

### Applicant

Company name			
Trading name			
ACN		ABN	
Business registered address			
Business postal address			
Orders tel		Accounts tel	
Orders fax		Accounts fax	
Email		Nature of business	
Type of business	Sole trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Company <input type="checkbox"/>
Other businesses owned			
Expected monthly purchases	Highest \$	Lowest \$	
If the company includes a trust, the name of the trust is			
Name & address of accountants			
Name of bank		Branch	
Account no.		BSB	
Are the business premises owned	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are there any charges or PPSA security interests over the assets of the Applicant
			Yes <input type="checkbox"/>
			No <input type="checkbox"/>
Are there any charges over the assets of the partner/director	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

### Details of partners/directors

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

### Trade references (please supply four (4) trade references of similar size purchases to the credit applied for)

Name and Contact Person		Telephone	
Address		Fax	
Name and Contact Person		Telephone	
Address		Fax	
Name and Contact Person		Telephone	
Address		Fax	
Name and Contact Person		Telephone	
Address		Fax	

# TERMS AND CONDITIONS

## Parties

1. **Supplier** means Advantage Air (NSW) Pty Ltd ABN 23 620 995 306 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (jointly and severally). **Applicant** means the party named as the Applicant in the application.

## Definitions

2. **agreement** means these terms and conditions and includes the application for commercial credit and any order.  
**application for commercial credit** means the application attached to these terms and conditions.  
**goods** means goods and services supplied by the Supplier to the Applicant, including all goods and services set out or identified in the order, invoice and any other document provided to the Applicant by the Supplier.  
**invoice** means a tax invoice issued to the Applicant by the Supplier.  
**order** means an order placed or communicated with or to the Supplier by the Applicant.

## Agreement

3. The Applicant agrees that these terms and conditions will apply to the supply of all goods by the Supplier to the Applicant. The agreement between the Supplier and the Applicant will not include any terms or conditions of the Applicant (including on any order given by the Applicant) unless the Supplier agrees in writing).

## Payment Terms

4. The terms of payment are strictly thirty (30) days (or such other period as nominated by the Supplier and advised to the Applicant) from the last day of the month of delivery of the order.
5. If the Applicant does not pay an invoice in full by the payment due date the Supplier reserves the right to charge the Applicant, in addition to any other costs recoverable under this agreement:
  - (a) interest on the total monies owed to the Supplier, calculated daily using an interest rate of 21% per annum; and
  - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and all legal costs on a full indemnity basis) incurred by the Supplier in recovering any unpaid amounts under this agreement.

## Prices, GST and discounts

6. The prices shown in the Supplier's current price list, as displayed/provided to Applicant, are subject to change without notice. Unless otherwise stated, prices in the price list are exclusive of GST. All items in the price list will attract GST.

## Placing orders

7. Orders are to specify an order number or reference, the date the order was placed and the goods ordered with the preferred date of delivery of the goods ("the delivery date"). While the Supplier will make every effort to hold sufficient quantity of all goods in stock at all times, the Supplier may not always have a sufficient quantity of all goods in stock at all times to satisfy the Applicant's order.
8. Where the Supplier cannot fulfil an order it will notify the Applicant and offer alternative arrangements. If the Applicant is not satisfied with the new arrangement proposed, they may cancel the order.
9. The Supplier may change the specifications of the goods without notice. If the Applicant is not satisfied with the new specifications, they may cancel the order.
10. The Supplier may decline any order received from the Applicant within five (5) days of the order being received by the Supplier.

## Delivery

11. If requested in the order, the Supplier shall deliver each order to the site specified by the Applicant by the delivery date between the hours of 7.00am and 5.00pm Monday to Friday.
12. The Supplier is not liable for late delivery or failure to supply the goods for reasons beyond its control.
13. A delivery charge (as detailed under the "deliveries" section of the Supplier's price list) is charged for deliveries by the Supplier. This is payable by the Applicant.
14. Deliveries on Saturday can be made, but only with prior arrangement with the Supplier, and between the hours of 8:30am and 12 noon.

