

BM Refrigeration Services
Terms and Conditions

1. Definitions

- 1.1 **ACL** means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;
- 1.2 **Agreement** in these terms and conditions means any agreement or contract entered into for the provision of services and/or goods by BM Refrigeration Services to the customer
- 1.3 **BMRS** means BM Refrigeration Services
- 1.4 **Charges** means the Company's charges for performing the Works (including the Call Out Fee and the Company's charges of travelling to and from the Site
- 1.5 **Consumer** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;
- 1.6 **Customer** means any person, firm or corporation requiring goods or services from BMRS
- 1.7 **Goods** means goods (including equipment) and services provided from BMRS to the customer
- 1.8 **GST** meaning goods and services tax as defined in a New Tax System(Goods and Services Tax) Act 1999, as amended
- 1.9 **PPSA** means the Personal Property Securities Act 2009 (Cth) and its associated regulations as amended
- 1.10 **Price List** means the price list issued by BMRS from time to time;
- 1.11 **Representative** means a representative of BMRS
- 1.12 **Terms** mean these terms and conditions set out in this document and any special terms and conditions agreed in writing

2. Basis of Agreement

- 2.1 These terms are valid for all contracts for goods or services provided by BMRS to the customer.
- 2.2 No amendment, alteration, waiver or cancellation of any of these terms is binding on BMRS unless confirmed by BMRS in writing.
- 2.3 Any written quotation provided by BMRS to any of its customers concerning the supply of goods and services is:
 - i) Valid for 15 days
 - ii) An invitation to treat only
 - iii) Subject to the customer offering to enter into an agreement in accordance with these terms and conditions. Such agreement shall be deemed to be accepted by BMRS when BMRS confirms its acceptance of such offer in writing, or by electronic means, or performs services or supplies goods to the customer
 - iv) All prices quoted in the written quotation or verbally to the customer for the supply of goods and services include GST and other taxes and duties payable unless stated otherwise
- 2.4 The terms may include additional terms in BMRS' quotation, which are not inconsistent with the terms.
- 2.5 BMRS in its absolute discretion may refuse to accept any offer.
- 2.6 It is the customer's responsibility to provide BMRS with its specific requirements in relation to the goods and services.
- 2.7 BMRS may vary or amend these terms at any time, with any such changes or amendments notified at www.bmrs.com.au. The customer acknowledges that they have read the latest terms prior to placing any order for products.
- 2.8 The management of BMRS reserves the right to suspend this agreement at any time.

3. Price and Payment

- 3.1 Unless BMRS shall otherwise agree, payment for goods and services must be made in full prior to delivery of the goods or provision of any services. If payment is made by cheque, then payment is not made until the payments under the proceeds of the cheques are cleared.
- 3.2 Payment terms may be revoked or amended at the sole discretion of BMRS by written notice to the customer.

- 3.3 Payment can be made by credit/debit card on-line or over the telephone, by EFT or by cheque. Payment in arrears will be by prior agreement only.
- 3.4 If paying by Credit Card, all details including the CCV number must be submitted in order to prevent any fraudulent credit card transactions
- 3.5 Merchant or other fees incurred as a result of payment by credit card will be charged to the customer's account.
- 3.6 If work to be performed is above the value of the customer's requested credit limit, then the amount not covered by the credit limit will be requested to be deposited into the BMRS bank account before work commences. The outstanding balance is to be paid under the normal terms of this agreement.

4. Stock Availability

- 4.1 If goods are ready for immediate dispatch then payment is required in full in advance before any goods are shipped. This is inclusive of any freight charges for shipping the goods, which amount BMRS will notify the customer.
- 4.2 Some goods may not be in stock at the time of placing order. One of our sales consultants will contact the customer within 48 hours to confirm delivery time and stock availability. Waiting times for goods can vary however BMRS will not be responsible for any delay beyond the control of BMRS.
- 4.3 A minimum 40% deposit is required from the customer if goods are not in stock and must be ordered.

