

Service Terms and Conditions

1. Definitions and Interpretation

1.1 In these terms and conditions:

- (a) **"Brivis"** means Brivis Climate Systems Pty Ltd ACN 096 079 088;
- (b) **"Customer"** means the person or entity named in the Sales Invoice;
- (c) **"Goods"** means Brivis heating or cooling products, and related parts;
- (d) **"GST"** means goods and services tax;
- (e) **"Order"** means any order for or any statement of intent to purchase Goods or Services placed by the Customer with Brivis; and
- (f) **"Sales Invoice"** means the sales invoice issued by Brivis to the Customer;
- (g) **"Services"** means services to be provided in relation to Goods or any other services referred to in the Sales Invoice; and
- (h) **"Site Address"** means the site address listed in the Sales Invoice.

1.2 Only these terms and conditions, and terms which cannot be excluded by law, bind Brivis. All other conditions, warranties and representations (including any conditions attached to the Customer's purchase order or the Customer's acceptance of a written quotation) are excluded.

1.3 Any special conditions specified in the Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.

2. Orders

2.1 Once an order has been accepted by Brivis, the order formed by that acceptance cannot be cancelled by the Customer.

2.2 The supply of Goods or Services by Brivis is subject to availability.

2.3 Brivis reserves the right, at any time and for any reason, to suspend or discontinue the supply of Goods or Services to the Customer without penalty. If Brivis is unable to supply all of the Customer's order, these terms and conditions will continue to apply to any part of the order supplied.

3. Pricing

3.1 Where a written quotation has been given by Brivis, the price or rate is that specified in the quotation. In any other case, the price for Goods will be Brivis' list price current at the date of supply and the charge for Services will be at Brivis' prevailing rates at the time of supply.

3.2 In cases where Brivis intends to progress bill the Customer for the supply of Goods or Services, Brivis will do so on a percentage (%) of completion of works basis and specify the billing schedule in its written quotation. A separate Sales Invoice will be raised for each progress payment in accordance with the billing schedule.

3.3 Unless otherwise specified, all prices are exclusive of GST and any GST applicable to the supply of Goods or Services will be added to the amount payable by the Customer.

4. Payment

4.1 The Customer must make immediate payment upon receipt of the Sales Invoice

4.2 Time is of the essence in respect of the Customer's obligation to make payment for Goods or Services to be supplied by Brivis to the Customer.

4.3 If any part of a Sales Invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to set-off any claim against Brivis from monies owing to Brivis.

5. Access To Premises

5.1 The Customer agrees to give clear and safe access to agents, employees or contractors of Brivis to the Premises at an agreed time to supply Goods and Services.

5.2 If the Customer is not the owner of the Premises, the Customer represents and warrants to Brivis that:

- (a) it has obtained the consent of the owner and any agent of the owner of the Premises for Brivis to supply Goods and Services to the Premises;
- (b) it is liable to pay Brivis even though it is not the owner of the Premises; and
- (c) it will indemnify Brivis against all costs or damage suffered by Brivis or which is claimed against Brivis arising from any breach of this clause 5.2 by the Customer.

6. Title and Risk in Goods

6.1 Ownership in Goods remains with Brivis until full payment is received for all Goods supplied by Brivis to the Customer.

6.2 The affixing of Goods to any part of the Premises does not have the effect of making the Product a fixture and is severable by Brivis.

6.3 The Customer indemnifies Brivis, its officers, employees, agents and contractors for any costs of removal, claims, actions and causes of action of any kind in respect of the removal of Goods under clause 6.2.

6.4 Risk in Goods passes to the Customer on their delivery to the Premises.

7. Dimensions, Performance Data and Other Descriptive Details

7.1 Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, or the descriptive literature or a catalogue specifying Goods, may be subject to alteration without notice.

7.2 Brivis reserves the right to make changes in the construction and/or design of Goods and despite any such changes, the Customer shall accept in performance of any order of Brivis' current corresponding standard models of Goods.

8. Claims and Returns

8.1 All complaints, requests for return of Goods, claims, or notification of lost, incomplete, damaged, defective or non-compliant Goods must be submitted by the Customer to Brivis in writing within 7 days of the date of delivery of Goods. Otherwise, the Customer shall be deemed to have accepted the Goods.