## Risk

15. Risk in the goods passes from the Supplier to the Applicant on the earlier of:
  - (a) delivery of the goods to the site chosen by the Applicant, whether or not the Applicant or their agent acknowledges receipt of delivery; and
  - (b) when payment of the order is made by the Applicant in full.
16. For the avoidance of doubt, goods paid for by the Applicant upfront, stored and delivered to site by the Supplier at the request of the Applicant are the property of the Applicant from the time payment is made. The Supplier, whilst providing due care in the handling and storage of goods, accepts no responsibility or liability for any damage or loss.

## Return of goods

17. Goods returned for credit will only be accepted by the Supplier if, in the Supplier's opinion, they are in their original condition. The Applicant agrees that goods that are non-standard or special items cannot be returned.
18. The Supplier will charge a handling fee equal to 25 percent of the price of any goods returned for credit.
19. The Applicant must notify the Supplier within twenty-four (24) hours of delivery of the goods that they want to return the goods.

## Jurisdiction

20. The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales.
21. The Applicant acknowledges and agrees that any contract for the supply of goods between the Supplier and the Applicant is formed at the address of the Supplier.
22. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

23. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future and in present and after acquired personal property with the amount of its indebtedness hereunder and the performance of its obligations pursuant to this agreement until discharged.

24. The Applicant irrevocably appoints as its attorney any director of the Supplier to execute, on behalf of the Applicant and in the Applicant's name, any mortgage in favour of the Supplier or any consent to caveat by the Supplier over any real property owned by the Applicant. Applicant consents to and authorises such execution and to lodgement and registration of such mortgages or consents to caveat in any jurisdiction. The Applicant agrees that it is not necessary for the Applicant to have default in its obligations under this agreement before such execution, lodgement and registration may be effected.

## Purpose of credit

25. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

26. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
27. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of this agreement.

## Retention of title

28. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
29. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
30. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
31. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 30 hereof unless and until the funds held on trust are remitted to the Supplier and those funds are sufficient to make payment for the goods in full.
32. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue. The Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
33. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 32. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
34. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
35. For the avoidance of doubt, the Supplier's interest in goods supplied to the Applicant but not yet paid for constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

## Warranty

36. The Supplier's warranty policy, as set out at pages 6 to 8 of this agreement, applies to the goods. To the extent permitted by law and except as otherwise stated in the Supplier's warranty policy all other conditions, warranties and liabilities in respect of the goods are excluded.
37. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods pursuant to this agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified. Where consumer rights and remedies provided for by the *Competition and Consumer Act 2010* apply to the provision of goods by the Supplier to the Applicant and cannot be contracted out of, they apply and override any inconsistent provisions in this agreement but only to the extent of the inconsistency.
38. Subject to the Applicant's rights under statute and the Supplier's warranty policy, in relation to:
  - (a) the supply of goods, the Supplier's liability is limited (as elected by the Supplier) to replacing the goods or supplying similar goods or repairing the goods or providing the cost for replacing the goods or for acquiring equivalent goods or providing the cost for having the goods repaired; and
  - (b) the supply of services, the Supplier's liability is limited (as elected by the Supplier) to supplying the service again or providing for the cost of having the services supplied again.

## Cancellation of terms of credit

39. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
40. If the Applicant fails to comply with any of the terms of this agreement, suffers an Insolvency Event or makes any misrepresentation to the Supplier all liabilities incurred by the Applicant will become immediately due and payable to the Supplier.

## Provision of further information

41. The Applicant undertakes to comply with any request from the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application. The Applicant and the Supplier agree that the terms of the *Privacy Act 1988* authorisation attached to this agreement will apply to any information provided by the Application pursuant to a request from the Supplier.

42. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Corporations**

43. If the Applicant is a corporation, the Applicant warrants that this agreement has been duly executed by the corporation and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

#### **Trustee capacity**

44. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be indemnified out of the trust assets;
  - (c) the Applicant has the power under the trust deed to sign this agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
45. The Applicant must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

46. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
47. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.
48. The Applicant must give the Supplier a copy of the partnership deed upon request.