5. Passing of Property

- 5.1 Until full payment in cleared funds has been received by BMRS into its nominated bank account, for all goods and services supplied by it to the customer, as well as all other amounts owing to BMRS by the customer:
 - (i) Title and property in goods remains vested in BMRS and does not pass to the customer , including where delivery of the goods has been made to the customer;
 - (ii) The customer must properly segregate and store the goods in such manner as to clearly indicate that they are the property of BMRS; and
 - (iii) If the customer has breached these terms, BMRS may enter the premises without notice, where BMRS' goods are stored and remove them, even where attached to other goods which are not the property of BMRS, and for this purpose the customer irrevocably licences BMRS to enter such premises and also indemnifies BMRS from and against all costs, claims, demands or actions by any party arising from such action.
- 5.2 Goods supplied by BMRS to the customer will be at the customer's risk and insurable responsibility immediately upon:
 - (i) Delivery of the goods to the customer, its agent or into its custody or control;
 - (ii) Collection of the goods by the customer's nominated carrier or agent
- 5.3 The goods are sold to the customer on the basis that the customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods and BRMS has no responsibility to the customer in this regard.
- 5.4 The customer assumes all risk and liability for loss, damage or injury to persons or to property of the customer, or third parties arising out of the use or possession of any of the goods sold by BMRS, unless recoverable from BMRS on the failure of any statutory warranty under the ACL.

6. Personal Property Securities Act ("PPSA")

- 6.1 Notwithstanding anything to the contrary contained in these terms, the PPSA applies to these terms.
- 6.2 For the purposes of the PPSA:
 - i) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
 - ii) these terms are a security agreement and BMRS has a Purchase Money Security Interest in all present and future goods supplied by BMRS to the Customer and the proceeds of the goods;

- iii) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- iv) the customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by BMRS on the Personal Property Securities Register.

6.3 The security interest arising under this clause attaches to the goods when the goods are collected or dispatched from BMRS' premises and not at any later time.

6.4 Where permitted by the PPSA, the customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

6.5 BMRS and the customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these terms.

6.6 To the extent permitted by the PPSA, the Customer agrees that:

- i) the provisions of Chapter 4 of the PPSA which are for the benefit of the customer or which place obligations on BMRS will apply only to the extent that they are mandatory or BMRS agrees to their application in writing; and
- ii) where BMRS has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

6.7 The Customer must immediately upon BMRS' request:

- i) do all things and execute all documents necessary to give effect to the security interest created under this agreement; and
- ii) procure from any person considered by BMRS to be relevant to its security position such agreements and waivers (including as equivalent to those above) as BMRS may at any time require.

6.8 BMRS may allocate amounts received from the customer in any manner BMRS determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by BMRS.

6.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these terms, nor the sale of the goods, except as otherwise required by law or that is already in the public domain.

7. Delivery and Delivery Dates

7.1 The obligations of BMRS as to delivery extend to the delivery of goods to the kerb side or street level of the customer's premises as notified on the quotation only. In the event that there are additional delivery requirements the customer shall notify BMRS within 48 hours prior to the delivery date, and bear the expense of any additional costs. BMRS is entitled to require the customer to pay for the additional expense before delivery is completed.

7.2 If BMRS agrees to deliver the goods to a specific area and if BMRS is not previously told of any stairs or other access issues preventing a standard delivery, then BMRS has the right to refuse delivery upon arrival and instead BMRS can deliver the goods as set out in subclause 7.1 or to take the goods back to its premises.

7.3 It is the responsibility of the customer to correctly notify BMRS with all delivery access and information prior to delivery. If the delivery information is incorrect, or not fully disclosed, the customer will bear the expense of any additional costs which amount is to be paid before delivery is subsequently made.

7.4 All delivery dates and times as noted on BMRS' invoices are approximate only. BMRS will act reasonably to deliver goods at the time requested by the customer to all its customers, however, BMRS cannot guarantee exact delivery dates and times, as it is not responsible for any delays that arise from any third party actions and/or transportation issues that arose prior to delivery.

8. Inspection, Acceptance and Return of Goods (including Damaged Goods)

8.1 The customer must in the case of all goods ordered advise BMRS in writing within 3 days of receipt:

- i) of the non arrival of part of the goods;

- ii) if there is damage to the goods;
- iii) that the wrong goods have been received;
- iv) that the quantity of the goods is incorrect; or
- v) the goods do not meet specifications.

8.2 BMRS will only consider, at its complete and unfettered discretion, accepting the return of goods if

- i) If the request to return has been made in writing within three business days of the date of the delivery, stating the reason for the return
- ii) if the goods are not optioned or customised in any way or produced to a specific customer requirement in part or in whole;
- iii) with the written prior knowledge of BMRS
- iv) if the customer pays for all transport and handling costs to BMRS' warehouse;
- v) on the acceptance of the application of a restocking and handling charge, such charge being a minimum of 25% of the invoice value, except where the wrong goods were delivered by BMRS, in which case there will be no restocking or handling charge; and
- vi) if the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of BMRS.