8.2 Brivis will not accept the return of Goods unless the following conditions are satisfied:

- (a) Brivis's written approval has first been obtained, which will include the issue of an authorisation number;
- (b) Goods are returned within 7 days of the issue of the authorisation number;
- (c) a copy of the relevant invoice is enclosed with the returned Goods;

8.3 If Brivis agrees that the Customer can return Goods where Goods are not damaged, defective nor non-compliant:

- (a) Goods returned must be of merchantable quality (as determined solely by Brivis) with the original packaging intact and without damage or marks to the original packaging;
- (b) the Customer must pay transportation costs for the return of Goods to a warehouse or other premises nominated by Brivis; and
- (c) the Customer must pay to Brivis a handling charge equal to 15% of the price paid for Goods.

8.4 Unauthorised returns will not be accepted. The Customer will be responsible for all damage incurred during return shipment. The Customer shall not deduct the amount or any anticipated credit from any payment due to Brivis.

9. Warranty

9.1 Subject to this clause 9, Brivis warrants against:

- (a) defective Goods supplied during the provision of the Services for a period of 12 months from the date the Services are provided ("**Goods Warranty**"); and
- (b) defective workmanship of the Services for a 90-day period from the date the Services are provided ("**Services Warranty**").

9.2 Any claim under the Goods Warranty or the Services Warranty must be notified to Brivis as soon as possible after the Customer becomes aware of the defect providing all relevant details of the claim.

9.3 Other than the warranties set out in these terms and conditions, Brivis excludes any other condition or warranty which would otherwise be implied in relation to the supply of the Product. To the extent that Brivis is unable to limit its liability at law, its liability is limited, at its option to:

- (a) in the case of Goods:
 - (i) the replacement or repair of Goods or the supply of equivalent goods;
 - (ii) the payment of the cost of replacing or repairing Goods or of acquiring equivalent goods;
- (b) in the case of Services:
 - (i) the supply of Services again;
 - (ii) the payment of the cost of having Services supplied again.

9.4 Certain Goods supplied by Brivis or an authorised dealer of Brivis may be covered by written warranty. To the extent permitted by law, such a warranty is in substitution of all other terms, conditions, warranties and representations, express or implied by statute or otherwise.

10. Liability

Subject to clause 9, Brivis is not liable for any injury, damage or loss of any kind whatsoever and howsoever arising out of or in connection with the supply of Goods and Services including loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings, nor shall Brivis be under any liability whether in contract, tort or otherwise for any injury, damage, or loss whether consequential, special, indirect or otherwise arising out of or in connection with the supply of goods or services, even if due to the negligence of Brivis or any of its employees or agents.

11. Termination, Repossession of Goods & Recovery of Debt

If the Customer does not make any payment by the due date stated on the Sales Invoice or commits any other material breach of these terms and conditions, Brivis may (without limiting any other right or claim it may have against the Customer), do any or all of the following:

- (a) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue at the reference rate for business loans available to commercial customers from the financial institution that Brivis banks with plus 5% calculated from the due date for payment until the date payment is made (both dates inclusive);
- (b) cancel or suspend any unfilled orders or cease providing Services;
- (c) terminate any contracts between Brivis and the Customer and demand immediate payment of any monies due and outstanding under those contracts;
- (d) enter (at any time) any premises in which Goods are stored, to enable Brivis to reclaim possession of Goods without liability to the Customer. For the avoidance of doubt, title in Goods immediately re-vest in Brivis upon Brivis asserting its right of entry under this clause 11(d); and
- (e) institute any recovery process as Brivis in its discretion decides at the Customer's cost and expense.

12. Alteration to Terms and Conditions

Brivis may amend or vary these terms and conditions at any time by written notice to the Customer's place of business or by posting an amended copy on Brivis's website (www.brivis.com.au) and the Customer will be bound by any such amendments.

13. Governing Law

These terms and conditions are governed by the laws of Victoria.

14. General

14.1 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.

14.2 The failure by Brivis to enforce, at any time or any period of time, any term of any contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.