#### **Insolvency**

49. If an insolvency event occurs in respect of the Applicant, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent. For the purposes of this clause **Insolvency event** means: (a) the Applicant is insolvent, has a receiver, manager, administrator, liquidator or controller appointed over it or its assets or makes composition with its creditors; (b) commits an act of bankruptcy or insolvency, liquidation, administration or appointment of any of the persons referred to in clause 49(a); (c) is the subject of an application for winding up, deregistration or administration; (d) calls a meeting of its creditors; (e) passes a resolution for its winding up, deregistration or administration; (f) has judgment entered against it in any cause in an amount in excess of \$20,000; or (g) compromises with its creditors.

#### **Waiver**

50. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
51. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the Personal Property Securities Act 2009 and any other legislation and regulations in respect of that Act (**PPSA**): (a) under section 95 to receive notice of intention to remove an accession; (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law; (c) under section 121(4) to receive a notice of enforcement action against liquid assets; (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods; (e) under section 130 to receive a notice to dispose of goods; (f) under section 132(2) to receive a statement of account following disposal of goods; (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period; (h) under section 135 to receive notice of any proposal of the Supplier to retain goods; (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods; (j) under section 142 to redeem the goods; (k) under section 143 to reinstate the security agreement; and (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

#### **Costs**

52. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
53. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
- (a) Firstly, in payment of any and all collection and repossession costs and legal costs in accordance with clauses 5(b) and 30;
  - (b) Secondly, in payment of any interest incurred in accordance with clause 5(a).
  - (c) Thirdly, in payment of the outstanding invoice(s).

#### **Taxes and duty**

54. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
55. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

#### **Set-off**

56. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
57. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

#### **Limit on Liability and Indemnity**

58. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control. If, by reason of anything beyond its control, the Supplier cannot perform the whole or part of its obligations under this agreement the Supplier shall be relieved of those obligations to the extent and for the period that it is unable to perform them and shall not be liable to the Applicant for the resulting loss.
59. The Applicant agrees to indemnify the Supplier and its directors, officers and employees (**Indemnified Persons**) and keep the Indemnified Persons indemnified against any loss suffered by the Supplier arising out of or in connection with this agreement, except to the extent the loss is caused by the Indemnified Persons. This indemnity includes any legal fees and expenses the Indemnified Persons incur in order to enforce its rights, on a full indemnity basis.
60. To the full extent permitted by law, the Applicant releases each Indemnified Person from all claims the Applicant may have arising out of or in connection with this agreement, including the Applicant's use and possession of the goods.
61. The indemnity and release in clauses 59 and 60 do not apply to the extent an Indemnified Person is guilty of fraudulent acts or omissions or a breach of this agreement.
62. The Applicant agrees that the maximum aggregate liability of the Supplier for all claims under or relating to this agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis, is limited to the price paid by the Applicant under this agreement.
63. The Supplier shall not under any circumstances be liable, whether claims are made or not, to the Applicant or any third party in respect of any consequential or special losses (including loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right) or any other indirect loss.

#### **Personal Property Securities Act 2009 ("PPSA")**

64. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
65. The Applicant agrees:
- (a) to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this agreement or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative; and
  - (b) that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
66. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
67. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to affect such registration.
68. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

#### **Miscellaneous**

69. The Applicant agrees that the Supplier is entitled to supply goods to any other person or firm.
70. Where a party comprises two or more persons, then unless expressly stated otherwise (a) the covenants and obligations by or on behalf of that party binds those two or more persons jointly and each of them severally; and (b) the benefit of any covenant or obligation in favour of that party accrues to and may be enforced by any one or more of those persons.
71. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
72. Subject to clause 6, no modification or alteration of the terms of this agreement shall be binding unless made in writing and duly executed by the parties. The Applicant may terminate this Agreement if it does not agree to a price change made under clause 6.
73. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

#### **Privacy Act**

74. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation attached to this agreement.

The Applicant hereby applies for the granting of a credit facility and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			
<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

### FOR COMPLETION BY THE SUPPLIER

The Applicant's credit application is accepted. Signed for and on behalf of the Supplier.

The following persons must sign this credit application on behalf of the Applicant:

For Companies: Where there is only one director for the company then that person must sign, where there are two or more directors for the company then two Directors or a Director and the Company Secretary must sign.

