

## Terms and Conditions

### ➤ Definitions and Interpretation

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

**Client** means the party described in the Contract Particulars or if no description has been provided, the entity to which Cold One Refrigeration & Air Conditioning is providing the Services and/or Goods.  
Client may also be referred to as customer

**Cold One Refrigeration & Air Conditioning** means Cold One Refrigeration & Air Conditioning Pty Ltd (ABN 30 671 900 155) described in the Contract or if no description has been provided, the entity named in the Cold One Refrigeration & Air Conditioning Invoice. Cold One Refrigeration & Air Conditioning Invoice means an invoice setting out the Services and/or Goods supplied to the Client by Cold One Refrigeration & Air Conditioning and claiming payment for the provision of those Services and/or Goods.

**Cold One Refrigeration & Air Conditioning Plant and Equipment** means all goods, products, materials and equipment used by Cold One Refrigeration & Air Conditioning for carrying out the Works other than Goods or which is not intended by Cold One Refrigeration & Air Conditioning to become part of the Works.

**Completion Date** means the date specified in the Contract, or any extension thereof, on which Cold One Refrigeration & Air Conditioning must deliver the Goods and/or complete the Services.

**Conditions** means these standard Cold One Refrigeration & Air Conditioning terms and conditions.

**Contract** means the agreement between the Client and Cold One Refrigeration & Air Conditioning evidenced by the Conditions, the Contract Particulars and/or Cold One Refrigeration & Air Conditioning Invoice, and all other documents incorporated by written reference into the Contract by Cold One Refrigeration & Air Conditioning.  
May also be referred to as a Quote or Estimate.

**Contract Price** means the total price submitted by Cold One Refrigeration & Air Conditioning either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed in the Contract.

**CPI** stands for Consumer Price Index. It's a widely used economic indicator that measures changes in the prices of goods and services that are commonly purchased.

**Force Majeure** means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of Cold One Refrigeration & Air Conditioning), sabotage or commotion, act or omission of the Client, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of Cold One Refrigeration & Air Conditioning.

**Goods** means the goods, products, materials or equipment supplied by Cold One Refrigeration & Air Conditioning in accordance with this Contract and specified in the Contract Particulars and/or Cold One Refrigeration & Air Conditioning Invoice.

**Information** means documents, data, methods, material, preliminary design, specific requirements, specifications, calculations, test results and any other information provided to Cold One Refrigeration & Air Conditioning by the Client before or during execution of the Contract.

**Insolvency Event** means circumstances under which a party (a) has a receiver or similar officer appointed over all or a substantial part of its assets or undertaking; (b) passes a resolution for winding-up (other than a winding-up for the purpose of, or in connection with, any solvent amalgamation or reconstruction) or a court makes an order to that effect or a court makes an order for administration (or any equivalent order in any jurisdiction); (c) ceases to carry on business; or Doc No NRW-PP-TC-0006

**Services** means all the services Cold One Refrigeration & Air Conditioning has agreed to perform for the Client under its offer and specified in the Contract Particulars and/or Cold One Refrigeration & Air Conditioning Invoice.

**Site** means the location where the Services are to be performed.

**Works** means the scope of works being tendered for as detailed in Cold One Refrigeration & Air Conditioning's offer which is inclusive of the Goods and/or Services. 2.

