



+61 370 356 800  
Sales@ANZCooling.com  
U/51 22-30 Wallace Avenue, Point Cook, VIC 3030  
ABN: 13 656 731 289

## **ANZ Cooling PTY Ltd Terms & Conditions**

### **1. DEFINITIONS**

In these conditions:-

“Customer” means the person, firm or company with whom or with which ANZ Cooling PTY Ltd contracts;

“Contract” means the contract made or to be made between ANZ Cooling PTY Ltd and the Customer subject to these conditions:

“Service” means any services to be performed by ANZ Cooling PTY Ltd for the Customer under the Contract:

“Act of insolvency” shall be deemed to mean and include any one or more of the following namely the passing of a resolution or the presentation of a petition for winding up the presentation of a petition for the appointment of an administrator, the appointment of a receiver and or a manager or administrative receiver over the whole or any part of the Customer’s undertaking and assets, the making of a proposal for a voluntary arrangement within Part 1 insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or the calling by the Customer of any meeting of its creditors generally the presentation of a petition in respect of a bankruptcy order an application for an interim order in connection with any proposals for a voluntary arrangement or the Customer; affairs, anything analogous to any of the foregoing under the law of any jurisdiction.

### **2. BASIS OF CONTRACT**

2.1 Any quotation submitted by the Company amounts to an invitation to treat and not an offer.

2.2 Subject to any alteration or qualification agreed to in writing by ANZ Cooling PTY Ltd, ANZ Cooling PTY Ltd only supplies Goods and Services on the basis of these Conditions to the exclusion of any terms preferred by the Customer.

### **3. DELIVERY**

3.1 Any time or day quoted by ANZ Cooling PTY Ltd for delivery of all or any of the Goods and /or performance of all or any of the Services is an estimate only. Time of delivery or performance shall not be of the essence. ANZ Cooling PTY Ltd shall not be liable for any failure to meet any such estimate, nor for any loss, whether financial or otherwise, resulting directly or indirectly there from. All or any of the Goods may be delivered and/or all or any of the Services may be performed in advance of the quoted date for delivery or performance (as the case may be).

3.2 Delivery will be made by sending Goods through the post or by a recognised carrier arranged by ANZ Cooling PTY Ltd. Goods supplied for export from Australia shall be supplied ex-works ANZ Cooling PTY Ltd shall be under no obligation to give notice the sale of Goods Act.

3.3 ANZ Cooling PTY Ltd reserves the right to deliver by instalments.

3.4 Where the Goods are delivered in instalments (whether by agreement or pursuant to condition 3.3), each delivery may be invoiced separately and failure by ANZ Cooling PTY Ltd to deliver anyone or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

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3.5.3.1 Notification of short delivery (measured by weight or number) or damage in transit must be recorded on the carrier's delivery book (save where Goods have been accepted from the Carrier without being checked in which event the delivery book must be signed "not examined") and in any event made in writing to ANZ Cooling PTY Ltd within ten days of the receipt of the Goods. Such

Goods must be kept intact with the packing and ANZ Cooling PTY Ltd must be allowed to inspect the same.

3.5.2 Notification of non-delivery must be made in writing to ANZ Cooling PTY Ltd within seven days after the date of ANZ Cooling PTY Ltd's invoice.

3.5.3 Subject to compliance by the Customer with the foregoing Conditions, ANZ Cooling PTY Ltd shall (subject to condition 3.5.4) make good by reimbursement of the price, repair or replacement (at ANZ Cooling PTY Ltd's option) any such non delivery short delivery or damage and apart from such reimbursement or repair or replacement and in the absence of notification as aforesaid ANZ Cooling PTY Ltd shall not be liable for any such non delivery short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly there from any such shortage, damage or non-delivery shall not entitle the Customer to reject the goods or rescind the contract.

3.5.4 ANZ Cooling PTY Ltd shall be under no liability to the Customer in connection with any damage or loss in transit where delivery takes place by post or by collection by the Customer or its carrier.

#### 4. DESCRIPTION

4.1 All descriptive and technical specifications figures for performance drawings, catalogues promotional materials, display stands, illustrations and particulars of weight and dimensions supplied by ANZ Cooling PTY Ltd are approximate only and ANZ Cooling PTY Ltd reserves the right without notice to the Customer to alter such matters and to supply to Goods as so altered in performance of the Contract.