Sole Traders operating under their own name or under a business name: The individual.

Partnerships: All Partners of the Partnership.

<b>Signature</b>		<b>Position</b>	
<b>Name (print)</b>		<b>Date</b>	

### ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS (Supplier to nominate)

#### PRIVACY ACT 1988 AUTHORISATION

- The Applicant acknowledges that when they apply for credit with the Supplier, the Supplier may collect credit-related personal information from the Applicant ("personal credit information"). Personal credit information may include personal particulars (name, sex, address, previous addresses, date of birth, name of employer and driver's licence number), details of services provided by the Supplier to the Applicant, overdue amounts and recovery action taken.
- If the Applicant does not provide the information requested in this credit application, the Supplier may be unable to process this application and/or provide credit to the Applicant.
- The Supplier agrees that, in dealing with information disclosed to it by the Applicant, the Supplier will act in accordance with the National Privacy Principles and with the Privacy Act 1988.
- The Applicant authorises the Supplier to obtain any information about the Applicant's consumer or commercial credit or business history, commercial activities or commercial credit worthiness from the Applicant's bank, any trade referee named in this application and any other credit reporting agency or business which provides information about the commercial creditworthiness of a person or entity in relation to credit provided by the Supplier.
- The Applicant agrees that the Supplier may exchange information about the Applicant with any party named in clause 4 or in a consumer credit report issued by a credit reporting agency in respect of the Applicant for the following purposes:
  - to assess a credit application by the Applicant;
  - to assess the creditworthiness of the Applicant;
  - to withdraw credit facilities;
  - to notify other credit providers of a default by the Applicant;
  - to exchange information with other credit providers as to the status of this credit account, where the Applicant are in default with other credit providers; and/or
  - to enable the daily operation of the Applicant's credit facility, if any.
- The Applicant understands that the information exchanged pursuant to clause 5 can include anything about the Applicant's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 and the Privacy (Credit Reporting) Code 2014 (Version 1.2).
- The Supplier may give information about the Applicant to a credit reporting agency for the following purposes:
  - to obtain a consumer credit report about the Applicant; and/or
  - to allow the credit-reporting agency to create or maintain a credit information file containing information about the Applicant.
- The information given to the credit-reporting agency may:
  - include personal particulars (name, sex, address, previous addresses, date of birth, name of employer and driver's license number;
  - include details concerning the Applicant's application for consumer or commercial credit and the amount requested;
  - advise that the Supplier is a current credit provider to the Applicant;
  - advise of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty days (60), and for which debt collection action has been taken;
  - advise that the Applicant's overdue accounts, loan repayments, and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - information that, in the opinion of the Supplier, the Applicant has committed a serious credit infringement (that is, fraudulently or showing an intention not to comply with the Applicant's credit obligations); and
  - advise that any credit facility provided to the Applicant by the Supplier has been paid or otherwise discharged.
- The Applicant may request personal credit information about themselves from the Supplier.
- If the Applicant believes that any personal credit information is incorrect or incomplete, the Applicant may request the Supplier to correct the information.
- If the Applicant has any complaint about the Supplier's personal credit information policy, the handling of personal credit information by the Supplier or a breach of the Australian Privacy Principles, the Applicant may make a complaint to the Supplier.
- Further information on how the Applicant may request the Supplier to correct information, or make a complaint to the Supplier, and how the Supplier will deal with these matters is set out in the Supplier's privacy policy.
- The Applicant may request credit reporting bodies to whom the Supplier provides the Applicant's personal credit information not to:
  - use credit reporting information for the purpose of pre-screening or direct marketing by credit providers; or
  - disclose credit reporting information if the Applicant or the Guarantor believes on reasonable grounds that he or she has been, or is likely to be a victim of fraud.
- The Supplier is not likely to disclose information about the Applicant to overseas recipients.
- The Applicant may obtain a copy of the Supplier's policy in relation to the management of personal credit information from the Supplier's website at [www.advantageair.com.au](http://www.advantageair.com.au) or by request to the Supplier.