8.3 If an item is received and is damaged or faulty in any way, the customer must immediately notify BMRS by phone, fax or email listing a contact name, address, phone and fax number, and BMRS' invoice number and details of the fault (including what is wrong with the item) and under no circumstance must the customer make an attempt to repair or make changes to the goods.

8.4 If a customer wants to return goods that do not breach any warranty, then all goods returned due to a customer changing the customer's mind:

- i) will not be refunded and only a credit note will be issued, if the request of the customer to return the goods is accepted by BMRS, who has the complete and unfettered discretion as to whether to accept the return of the goods.
- ii) must be arranged with BMRS and is at the expense of the customer to return the goods to the nominated address as instructed by BMRS
- iii) must not have been used or tampered with in any way whether by the customer or anyone else.

8.5 The customer must retain all delivery dockets and/ or consignment notes. These must be submitted to BMRS for any claims made against a transport company whether by BMRS directly or on behalf of a customer.

8.6 In the event that any claim is made by the customer whether against a transport company or BMRS or otherwise, then BMRS may require the customer to submit proof of such claim including the provision of any photographs to substantiate the claim or any other proof as may be reasonably required by BMRS

9. Cancellations

9.1 A customer can seek to cancel an order. However it will be at the absolute discretion of BMRS to accept such cancellation and if so, the terms upon which such cancellation will be accepted.

9.2 A customer can seek to cancel an order in the case of specially manufactured goods provided that the cancellation is received prior to the commencement of the manufacture of those goods. However it will be at the discretion of BMRS to accept such cancellation and if so, the terms upon which such cancellation will be accepted. If the request to cancel is not received prior to the commencement of the manufacture of the goods, then such cancellation will not be accepted and the customer will be responsible to take delivery of the goods and make payment in full.

9.3 Should the customer refuse to accept any delivered goods, the customer forfeits all monies (including deposits) paid to BMRS.

9.4 If the equipment is a stock item cancellation must be received one week before shipping before BMRS will give any consideration, at its complete and unfettered discretion, to whether to accept such cancellation and the terms upon which such cancellation is accepted.

9.5 If a cancellation is accepted, then without restricting BMRS as to the terms that it will accept such cancellation, the customer will note that a cancellation fee will apply being a minimum of 20% of the purchase price for any goods ordered.

10. Liability/Warranty

10.1 All goods are covered by the manufacturer's standard warranty. To the extent permitted by law, BMRS' entire responsibility with respect to warranties for the goods is to pass on to the customer the benefit of any such warranties.

10.2 The manufacturer warranties are for goods only and are solely at the discretion of the manufacturer.

10.3 BMRS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the goods or by law.

10.4 Manufacturer warranties DO NOT cover any labour or refrigerant or other parts that are deemed necessary to affect proper repair to the customer's equipment. These charges will be passed on to the customer where the customer requires BMRS to undertake the repair.

10.5 Manufacturers Warranties for capital equipment (compressors, evaporators, condensing units and condensers) are up to 12 months but may vary depending upon the manufacturer.

10.6 The terms which BMRS sells are generally set out on our website however not all warranties are onsite. Smaller items may have a back-to-base warranty. Please read carefully when purchasing goods and contact BMRS immediately by email at info@bmrs.com.au or on 1300 669 353 before purchasing.

10.7 If a good is out of warranty and the customer requires BMRS to undertake repairs on behalf of the customer, then the customer is liable to pay any further charges incurred by BMRS in respect of such repairs.

10.8 Warranties are voidable where there is evidence of third party interference with the product whether by the customer or some other third party. This includes services provided, and/or goods repaired or replaced by third parties. In such circumstances the manufacturer and BMRS will accept no liability in respect of faulty or defective goods.

10.9 Except as the terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure

10.10 If the customer is a consumer nothing in these terms restricts, limits or modifies the customer's rights or remedies against BMRS for failure of a statutory guarantee under the ACL

10.11 If the customer on-supplies the goods to a consumer and:

- i) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of BMRS' liability to the customer; and
- ii) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of BMRS' liability to the customer; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the customer or any third party.

10.12 If clause 10.2 or 10.3 do not apply, then other than as stated in the terms or any written warranty statement BMRS is not liable to the customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the customer or any third party.

10.13 BMRS is not liable for any indirect or consequential losses or expenses suffered by the customer or any third party, howsoever caused, including but not limited to loss of perishables, loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed by the ACL.

