



**BALTICARE PTY. LIMITED**

**TRADING AS: BALTIMORE AIRCOIL NEW ZEALAND**

120 Wisemans Ferry Road, Somersby NSW 2250 Australia

Affiliate of Amsted Industries of U.S.A.

IRD: 95-187-005

**TERMS & CONDITIONS OF SALE OF GOODS & SERVICES**

**1. Definitions**

We and similar expressions means Balticare Pty Ltd (IRD: 95-187-005). **You** and similar expressions means you, the person, jointly or severally if more than one, acquiring or proposing to acquire Goods or Services from us. **ACL** means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth). **Consequential Loss** includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage. **Consumer** has the definition given to it in the ACL. **Goods** means goods supplied, or to be supplied, by us to you. **Mobilisation** means the activation of our physical and manpower resources for transfer to your site. **Services** means all services supplied, or to be supplied, by us to you including but not limited to installation and labour services. **Storage Charges** means a minimum fee of \$250 per day or such other amount we notify you of from time to time, charged by us for storage and all expenses incurred in relation to storing the Goods and in any case not less than the commercial value of the storage space occupied by the Goods.

**2. Acceptance**

These conditions apply if we accept any order from you (whether for cash, or on credit) and are binding from the moment that we accept such order from you even if we do not tell you that it has been accepted. However we are not obliged to accept any order from you, even if we have provided a quotation. You may not cancel an accepted order.

**3. Prevailing conditions**

These conditions prevail even if they are inconsistent with any earlier or later document, and cannot be varied or replaced by any other terms, including your terms of purchase (if any), unless our directors otherwise agree in writing.

**4. Price**

4.1. Unless otherwise stated in a quotation, prices quoted for Goods or Services will be current for a maximum of 30 days from the date of the quotation, and unless otherwise stated do not include freight, insurance, goods and services tax (GST) or any taxes, duties, levies or other incidental costs, which will also be payable by you. If you specify a delivery date more than 90 days after the date of your purchase order, then our price in effect at the time of the delivery will apply.

4.2. If you request any variation to the goods or services or terms of provision of such goods or services, we may increase the price to account for the variation.

4.3. Where there is any change in the rates or costs or method of assessment of any component of the pricing before delivery of the Goods or completion of the Services, we may vary the price to take account of any such change, by notifying you.

**5. Payment for Goods**

5.1. Payment for Goods supplied by us is due at the time we accept your order for Goods.

5.2. We may at our discretion agree in writing to extend credit to you subject to the conditions of clause 7. If we agree to extend credit to you, then you must make payment in the following manner:

- a) a deposit, in an amount we determine at our sole discretion, must be paid upon our acceptance of your order for Goods, and
- b) the balance of the price of the Goods must be paid in accordance with terms we agree to in writing at the time of your order for those Goods.

5.3. The deposit referred to in clause 5.2 a) will be 15% of the total price of the Goods, unless we otherwise advise you in writing by us.

5.4. Payment by cheque or by electronic funds transfer is not deemed made until the proceeds have cleared.

**6. Payment for Services**

6.1. Payment for Services supplied by us is due upon Mobilization.

6.2. We may at our discretion agree in writing to extend credit to you subject to the conditions of clause 7. If we agree to extend credit to you, then you must make payment in the following manner:

- a) a deposit, in an amount we determine at our sole discretion, must be paid upon Mobilisation, and
- b) the balance of the price of the Services must be paid in accordance with terms we agree to in writing at the time of your order for the corresponding Services.

6.3. The deposit referred to in clause 6.2 a) will be at least 15% of the total price of the Services, unless we otherwise advise you in writing by us.

6.4. Payment by cheque or by electronic funds transfer is not deemed made until the proceeds have cleared.

**7. Terms of credit**

7.1. You have not relied on any representation made by any person as to whether we will extend credit to you, unless such offer of credit is in writing and signed by the Balticare Finance Director.



