

**TECO AUSTRALIA PTY LIMITED**  
**Household Appliance and Air Conditioning Division**  
**TERMS AND CONDITIONS OF SALE**

**1. Definitions and Interpretation**

1.1 In these conditions unless the context otherwise requires:

“**Collateral**” means all of the Customer’s present and after-acquired personal property, and all of the Customer’s present and future rights in relation to any personal property to which the PPS applies.

“**Conditions**” means the terms and conditions set out in this document as varied in writing by Teco.

“**Customer**” means the purchaser of the Products and/or the applicant listed in the Application for a Trading Account.

“**Delivery Charge**” means the cost of delivering the Products to the Customer.

“**Delivery Date**” means the estimated date for delivery of the Products to the Delivery Point.

“**Delivery Point**” means the place to which the Products are to be delivered, as nominated by the Customer.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder.

“**Intellectual Property**” means the copyright subsisting in the Products and any written material supplied in relation thereto and all patents, trade marks and industrial designs (whether registered or not) and all confidential information and trade secrets concerning or relating to the Products or the Services.

“**Interest Rate**” means the rate of two percent (2%) above the Indicator Lending Rate quoted by Westpac Banking Corporation from time to time.

“**Quotation**” means a written quotation provided by TECO to the Customer specifying Products to be supplied to the Customer and the Price of those Products.

“**PPS**” means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder.

“**PPSR**” means the personal property securities register established pursuant to the PPS.

“**Price**” means the price paid by the Customer for the Products.

“**Products**” means the goods and services supplied or to be supplied to the Customer by TECO.

“**Security Agreement**” means any contract entered into between the Customer and TECO, including an Application for a Trading Account and the Conditions.

“**Tax Invoice**” means an invoice that complies with the GST Act.

“**TECO**” means TECO Australia Pty Limited ACN 002 595 388.

“**Terms of Payment**” means the terms of payment of the Price and Delivery Charge. Unless TECO specifies otherwise, the Price and any other moneys owing by the Customer to TECO must be paid within 30 days of the end of the month in which the relevant invoice is issued.

“**Warranty Period**” means that period of time specified in the warranty applicable to the relevant Product.

1.2 In these Conditions, where the context admits:

- (1) a word denoting one gender includes the other genders;
- (2) a word denoting the singular includes the plural and vice versa; and
- (3) a word denoting a natural person includes reference to a corporation and other entities.

1.3 The margin notes and headings in these Conditions are for convenience only and do not affect the interpretation of or form part of these Conditions.

**2. General**

2.1 The only contractual terms that bind TECO are those set out in these Conditions (including any updated version of these Conditions provided from time to time) and in the Quotation or otherwise agreed to in writing by TECO or which are imposed by law and cannot be excluded. In the event of any inconsistency between the contractual terms set out in these Conditions and any other contractual term then the terms set out in these Conditions will prevail to the extent of such inconsistency.

2.2 The Customer acknowledges that the Customer is responsible to ensure that the Products are suitable for its intended use. TECO warrants that the Products will perform to the published specifications subject to specified tolerances

or if no tolerance is specified then reasonable tolerances. TECO gives no warranty that the Products will be suitable for any particular purpose even if it has been given notice of that purpose.

2.3 These Conditions are applicable only to Products supplied by TECO’s Household Appliance and Air Conditioner Division. Supply of goods and services by other divisions of TECO will be subject to the terms and conditions issued by these divisions.

**3. Formation of Contract**

3.1 A Quotation submitted to the Customer by or on behalf of TECO does not represent an offer by TECO to sell the Products to the Customer. A Quotation will remain current for 60 days unless withdrawn or varied.

3.2 Each order for goods and/or services placed by the Customer with TECO (“**Order**”) will constitute an offer by the Customer to purchase the Products specified in the Order and is subject to these Conditions.

3.3 An Order once given by the Customer is irrevocable unless TECO gives its written consent or receives written notice of revocation before the Order is accepted by TECO. Where TECO accepts the revocation of an Order after it has been accepted, TECO may at its discretion charge a restocking fee.

3.4 A contract for the sale of Products to the Customer will be formed at the time of acceptance of the Order from the Customer and will be subject to these Conditions.

