

Airmaster Australia Pty Ltd – Terms & Conditions of Trade

1. Definitions

0.1. "AMA" means Airmaster Australia Pty Ltd ATF Airmaster Australia Unit Trust TIA Airmaster Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Airmaster Australia Pty Ltd ATF Airmaster Australia Unit Trust TIA Airmaster Australia Pty Ltd.

0.2. "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

0.3. "Goods" means all Goods or Services supplied by AMA to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

0.4. "Price" means the Price payable for the Goods as agreed between AMA and the Customer in accordance with clause 4 below.

2. Acceptance

2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2. These terms and conditions may only be amended with AMA's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AMA.

2.3. The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, AMA reserves the right to vary the Price with alternative Goods as per clause 4.2. AMA also reserves the right to halt all Services until such time as AMA and the Customer agree to such changes.

2.4. Where AMA gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Goods or Services then it is given in good faith and AMA shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.

3. Change in Control

3.1. The Customer shall give AMA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by AMA as a result of the Customer's failure to comply with this clause.

4. Price and Payment

4.1. At AMA's sole discretion the Price shall be either: (a) as indicated on any invoice provided by AMA to the Customer; or (b) the Price as at the date of delivery of the Goods according to AMA's current price list; or (c) AMA's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2. AMA reserves the right to change the Price if a variation to AMA's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to AMA in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, hidden pipes and wiring in walls or asbestos removal etc which are only discovered on commencement of the Services) will be charged for on the basis of AMA's quotation and will be shown as variations on the invoice.

4.3. At AMA's sole discretion a non-refundable deposit may be required.

4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date determined by AMA, which may be:

- (A) on delivery of the Goods;
- (B) before delivery of the Goods;
- (C) by way of instalments/progress payments in accordance with AMA's payment schedule;
- (D) the date which is thirty (30) days following the date of any invoice given to the Customer by AMA; or
- (E) the date specified on any invoice or other form as being the date for payment; or
- (F) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AMA.

4.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed between the Customer and AMA.

4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to AMA an amount equal to any GST AMA must pay for any supply by AMA under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

5.1. Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (A) the Customer or the Customer's nominated carrier takes possession of the Goods at AMA's address; or
- (B) AMA (or AMA's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

5.2. At AMA's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then AMA shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4. AMA may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5. Any time or date given by AMA to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and AMA will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

6.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, AMA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AMA is sufficient evidence of AMA's rights to receive the insurance proceeds without the need for any person dealing with AMA to make further enquiries.

6.3. If the Customer requests AMA to leave Goods outside AMA's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

6.4. Where AMA is required to install the Materials the Customer warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and AMA shall not be liable for any claims, demands, losses, damages, costs and expenses however caused or arising in connection with the installation and work incidental thereto.

7. Air-Conditioning Risk

7.1. Whilst the final location of any plant installation is at the discretion of the Customer, a charge will apply as a variation as per clause 4.2, if the Customer requests the unit to not be located other than as per quotation.

7.2. The Customer acknowledges and agrees that AMA does not guarantee any noise levels (external or internal) and AMA shall not be held liable for any loss, damages, or costs, however resulting from noise levels.

7.3. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.

7.4. The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.

7.5. In the event that the electrical wiring is required to be re-positioned or upgraded at the request of any third party contracted by the Customer, or to meet regulatory requirements, then the Customer agrees to notify AMA immediately upon any proposed changes. The Customer agrees to indemnify AMA against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 4.2.

8. Customer's Responsibilities

8.1. The Customer acknowledges that in the event asbestos or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify AMA against any costs incurred by AMA as a consequence of such discovery. Under no circumstances will AMA handle removal of asbestos product.

8.2. The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which AMA is required to install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which AMA based the quotation on and therefore, the Customer agrees to indemnify AMA against any costs incurred by AMA in rectifying such errors if required.

8.3. AMA is not responsible for the removal of rubbish from or clean-up of the building/constructions sites. This is the responsibility of the Customer or the Customer's agent.

9. Accuracy of Customers Plans

9.1. AMA shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, AMA accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

10. Access

10.1. The Customer shall ensure that AMA has clear and free access to the work site at all times to enable them to undertake the works. AMA shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of AMA.

11. Underground Locations or Hidden Services

11.1. Prior to AMA commencing any work the Customer must advise AMA of the precise location of all underground or hidden services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

11.2. Whilst AMA will take all care to avoid damage to any underground services the Customer agrees to indemnify AMA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Title

12.1. AMA and the Customer agree that ownership of the Goods shall not pass until:

- (A) the Customer has paid AMA all amounts owing to AMA; and
- (B) the Customer has met all of its other obligations to AMA.

12.2. Receipt by AMA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3. It is further agreed that:

- (A) until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to AMA on request.
- (B) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AMA and must pay to AMA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (C) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for AMA and must pay or deliver the proceeds to AMA on demand.
- (D) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust to the benefit of AMA and must sell, dispose of or return the resulting product to AMA as it so directs.
- (E) the Customer irrevocably authorises AMA to enter any premises where AMA believes the Goods are kept and recover possession of the Goods.
- (F) AMA may recover possession of any Goods in transit whether or not delivery has occurred.
- (G) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AMA.
- (H) AMA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

13. Personal Property Securities Act 2009 ("PPSA")

13.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by AMA to the Customer.