- 7.2. If in a particular case we give you credit we may still decline to give you further credit at any time. If we do decline to give you further credit then that decision does not affect the credit terms which apply to any amounts you then owe to us.
8. **Default**
- 8.1. If any amount you owe us is not paid within 7 days after the due date or at the time we accept your order (as the case may be) then all of the monies that you owe us on any account become immediately due and payable without the requirement of any notice from us to you. In that case, and also if at any time you breach any of these conditions or otherwise default under any other agreement we may have with you, without limiting our rights, we may at our discretion do any or all of the following:
- suspend the supply of any goods or services
  - delay, defer or cancel any outstanding orders
  - require that you pay interest on any overdue amount calculated on daily balances commencing from the due date for payment at the rate of the Westpac Indicator Lending Rate effective from time to time plus 4% per annum
  - if payment is not made within 2 months after the due date, charge you an administration fee of the greater of \$20.00 or 10% of the overdue amount, and
  - charge you for any reasonable costs and expenses incurred by us as a consequence of or in seeking to recover payment or otherwise resulting from your default including but not limited to dishonour fees, representation fees, debt recovery agent fees and commissions and all legal costs and expenses; and you indemnify us against all such costs and expenses.
9. **Delivery**
- 9.1. Unless you and we agree that you will collect the Goods, we will arrange for delivery of the Goods to the address you nominate on the order, or if you have not nominated a location, then to the address we have for you on file. However you are liable for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the point of delivery to you. If agreed that you will collect the Goods:
- you must collect the Goods within 5 days of being advised they are ready, or
  - if you do not collect the Goods within this time, you will be deemed to have taken delivery of the Goods and we may at our discretion require you to pay Storage Charges for the period between when we advise the Goods are ready and the date you collect such Goods.
- 9.2. Delivery is deemed to occur when the Goods leave our premises to be transmitted to your delivery address. At such time all risk of loss, damage or shortage will pass to you and any claims arising from the delivery must be made by you against the carrier.
- 9.3. We may dispatch an order in one or more instalments and in that case you must pay separately for each instalment and each instalment becomes a separate contract.
- 9.4. If delivery is attempted and is unable to be completed you are deemed to have taken delivery of the Goods and we may at our discretion do one or more of the following things:
- arrange storage for the Goods and require you to pay Storage Charges until the date you collect the Goods,
  - invoice you for all outstanding amounts which will be due and payable in accordance with clause 8.1 above.
- 9.5. Any period or date for delivery of Goods or provision of Services stated by us is an estimate only and not a contractual commitment. We will use our reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by you or any third party for failure to meet any estimated date.
10. **Risk**
- 10.1. The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to you immediately upon the Goods leaving our premises for delivery to you, or if we store Goods that are ready for delivery then from the time that we notify you that the Goods are held in storage.
- 10.2. We strongly recommend that you arrange transit insurance prior to delivery of the Goods as the Goods are fragile and may suffer damage in transit.
- 10.3. You assume all risk and liability for loss, damage or injury to persons or to your property, or third parties arising out of the use or possession of any of the Goods sold by us, unless recoverable from us on the failure of any statutory guarantee under the ACL.
11. **Title**
- 11.1. Until we receive full payment in cleared funds for the Goods (and related Services) provided by us, together with any other related amounts owing to us by you:
- title and property in such Goods remains vested in us and does not pass to you;
  - you must hold such Goods as fiduciary bailee and agent for us, and if you sell such Goods, you must hold the proceeds of the sale of such Goods in trust for us in a separate account (however failure to do so will not affect your obligation to deal with the proceeds as trustee);
  - you must keep such Goods separate from your goods and maintain our labelling and packaging;
  - we may without notice, enter any premises where we suspect such Goods are and remove them, even if they are attached to other Goods that are not our property, and for this purpose you irrevocably authorise us and our servants and agents to enter such premises or vehicle owned, leased or otherwise occupied by you, or by any of your agents or associates and you indemnify us and our servants and agents from and against all costs, claims, demands or actions by any party arising from such action.
- 11.2. In the event that we exercise our rights under 11.1(d), we may dispose of the Goods removed and may claim from you the loss to us on such disposal.