4.2 Any alterations or modifications made by the Customer shall be at the Customer's risk and the Customer will ensure that the Goods are only used in a manner and purpose for which they are appropriate and that any instructions are passed on to any party to whom the Customer supplies the goods.

#### 5. PRICE

5.1 ANZ Cooling PTY Ltd shall be entitled to the invoice the Customer for the price of the Goods on or at any time after ANZ Cooling PTY Ltd has notified the Customer that the goods are ready for collection or ANZ Cooling PTY Ltd has tendered delivery of the goods.

5.2 Notwithstanding any quotation, the actual price to be charged to the Customer under the contract may be increased in line with ANZ Cooling PTY Ltd's prices current as at the date of invoice. All prices are exclusive of GST which shall be payable by the Customer.

5.3 ANZ Cooling PTY Ltd reserves the right to charge for carriage in addition and to impose a minimum order charge.

5.4 The Customer shall make payment in full within twenty days from the month end of the date the invoice was raised. Interest at 5% above the base rate for the time being and from time to time of Suncorp Bank Plc. will be charged on a daily basis on all monies outstanding after the due date

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until the actual date of payment (as well after judgement as before), and any cash discount referred to in the quotation, correspondence and/or elsewhere may be withdrawn.

5.5 ANZ Cooling PTY Ltd reserves the right to charge 3% for all accounts being paid by Debit / Credit Card

## 6. RISK AND TITLE

6.1 Risk in the Goods shall pass to the Customer immediately on despatch to the delivery depot, delivery to the Customer or collection by the Customer or its carrier (as the case may be).

6.2 Notwithstanding delivery, property in and title to the Goods shall remain in ANZ Cooling PTY Ltd (which reserves all right to dispose of them) until ANZ Cooling PTY Ltd has received payment (in cleared funds) of the full price of A) all Goods or Services the subject of the Contract and B) all other goods and services supplied by ANZ Cooling PTY Ltd to the Customer under any other contract whatsoever.

6.3 Subject as herein provided, the Customer shall nevertheless be entitled to deal with the goods to which ANZ Cooling PTY Ltd retains title in the ordinary course of business provided that:

A) The Customer shall not purport to dispose of property in and title to the goods until delivery to its own customer.  
B) The Customer shall first deal with the goods that it has paid for and any payments by ANZ Cooling PTY Ltd from the customer shall first be appropriated to goods dealt with by the customer. C) If the goods are altered or any goods become attached to the goods or if any part of the goods is replaced such alteration, attachment or replacement shall not affect ANZ Cooling PTY Ltd's property in and title to the goods.

6.4 Until property in and title to the goods passes to the customer.

6.4.1 The customer shall hold the goods as bailee for ANZ Cooling PTY Ltd and shall keep the goods in such a way that they are readily identifiable as the property of ANZ Cooling PTY Ltd and shall keep the same properly stored, protected and insured: and

6.4.2 ANZ Cooling PTY Ltd shall be entitled at any time to revoke the customer's power to deal with the goods and:

6.4.3 The customer's power to deal with the goods shall automatically cease if the customer shall commit or be subject to any act of insolvency: and

6.4.4 The customer shall not make any modification to the goods or their packaging or alter / remove or tamper with any marks, numbers or other means of identification used on or relation to the goods.

6.5 Upon determination of the customer's power to deal with the goods under conditions 6.4.2 or 6.4.3. The customer shall place the goods at the disposal of ANZ Cooling PTY Ltd and ANZ Cooling PTY Ltd and its servants and agents are hereby irrevocably authorised without the need for consent of any third party using only such force as may be necessary to enter upon any premises of the customer for the purpose of removing (including where necessary detaching from other items) the goods.



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## 7. TERMINATION AND SUSPENSION

Without prejudice to any rights and remedies available to it, ANZ Cooling PTY Ltd shall be entitled, forthwith on written notice to the customer either to terminate wholly or in part the contract or to withhold performance of all or any of its obligations under the contract and /or any other contract with the customer (and on the giving of such notice all monies outstanding from the customer to ANZ Cooling PTY Ltd shall become immediately due and payable) if:

7.1 Any sum owing to ANZ Cooling PTY Ltd from the customer on any account whatsoever shall be unpaid after the due date for payment.

