged by Camberwell Air to perform Installation Services

Australian Consumer Law means the Competition and Consumer Act 2010 (Cth) and other similar state or territory laws as applicable to the Products.

Camberwell Air means BSR Franchising Pty Ltd ACN 122 556 094 trading as Camberwell Air.

Customer means any person or entity that places an Order.

Customer Site means the physical location where the Customer has directed Camberwell Air to install the Goods, as specified on the relevant order or invoice.

Delivery means:

- (i) In the case of Goods, upon delivery to the Customer or its agent or to a transport company nominated by the Customer.
- (ii) In the case of Installation Services, upon completion of the services.

Goods means air-conditioning (heating and cooling) goods including units and all associated refrigeration piping, ducting and other equipment and accessories.

Installation Services means all services associated with installing the Goods at the Customer Site.

Order means an order to purchase Products which must be in writing. For clarity a quote is not an order unless it has been accepted by the Customer in writing or by payment of a deposit.

Products means Goods or Installation Services, or both as the case requires.

Terms and Conditions means these air conditioning terms and conditions of trade.

3 Prices

The Customer agrees to pay Camberwell Air the prices for the Products specified in the Order. The Customer acknowledges that quotes for Installation Services are estimates only, and any variances due to unforeseen circumstances may result in a variation to the quote.

4 Fees, GST and other taxes

The Customer must pay Camberwell Air goods and services tax and any other taxes, duties, fees & levies relating to the Products supplied (not including income related taxes or employee related taxes). The amount that the Customer owes Camberwell Air will be stated in an invoice to the Customer.

5 Quotes and Ordering

Camberwell Air reserves the right to cancel, or withdraw a quote or cancel an order at any time, even if it has been accepted by the Customer. Payment of a deposit by the Customer is not deemed acceptance of a quote or order. If Camberwell Air rejects an order any deposit will be refunded.

6 Payment

- (a) The Customer shall pay in full for all Goods, plus 25% of the quoted Installation Services fees upon booking the installation date.
- (b) Unless otherwise agreed or required by Camberwell Air, the Customer must make payment of the balance of all amounts on supply of the Products (completion of the Installation Services).
- (c) All payments made by credit card may incur a surcharge equivalent to the fees and costs incurred by Camberwell Air for credit card transactions.
- (d) If the Customer fails to make payment in accordance with these Terms & Conditions, Camberwell Air shall be entitled to:
 - (i) require that the Customer pay for any further Products in full at the time the Products are ordered;
 - (ii) claim from the Customer all costs, expenses and charges incurred in recovering payment including, but not limited to, any mercantile agent's costs and legal costs and disbursements on a solicitor-client full indemnity basis;
 - (iii) cease any further deliveries to and Installation Services for the Customer and terminate without liability any agreement in relation to Products that have not been delivered to the Customer;
 - (iv) preclude the Customer from participating in special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until its accounts are no longer overdue;

- (v) charge interest on overdue accounts at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus a monthly an additional an account keeping fee at the rate of two per centum (2%) per month on a cumulative basis calculated on a day to day basis on any monies due but unpaid to Camberwell Air. Such amounts will be computed from the due date for payment. The parties agree that such amounts are not a penalty but are a true measure of damages incurred by Camberwell Air; and
- (vi) exercise any of the rights set out in clause 8 below or that are otherwise available to Camberwell Air at law.

7 Set off

If for any reason Camberwell Air owes the Customer any money, Camberwell Air may set off and deduct from the money owed by Camberwell Air any amount due and owing by the Customer to Camberwell Air. The Customer shall not be entitled to set off or withhold payment of any account by reason of any account query, claim, dispute or set off, unless otherwise agreed in writing by Camberwell Air.

8 Delivery & Risk

- (a) Camberwell Air's delivery obligation with respect to any Goods is discharged on arrival of the Products at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice, whoever occurs first. The Customer shall unload the Goods upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the Products, Camberwell Air shall be entitled to charge a fee for any delay experienced or for the storage of the Goods which shall be at the risk and cost of the Customer. Camberwell Air may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms & Conditions.
- (b) The risk in the Products shall pass to the Customer on delivery.
- (c) The Customer shall examine the Products immediately after delivery and Camberwell Air shall not be liable for any incorrect delivery, shortage, defect or damage unless Camberwell Air receives details in writing within seven (7) days of the date of delivery of the Products.
- (d) Subject to clause 8(c), acceptance of the Products shall be deemed for all purposes to have taken place when delivery has occurred.
- (e) Third party deliveries of the Product may be arranged at the request of the Customer subject to the acceptance of Camberwell Air. The cost of such delivery shall be to the Customer's account and the delivery charges will be detailed separately on the sales invoice. Camberwell Air is entitled to charge a fee for delivery.
- (f) Delivery and installation times agreed to or notified by Camberwell Air are estimates only and Camberwell Air may vary such delivery or installation times without notice. The Customer is not entitled to terminate its order or this Agreement with Camberwell Air as a result of delivery or installation times so varied.

