



# Product Terms and Conditions of Sale

(please read carefully)

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## 1. Definitions

- 1.1 "Goods" shall mean all goods supplied, or to be supplied, to the Purchaser by the Supplier pursuant to this Agreement.
- 1.2 "Goods and Services" shall mean all Goods, and all products, services and advice provided by or to be provided by the Supplier to the Purchaser pursuant to this contract; and shall include without limitation the design, manufacture, development, sale, installation, repair and maintenance of ventilation equipment and the supply of componentary and parts.
- 1.3 "Price" shall mean the cost of the Goods and Services as agreed between the Supplier and the Purchaser as recorded on the Sales Order form or other document between the Supplier and the Purchaser, subject to clause 3 of this contract.
- 1.4 "Purchaser" shall mean the party described as such in the Sales Order form which forms part of this contract (or, in the absence of such Sales Order form, shall mean the party described as the purchaser, customer or similar in any other document(s) which form(s) part of this contract).
- 1.5 "Supplier" shall mean the party described as such in the Sales Order form which forms part of this contract (or, in the absence of such Sales Order form, shall mean the party described as the supplier, vendor or similar in any other document(s) which form(s) part of this contract).

## 2. Collection and use of information

- 2.1 The Supplier may collect, retain, disclose and use any personal information about the Purchaser, according to the privacy policy available on the Supplier's website.

## 3. Price

- 3.1 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of the Supplier between the date of this contract and delivery of the Goods and Services.
- 3.2 If a Price increase applies, the Supplier shall notify the Purchaser as soon as practicable. The Purchaser will have 5 working days from the date of notification to cancel their purchase and receive a full refund of any amounts paid.

## 4. Payment

- 4.1 Payment of the Price of the Goods and Services shall be made as follows:

- 4.1.1 Deposit equivalent to 50% of total cost is to be paid immediately this contract is signed by the Purchaser; and
- 4.1.2 Balance immediately on completion of delivery and (where applicable) installation.
- 4.2 Default interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 4.3 Any debt collection costs incurred by the Supplier in the enforcement of any rights contained in this contract due to a default by the Purchaser shall be paid by the Purchaser.
- 4.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 4.5 For the avoidance of doubt, the Supplier and the Purchaser each acknowledge and agree that this contract is not a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003 because the whole of the Price is due and payable within 2 months of the date of this contract, namely, in accordance with clause 4.1. Where a prepaid filter change contract is entered into, this clause may not apply.

## 4A. Prepaid Filter Change

- 4A.1 The Purchaser agrees to terms and conditions of the prepaid filter charge which are set out in the DebitSuccess Terms and Conditions and the Prepaid Filter Trust Deed, as provided to the Purchaser at the time of purchase and available at [www.hrv.co.nz](http://www.hrv.co.nz).
- 4A.2 The Purchaser acknowledges the prepayments will be collected by DebitSuccess Limited (or such other entity appointed by Cristal Air International Limited ("CAIL") from time to time and held on trust in accordance with the Trust Fund by CAIL pending supply.
- 4A.3 The Purchaser agrees and irrevocably directs that all interest earned on these prepayments be paid to CAIL as a fee for its services.
- 4A.4 The Purchaser irrevocably directs CAIL to pay the Supplier, from the amounts held in trust for the Purchaser by CAIL under the Prepaid Filter Trust Deed, an amount equivalent to the price for the filter change, upon presentation of evidence to CAIL's satisfaction that a filter change has been carried out for the Purchaser by the Supplier.
- 4A.5 If the Trust Fund holds insufficient funds to allow payment in full for the Filter change:
  - (a) the Purchaser directs that CAIL shall not be obliged to make any such payment, unless and until the Purchaser has deposited additional money in the Trust Fund so that it equals or exceeds the price for the filter change; and
  - (b) the Purchaser shall have the right to cancel this agreement as it relates to prepaid filter changes.
- 4A.6 If at the time of the Filter change, the amount in the Trust Fund exceeds the amount required to perform the change, the Purchaser shall be entitled to a refund of the difference.



4A.7 Should CAIL be validly removed or retires, or a trust is wound up, in accordance with the Prepaid Filter Trust Deed, the Purchaser irrevocably directs that all amounts held on trust for the Purchaser under the Prepaid Filter Trust Deed must be paid to the Purchaser.

4A.8. The Purchaser is entitled to a refund of the prepayments if he or she has:

4A.8.1 moved house and notified CAIL/DebitSuccess within 30 calendar days of doing so;

4A.8.2 passed away (the estate of the Purchaser will be entitled to the refund); or

4A.8.3 cancelled this contract pursuant to the terms of this contract and the DebitSuccess Terms and Conditions.

The Purchaser agrees that:

4A.8.4 all refund monies will be held for six months after which all rights to the refund will lapse;

4A.8.5 a \$50 administration fee is payable to DebitSuccess for the processing of any refunds, or if the Purchaser is not contactable, within 6 months from the date the Purchaser became being eligible for a refund.

4A.9 Where the Purchaser relocates to a new premises, he or she may request that:

4A.9.1 his or her obligations under this contract and the DebitSuccess Terms and Conditions be transferred to the new owner (to the extent that the new owner's written approval has been obtained); or

4A.9.2 any balance paid under this contract and the DebitSuccess Terms and Conditions be transferred to an alternate HRV System at the new premises.

## 5. Quotation

5.1 Where a quotation is given by the Supplier for Goods and Services:

5.1.1 Unless otherwise agreed the quotation shall be valid for 1 day from the date of issue; and

5.1.2 The Supplier reserves the right to alter the quotation price because of circumstances beyond its control.

5.2 Where the actual cost of Services exceeds the Price (due to circumstances that could not have been anticipated at the time of agreeing the Price) or if Goods are required in addition to the Goods and Services which are included in the Price, the Purchaser agrees to pay for the additional cost of such additional Goods and Services.