**12. Personal Property Securities Act**

- 12.1. You acknowledge and agree that in each case we have a purchase money security interest under the Personal Property Securities Act 2009 (PPSA) attaching to the Goods and any proceeds of sale of those Goods to secure the payment by you to us of the purchase price and any applicable costs, charges and interest payable. You authorise the registration of such an interest on the Personal Property Securities Register. You have not agreed to postpone the time for attachment of the security interest granted to us under these conditions.
- 12.2. You must: (a) pay all costs (including legal costs) incurred in the registration and maintenance of the security interest; (b) do all acts and sign all documents necessary to perfect our security interest, and to provide more effective security over the Goods and proceeds from the Goods as necessary; (c) keep full and complete records of the Goods; and (d) not change your name, address or contact details without providing us prior written notice.
- 12.3. You agree to perfect and continuously maintain perfection of any security interest that itself forms part of the Goods and proceeds from the Goods and do everything necessary to ensure that a third person cannot acquire an interest in the Goods and proceeds from the Goods free of the security interest, if you still owe us anything in connection with the Goods.
- 12.4. Unless otherwise agreed to in writing by the parties, you waive your right to receive any notices or verification statements under the PPSA.
- 12.5. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these conditions, you and we agree that each of the provisions of the PPSA which s115 of the PPSA permits parties to contract out of, other than ss 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest unless we at our absolute discretion otherwise notify you in writing.
- 12.6. Pursuant to section 275(6) of the PPSA, you agree that you will not disclose information pertaining to our security interest without our prior written approval.
- 12.7. You warrant to us as an essential condition that you are not acquiring the Goods for use (nor will you use them), predominantly for any personal, domestic or household purpose. You acknowledge that accordingly all of the collateral under each security interest is commercial property.
- 12.8. The collateral to which the security interests attach in each case is respectively each of the items comprising the Goods, and which as the case requires are items belonging to the "other Products" or "intangible property" classes of collateral or otherwise to the corresponding class or classes of collateral we identify. The collateral to which the security interests attach in each case includes but is not limited to any particular such item of the Goods, that is or may be held by you as inventory; and also includes any proceeds of that collateral (within the meaning of the PPSA), which proceeds you agree are properly describable (for the purposes of the PPSA) as "all present and after-acquired property".
- 13. Defects/Return of Goods**
- 13.1. Subject to clause 13.4, we will not be liable for any shortages, damage or non-compliance with your specifications in an order unless you notify us within 7 days of delivery with full details and description, and failing such notification you are deemed to have accepted the Goods. When you sign any delivery or consignment note or similar document on receipt of a delivery, that is conclusive evidence that you received the delivery without any shortage or damage that would have been visible on taking delivery without unpacking the Goods.
- 13.2. When any shortages, claim for damaged Goods or non-compliance with order specification is accepted by us in writing, we may, at our option, replace the Goods or repair the Goods unless otherwise required by law.
- 13.3. Subject to clause 13.4, we will not under any circumstances accept Goods for return that:
- a) are not returned at your cost within 7 days of the delivery date
  - b) have not been stored or used in a proper manner
  - c) have been specifically produced to fulfill the order
  - d) have been altered in any way, and/or
  - e) are not in their original condition and packaging.
- 13.4. If you are a Consumer for the purposes of an order, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 14. Your warranties**
- 14.1. We rely on the following warranties from you as essential conditions: (a) you have obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods; (b) you have provided us with an accurate description, illustration and/or specification of the Goods or Services you require (c) you have expressly made known to us any purpose for which you require the Goods or Services; (d) where you are a natural person, at all times during the term of our agreement you are not bankrupt, and you have not entered into any scheme of arrangement or any assignment or composition with or for the benefit of your creditors; and (e) where you are a corporation, at all times during the term of our agreement you have not committed an act of insolvency, or entered into any scheme of arrangement or any assignment or composition with or for the benefit of your creditors or any class of its creditors generally, or had a liquidator, administrator, receiver, manager or similar functionary appointed in respect of your assets, or had any action taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of your company.



**15. Our warranties**

- 15.1. You may have the benefit of consumer guarantees under the ACL, and in such cases clauses (a) through to (c) below apply: (a) our Goods come with guarantees that cannot be excluded under the ACL; (b) you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure; and (c) the benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded and where this clause is inconsistent with any other provision of this document, this clause will prevail. Our liability to you is limited to the options set out in this clause 15.
- 15.2. Subject to clauses 15.4, 15.9 and 15.10, we warrant that the Goods will be free from defects in materials and workmanship under normal use and service for a period of 12 months from the date of delivery, or attempted delivery (as the case may be).
- 15.3. If a defect in the Goods appears before the end of the warranty period and we find the Goods to be defective in materials or workmanship, we will (at our sole discretion) repair the Goods, replace the defective part of the Goods, replace the Goods pay for the cost of replacing the Goods or resupply the Services free of charge.
- 15.4. This warranty will not apply:
- (a) where there has been failure on the part of you to properly maintain any Goods; or
  - (b) where there has been failure on the part of you to follow any instructions or guidelines provided by us; or
  - (c) where you are in default of any term of this document; or
  - (d) if any Goods have been used other than for any application specified on a quote or order form; or
  - (e) if the Goods have continued to be used after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
  - (f) to fair wear and tear, any accident or act of God;
  - (g) to goods not manufactured by us as they will be separately warranted by their individual manufacturer's warranty; or
  - (h) where the Goods have been repaired, altered or modified without our consent.
- 15.5. It is your responsibility to satisfy yourself that the Goods can attain the performance level required in the environment and context in which it is to be installed and that the Goods are fit for the purpose for which it is intended to be used by you. You further acknowledge that it is your sole responsibility to comply with all relevant legislation, ordinances, regulations, codes, standards, or recommendations of any relevant authority or body applicable to the installation, location, operation or maintenance of the Goods (including any such provisions pertaining to distances between evaporative cooling equipment and air conditioning system duct intakes).
- 15.6. Any replacement parts supplied shall be covered by warranty for the unexpired portion of the warranty period of the original Goods or for a period of 90 days from date of supply, whichever period expires last. Unless service under warranty is specifically included in the quotation, the cost of labour for fitting replacement parts will be at your expense. Nothing in this clause will exclude, restrict or modify any condition, warranty or liability implied by law where to do so would render this clause void.
- 15.7. Any description of the Goods provided to you is for sole purpose of identifying them and does not constitute a warranty. In the interest of product improvement, we reserve the right to change materials of construction and/or Goods design without notifying you.
- 15.8. You acknowledge that we are not the supplier of motors and accessories used together with our Goods, and we do not warrant the merchantability or fitness for any particular purpose of motors or accessories.
- 15.9. We make no express warranties or representations other than set out in this clause 15.
- 15.10. The repair or replacement of the Goods or part of the Goods is the absolute limit of our liability under this warranty.
- 15.11. If a fault covered by warranty occurs, you must first contact us at our main place of business or such other place as we may direct you to.
- 15.12. A warranty claim must be accompanied by:
- (a) proof of purchase
  - (b) full details of the alleged defect, and
  - (c) any other relevant documentation.
- 15.13. You must make the Goods available to us for inspection and testing. If such inspection and testing finds no defect in the Goods, you must pay our usual costs of service work and testing.
- 15.14. You must bear the cost of transport of the Goods to and from us to make the warranty claim, and all insurance of the Goods.
- 16. Liability**
- 16.1. We do not seek to exclude our legal liability (if any) for any death or personal injury which is caused by our negligence. However, even where we are liable for death or personal injury we are not liable for any associated Consequential Loss. Also, we are not liable to the extent that something was caused or contributed to by your negligence or by the negligence of your consultants or agents or of any third party.
- 16.2. Except as stated above, we are not liable for, and you do not rely on being able to claim against us for, any loss or damage or any indirect or Consequential Loss or expenses suffered by you or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than, if you are a consumer, then to the extent the loss was reasonably foreseeable.
- 16.3. If you on-supply the Goods to a person who is a consumer and the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the amount specified in section 276A(1) of the ACL is the absolute limit of our liability to you howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by you or any third party.