7.2 The customer shall refuse to take delivery of or collect any of the goods and /or to allow the performance of all the services in accordance with terms of the contract.

7.3 The customer shall commit or be subject to any act of insolvency:

7.4 The customer shall commit any breach of any contract (including without limitation the contract) with ANZ Cooling PTY Ltd.

7.5 The customer shall refuse to make any pre-payment as here in after provided.

In the event of any such suspension, ANZ Cooling PTY Ltd shall be entitled to require, as a condition of resuming performance under the contract, pre-payment of any sum or sums due or to become due to it and/or to terminate as a result of the same event giving rise to the suspension. Termination of the contract (howsoever occasioned) or of any other contract pursuant to this clause shall not affect the coming into force or the continuance in force of any provision hereof or of such other contract which is expressly or by implication intended to come into or continue in force on or after such termination.

## 8. WARRANTY

8.1 ANZ Cooling PTY Ltd shall make good at its option by reimbursement of the whole or part of the price or by repair or by replacement.

(i) any defect developing under normal use in the goods and due solely to faulty design (except where supplied by or on behalf of the customer) materials and /or workmanship: provided that any such failure or defect is upon discovery promptly notified to ANZ Cooling PTY Ltd in writing and in any event within twelve months from delivery or notification for collection (as the case may be)

8.2 ANZ Cooling PTY Ltd shall not (except in respect of death or personal injury caused by the negligence of ANZ Cooling PTY Ltd its officers employees or agents and any liability which cannot be excluded under the Consumer Protection Act) be liable to the customer by reason of any representation or implied warranty condition, or other term (all of which are hereby excluded to the extent permitted by law) or any duty at common law or under statute, or under the express terms of the contract or otherwise on any common law, statutory or other basis whatsoever, for any injury and or loss and/or damage of any kind whatsoever and howsoever arising or arisen whether direct, indirect consequential or special and howsoever caused (whether occasioned by the negligence of

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ANZ Cooling PTY Ltd or its officers employees or agents or otherwise and including without limitation any loss arising out of the liability of the customer to any third party by virtue of part 1 Consumer Protection Act 1987) resulting from or arising out of or in connection with the goods and the services (including without limitation any defect therein and or any act or omission of ANZ Cooling PTY Ltd in connection therewith) except as expressly provided in these conditions.

8.3 Notwithstanding and without limitation to any other provision hereof in no event will ANZ Cooling PTY Ltd be liable under any terms of or otherwise in connection with the contract for lost profits or any other incidental or consequential damages.

#### 9. GENERAL

9.1 ANZ Cooling PTY Ltd shall have no liability whatsoever for any failure to perform or for any delay in the performance of any of its obligations under the contract arising wholly or in part by reason of any factor beyond its reasonable control, including without limitation, any act or omission of its suppliers, act of God, war, national emergency, pandemic, laws or regulations of any territory, industrial dispute, evil commotion, fire, tempest and or flood.

9.2 No failure or delay on the part of ANZ Cooling PTY Ltd to exercise any of its rights under the contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by ANZ Cooling PTY Ltd of any breach by the customer of any of its obligations under the contract shall not affect the rights of ANZ Cooling PTY Ltd in the event of any further or additional breach or breaches.

9.3 The customer may not assign ANZ Cooling PTY Ltd's contract.

9.4 Illegality or unenforceability of any provision shall not affect the legality and enforceability of other provisions.

9.5 In contracting for the exclusions and limitations of liability herein contained ANZ Cooling PTY Ltd is contracting on its own behalf and as agent for and on behalf of and for the benefit of anyone carrying out activities on behalf of ANZ Cooling PTY Ltd.

9.6 The customer shall not be entitled to withhold or delay payment or exercise any right of setoff whatsoever and howsoever arising or arisen which might otherwise be available to it.

9.7 The contract shall in all respects be governed by and construed in accordance with Australian Law and the parties hereby submit to the non-exclusive jurisdiction of the Australian Courts within Victoria.

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