9 Legal & Equitable Title

- (a) Ownership of the Products remains with Camberwell Air until the Customer has paid all indebtedness on an all monies basis to Camberwell Air on any account whatsoever.
- (b) The Customer agrees that it is in possession of the Products solely as a bailee for Camberwell Air until all payments owing to Camberwell Air have been made in full on an ongoing basis and until such payment:
 - (i) the Customer shall be fully responsible for any loss or damage to the Products whatsoever and howsoever caused following delivery;
 - (ii) the Customer shall store the Products separately from its own goods and those of any other party and in a manner which clearly identifies the Products, whether as separate chattels or as components, as the property of Camberwell Air; and
 - (iii) the Customer shall maintain records of Products owned by Camberwell Air identifying them as Camberwell Air's property. The Customer shall allow Camberwell Air to inspect these records and the Products upon request.
- (c) Camberwell Air licenses the Customer to install the Products (or to engage an Approved Installer to stall the Products on its behalf). If the Products are affixed to other materials, the totality thereof shall be the sole and exclusive property of Camberwell Air until full payment has been made to Camberwell Air.
- (d) The Customer shall be at liberty to sell the Products in the ordinary course of its business, subject to the condition that until payment has been made to Camberwell Air, the Customer shall sell as an agent and bailee for Camberwell Air.
- (e) Camberwell Air reserves the following rights in relation to the Products until all amounts owed by the Customer to Camberwell Air are fully paid:
 - (i) to demand the Customer return the Products to Camberwell Air;
 - (ii) to enter the Customer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products;
 - (iii) to permit the manufacturer or importer to enter the Customer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
 - (iv) to keep or resell any of the Products repossessed pursuant to clauses 9(e)(i) to 9(e)(iii).
- (f) If the Products are sold by the Customer, the Customer must hold in trust such part of the proceeds of any such sales as represent the invoice price of the Product sold as the beneficial property of Camberwell Air and must pay such amount to Camberwell Air upon request. In such circumstances, Camberwell Air is entitled to maintain an action against the Customer for the purchase price of the Product.
- (g) If payment for the Product is not made by the Customer by the due date specified by Camberwell Air to the Customer, then the Customer shall return the Products to Camberwell Air upon demand. If the Customer does not return the Product to Camberwell Air within 48 hours of receipt of such demand, Camberwell Air or its nominated agent shall be entitled to enter the premises at any time to do all things necessary to recover the Product. The Customer shall be liable for all costs associated with the exercise by Camberwell Air of its rights under this clause and all such costs shall be payable by the Customer upon Camberwell Air's demand.

10 Cancellation of Orders, Returns and claims

- (a) Camberwell Air is not obliged to accept for return or exchange any Products, except as required by law or by these Terms & Conditions.

- (b) Any variation or cancellation of any order, must be agreed in writing, and is in the absolute discretion of Camberwell Air. If the Customer cancels its order, the Customer must indemnify Camberwell Air against all reasonable and direct losses arising from the cancellation.
- (c) If Camberwell Air elects to take back Product it must be in an as new and saleable condition in the original boxing, and a re-stocking fee of 25% of the invoice value will apply plus any return delivery fees. To the extent permitted by law, Installation Services will not be refundable.
- (d) Except where the Australian Consumer Law applies:
 - a. all requests for returns and claims relating to defective Goods are to be made with the manufacturer directly and in accordance with their claims and returns policies; and
 - b. all claims relating to Installation Services are to be made with the Approved Installer directly and Camberwell Air shall not in any way be liable with respect to such claims.

11 Default

- (a) The Customer will be in default under these Terms and Conditions if:
 - (i) the Customer breaches these Terms and Condition or any other agreement with Camberwell Air for the supply of products;
 - (ii) payment for the Products has not been received by Camberwell Air by the due date for payment;
 - (iii) the Customer, as an individual, commits an act of bankruptcy or become insolvent;
 - (iv) the Customer being a body corporate ceases to carry on its business or becomes insolvent or an order is made, or a resolution passed for its winding up, whether voluntary or otherwise, or if a receiver, receiver and manager, or administrator is appointed to the whole, or any part of its assets;
 - (v) Camberwell Air determines the Customer's credit worthiness or its credit standing alters adversely.
- (b) If the Customer defaults, Camberwell Air may:
 - (i) cease any further deliveries to the Customer and cancel any order in relation to Products that have not been delivered to the Customer;
 - (ii) treat the agreement with the Customer as repudiated and sue for breach of contract or other remedies available to Camberwell Air;
 - (iii) refuse to supply any Products to the Customer;
 - (iv) claim the return of any Products in the Customer's possession where title has not passed to a consumer;
 - (v) without notice to the Customer withdraw or vary any credit Camberwell Air may have provided to the Customer; or
 - (vi) without notice to the Customer, make all monies owing to Camberwell Air on any account immediately due and payable.

