



## TERMS & CONDITIONS

### 1. Interpretation

#### 1.1. In these Conditions:

- 1.1.1. 'The Company' means Atlas Air Conditioning (Pty) Ltd which agrees to perform the Contract Work. 'Contract Work' means any or all of the work which the Company agrees to perform and/or the services which the Company agrees to provide in accordance with the quotation annexed hereto.
- 1.1.2. 'Goods' means all goods of whatsoever description including but not limited to materials, equipment, machinery and fittings, unless otherwise agreed to between the parties. 'Customer' means the person, firm or corporate body who contracts with the Company in accordance with the quotation.
- 1.1.3. 'Contract' means any contract between the Company and the Customer for the carrying out of the Contract Work.
- 1.1.4. 'Quotation' means a quotation by the Company for the Contract Work.

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in these Conditions are for convenience only and shall not affect the interpretation of a Contract.
- 1.4. Reference to one gender includes reference to the other gender.

### 2. Orders and specifications

- 2.1. The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. No variation of, or addition to, these Conditions shall be effective unless reduced to writing and signed by the Company and the Customer.
- 2.3. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4. The Customer acknowledges that the representative acting on behalf of the Customer is a duly authorised representative of the Customer and has the authority to act on behalf of and bind the Customer to these terms.
- 2.5. The Customer acknowledges that any adjustments made to any equipment or systems may tamper with the warranty on the equipment and/or systems and as a result shall ensure that no other person other than an employee of the Company will be allowed to make any adjustments to any part of the equipment or system covered in this contract. In the event that the Company becomes aware that any equipment or system has been handled by someone other than an employee of the Company, the Company reserves its rights to cancel this contract and claim any and all damages it may sustain as a result of such action by the Customer.
- 2.6. Any typographical or clerical error or omission in any Quotation, price list, acceptance, invoice or other such document issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.7. A Contract shall be created by the Customer accepting a Quotation or otherwise placing an order with the Company, irrespective of how such Quotation, acceptance or order is expressed.
- 2.8. The Customer shall be responsible for ensuring the accuracy of the terms of any order or other material (including any applicable specification) submitted by the Customer or on its behalf and for giving the Company any necessary information relating to Contract Work within a sufficient time to enable the Company to perform the Contract in respect thereof in accordance with its terms.
- 2.9. The Customer shall be responsible for ensuring that every building, path, private road, open space or other property to be used in the performance of Contract Work is safe and suitable for the intended use and, without limitation of the foregoing, is adequately served with all required public utilities.
- 2.10. The Customer may not cancel a Contract unless the Company agrees in writing and then on the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit, costs (including the cost of all labour and materials used), claims, actions, damages, charges and expenses incurred by the Company as a result of cancellation.
- 2.11. The Company shall have and retain the property, copyright, design right and all other intellectual or industrial property rights in all know how, trade secrets, trademarks, service marks, drawings, designs, plans, models, specifications and/or estimates prepared by the Company. If the Customer uses or allows any third party to



- 2.12. use any design or other intellectual property rights of the Company provided as part of the Contract Work other than as contemplated under the Contract, the Customer will, without prejudice to any other remedy available to the Company, pay the Company under the Contract plus VAT.
  - 2.13. Where the Customer is to supply goods ('Customer's Property') to the Company in connection with the Contract Work the Company will not be liable to the Customer for loss of or any damage to Customer's Property unless caused by the negligent act or omission of the Company.
  - 2.14. It is specifically agreed that the Customer shall be responsible to the Company for insuring the place of performance of the Contract Work and shall indemnify the Company against liability for any damage to the place of performance of such Contract Work, if any and howsoever caused.
- 3. Prices**
- 3.1. The Company will quote for Contract Work only after the Company has received a written specification from the Customer.
  - 3.2. The Quotation shall be open for acceptance within either the period stated therein or, if none is stated, within 30 (thirty) days of the date on the quotation. In the event that the Customer requires a further period for acceptance of the quotation, such longer period shall be subject to the Company verifying the and/or adjusting the quotation in its sole discretion one month prior to the Contract Work commencing.
  - 3.3. The contract provides for all work to be carried out within normal working hours and on normal working days. Work done outside normal working hours will necessitate additional labour charges based on overtime rates stated herein. Where the contract especially provides for the scheduled inspections to take place outside of normal working hours, then the additional overtime work will be charged as overtime.
  - 3.4. The Company reserves the right by giving notice to the Customer at any time before completion of Contract Work to increase the price of the applicable Contract in the following circumstances:
    - 3.4.1. Where additional work is performed at the Customer's request; and/or
    - 3.4.2. To reflect any increase in the cost to the Company which is due to any factor beyond the Company's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of performance) or any failure of the Customer to give the Company adequate information or instructions.
  - 3.5. Prices are exclusive of VAT and, where applicable, any additional or substitute taxes, levies, imposts, duties, fees or charges shall be paid by the Customer.
  - 3.6. The Quotation shall include all transportation costs and shall be payable at the rate specified therein.
  - 3.7. The Quotation shall include all costs applicable to emergency service calls and the Customer acknowledges and is aware of such costs and rates applicable.
- 4. Terms of Payment**
- 4.1. All charges are based on SEIFSA wage indices. The Customer will be notified of any increased to labour and material costs and will automatically be charged on any new rates.
  - 4.2. All materials and replacement parts required to maintain the equipment in proper working order will be for the Customer's account, chargeable as stated herein.
  - 4.3. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled, at its option at any time thereafter to:
    - 4.3.1. Terminate the relevant Contract and suspend further performance of Contract Work; and
    - 4.3.2. Require the immediate return of any Goods on the Customer's premises (if any);
    - 4.3.3. Require full payment, without deduction, of the total amount due and/or which would have become due under the relevant Contract but for termination;
    - 4.3.4. Charge interest on any unpaid amounts at a rate of 10.25% per annum;
  - 4.4. If the Customer is in any way in breach and the Company engages the services of an attorney to collect the whole or any portion of the amount owing to it by the Customer, the Customer shall pay all the costs occasioned as a result, including collection charges and costs on an attorney and own client scale.
  - 4.5. Should the Company have applied any discount on the Quotation and the Customer fails to make payment, such default will result in the Customer forfeiting any discount given by the Company and the full amount shall then become due and owing to the Company, subject to the provisions of Clause 4.2 above.
  - 4.6. In the event that the Customer is not based in the Republic, the Company shall require full payment of the Quotation prior to commencement of the Contract Work.



