

Supply of Goods and Services Terms and Conditions

The Client hereby engages Melbourne Refrigeration to provide the Goods and Services specified in the Online Purchase Order and Melbourne Refrigeration agrees to provide such Goods and Services on the Terms herein.

1. Definitions

In these Terms unless the context requires otherwise:

Melbourne Refrigeration means Jay V Pty Ltd ACN 165 831 765 as trustee for the Vrdoljak Family Trust trading as Melbourne Refrigeration & Catering Equipment ABN 84 180 632 675

Client means the client whose details appear in the Online Purchase Order

Contract means a contract for the sale of Goods to the Client, which arises in accordance with clause 2 of these Terms

Financing Statement has the meaning given to it by the PPSA

Financing Change Statement has the meaning given to it by the PPSA

Goods means the goods which the Client has agreed to purchase from Melbourne Refrigeration for the Price, details of which are contained in the Quote and Online Purchase Order

New Goods means Goods which are new and which are ordered from the manufacturer or supplier by Melbourne Refrigeration

Price means the price payable in respect of the Goods, as specified in the Quote, Online Purchase Order and any subsequent invoice issued by Melbourne Refrigeration

Purchase Acceptance means Melbourne Refrigeration sending an invoice to the Client for the Goods and/or Services after receiving an Online Purchase Order in accordance with these Terms

Online Purchase Order means an online order for the Goods and/or Services provided by the Client to Melbourne Refrigeration

PPSA means the Personal Properties Securities Act 2009 (Cth)

PPSR means the Personal Properties Securities Register

Quote means the quotation represented online by Melbourne Refrigeration which details the Price of the Goods and/or Services which Melbourne Refrigeration is selling to the Client

Second-hand Goods means Goods which are used prior to being made available for purchase from Melbourne Refrigeration and which Melbourne Refrigeration holds on stock

Services means the services which the Client has agreed to purchase from Melbourne Refrigeration for the Price, details of which are contained in the Quote

Terms means these terms and conditions of sale

Warranty means any manufacturer's warranty provided to the Client by Melbourne Refrigeration in relation to the Goods and/or Services

Website means <https://melbournerefrigeration.com.au/> owned and operated by Melbourne Refrigeration.

2. Contract

- 2.1 The Client may order Goods and/or Services from Melbourne Refrigeration from time to time by providing an Online Purchase Order to Melbourne Refrigeration.
- 2.2 Following receipt of an Online Purchase Order and upon Melbourne Refrigeration sending an invoice to the Client a contract arises between Melbourne Refrigeration and the Client for the supply of the Goods and Services at the Price, and otherwise on these Terms.
- 2.3 These Terms apply to all trade and all Contracts between Melbourne Refrigeration and the Client.
- 2.4 Melbourne Refrigeration will not supply Goods and Services to the Client on any terms or conditions other than these Terms.
- 2.5 The Client is deemed to have adopted and accepted these Terms upon making an Online Purchase Order.
- 2.6 Melbourne Refrigeration will supply the Goods and Services specified in the Online Purchase Order and assemble and install the Goods and/or deliver the Services for the Client in accordance with the Online Purchase Order.

3. Price

- 3.1 The Price for the Goods and Services is as specified in the Quote on the Website which will be payable in respect of any taxable supply made under these Terms pursuant to A New Tax System (Goods and Services Tax) Act 1999 and related legislation and regulations.
- 3.2 Melbourne Refrigeration reserves the right to change the Quote of Goods at any time without notice. The price displayed at the time of the Online Purchase Order will continue to apply even if the price changes before Melbourne Refrigeration issue an invoice.
- 3.3 Unless specified otherwise in the Quote, delivery and freight charges are not included in the Price, and are payable by the Client at the same time as the Price is due to be paid.
- 3.4 Delivery and freight charges and are subject to change in the absolute discretion of Melbourne Refrigeration. Delivery and handling charges are calculated at checkout.
- 3.5 The Client may not set off against the Price any amounts due from Melbourne Refrigeration, without the express written consent from Melbourne Refrigeration.