3.5 TECO reserves the right to reject Orders in whole or in part. Orders will be accepted by TECO on the earliest to occur of the following:

- (a) Confirmation to the Customer by TECO of the estimated delivery date of the Products; or
- (b) Delivery of the Products by TECO to the Customer.

**4. Price and Payment**

4.1 The Customer must pay the Price and the Delivery Charge to TECO in accordance with the Terms of Payment.

4.2 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to TECO, TECO may:

- (a) suspend or cancel any outstanding Orders placed by the Customer; and
- (b) charge the Customer interest (both before and after any judgement) on the amount overdue, at the Interest Rate calculated on a daily basis from the date payment was due to TECO to the date of actual payment.

All costs incurred by TECO in enforcing payment will be borne by the Customer.

4.3 If GST (goods and services tax) is payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (as amended) on a Taxable Supply (as defined by that Act), then despite anything to the contrary in these conditions, the Customer must pay to TECO at the same time that payment of the purchase price, service fee or other money or consideration is due from the Customer to TECO under these Conditions for or on account of such Taxable Supply (or if no such payment is due, then on demand by TECO), an additional amount which is equal to the GST which is payable on such Taxable Supply.

**5. Delivery and Installation**

5.1 TECO will endeavour to deliver the Products to the Delivery Point by the Delivery Date. TECO will in no

event be liable to the Customer by reason of delays in delivery caused by any reason whatsoever.

5.2 The Customer will inspect the Products immediately after delivery and will within one (1) business day from such

5.3 inspection give written notice to TECO of any shortages or damage apparent in relation to the Products. In the event that:

- (1) the Customer fails to give such notice, then to the extent permitted by statute the Products will be deemed to have been accepted by the Customer; or
- (2) the Customer gives such notice, then TECO will upon verification of the notice make up any shortages and replace any damaged Products as soon as it is reasonably able to do so.

5.4 If the Customer fails to take delivery of goods ordered within fourteen (14) days after invoice then without prejudice to any other right or remedy available to TECO, TECO may store the goods until actual delivery and charge the Customer for the costs of or associated with storage including without limitation insurance and handling charges.

## 6. Risk and Property in Goods

6.1 All goods will be at the Customer's risk immediately upon delivery to the Customer or the Customer's nominee or carrier, or upon being placed into storage in accordance with clause 5.3.

6.2 Notwithstanding the provisions of Clause 6.1, in respect of each sale of Products to the Customer by TECO, TECO will retain title in the Products, the subject of that sale, as well as title in goods being the subject of all previous and subsequent sales ("Goods") until Teco has received payment in full of all sums due in connection with the supply of all Goods by TECO to the Customer (whether the subject of the current, previous or subsequent sales).

6.3 In the event that any Goods are incorporated into or attached to, or mixed with, other goods by the Customer, so that they are no longer identifiable or separable, then property in the composite goods will vest in and be retained by TECO in accordance with Clause 6.2.

6.4 The Customer will store all Goods and any composite goods owned by TECO in such a way that they are clearly identifiable as TECO's property ("TECO Goods"), and shall maintain and allow TECO to inspect records of TECO Goods, identifying them as TECO's property, and of the persons to whom it sells or otherwise supplies TECO Goods or any of them and of payments made by such persons for TECO Goods.

6.5 If payment for any Goods is overdue, TECO is entitled, without prejudice to any of its other rights and remedies, to repossess TECO Goods and to enter into any premises upon which TECO Goods are stored, without notice, for this purpose.

6.6 Until such time as TECO receives payment in full for all TECO Goods, if the Customer sells or receives any payment from a customer or insurer in respect of TECO Goods, the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) will be held by the Customer on trust for TECO and paid into a separate bank account which shall not be overdrawn or otherwise dealt with without TECO's prior written consent.

6.7 Nothing in clauses 6.2 to 6.6 inclusive, shall affect TECO's rights as an unpaid seller.

## 7. Warranties

7.1 Subject to clauses 7.4 and 7.5, the Products are warranted against faulty workmanship and/or materials produced by TECO for the Warranty Period.

7.2 Except as provided in TECO's standard warranty for the Products notified by TECO to the Customer from time to time to the fullest extent permitted by law:

(a) All warranties, representations, terms and conditions concerning the Products to be supplied by TECO are hereby expressly excluded; and

(b) TECO will have no liability whatsoever for any incidental, special or consequential damages, including but not limited to loss of business, profits, data or use, whether in an action in contract or tort (including negligence) or based upon any representation or other conduct of TECO, arising out of or in connection with the Products or these Conditions; and

(c) TECO's liability to the Customer for any reason whatsoever arising out of or in connection with the Products or these Conditions will not exceed the cost of resupplying the Products in question (or equivalent Products) or for repairing those Products.