- 4.7. The Company has a strict cash policy and in the event that the Customer requires credit to be granted, such granting of credit will be at the discretion of the Company and the Customer shall consent to a credit check before such granting of credit is considered by the Company.
- 5. Inspection Dates**
- 5.1. The Company will endeavour to adhere to the appointment agreed upon for the maintenance inspections, but reserves the right to vary the inspection date and time should it become necessary. The Company accepts no liability whatsoever for any losses incurred due to any alterations to the inspection date.
- 6. Warranty**
- 6.1. The Company warrants that every new or reconditioned part installed during any repair maintenance work for a period of 3 months from date of installation. A warranty in terms of this clause:
- 6.1.1. Will be void if the Customer has subjected the part, or the goods or the property in which it was installed to misuse or abuse; and
- 6.1.2. Does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to be ordinarily used.
- 7. Liability**
- 7.1. The Company shall not be liable for any defect in Contract Work arising directly or indirectly from compliance with any drawing, design, specification or order of the Customer.
- 7.2. Without prejudice to the terms of Clause 7.1 and 7.3, the Company will accept liability for any loss or damage sustained by the Customer as a direct result of any breach of a Contract or of any liability of the Company in respect of the performance of a Contract provided that such liability shall be limited to payment of damages not exceeding the invoice value of the Contract in question.
- 7.3. The Company shall not be liable for the following loss or damage howsoever caused (even if foreseeable or in the Company's contemplation):
- 7.3.1. Any losses or damages cause by failure of the Customer to report on the necessary repairs to be undertaken or replacement of any faulty equipment.
- 7.3.2. Any losses incurred by stoppages or any other direct or consequential damages, whatsoever the cause;
- 7.3.3. The corrosive, erosion or scaling of liquids and gases upon any plant or equipment;
- 7.3.4. The loss of consumable material including water, refrigerant and fuel.
- 7.3.5. Loss of profits, business or revenue whether sustained by the Customer or any other person; and/or
- 7.3.6. Special, indirect or consequential loss or damage, whether sustained by the Customer or any other person; and/or
- 7.3.7. any loss arising from any claim made against the Customer by any other person.
- 7.4. The Customer shall indemnify the Company against all claims, actions, costs, expenses (including court costs and legal fees) or other liabilities whatsoever in respect of:
- 7.4.1. Any claim for breach of industrial and/or intellectual property rights arising out of compliance with any drawings, designs, specifications or order of the Customer; and/or
- 7.4.2. Any breach of Contract or negligent or wilful act or omission of the Customer in relation to the Contract.
- 8. Force majeure**
- 8.1. The Company shall be entitled, without liability on its part and without prejudice to its other rights, to terminate a Contract or any unfulfilled part thereof or, at its option, to suspend or give partial performance under it, if performance by the Company or by its suppliers is prevented, hindered, or delayed whether directly or indirectly by reason of any cause whatever beyond the Company's or its suppliers' reasonable control, whether such cause existed on the date when the Contract was made or not.
- 9. Insolvency**
- 9.1. If the Customer commits any breach of these terms; and/or
- 9.2. Commits any act of insolvency; and/or
- 9.3. Attempts to reach a compromise with its creditors; and/or
- 9.4. Has had application issued against it for its provisional or final liquidation; and/or