4. Delivery of the Goods

- 4.1 Full delivery prices and options are listed on Melbourne Refrigeration's Website and are subject to change from time to time depending on the size and weight of the Goods and the delivery location.
- 4.2 For Second-hand Goods, Melbourne Refrigeration will endeavour to deliver or make available the Goods for pick up **TBA days** after an Online Purchase Order is received.
- 4.3 For New Goods, they will be shipped from the manufacturer after an Online Purchase Order is accepted by Melbourne Refrigeration. Upon the Online Purchase Order being accepted, Melbourne Refrigeration will use its best endeavours to make the Goods available for delivery or pick up after 5 business days.
- 4.4 Unless otherwise agreed, the Goods will be delivered to the Client's address or picked up from the Melbourne Refrigeration premises as specified in the Quote. The Client will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 4.5 Melbourne Refrigeration is not responsible for any loss or damage to the Goods during delivery.
- 4.6 Melbourne Refrigeration will use reasonable endeavours to ensure its delivery agents meet delivery estimates. However Melbourne Refrigeration cannot be held liable for any delay in delivery.
- 4.7 Melbourne Refrigeration will use its best reasonable endeavours to comply with the Client's particular delivery requirements. Where changes are made to the manufacturing processes or specifications of any Goods, however, the Client may not cancel the whole or part of an order or claim compensation due to Melbourne Refrigeration's failure to comply with its delivery requirements or minor variations to the Goods.
- 4.8 If for any reason beyond the control of Melbourne Refrigeration, including without limitation, strike, trade dispute, fire, flood, accident, tempest, pandemic, death, war declared or undeclared, blockade, governmental or quasi-governmental restraint, unavailability of Goods, loss or destruction of the Goods, delays in transport or an act of God, an order cannot be filled at the time required by the Client or at all, Melbourne Refrigeration is not required to supply the Goods to the extent and for the period that it is so unable to supply the Goods, and Melbourne Refrigeration is not liable to the Client in respect of any inability on its part to perform its obligations.
- 4.9 The Client must notify Melbourne Refrigeration if any Goods delivered under a Contract are defective or are otherwise in breach of these Terms within three days of delivery. If the Client does not give the requisite notice to Melbourne Refrigeration within this time frame, the Client is deemed to have waived its rights in respect of such Goods.

5. Withholding Supply

- 5.1 Melbourne Refrigeration reserves the right to withhold supply of Goods and Services to the Client and Melbourne Refrigeration is not liable for loss or damage resulting directly or indirectly from such action where:
 - 5.1.1 Melbourne Refrigeration has insufficient Goods to fill an order;
 - 5.1.2 the Goods specified in the Quote have been discontinued; or
 - 5.1.3 the Client has unpaid invoices outstanding in excess of 30 days.

6. Acceptance of Goods – Retention of Title

- 6.1 Title to the Goods supplied shall not pass until the Client has made payment in full of the Price and any additional costs.
- 6.2 Melbourne Refrigeration and the Client further agree that until property and title to the Goods pass to the Client:

- 6.2.1 the Client must hold the Goods as the bailee of Melbourne Refrigeration;
- 6.2.2 if required by Melbourne Refrigeration, the Goods must be kept separate and identifiable;
- 6.2.3 if the Client fails to make any payment in accordance with the Contract, Melbourne Refrigeration may give notice in writing to the Client to return the Goods to Melbourne Refrigeration and, if the Client fails to return the Goods, Melbourne Refrigeration is hereby authorised to enter the Client's premises or the premises of any agent at which the relevant Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods, and either keep or resell the Goods;
- 6.2.4 if the Goods are used in such a manner that they become a constituent part of or inextricably mixed into another object, or the Client sells the Goods to a third party in the ordinary course of the Client's business, that:
 - 6.2.4.1 the Client must hold all proceeds from the sale or disposal of the Goods on trust for Melbourne Refrigeration in a separate account from the Client's own money; and
 - 6.2.4.2 the Client must account to Melbourne Refrigeration for the proceeds of the sale or disposal of the Goods until the Client's total indebtedness to Melbourne Refrigeration is discharged;
- 6.2.5 in the event that the Client has sold the Goods to a third party and has defaulted in payment to Melbourne Refrigeration for such Goods, the Client;
 - 6.2.5.1 agrees to provide full details of the third party to Melbourne Refrigeration;
 - 6.2.5.2 consents to Melbourne Refrigeration seeking payment directly from the third party, or Melbourne Refrigeration entering into a separate contract with the third party for the sale of the Goods;
 - 6.2.5.3 forgoes any beneficial right to payment for the Goods from the third party, and will do all such things necessary to direct the third party to make payment for the Goods directly to Melbourne Refrigeration; and
 - 6.2.5.4 will remain liable for the entire payment of the Goods until such time the full debt is paid to Melbourne Refrigeration, including being liable for any shortfall in payment by the third party;
- 6.2.6 in the event that the Goods are converted into or intermingled with other products, property in and title to the end products vest in Melbourne Refrigeration; and
- 6.2.7 the Client may not charge the Goods in any way nor grant or otherwise give any interest in the Goods.

6.3 If Melbourne Refrigeration takes possession of any Goods in accordance with this clause 6, the Client remains liable to pay the Price.