# DEED OF GUARANTEE & INDEMNITY

**To** Advantage Air (NSW) Pty Ltd (ABN 23 620 995 306) (Supplier)

<b>Name</b>		<b>Address</b>	
<b>Name</b>		<b>Address</b>	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

**Jurisdiction**

1. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the commonwealth of Australia which are in force in that State.
2. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

**Consideration**

3. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods and services (together, **goods**) sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any credit facility, account or accounts whether now existing or which may in the future be opened or in any manner whatsoever.

**Guarantee and indemnity**

4. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on a full indemnity basis of any attempt or attempts to recover monies owed from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
5. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant.
6. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
7. The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
8. This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
9. The liability of each Guarantor under this guarantee and indemnity shall not be limited or affected by any credit limit granted or varied by the Supplier, either at the time the agreement between the Supplier and the Applicant is entered into or subsequently.
10. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - (a) any other security taken by the Supplier from the Applicant or any other person; or
  - (b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or any Guarantors.
11. This guarantee and indemnity is enforceable in full by the Supplier even if it signed by only one or more Guarantors.

**Right of subrogation**

12. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
13. In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full and any funds received by the Guarantors from the Liquidator will be held on trust for the Supplier until the Supplier has received 100 cents in the dollar in respect of the monies owing by the Application to the Supplier.

**Dated**

<b>Signed, sealed and delivered by the guarantor</b>	<b>Signature</b>		<b>Name</b>	
			<b>Position</b>	
<b>Signed, sealed and delivered by the guarantor</b>	<b>Witness signature</b>		<b>Name</b>	
	<b>Signature</b>		<b>Name</b>	
			<b>Position</b>	
	<b>Witness signature</b>		<b>Name</b>	

**Insolvency of Applicant**

14. No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as reducing, discharging or diminishing the Applicants or the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

**Costs**

15. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - (a) the account of the Applicant;
  - (b) this guarantee and indemnity;
  - (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
  - (d) the preparation, completion and stamping of this deed; or
  - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.
16. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on a full indemnity basis.
17. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

**Variation**

18. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
19. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

**Severance**

20. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

**Security/charge**

21. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
22. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
23. This guarantee and indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee and indemnity.

**Personal Property Securities Act**

24. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
25. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

**Privacy Act**

The Guarantors authorise the Supplier to do each of the things listed the Privacy Act 1988 authorisation attached to this agreement in relation to its personal credit matters.

# Advantage Air Warranty Policy

## 1. General

In this Warranty Policy:

A **product** is a product which was manufactured by Us or supplied to You by Us or both.

**Us/Our/We** means Advantage Air (NSW) Pty Ltd (ABN 23 620 995 306).

**You/Your** means the person, organisation, partnership, corporation, trust or other entity who has purchased a product from Us or an Authorised Dealer.

**Authorised Dealer** means a dealer, retailer or installer of Ours that has been authorised by Us to sell Advantage Air products.

## 2. Our Warranty to You

Advantage Air provides a “peace of mind” product warranty on all Advantage Air products. We warrant to You that Advantage Air products:

- (a) will, during the warranty period, comply with the technical specifications published on Our website;
- (b) are constructed of suitable and appropriate materials; and
- (c) are constructed using good and careful workmanship.

If you are a consumer under the Australian Consumer Law then our goods also come with guarantees that cannot be excluded under the Australian Consumer Law. 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 acceptable quality and the failure does not amount to major failure.

The benefits given to You under this Warranty are in addition to other rights and remedies under a law in relation to the products. Nothing in this Warranty purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application any of the provisions of the *Competition and Consumer Act 2010* or any relevant laws which by law cannot be excluded, restricted or modified.

## 3. Warranty periods

Different warranty periods apply to different components of the products supplied by Advantage Air, as set out in the table below (**Warranty Period**).

Product	Warranty Period
Air conditioning units	As per manufacturer’s warranty
All electronic control systems and motors	5 years
All other products	10 years

The Warranty Period will depend on the product You have purchased. In all cases the commencement date for the Warranty Period is the date of purchase as reflected on the Authorised Dealer’s invoice/receipt provided to You.

## 4. Making a Warranty claim

If You consider that an Advantage Air product You have purchased from Us has a defect or does not comply with the warranties given to You by this Warranty or under the *Competition and Consumer Act (2010)*, You can make a claim under this Warranty.