13.3. The Customer undertakes to:

- (A) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AMA may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 13.3(i) or 13.3(ii);
- (B) indemnify, and upon demand reimburse, AMA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (C) not register a financing change statement in respect of a security interest without the prior written consent of AMA;
- (D) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of AMA;
- (E) immediately advise AMA of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

13.4. AMA and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

13.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7. Unless otherwise agreed to in writing by AMA, the Customer waives

their right to receive a verification statement in accordance with section 157 of the PPSA.

13.8. The Customer must unconditionally ratify any actions taken by AMA under clauses 13.3 to 13.5.

13.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1. In consideration of AMA agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

14.2. The Customer indemnifies AMA from and against all AMA's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising AMA's rights under this clause.

14.3. The Customer irrevocably appoints AMA as each director of AMA as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

15.1. The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify AMA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow AMA to inspect the Goods.

15.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

15.3. AMA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AMA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. AMA's liability in respect of these warranties is limited to the fullest extent permitted by law.

15.5. If the Customer is a consumer within the meaning of the CCA, AMA's liability is limited to the extent permitted by section 64A of Schedule 2.

15.6. If AMA is required to replace the Goods under this clause or the CCA, but is unable to do so, AMA may refund any money the Customer has paid for the Goods.

15.7. If the Customer is not a consumer within the meaning of the CCA, AMA's liability for any defect or damage in the wwwGoods is:

- (A) limited to the value of any express warranty or warranty card provided to the Customer by AMA at AMA's sole discretion;
- (B) limited to any warranty to which AMA is entitled, if AMA did not manufacture the Goods;
- (C) otherwise negated absolutely.

15.8. Subject to this clause 15, returns will not be accepted provided that:

- (A) the Customer has complied with the provisions of clause 15.1; and
- (B) AMA has agreed that the Goods are defective; and
- (C) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (D) the Goods are returned in as close a condition to that in which they were delivered as is possible.

15.9. Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, AMA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (A) the Customer failing to properly maintain or store any Goods;
- (B) the Customer using the Goods for any purpose other than that for which they were designed;
- (C) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (D) the Customer failing to follow any instructions or guidelines provided by AMA;
- (E) fair wear and tear, any accident, or act of God.

15.10. Notwithstanding anything contained in this clause if AMA is required by a law to accept a return then AMA will only accept a return on the conditions imposed by that law.

16. Intellectual Property

16.1. Where AMA has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of AMA.

16.2. The Customer warrants that all designs, specifications or instructions given to AMA will not cause AMA to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify AMA against any action taken by a third party against AMA in respect of any such infringement.

16.3. The Customer agrees that AMA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which AMA has created for the Customer.

17. Default and Consequences of Default

17.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AMA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2. If the Customer owes AMA any money the Customer shall indemnify AMA from and against all costs and disbursements incurred by AMA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, AMA's collection agency costs, and bank dishonour fees).

17.3. Without prejudice to any other remedies AMA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions AMA may suspend or terminate the supply of Goods to the Customer. AMA will not be liable to the Customer for any loss or damage the Customer suffers because AMA has exercised its rights under this clause.

17.4. Without prejudice to AMA's other remedies at law AMA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AMA shall, whether or not due for payment, become immediately payable if:

- (A) any money payable to AMA becomes overdue, or in AMA's opinion the Customer will be unable to make a payment when it falls due;
- (B) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (D) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. Compliance with Laws

18.1. The Customer and AMA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

18.2. The Customer shall obtain (expense of the Customer) all licenses and approvals that may be required for the works.

18.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/ construction sites and any other relevant safety standards or legislation.

19. Dispute Resolution

19.1. If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately

identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be: (A) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(B) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Cancellation

20.1. AMA may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice AMA shall repay to the Customer any money paid by the Customer for the Goods. AMA shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.2. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AMA as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.3. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1988

21.1. The Customer agrees for AMA to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by AMA.

21.2. The Customer agrees that AMA may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (A) to assess an application by the Customer; and/or
- (B) to notify other credit providers of a default by the Customer; and/or
- (C) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (D) to assess the creditworthiness of the Customer.

22. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

22.1. The Customer consents to AMA being given a consumer credit report to collect overdue payment on commercial credit (Section 18(1) (h) Privacy Act 1988).

22.2. The Customer agrees that personal credit information provided may be used and retained by AMA for the following purposes (and for other purposes as shall be agreed between the Customer and AMA or required by law from time to time):

- (A) the provision of Goods; and/or
- (B) the marketing of Goods by AMA, its agents or distributors; and/or
- (C) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (D) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (E) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

22.3. AMA may give information about the Customer to a credit reporting agency for the following purposes:

- (A) to obtain a consumer credit report about the Customer;
- (B) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

22.4. The information given to the credit reporting agency may include:

- (A) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (B) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (C) advice that AMA is a current credit provider to the Customer;
- (D) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (E) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(F) information that, in the opinion of AMA, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);

(G) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;

(H) that credit provided to the Customer by AMA has been paid or otherwise discharged.

23. General

23.1. The failure by AMA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AMA's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which AMA has its principal place of business and are subject to the jurisdiction of the courts of Dandenong in that state.

23.3. Subject to clause 15 AMA shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AMA of these terms and conditions (alternatively AMA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

23.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AMA nor to withhold payment of any invoice because part of that invoice is in dispute.

23.5. AMA may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

23.6. The Customer agrees that AMA may amend these terms and conditions at any time. If AMA makes a change to these terms and conditions, then that change will take effect from the date on which AMA notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for AMA to provide Goods to the Customer.

23.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.