7. Personal Properties Securities Act 2009

- 7.1 The Client acknowledges that these Terms together with any Quote:
 - 7.1.1 constitute a security agreement for the purposes of the PPSA; and
 - 7.1.2 create a security interest in all Goods described in the Quote, or any after acquired accounts as original collateral of the Client.
- 7.2 The Client acknowledges and agrees that Melbourne Refrigeration may effect a registration on the PPSR in relation to any security interest arising under or in connection with any Contract.
- 7.3 The Client agrees that it must:
 - 7.3.1 promptly sign any further documents and/or provide any further information which Melbourne Refrigeration may reasonably require to:
 - 7.3.1.1 register a Financing Statement or Financing Change Statement in relation to a security interest on the PPSR;
 - 7.3.1.2 register any other document required to be registered by the PPSA;
 - 7.3.1.3 correct a defect in a statement referred to in clause 7.3.1.1 or 7.3.1.2;
 - 7.3.1.4 indemnify, and upon demand reimburse, Melbourne Refrigeration for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods charged thereby;
 - 7.3.1.5 not register a Financing Change Statement in respect of any security interest without Melbourne Refrigeration's prior written consent; and
 - 7.3.1.6 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 Melbourne Refrigeration's prior written consent.

- 7.4 For the avoidance of doubt, the security interest extends to the Client's present and after acquired accounts as original collateral. Section 55(4) of the PPSA applies in the event that any subsequent interest is registered in by any third party in respect of the Client's accounts.
- 7.5 The Client hereby waives its right to receive any notice under the PPSA (including notice of a verification statement) unless such notice is required by the PPSA and cannot be excluded.
- 7.6 If chapter 4 of the PPSA applies to the enforcement of a security interest arising under or in connection with these Terms, the Client agrees that the following provisions of the PPSA will not apply to the enforcement of that security interest and the Client hereby waives any rights associated with the following provisions:
- 7.6.1 section 95 (notice of removal of accession), to the extent that it requires Melbourne Refrigeration to give the Client a notice;
 - 7.6.2 section 96 (when a person with an interest in the whole may retain an accession);
 - 7.6.3 section 121(4) (enforcement of liquid assets - notice to grantor);
 - 7.6.4 section 125 (obligation to dispose of or retain collateral);
 - 7.6.5 section 130 (notice of disposal), to the extent that it requires the Supplier to give the Client a notice;
 - 7.6.6 section 132(3)(d) (contents of statement of account after disposal);
 - 7.6.7 section 132(4) (statement of account if no disposal);
 - 7.6.8 section 142 (redemption of collateral);
 - 7.6.9 section 143 (reinstatement of security agreement); and
 - 7.6.10 section 157 (notification of verification statement).
- 7.7 Where a person is a controller in relation to the Goods, Part 4.3 of the PPSA does not apply to the enforcement of any security interest in the Goods by that controller.
- 7.8 Expressions used in these Terms and in the PPSA have the same meanings as when used in the PPSA.

8. Payment

- 8.1 All payment must be made in full prior to acceptance of an Online Purchase Order
- 8.2 In the event that the Online Purchase Order is considered potentially fraudulent Melbourne Registration reserve the right to not accept the Online Purchase Order. Your personal information is used in accordance with our Privacy Policy.
- 8.3 To the extent permitted by law, Melbourne Refrigeration will not be responsible for any damages or consequential losses (whether direct or indirect) suffered by a Client where a credit card is fraudulently used or is used in an unauthorised manner.

9. Enforcement Expenses and Costs

- 9.1 The Client agrees that it must pay to Melbourne Refrigeration on demand any expenses, fees and disbursements incurred by Melbourne Refrigeration in recovering any amount owing to it by the Client, including any reasonable debt collection agency fees and legal expenses and any costs incurred by Melbourne Refrigeration in respect of any order cancelled by the Client.

10. Variations and Cancellations

- 10.1 If the Client chooses to cancel an order after making an Online Purchase Order, the moneys paid will only be refunded at the discretion of Melbourne Refrigeration.
- 10.2 Melbourne Refrigeration may change these Terms at any time without notice.

11. Safety and Supervision

- 11.1 It is the Client's responsibility to provide a safe site with unimpeded access to perform the Services.
- 11.2 The Client is solely responsible for the safety and supervision of the Client's employees and agents on site at all times.

12. Exclusion of Warranties

- 12.1 This clause 12 only applies if the Australian Consumer Law does not apply to the Contract, for example if:

- 12.1.1 the Goods are purchased for the purpose of resupply or for the purpose of being used up or transformed in trade or commerce; or
- 12.1.2 the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- 12.1.3 the Price is higher than \$100,000.00.

Nothing in these Terms is intended to have the effect of excluding or limiting any consumer guarantees given by Melbourne Refrigeration under the Australian Consumer Law.