### If You have purchased from an Authorised Dealer

If You have purchased an Advantage Air product from an Authorised Dealer and You wish to make a claim under this Warranty, You must contact the Authorised Dealer within 30 days of a defect being discovered.

If You are unable to contact the Authorised Dealer or the Authorised Dealer will not provide You with assistance please call us on 1300 850 191.

### **If You are an Authorised Dealer**

If You are an Authorised Dealer and You wish to make a claim under this Warranty, You must within 30 days of a defect being discovered:

- (a) at Your cost, attend the site where the product is located and assess the fault and report on the fault to Us; and
- (b) Complete and forward to Us a properly completed Warranty Claim Form (as prescribed by Us) together with the proof of purchase and Your report on the fault by mail, fax or email to the address stated below.

Our Warranty Claim Form is available on our website. If You are unable to obtain our Warranty Claim Form from our website We will provide You with a copy on request.

If You do not follow the Warranty claim process outlined in this Warranty You may be liable for charges in accordance with Our Schedule of Charges set out below.

## **5. Where to send a Warranty Claim Form**

You must send the completed Warranty Claim Form and any other documents required by Us, as stated above to,:

Advantage Air (NSW):

By Mail: 7/10 Anella Ave  
Castle Hill NSW 2154

By Email: chwarranty@advantageair.com.au

## **6. What We will do**

Following receipt of a Warranty Claim Form under this Warranty, We will send a representative to the place where the Advantage Air product is located to assess the Warranty claim. You must provide Us with safe and ready access to all products. We will not undertake any work in respect of the Warranty claim until safe and ready access is provided. Any costs incurred by Us to provide such safe and ready access are payable by You.

### **If Your Warranty claim is valid**

If We determine that Your claim is valid We will, at Our discretion:

- (a) in relation to the supply of products:
  - (i) replace the products or supply similar products;
  - (ii) repair the products;
  - (iii) provide the cost for replacing the products or for acquiring equivalent products; or
  - (iv) provide the cost for having the products repaired; and
- (b) in relation to the supply of services:
  - (i) supply the service again; or
  - (ii) provide for the cost of having the services supplied again.

If an installer knowingly installs a faulty product, We will supply a replacement product but We will not be liable for the cost of installation of that replacement product.

### **If Your Warranty claim is not valid**

If We determine that Your Warranty claim is not valid, We will (at Our absolute discretion):

- (a) advise You of our decision and charge a call out fee in accordance with the Schedule of Charges set out below, as varied from time to time; or
- (b) with Your authorisation, repair any fault not and charge You in accordance with the Schedule of Charges set out below, as varied from time to time.

## **7. Warranty exclusions**

To the extent permitted by law, this Warranty is limited by the matters set out below. All other conditions, warranties and liabilities, whether express or implied, are otherwise excluded except for those provisions which may not be excluded by law.

Unless specified otherwise under 'Warranty Periods', this Warranty covers Advantage Air products only.

This Warranty covers 240V damper motors for replacement only. The costs of labour or any other incidental costs will not be covered.

This Warranty does not cover damage caused by:

- (a) misuse or abuse of the product;
- (b) incorrect, incomplete, or improper operation of the product or not following the operation instructions contained in the instruction manual or set out on the product label;
- (c) fire;
- (d) acts of God, riot, war, terrorism;
- (e) accident;
- (f) alteration of the product (in any manner or form whatsoever);
- (g) faulty, incorrect, incomplete, or improper installation of the product;
- (h) incorrect voltage or non-authorized electrical connections;
- (i) repair carried out on the product other than by an Authorised Dealer.

This Warranty does not cover service costs in replacing and maintaining consumable parts which have ceased working through normal wear and tear.

## **8. Schedule of Charges**

The following schedule of charges currently applies:

<b>Description</b>	<b>Fee</b>
Call out fee	\$288.92 (inc GST) including first hour
Labour charge for repairs unrelated to an Advantage Air product defect	\$161.79 (inc GST)/ hour
Products damaged as a result of poor installation	Charged according to Applicant purchase prices

The above schedule of charges may change from time to time.