- 9.5. Has been placed under judicial management and/or business rescue proceedings in terms of the Companies Act 71 of 2008; and/or
- 9.6. Conducts itself in a manner to justify inference that it no longer wishes to abide by these terms; and/or
- 9.7. Fails to have judgment in excess of R 25 000.00 (twenty thousand Rand) set aside, and fails to remedy such breach within a period of 7 (seven) days after receipt of a written notice from the Company calling upon the Customer so to remedy, then the Company shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of these terms and, without further notice, claim and recover damages from the Customer.

## 10. General

- 10.1. No waiver by the Company of any breach of Contract by the Customer shall be construed as a waiver of any subsequent breach of the same or any other provision.
- 10.2. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected thereby.
- 10.3. The Customer consents to the jurisdiction of the South African Magistrate's Courts in terms of the provisions of Section 45 of the Magistrate's Court Act (32 of 1944 as amended) for the determination of any claim which the Company may at any time have against the Customer, even though the amount of the claim exceeds the jurisdiction of such Court. It shall, nonetheless, be in the discretion of the Company to institute action either in the South African Magistrate's Courts in terms of the consent aforesaid or in the Supreme Court of South Africa having jurisdiction.
- 10.4. Failure or delay by the Company in enforcing or partially enforcing its rights under the Contract will not be construed as a waiver of any of its rights under the Contract.
- 10.5. The Customer chooses as its domicilium citandi et executandi as the address stipulated on the quotation whether in respect of court process, notices or other documents or communications of whatever nature where all documentation delivered or served will come to their attention.

## 11. Suretyship

- 11.1. Every natural person who signs this application on behalf of the Customer ("the surety") by so signing, binds himself/herself in his/her personal capacity as surety for, and as co-principal debtor jointly and severally with the Customer in favour of the Company for the full and punctual performance by the Customer to the Company of all the Customer's obligations to the Company including without limitation, the payment of all monies that may be due by the Customer to the Company whether as damages or otherwise.
- 11.2. The suretyship is unlimited as to the amount thereof;
- 11.3. The Surety appoints as his/her domicilium citandi et executandi, for the purposes of receiving process commencing legal proceedings against him/her by the Company, including arbitration proceedings, the domicilium citandi et executandi of the Customer as stipulated in clause 11.5 above;
- 11.4. This suretyship shall remain in force as a continuing covering security, during the currency of this agreement, and until all the obligations of the Customer to the Company have been discharged in full, notwithstanding that payments made by the Customer to the Company should from time to time discharge the then outstanding balance(s) due by the Customer to the Company. In the event that the Company should elect to cancel this agreement by reason of the breach by the Customer, or if this agreement should for any other reason howsoever terminate, this suretyship, and the provisions of this clause shall continue to be in force as between the Company and the Surety until such time as the Customer's obligations to the Company have been discharged in full;
- 11.5. No undertaking, agreement or representation howsoever made or purported to be made on behalf of the Company, the effect or alleged effect of which is that the Surety is released or discharged, whether wholly or in part, from his/her obligations in terms of this clause, shall be of no force and effect unless contained in a written instrument, signed by the Financial Manager or Member of the Company, which expressly records that the Surety is so released or discharged;
- 11.6. This suretyship shall be in addition to any other suretyships or securities which the Company may hold or hereafter obtain for the performance of the Customers' obligations to it in terms of this agreement. The Company shall be entitled, in its sole and absolute discretion, exercised upon such grounds as it deems proper, to release, discharge, compromise or consensually vary such other suretyships or securities, which shall not extinguish, limit, detract from





or otherwise attenuate the Company's rights as against the Surety in terms of this clause, it being expressly agreed that any such act by the Company shall not prejudice the Surety;

11.7. In the event that more than one person should bind himself/herself as Surety, whether in this agreement or in a separate instrument, for the full and punctual performance by the Customer to the Company of all the Customer's obligations to the Company in terms of this agreement, every such person shall be deemed to have undertaken and entered into a distinct suretyship, severable and separate from every other, and the mere fact that any other suretyship should for any reason whatsoever prove to be unenforceable shall not extinguish, limit, detract from or otherwise attenuate the Company's rights as against the Surety in terms of this clause, which rights shall remain fully enforceable.

11.8. The Surety renounces the legal benefits of beneficium ordinis seu excussionis, beneficium divisionis, errori calculi and exception non-causa debiti, with the meaning of which he/she declares him/herself to be fully acquainted.

## 12. Applicable Law

12.1. The Contract shall be governed and construed according to the laws of the Republic of South Africa.