

1. Definitions

- 1.1 “Total Air Control” shall mean Total Air Control Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Total Air Control Pty Ltd.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Total Air Control to the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by Total Air Control to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Total Air Control to the Customer.
- 1.5 “Services” shall mean all Services supplied by Total Air Control to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between Total Air Control and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by Total Air Control from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by Total Air Control shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Total Air Control.
- 2.4 The Customer shall give Total Air Control not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Total Air Control as a result of the Customer’s failure to comply with this clause.
- 2.5 Goods are supplied by Total Air Control only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price And Payment

- 3.1 At Total Air Control’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Total Air Control to the Customer in respect of Goods supplied; or
 - (b) Total Air Control’s current price at the date of delivery of the Goods according to Total Air Control’s current Price list; or
 - (c) Total Air Control’s quoted Price (subject to clause 3.2 which shall be binding upon Total Air Control provided that the Customer shall accept Total Air Control’s quotation in writing within thirty (30) days.
- 3.2 Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or iron reinforcing rods in concrete) will be charged for on the basis of Total Air Control’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At Total Air Control’s sole discretion a deposit may be required.
- 3.4 At Total Air Control’s sole discretion:
- (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Customers shall be made by instalments in accordance with Total Air Control’s payment schedule.
- 3.5 Total Air Control may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct debit, or by any other method as agreed to between the Customer and Total Air Control.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 Delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer’s nominated address.
- 4.2 At Total Air Control’s sole discretion the costs of delivery are:
- (a) included in the Price; or
 - (b) for the Customer’s account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Total Air Control shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 The failure of Total Air Control to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 Total Air Control shall not be liable for any loss or damage whatever due to failure by Total Air Control to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Total Air Control.

5. Risk

- 5.1 If Total Air Control retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Total Air Control is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Total Air Control is sufficient evidence of Total Air Control’s rights to receive the insurance proceeds without the need for any person dealing with Total Air Control to make further enquiries.
- 5.3 Total Air Control shall not be held responsible for any damage to the Goods caused by outside agents and/or while under Customer’s control. Where the Customer requests Total Air Control to repair such damage then Total Air Control reserves the right to charge the Customer for any costs incurred in rectifying such damage.
- 5.4 The Customer acknowledges that where any unit is supplied by the Customer, Total Air Control shall accept no liability on poor performance of such unit.
- 5.5 Where Total Air Control gives advice or recommendations to the Customer, regarding the suitability of Goods and such advice or recommendations are not acted upon, then Total Air Control shall not be liable in any way for poor performance of the Goods.

6. Title

- 6.1 Total Air Control and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Total Air Control all amounts owing for the particular Goods; and

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- (b) the Customer has met all other obligations due by the Customer to Total Air Control in respect of all contracts between Total Air Control and the Customer.
- 6.2 Receipt by Total Air Control of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Total Air Control's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that until Total Air Control receives payment in full for the Goods and all other obligations of the Customer are met:
- (a) where practicable the Goods shall be kept separate and identifiable; and
 - (b) Total Air Control may give notice in writing to the Customer to return the Goods or any of them to Total Air Control. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) Total Air Control shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to Total Air Control upon request then Total Air Control or Total Air Control's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Total Air Control for the Goods, on trust for Total Air Control; and
 - (f) the Customer shall not deal with the money of Total Air Control in any way which may be adverse to Total Air Control; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Total Air Control; and
 - (h) The Customer must:
 - (i) secure the Goods from risk, damage and theft;
 - (ii) insure and keep insured the Goods against such risks as are usual or common to insure against in a business of the type conducted by the Purchaser; and
 - (iii) keep the Goods in a good and serviceable condition; and
 - (i) Total Air Control can issue proceedings to recover the Price of the Goods sold and any further loss and damage incurred by Total Air Control by the Customer's conduct notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (j) if the Goods are converted into other products, the parties agree that Total Air Control will be the owner of the end products.