7.3 Provisions of the Trade Practices Act 1974 (Cth), as amended, and other legislation and laws from time to time in force in Australia, such as, but not limited to, the Sale of Goods Acts and the Fair Trading Acts of various States of Australia, may imply warranties or conditions or impose obligations upon TECO which cannot, in whole or part, be excluded, restricted or modified. These Conditions must be read and construed subject to any such statutory provisions. If such statutory provisions apply then, to the extent permitted by law, TECO's liability (if any) arising out of or in relation to the Products supplied by TECO shall be limited, at its option to: (a) In the case of goods:

(i) the replacement or repair of the goods or the supply of equivalent goods; or

(ii) the payment of the cost of replacing the goods or having the goods repaired or of acquiring equivalent goods; (b) In the case of Services:

(i) the supply of the services again; or

(ii) the payment of the costs of having the services supplied again.

7.4 The Customer agrees that, unless the applicable product warranty provides otherwise in order to make a claim under the warranty provided in clause 7.1, it will either:

(1) return the defective Products to TECO free of charge; or

(2) pay to TECO all costs and expenses incurred by TECO in sending its representative to the site of repair, including without limitation fares, working and travelling time, accommodation and sundry expenses.

7.5 TECO reserves the right to refuse and/or void the warranty referred to in clause 7.1 if in its absolute discretion it is of the opinion that the Products have been serviced or modified by unauthorised parties without TECO's express written permission.

## 8. PPS

8.1 The Customer grants TECO a security interest in the Collateral.

8.2 the security interest referred to in clause 8.1 secures:

(a) payment of all amounts owing, or which may become payable, by the Customer to TECO; and

(b) performance of any obligations the Customer has to TECO under this agreement and these Conditions.

8.3 TECO retains title to, and has a purchase money security interest in, all Products and any and all proceeds derived directly or indirectly from any dealing with such Products within the meaning of s 14 and 32 of the PPS, until such time as the Customer has made payment of all secured amounts to Teco.

8.4 In respect of the PPS:

- (a) for the purposes of *s115* of the PPS, the Customer and TECO agree that to the fullest extent permitted by law, they have agreed to contract out of *ss95, 117, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143* of the PPS and contract out of all matters permitted to be contracted out of pursuant to *s115(7)* of the PPS; and
- (b) to the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under *s157* of the PPS pursuant to *s157(3)(b)* of the PPS.

#### 9. Intellectual Property Rights

9.1 The Customer acknowledges that TECO owns full right, title and interest in and to the Intellectual Property and agrees that it will not at any time, by act or omission, do anything that will detrimentally affect TECO's rights in and to the Intellectual Property.

#### 10. Force Majeure

10.1 The obligations of a party under the Conditions, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with the obligations by force majeure and the parties will not be liable for any failure to fulfil their obligations caused by force majeure.

10.2 Force majeure means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril or navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of any government whether

de jure or de facto or of any official purporting to act under the authority of that government prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property.

#### 11. Notices

11.1 A notice or other communication required or permitted to be given by one party to another will be in writing and either delivered personally, sent by post (postage prepaid) to the other party's address set out in the Order or forwarded by facsimile transmission to the other party's facsimile number set out in the Order.

11.2 A notice or other communication is deemed given if:

- (1) personally delivered, upon delivery;
- (2) mailed, on the expiration of two (2) business days after posting; or
- (3) sent by facsimile transmission, upon receipt of a fully legible facsimile transmission.

11.3 The receipt of a facsimile transmission shall be acknowledged to the sending party by the receiving party.

#### 12. Severance

12.1 If any provision of the Conditions is or becomes invalid, illegal or unenforceable such provision will be deemed to be severed from the Conditions but all the remaining provisions shall not be affected as far as possible.

#### 13. Governing Law

13.1 The Conditions shall be governed by the laws of the State of New South Wales as in force from time to time and the parties agree to submit to the courts having jurisdiction in New South Wales in relation to any proceedings which may arise from the Conditions.