- **Validity Period** Cold One Refrigeration & Air Conditioning's offer is open for acceptance for a period of thirty (30) days from the date of tender submission or such time as the parties agree in writing.
- **Deemed Acceptance** the absence of written acknowledgement, the performance of any of the Works by Cold One Refrigeration & Air Conditioning will be deemed acceptance of the Contract.
- **General**
  - ❖ The Contract is governed by the law as stipulated, and the parties submit to the non-exclusive jurisdiction of those Courts.
  - ❖ Any waiver partly or whole of the terms of the Contract will be valid only if in writing and signed by Cold One Refrigeration & Air Conditioning.
  - ❖ Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.
  - ❖ These conditions (which can only be waived in writing and signed by an authorised representative of Cold One Refrigeration & Air Conditioning) prevail over all conditions of the Client's order or other documents.
  - ❖ If additional terms and/or conditions are attached to, incorporated into or accompany the Client's order, those terms and/or conditions are not accepted by Cold One Refrigeration & Air Conditioning and do not form part of the Contract unless expressly accepted in writing or signed by an authorised representative of Cold One Refrigeration & Air Conditioning.
  - ❖ Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.
- **Price**
  - ❖ The Client shall pay Cold One Refrigeration & Air Conditioning for the Works in accordance with the Contract Price and time for payment listed in the Contract Particulars and/or Cold One Refrigeration & Air Conditioning Invoice.
  - ❖ Unless otherwise stated, the price quoted by Cold One Refrigeration & Air Conditioning is net and exclusive of Goods and Services Tax (GST) and any other relevant taxes of any nature whatsoever, together with penalties, fines or interest thereon.
  - ❖ Pricing is Valid for Thirty (30) Days from quotation date.
- **Payment**
  - ❖ Any deposits requested are to be paid before works proceed as per the contract
  - ❖ Final balance is due upon completion of works unless alternative agreement is made in writing.
  - ❖ Except as otherwise agreed by Cold One Refrigeration & Air Conditioning in writing, the Client shall pay all invoiced amounts in Australian dollars
  - ❖ All accounts overdue are subject to an annual 8% interest charge, that is then charged monthly until outstanding amounts are paid in full.
  - ❖ Please be aware all goods provided remain the property of Cold One Refrigeration & Air Conditioning until payment of invoice is received in full.
  - ❖ If the invoice is not paid the client hereby authorize access for Cold One Refrigeration & Air Conditioning to recover the goods/materials with all expenses at your (clients) cost.
  - ❖ The Client agrees to indemnify Cold One Refrigeration & Air Conditioning for any late fees, legal fees and/or debt collection fees in the event that the Tax Invoice is not paid via the due date.
  - ❖ From time to time Cold One Refrigeration & Air Conditioning may at its sole discretion agree to provide a customer with specific terms of trade. Such terms of trade shall be supplied subject to relevant checks being undertaken on the customer to the satisfaction of Cold One Refrigeration & Air Conditioning and the customer then signing a "terms of trade" agreement in acknowledgement of the specific terms and conditions relating to the provision of such credit terms.
  - ❖ All payments made by credit card may incur a surcharge equivalent to the fees and costs incurred by Cold One Refrigeration & Air Conditioning for credit card transactions.

➤ **Services**

- ❖ Cold One Refrigeration & Air Conditioning will undertake the Works in accordance with the Contract and using due skill, care and diligence.
- ❖ The Client shall ensure that its employees, consultants, agents and contractors cooperate with Cold One Refrigeration & Air Conditioning and do not interfere with or delay delivery of the Works. Cold One Refrigeration & Air Conditioning will be entitled to claim an extension of time and any costs incurred as a result of any delay caused due to any interference by the Client or others to its performance of the Works.
- ❖ Cold One Refrigeration & Air Conditioning may bring onto Site Cold One Refrigeration & Air Conditioning Plant and Equipment that is not sold to the Client, but which is used by Cold One Refrigeration & Air Conditioning in carrying out the Works. In this circumstance, title of the Cold One Refrigeration & Air Conditioning Plant and Equipment always remains with Cold One Refrigeration & Air Conditioning and Cold One Refrigeration & Air Conditioning may enter the Site at any time to retake possession of any Cold One Refrigeration & Air Conditioning Plant and Equipment and without liability for trespass or for any resulting damage.

➤ **Access to Site**

- ❖ The Client must provide Cold One Refrigeration & Air Conditioning access to the Site and possession of a sufficient portion of the Site to enable Cold One Refrigeration & Air Conditioning to properly perform the Works without interference.
- ❖ Cold One Refrigeration & Air Conditioning will be entitled to claim an extension of time and costs incurred as a result of any delay caused due to any interference of the Client or others on Site and/or delay in access to the Site.

➤ **Information and Documents**

- ❖ The Client will provide all Information including answers to any questions that Cold One Refrigeration & Air Conditioning may ask, to enable Cold One Refrigeration & Air Conditioning to properly perform the Works.
- ❖ The Client shall be responsible for and confirms the completeness and accuracy of all Information provided to Cold One Refrigeration & Air Conditioning.
- ❖ Cold One Refrigeration & Air Conditioning will not check or review any Information provided by the Client, for the purpose of assessing completeness or accuracy unless that is part of the Services described in the Contract.
- ❖ Cold One Refrigeration & Air Conditioning will be entitled to claim an extension of time and any costs incurred as a result of any delay in provision of Information by the Client or others to Cold One Refrigeration & Air Conditioning or as a result of any Information being inaccurate.