- 12.2 Subject to clause 12.1, except as provided in these Terms and any Warranty and to the extent permitted by law, and except where conditions and warranties as to the supply of goods are implied by any statute or rule of law, all implied conditions, guarantees and warranties (including guarantees or warranties as to merchantability and fitness for purpose) are expressed excluded.
- 12.3 Subject to clause 12.1, Melbourne Refrigeration makes no representation or warranty in relation to any Second-Hand Goods all of which (to the extent permitted by law) are sold to the Client "as is". The Client agrees to look solely to the Warranty (if any) of the manufacturer.
- 12.4 Warranties in relation to Goods are void if the Goods are altered in any way by the Client.

13. Liability and Indemnity

- 13.1 Melbourne Refrigeration accepts no responsibility and the Client and the Client hereby indemnifies Melbourne Refrigeration and holds it forever harmless from and against any liability, loss, cost, expense or demand for or arising out of the Client's negligence or from a breach or non-performance by the Client of these Terms, as a consequence of any claim against Melbourne Refrigeration, arising directly or indirectly as a result of the Client's negligence or in connection with a breach or non-performance of any of the Client's obligations under these Terms.
- 13.2 This clause 13 only applies if and to the extent that the Australian Consumer Law does not apply to the Contract. Clause 12.1 describes Contracts to which the Australian Consumer Law does not apply. Nothing in these Terms is intended to have the effect of limiting Melbourne Refrigeration's liability under the Australian Consumer Law.
- 13.3 Melbourne Refrigeration accepts no responsibility and is not liable for any direct or indirect, special or consequential loss or damage or injury to any person, corporation or other entity in connection with a Contract or the Goods, howsoever caused.
- 13.4 Melbourne Refrigeration accepts no responsibility and is not liable for any loss incurred in connection with the storage of any goods by Melbourne Refrigeration.
- 13.5 Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
 - 1. to cancel your Service Contract with us; and
 - 2. to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

14. Risk

- 14.1 Risk in the Goods passes to the Client upon the Goods being dispatched for delivery. The Client accepts all risk involved in the use and/or possession of the Goods.
- 14.2 The Client must insure Goods against all loss or damage, and Melbourne Refrigeration's interest must be noted on such insurance policy.

15. Insurance

- 15.1 The Client and Melbourne Refrigeration undertake that they each have the necessary insurances, including workers compensation and employer's liability insurance, public liability insurance in respect of personal injury, death or property damage and (if appropriate) professional indemnity insurance in place as at the date of the Quote and for the duration of the Services being carried out.

16. Severability

- 16.1 If any of these Terms is invalid or unenforceable in any jurisdiction, that Term must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining Terms or affecting the validity or enforceability of that Term in any other jurisdiction.

17. Waiver

- 17.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

18. Termination

- 18.1 Subject to clause 18.2 either party may terminate the Contract by giving the other party notice in writing of such termination.
- 18.2 In the event that the Client terminates the Contract in accordance with clause 18.1 the Client must pay to Melbourne Refrigeration the Price plus any additional costs without prejudice to its other rights and remedies under these Terms.

19. Intellectual Property

- 19.1 The Client acknowledges that no rights to any intellectual property in the Goods (including, without limitation, patent, trademark, design, copyright or plant breeder's rights) are transferred to the Client.
- 19.2 The Client must notify Melbourne Refrigeration immediately if the Client's use of the Goods results in an actual or alleged infringement of a third party's intellectual property rights.
- 19.3 The Client is solely responsible for any infringement of the intellectual property rights of any third party resulting from the Client's use of the Goods, and the Client must indemnify Melbourne Refrigeration for any costs, expenses, damages or liability incurred by Melbourne Refrigeration arising from any such infringement.

20. Jurisdiction

- 20.1 These Terms are governed by the laws of the State of Victoria and the parties submit to the jurisdiction of the Courts and Tribunals of Victoria.

21. Entire Agreement

- 21.1 These Terms are to be read in conjunction with the Quote/Invoices and these two documents constitute the entire agreement between the parties. In the event of a conflict between these Terms and the Quote, these Terms will prevail.

22. Notices

- 22.1 Any notices delivered in accordance with these Terms are to be addressed to the registered office of each party or such other address as notified by the parties in writing from time to time.

23. Terms Binding on Successors

- 23.1 These Terms are binding on the Client, its successors, and legal personal representation.

24. Dispute Resolution

- 24.1 If a dispute arises out of or relating to these Terms (a Dispute), either party may notify the other party of the nature and particulars of the Dispute, and the parties must, within 7 days of the delivery of such notice, commence discussions to attempt to resolve the Dispute in good faith, without the necessity of resorting to any formal proceedings.
- 24.2 If the Dispute is not resolved within the next 10 days, either party may refer the Dispute to mediation in accordance with, and subject to, the mediation rules of the Australian Disputes Centre (ADC). The parties agree that they must bear the costs of mediation under this clause 24 equally.
- 24.3 If neither party refers the dispute to mediation within 24 days of delivery of the initial notice of the Dispute, either party may commence court proceedings in respect of the Dispute.