7. Defects

- 7.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Total Air Control of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Total Air Control an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Total Air Control has agreed in writing that the Customer is entitled to reject, Total Air Control's liability is limited to either (at Total Air Control's discretion) replacing the Goods or repairing the Goods except where the Customer is entitled to further remedies pursuant to the *Competition and Consumer Act 2010* ("CCA").
- 7.2 Goods will not be accepted for return other than in accordance with 7.1 above.

8. Warranty and Limitation of Liabilities

- 8.1 To the extent permitted by applicable law and except where the Customer has acquired the Goods as a consumer within the meaning of the CCA, all warranties and conditions whether express, implied or statutory concerning the Goods supplied are excluded (including warranties as to merchantability and fitness for a particular purpose) save for the manufacturer's warranties and warranties and conditions agreed in writing between BG and the Purchaser.
- 8.2 To the extent that Total Air Control is able to do so, Total Air Control will pass on to the Customer the benefit of any manufacturer's warranties. Total Air Control will not be liable for any defect in the manufacture of the Goods, except where the Customer has acquired the Goods as a consumer within the meaning of the CCA and if Total Air Control is liable pursuant to the CCA. It is the Customer's responsibility to adhere to the warranty conditions of the manufacturer. Warranty claims are to be resolved directly between the Customer and the manufacturer, although Total Air Control will provide the Customer with any assistance in seeking to have warranty claims satisfied.
- 8.3 Total Air Control does not warrant that Goods supplied will be compatible with the Customer's needs.
- 8.4 Photographs and illustrations supplied by Total Air Control represent the Goods generally, but should not be taken as necessarily representing the Goods the subject of these terms and conditions.
- 8.5 Figures given for the performance of the Goods vary in every case according to conditions. Any particulars of capacity or wear provided by Total Air Control must be treated as approximate only and are not warranted unless specifically warranted.
- 8.6 Total Air Control will not be liable to the Customer or any third party for lost profits or other special, consequential, incidental, or indirect damages, losses, costs or expenses of any kind, however caused, and whether based on contract, tort (including negligence), or any other theory of liability regardless of whether Total Air Control has been advised of the possibility of such damages, losses, costs or expenses.
- 8.7 In any event Total Air Control's liability will be limited to the amount paid by the Customer for the supply of the Goods.
- 8.8 Repair or replacement necessary as a result of accidental or intentional misuse by or on behalf of the Purchaser will result in the refusal of any warranty claim.
- 8.9 the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (a) failure on the part of the Customer to properly maintain any Goods; or
 - (b) failure on the part of the Customer to follow any instructions or guidelines provided by Total Air Control; or
 - (c) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (d) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (e) fair wear and tear, any accident or act of God.
- 8.10 the warranty shall cease and Total Air Control shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Total Air Control's consent.
- 8.11 in respect of all claims Total Air Control shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

9. Default & Consequences of Default

- 9.1 In the event that the Customer fails to pay for the Goods by the due date, interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 9.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Total Air Control from and against all costs and disbursements incurred by Total Air Control in pursuing the debt including legal costs on a solicitor and own client basis and Total Air Control's collection agency costs.
- 9.3 Without prejudice to any other remedies Total Air Control may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Total Air Control may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions including, but not limited to, service and maintenance. Total Air Control will not be liable to the Customer for any loss or damage the Customer suffers because Total Air Control has exercised its rights under this clause.

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- 9.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 9.5 Without prejudice to Total Air Control's other remedies at law Total Air Control shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Total Air Control shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Total Air Control becomes overdue, or in Total Air Control's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of the Customer or any asset of the Customer.