❖ **Returned Goods**

- ❖ Cold One Refrigeration & Air Conditioning is not under any duty to accept Goods returned by the Client.
- ❖ If Cold One Refrigeration & Air Conditioning agrees to accept returned Goods from the Client, the Client must return the Goods to Cold One Refrigeration & Air Conditioning at any place directed by Cold One Refrigeration & Air Conditioning and on such other terms as Cold One Refrigeration & Air Conditioning directs.

➤ **Title and Risk**

- ❖ Cold One Refrigeration & Air Conditioning will deliver the Goods on the date as set out in the Contract to the place nominated in the Contract.
- ❖ On the Client's receipt of the Goods, all risk relating to the Goods passes to the Client. However, if the Client provides any components to Cold One Refrigeration & Air Conditioning for inclusion in the Goods the risk of those components always remains with the Client.
- ❖ Cold One Refrigeration & Air Conditioning will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.
- ❖ It is acknowledged by the Client that Cold One Refrigeration & Air Conditioning fulfils all of its obligations under this Contract once the Goods are delivered by Cold One Refrigeration & Air Conditioning or collected by the Client, whichever the earlier.
- ❖ Title of the Goods remains with Cold One Refrigeration & Air Conditioning until all sums due and owing by the Client to Cold One Refrigeration & Air Conditioning are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.
- ❖ Until title of the Goods passes, Cold One Refrigeration & Air Conditioning reserves and retains the following rights in relation to the Goods until all accounts owed by the Client to Cold One Refrigeration & Air Conditioning are fully paid:

(a) to enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and

(b) to keep or resell the Goods repossessed under this clause.

❖ **Warranty**

- ❖ Any Goods supplied will be of merchantable quality and be free from substantial defect in workmanship.
- ❖ Warranty may be void if Cold One Refrigeration & Air Conditioning determine that faults arise from power failure, misuse of product and/or equipment, lack of routine maintenance or operator error.
- ❖ Warranty may be void at the discretion of Cold One Refrigeration & Air Conditioning if any goods are found to be tampered with by any unauthorised persons. This is to ensure that no harm/damage is caused via inadequate work standards that may affect the operation and/or the performance of the goods.
- ❖ The Goods will comply with all laws, by-laws, statutes, regulations and standards in force in the jurisdiction in which they are supplied.

➤ **Confidentiality**

- ❖ The Client acknowledges and agrees that any information submitted by Cold One Refrigeration & Air Conditioning in its offer which includes pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must always remain confidential and shall not be disclosed to any third party without Cold One Refrigeration & Air Conditioning prior written consent.

- ❖ If such information is disclosed to a third party with Cold One Refrigeration & Air Conditioning's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by the confidentiality obligations contained in this Contract.

➤ **Asbestos and Other Hazardous Materials**

- ❖ The Client is responsible for ensuring Works being performed on the Client's Site is in an asbestos and hazardous free environment.
- ❖ The Client is responsible for all costs arising as a result of the presence of asbestos, asbestos contaminated material or any other hazardous material in or on the Client's Site where the Works are required to be performed.

➤ **Delays**

- ❖ The Client shall reimburse Cold One Refrigeration & Air Conditioning all reasonable costs including but not limited to overheads incurred by Cold One Refrigeration & Air Conditioning for any delays except for delays caused by Cold One Refrigeration & Air Conditioning itself.
- ❖ Cold One Refrigeration & Air Conditioning expect that upon acceptance of the contract that the works and/or goods can be supplied and/or completed within three (3) months of the approval date. If works and/or goods cannot be completed within the three (3) months the client will be subject to any increases in cost due to supply increases of goods or CPI.

➤ **Force Majeure**

- ❖ If performance by Cold One Refrigeration & Air Conditioning of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then Cold One Refrigeration & Air Conditioning shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.
- ❖ If supply is delayed for more than three (3) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

➤ **Termination**

- ❖ If Cold One Refrigeration & Air Conditioning terminates this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against Cold One Refrigeration & Air Conditioning.
- ❖ The Client agrees if the Client terminates this Contract, it will pay to Cold One Refrigeration & Air Conditioning all outstanding Cold One Refrigeration & Air Conditioning Invoices and for all Goods and/or Services provided to the Client up to the date of cancellation and the Client indemnifies Cold One Refrigeration & Air Conditioning against any losses incurred by Cold One Refrigeration & Air Conditioning as a result of the termination.

➤ **Dispute Resolution**

- ❖ If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice').
- ❖ Within seven (7) days of receipt of the Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of the Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.
- ❖ Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice has first been given and then only after a period of twenty-eight (28) days from receipt of such Dispute Notice has elapsed.