- 16.4. If you on-supply the Goods to a person who is a consumer and clause 16.3 does not apply, payment of any amount required under section 274 of the ACL is the absolute limit of our liability to you. Howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by you or any third party.
- 16.5. If clauses 16.3 and 16.4 do not apply, then other than as stated in these conditions or as contained in any express warranty provided in relation to the Goods or Services, all conditions, terms and warranties that are or might otherwise be implied by law, practice, trade usage or international convention, are excluded to the fullest extent permitted by law and we are not liable to you in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by you or any third party.
- 16.6. Nothing in these conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.
17. **Intellectual Property**
- 17.1. Where we have created any designs or drawings for you, including but not limited to designs and drawings for Goods, then the copyright in those designs and drawings remains vested in us, and may only be used by you at our discretion.
- 17.2. Where you have supplied drawings, designs or instructions to us: (a) you warrant that all drawings, designs and instructions supplied to us will not cause us to infringe any patent, registered design or trademark in the execution of your order; and (b) you provide us with a perpetual licence to use the drawings, designs and instructions for the sole purpose of undertaking and complying with our obligations under these conditions.
- 17.3. You indemnify us and agrees to keep us indemnified against all liability, losses and expenses incurred by us in relation to, or in any way directly or indirectly connected with, any breach or alleged breach of any third party intellectual property rights in relation to the supplied drawings, designs and instructions described in clause 17.2, or any other intellectual property provided by you to us in regard to the supply of the Goods or Services.
18. **Cancellation**
- 18.1. If we are unable to deliver or provide the Goods or Services then we may cancel your order (even if it has been accepted) by written notice to you. We are not liable for any loss or damage whatever arising from such cancellation of an order.
19. **Force Majeure**
- We are not liable in any way to the extent that we are prevented from acting by events beyond our reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of god, acts or threats of terrorism, war, or any existing or future laws or acts of the federal ,state or local government affecting the conduct of our business (including specifically but not exclusively, orders, rules or regulations issued by any official or agency of any such government) (**Force Majeure**). If an event of Force Majeure occurs, we may suspend or terminate an order by written notice to you.
20. **General**
- 20.1. If any provision of these conditions is unenforceable it will be read down to be enforceable or, if it cannot be read down, the provision will be severed from these conditions without affecting the enforceability of the remaining provisions.
- 20.2. Our failure to enforce any of the provisions of these conditions will not be construed as a waiver of any of our rights.
- 20.3. You may not set off any money we owe you against any money you owe us.
- 20.4. We may license or sub-contract all or any part of our rights and obligations without your consent.
- 20.5. We may vary or amend the provisions of these conditions by written notice to you at any time. Any variations or amendments will apply to orders placed after the notice date.
- 20.6. A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon confirmation of successful transmission.
- 20.7. The laws of New South Wales from time to time govern these conditions. The parties agree to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.