10.14 Nothing in the terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

- 10.15 Where the customer is a consumer, the following mandatory statement applies: Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 10.16 BMRS guarantees for a period of thirty days after the work has been completed, that it will repair any work performed by it which is faulty or defective. For the purposes of ascertaining the date upon which the work is completed, reference will be made to the date of the final invoice,
- 10.17 For the purposes of such guarantee, in the event that there is faulty workmanship, BMRS will return within a reasonable time to rectify the workmanship without charge to the client
- 10.18 For the purposes of determining whether or not work performed by BMRS is faulty, in the event that the customer and BMRS cannot reach agreement, then the parties will agree to initially refer the matter for mediation and/or arbitration
- 10.19 For goods not manufactured by BMRS, the manufacturer of the goods' warranty will apply. For the purposes of this clause, installation shall be deemed to have taken place upon completion of the work, being from the date of the final invoice.
- 10.20 Warranty work undertaken by authorised service agents is arranged during our normal working hours only (generally Monday – Friday, 8am to 4.30pm, excluding public holidays)
- 10.21 All after hour's attendance/charges are not covered by any warranties or understandings, made by BMRS. After hours work is charged in a four (4) hour block for the first four (4) hours and hourly thereafter, in line with standard rates and practices for work contracted to third parties/agents.
- 10.22 Approved warranty repair work will be conducted for free only on the Australian mainland and within 50kms of a BMRS Authorised service agent premises. If the customer is located more than 50km away, then any distance there will be a charge to the customer on the excess at commercial rates.
- 10.23 All charges are subject to change without notification which include, but are not limited to spare parts; labour; gas and capital equipment
- 10.24 Where this warranty applies to equipment, including a greater warranty period than this warranty, it is in replacement of the warranty provided by the equipment manufacturer (if any)'s warranty.
- 10.25 The customer bears the cost of making the warranty claim.
- 10.26 This warranty shall not be varied, supplemented, qualified or novated by any prior course of dealing between the parties or by usage of the trade.
- 10.27 BMRS makes no express warranties or representations other than as set out in this clause.
- 10.28 The benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded.
- 10.29 In the case of goods not manufactured by BMRS but are sourced from third parties and supplied by BMRS, this warranty will not operate to extend the terms of the original manufacturer of those goods.
- 10.30 The following warranty exclusions apply:
- i) Any product which BMRS publishes as excluded from application of this Warranty;
 - ii) Any product for which the Warranty period published by BMRS (in advertising material or otherwise) differs from the Warranty period outlined above;
 - iii) defects or malfunctions that are the result of incorrect or poor maintenance by the customer;
 - iv) damage or alteration to the goods arising from circumstances outside the direct control of BMRS, including, without limitation, power surges, disruptions, flooding, fire or acts of god or where the goods are not used for their intended purpose;
 - v) any part of a refrigeration system which has been subject to misuse, neglect, alteration or changed in any manner, incorrect installation or accident that has been caused by the Customer or its invitee;
 - vi) the failure of goods that have been supplied to a customer's specification or design and that failure was caused by a customer specification or design fault;
 - vii) any problem that might arise due to poor installation or siting of the goods, including but not limited to, lack of sufficient fresh air circulation, marine or mobile applications;
 - viii) any problem that might arise out of the installation of remote cabinets, including but not limited to, blockages or leaks in the refrigeration system, replacement refrigerant and components including TX valves, and wiring issues with controllers;
 - ix) any third party equipment that the customer might have specified;
 - x) any installation or removal costs necessary to access or service the goods;

- xi) any time spent on security clearance, inductions and suchlike;
- xii) damage to, or breakage of, glass doors, gaskets, power leads, hinges, lights or plastic components; and
- xiii) the failure of gaskets, lights, hinges, locks, TX valves and batteries.
- xiv) any existing equipment used or supplied by the customer, is not covered by any warranties or understandings made by BM Refrigeration Services

10.15 Our contact details are:

BM Refrigeration Services Pty Ltd
PO Box 810,
Richmond NSW 2753

Tele: 1300 669 353

11. General

- 11.1 The law of New South Wales from time-to-time governs the terms. The parties agree to the exclusive jurisdiction of the courts of New South Wales, the Federal Court, and those courts entitled to hear appeals from those courts.
- 11.2 Any failure by BMRS to enforce the provisions of this agreement shall neither be construed as a waiver thereof, nor shall any custom or practice which may develop between the customer and BMRS be construed to waive or reduce the right of BMRS to insist upon the observance or performance by the customer of any of the customer's obligations under this agreement.
- 11.3 If any provision of this agreement is held to be unlawful, invalid, and unenforceable or in conflict with any rule of law, statute, ordinance or regulation it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 11.4 A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received upon confirmation of successful transmission