12 Warranty

- (a) The Goods may be warranted by the manufacturer of the Goods against defective workmanship and materials and such warranty is subject to the terms stated in the warranty card attached to the Product.
- (b) The Installation Services are subject to the Customer Guarantee contained in Annexure A to this Agreement.
- (c) To the extent permitted by law all implied conditions and warranties are expressly excluded.

13 Limitation of liability

- (a) Nothing in these Terms & Conditions shall be read or applied so as to exclude, restrict or modify, or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.
- (b) To the extent permitted by law, Camberwell Air shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits howsoever arising from the supply of the Products or arising from any breach, default or negligence of Camberwell Air, including its employees and agents, in connection with the supply of the Products.
- (c) If the Customer is entitled to the benefit of any implied terms which cannot be excluded, Camberwell Air's liability shall be limited, at its option, in the case of a supply of goods to:
 - (i) the replacement of the Product or the supply of an equivalent or similar Product;
 - (ii) the payment of the costs of replacing the Products or acquiring the relevant Products;
 - (iii) the payment of the costs of having the Products repaired; or
 - (iv) the repair of the Product; and
 in the case of services to:
 - (v) the resupply of the services; or
 - (vi) the payment of the cost of having the services performed again.

14 Indemnity

To the extent permitted by law the Customer indemnifies Camberwell Air for all loss or damage arising from Customer's negligent act or omission relating to the Products or a breach of this Agreement. This clause survives termination or expiry of this Agreement.

15 Force Majeure

Camberwell Air shall not be held liable for failure to comply with these Terms & Conditions to the extent that Camberwell Air's performance is prevented or delayed because of circumstances outside of Camberwell Air's control. This includes but is not limited to unforeseen events such as pandemics, strikes, breakdown of machinery, adverse non foreseeable weather conditions, or action of government or a port authority.

16 Non Derogation

The rights, powers and remedies available to Camberwell Air under these Terms are in addition to and are not in derogation of Camberwell Air's powers, rights and remedies existing at common law, or given by any law at any time in force (including but not limited to the Building and Construction Industry Security of Payment Act 2002 (Vic)).

17 Governing Law

These Terms & Conditions are governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

18 Subcontracting

The Customer agrees that Camberwell Air may subcontract all or any part of the provision of the products.

19 Service of Documents

Service of any notices may be effected by forwarding same by pre-paid post which will be deemed to have been received four days after postage, or email which will be deemed to be received on successful transmission, to the last known address or email address of the parties. Any termination or legal notices to Camberwell Air must be sent to legal@bsrgroup.com.au.

20 Statement of Debt

A certificate signed by an authorised representative of Camberwell Air shall be prima facie evidence of the amount of the indebtedness of the Customer to Camberwell Air at that time.

21 Disputes

- (a) Any dispute between the parties arising from the performance of the provisions of these Terms & Conditions must be settled through friendly consultation by the parties. All disputes arising in respect of the Terms & Conditions which are not resolved within thirty (30) days of first arising will be finally settled under the Rules for Domestic Arbitration of the Australian Disputes Centre by a single arbitrator appointed in accordance with the said rules. The place of arbitration will be Melbourne, Victoria or via weblink. The procedural law applicable to the arbitration will be that of Victoria. The decision of the arbitrator will be final and binding for both parties.
- (b) During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these Terms & Conditions which are not in dispute.

22 Inconsistency with other agreements

These Terms & Conditions shall take priority over any other agreements, terms and conditions or process that may be in place or regulate arrangements between the Customer and Camberwell Air but shall not override the terms agreed to by the Customer in relation to Camberwell Air's Terms of Credit and Privacy Statement (if applicable).

ANNEXURE A

As a valued Camberwell Air customer we are pleased to offer you a 5 year installation Guarantee.

Covers: Your **5 Year Installation Guarantee** protects you against faults that may occur as a direct result of the installation on the original installation date and is in addition to and not in place of the Consumer Law Guarantees under the Australian Consumer Law. It covers all installation related areas of the system other than the actual air conditioning unit.

Does not cover:

- ✖ This Guarantee does not cover faults or defects in the air conditioning unit – please refer to relevant manufacturer's warranty.
- ✖ This Guarantee will be void if any work is carried out by technicians other than authorised by Camberwell Air authorised Technicians. It does not cover if any additional works are carried out by the manufacturer's warranty agent as a result of a manufacturing fault.
- ✖ Guarantee does not extend to damage caused by vermin, natural or weather events such as storms, floods, cyclones, fires, removal or works which may interfere or affect the installed units or components, normal maintenance costs, manufacturers faults with the unit, negligence, accidental or deliberate misuse or unauthorised alterations, electrical interference, power surges/voltage fluctuations, rust, corrosion, batteries or fuses.