5.3 Where the actual cost materially exceeds the Price, the Supplier will notify the Purchaser of the additional costs. The Purchaser may, within 2 working days, cancel the sales order and receive a full refund of any part of the Price paid at that time.

## 6. Risk

6.1 The Goods remain at the Supplier's risk until delivery to the Purchaser.

6.2 Delivery of Goods shall be deemed complete when the Supplier gives possession of the Goods directly to the Purchaser or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Purchaser.

## 7. Title and Security (Personal Property Securities Act 1999)

7.1 Title in any Goods and Services supplied by the Supplier passes to the Purchaser only when the Purchaser has made payment in full for all Goods and Services provided by the Supplier and of all other sums due to the Supplier by the Purchaser on any account whatsoever. Until all sums due to the Supplier by the Purchaser have been paid in full, the Supplier has a security interest in all Goods and Services.

7.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Purchaser, by way of any manufacturing, installation, or assembly process, title in the Goods and Services shall remain with the Supplier until the Purchaser has made payment for all Goods and Services.

7.3 The Purchaser gives irrevocable authority to the Supplier to enter any premises occupied or owned by the Purchaser, or on which Goods are situated, at any reasonable time after default by the Purchaser or before default if the Supplier believes a default is likely and to remove and repossess any Goods. The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Purchaser or any third party as a result of the Supplier taking any action that is reasonably necessary in order to exercise this right, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded, except where any loss is caused solely and directly because the Supplier has been negligent or wilfully caused damage. The Supplier may either resell any repossessed Goods and credit the Purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Purchaser's account with the invoice value thereof less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

7.4 Under sections 120 and 121 of the Personal Property Securities Act 1999, where Goods are repossessed by the Supplier pursuant to clause 7.3, the Purchaser has a statutory right to receive advance notice from the Supplier of such repossession, and to object to the repossession within 10 working days of receiving notice from the Supplier. Under these Terms and Conditions, the Purchaser waives the right to receive notice and to object to the repossession. By signing these terms and conditions the Purchaser agrees to give up these rights.



7.5 The following shall constitute defaults by the Purchaser:

- 7.5.1 Non payment of any sum by the due date.
- 7.5.2 Before full payment of the Price is made by the Purchaser, any Goods and Services are seized by any other creditor of the Purchaser or any other creditor intimates that it intends to seize Goods and Services, or the Purchaser is bankrupted or put into liquidation or a receiver is appointed to any of the Purchaser's assets or a landlord distrains against any of the Purchaser's assets, or a Court judgment is entered against the Purchaser and remains unsatisfied for seven (7) days.

## 8. Change of mind

- 8.1 The Purchaser may return the Goods for change of mind up to 30 days from delivery, provided that, unless the Purchaser has rights under the Fair Trading Act 1986:
  - 8.1.1 The Goods are in undamaged condition and are suitable for resale; and
  - 8.1.2 the Purchaser pays the Supplier a restocking fee of 10% of the purchase price paid for the Goods.
- 8.2 Notwithstanding clause 8.1, the Purchaser may return only one of the systems described in the Sales Order Form (and retain the other), on the terms of clause 8.1, but in this case:
  - 8.2.1 The Supplier may offer a refund to the Purchaser for the fair value of the returned system to be determined at the sole discretion of the Supplier; or
  - 8.2.2 if the Purchaser does not accept the refund offered pursuant to clause 8.2.1, the Purchaser may cancel the contract and simultaneously re-enter a new contract for the retained system. In entering the new contract, the Purchaser shall be entitled to purchase the retained system for the price the Supplier would have charged for the retained system alone at the time the Sales Order for the bundled system was made. Any difference between the original price paid and the price paid under the new contract shall be refunded to the Purchaser.

## 9. Liability

- 9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Supplier which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Supplier, the Supplier's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 9.2 Except as otherwise provided by clause 9.1 or 9.3 the Supplier shall not be liable for:
  - 9.2.1 Any loss or damage of any kind whatsoever, arising from the supply of (or delay in supplying or failure

to supply) Goods and Services by the Supplier to the Purchaser, including consequential loss whether suffered or incurred by the Purchaser or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Supplier to the Purchaser; and

- 9.2.2 The Purchaser shall indemnify the Supplier against all claims and loss of any kind arising from the negligence, or wilful acts or omissions of the Purchaser.

9.3 Nothing in this clause 9 excludes the Supplier's liability for the negligent or wilful acts or omissions of the Supplier.

## 10. Product Warranty

- 10.1 Manufacturer's product warranty applies where applicable to the Goods.
- 10.2 Any written product warranty provided by the Supplier to the Purchaser shall also form part of this contract.

## 11. Copyright

- 11.1 The Supplier owns and has copyright in all designs, specifications, documents, work and software produced by the Supplier in connection with the Goods and Services provided pursuant to this contract. The Purchaser may use the Goods and Services only if paid for in full and only for the purpose for which they were intended and supplied by the Supplier.

## 12. Consumer Guarantees Act

- 12.1 Where the Purchaser is 'in trade' (within the meaning of the Consumer Guarantees Act 1993 - CGA), the parties each confirm, acknowledge and agree that:
  - (a) they are each 'in trade';
  - (b) the Goods and Services are supplied to the Purchaser and acquired by the Purchaser in trade and for a business purpose; and
  - (c) the statutory guarantees and implied terms, covenants and conditions contained in the CGA are excluded to the fullest extent permitted at law, and do not apply.

## 13. Miscellaneous

- 13.1 Failure by the Supplier to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations the Supplier has under this contract.
- 13.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.