10. Security And Charge

- 10.1 Despite anything to the contrary contained herein or any other rights which Total Air Control may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Total Air Control or Total Air Control's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Total Air Control (or Total Air Control's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Total Air Control elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Total Air Control from and against all Total Air Control's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Total Air Control or Total Air Control's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 If any clauses in these terms contravene any provisions in the PPSA or any amendments thereto such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these terms. The following definitions of the PPSA and amendments thereto apply to Total Air Control's terms of trade:
- (a) Financing statement. This has the same meaning as defined by the PPSA;
 - (b) Financing change statement. This has the same meaning as defined by the PPSA;
 - (c) Security agreement. This has the same meaning in these terms and conditions of trade as the security agreement created between the Purchaser and GB in the PPSA;
 - (d) Security interest. This has the same meaning as defined by the PPSA
- 11.2 The Customer hereby assents that by placing orders for Goods with Total Air Control the Customer acknowledges and agrees that Total Air Control's terms and conditions of trade:
- (a) Constitute a security agreement for the purposes of the PPSA in such Goods;
 - (b) Create a security interest in such Goods and in Goods previously supplied which have not been fully paid for and for Goods that will be supplied in the future.
- 11.3 The customer agrees to:
- (a) Sign and provide without delay any documents and/or accurate information Total Air Control may require to register a financing statement or financing change statement concerning a security interest on the Personal Property Securities Register and to register any other document required to be registered by the PPSA and to correct any defects in such documents or information.
 - (b) Indemnify and reimburse Total Air Control for all costs for a financing statement or financing change statement on the Personal Property Securities Register or releasing Goods charged thereby;
 - (c) Not to register a financing change statement in respect of a security interest on Goods supplied by Total Air Control that have not been fully paid for without the prior written consent of Total Air Control;
 - (d) Not to register, or permit a third party to register, a financing statement or a financing change statement concerning Goods supplied by Total Air Control that have not been fully paid for without the prior written consent of Total Air Control;
 - (e) Promptly tell Total Air Control of any material change in its methods and policies of selling and/or reselling Goods supplied by Total Air Control which would change the nature of proceeds of such sales.
- 11.4 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.5 With regard to sections 142 & 143 of the PPSA the Customer waives its rights as a grantor and/or a debtor under the PPSA.
- 11.6 With regard to section 157 of the PPSA, unless otherwise agreed in writing by Total Air Control the Customer waives its right to receive a verification statement.
- 11.7 The Customer shall unconditionally approve any actions taken by Total Air Control under clauses 11 and its sub-clauses hereof.

12. The Competition and Consumer Act 2010 ("CCA")

- 12.1 These terms of trade are not intended to have the effect of contracting out of any provisions of the CCA, except where permitted by law. If the Customer buys Goods as a consumer these terms of trade shall be subject to protection of consumers' rights legislation and shall not affect the consumer's statutory rights. If any clauses in these terms and conditions of trade contravene any provisions in these acts such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these terms and conditions of trade.

13. Cancellation

- 13.1 Total Air Control may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Total Air Control shall repay to the Customer any sums paid in respect of the Price. Total Air Control shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Total Air Control (including, but not limited to, any loss of profits) up to the time of cancellation.

14. Privacy Act 1988

- 14.1 The Customer and/or the Guarantor/s agree for Total Air Control to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Total Air Control.
- 14.2 The Customer and/or the Guarantor/s agree that Total Air Control may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or

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- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 14.3 The Customer consents to Total Air Control being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by Total Air Control for the following purposes and for other purposes as shall be agreed between the Customer and Total Air Control or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by Total Air Control, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 Total Air Control may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 15. *Building and Construction Industry Security of Payment Act 2002***
- 15.1 At Total Air Control's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Building and Construction Industry Security of Payment Act 2002* may apply.
- 15.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2002* of Victoria, except to the extent permitted by the Act where applicable.
- 16. *Intellectual Property and Confidential Information***
- 16.1 Unless otherwise agreed in writing all intellectual property rights in the Goods, if any, remain with Total Air Control and do not transfer to the Customer.
- 17. *General***
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 Total Air Control shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Total Air Control of these terms and conditions.
- 17.4 In the event of any breach of this contract by Total Air Control the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Total Air Control.
- 17.6 Total Air Control may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 The Customer agrees that Total Air Control may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Total Air Control notifies the Customer of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by Total Air Control to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Total Air Control's right to subsequently enforce that provision.
- 17.10 No agent or employee of Total Air Control has any authority to give or make any representation or warranty whatsoever on behalf of Total Air Control, other than in writing and signed by Total Air Control according to Law