

Airius Terms and Conditions of Trading - V13.9



1. DEFINITIONS

In these Conditions:

'AIRIUS OCEANIA' means Airius Oceania Pty Ltd whose registered office is at 2/14 Brandon St Suffolk Park NSW 2481. ACN 159 838 543

'BUYER' means the person or firm who agrees to buy Goods and/or Services from Airius Oceania.

'THESE CONDITIONS' means these Terms and Conditions of Trading together with any supplementary terms and conditions.

'GOODS' means any goods sold by Airius Oceania to the Buyer.

'GST' means Goods and Services Tax.

'QUOTATION' means an Airius Oceania quotation for Goods and/or Services.

'SERVICES' means any installation, design, fabrication or construction undertaken by Airius Oceania or its agents or contractors.

2. ORDERS

All orders between Airius Oceania and the Buyer whether written or verbal are accepted by Airius Oceania subject to the Goods being available and subject also to these Conditions applying. In the event of any inconsistency between these Conditions and any conditions on which the Buyer may seek to rely, these Conditions shall prevail and will override any conditions of purchase of the Buyer including any conditions which may appear on the Buyer's order form or similar documentation, unless agreed by Airius Oceania in writing. Acceptance of a Quotation or acknowledgement of order by the Buyer is deemed acceptance of these Conditions.

An order accepted by Airius Oceania cannot be cancelled, deferred or altered except by mutual agreement and confirmed in writing by both parties and is subject to agreement on costs incurred.

3. PRICES

All prices quoted are valid for a period of one month from the date of a Quotation or from the date of issue of price lists unless otherwise expressly stated in the quotation or price list. All prices are subject to GST at the rate current at the time of delivery. Authority fees including any Duty, AQIS, customs or related authority or government department or agency fees are excluded from our quotation and will be paid by the buyer.

Any purchase orders placed with Airius by a customer will have the price quoted held for one month and the price will only remain the same after that month if the customer pays for the order in full at that time or accepts there may be a higher price to be paid at time of dispatch.

4. DISCOUNTS/CARRIAGEPRICES

All prices quoted are net trade prices and shall not be subject to retention or net discount, unless specifically stated in a Quotation or Acknowledgement of Order. Carriage prices shown in Quotations are net prices and are not subject to any discount.

5. DELIVERY

Airius Oceania will use its reasonable endeavours to make deliveries of Goods on a date or dates agreed. Airius Oceania does not accept any responsibility or liability for failure to deliver or for any delay in delivering Goods in accordance with the order unless otherwise agreed in writing before delivery.

Frustrated deliveries created by the supply to Airius of incorrect delivery details including location, time or other information that is not correct, will incur a redelivery fee charged by the selected carrier plus a 15% (plus GST) handling fee.

This must be paid by the customer upon issue of Airius invoice for same or the purchase will be considered incomplete. Refer to item 11.

6. DAMAGED GOODS

The Buyer shall not be entitled to issue a claim against Airius Oceania in relation to alleged damaged Goods or alleged shortages of Goods unless the Buyer has notified Airius Oceania in writing of the alleged defects/shortages within 48 hours of delivery. The Buyer must notify Airius Oceania in writing directly about any damage or perceived damage to Goods (including packaging) relating to carriage.

7. RETURNED GOODS

The Buyer will not be entitled to return Goods to Airius Oceania unless Airius Oceania has agreed before any such return. Should Airius Oceania agree to accept returned Goods, the Buyer shall be liable to pay a restocking charge amounting to 15% of the agreed purchase price for the Goods. Goods returned must be in as-new condition in their original cartons.

8. RISK AND INSURANCE

The risk in the Goods shall pass to the Buyer from the time of delivery to the Buyer's address or other agreed place of delivery or on collection by the Buyer as appropriate notwithstanding that property in the Goods may be retained by Airius Oceania in accordance with Clauses 11 and 12. The Buyer shall be responsible for effecting its own insurance as appropriate from the date of delivery of any Goods. Once the Goods have been delivered or Services have been installed the Buyer shall be responsible for fully protecting them and keeping safe the

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Goods and Services. The risk and responsibility of the Buyer in this regard also extends and applies to the return where applicable of any Goods to Airius Oceania and the Buyer in such a case shall be so responsible to the time of acceptance of the returned Goods and/or Services by Airius Oceania.

9. PRICE OF GOODS AND SERVICES

The Goods and Services shall be supplied in accordance with the Airius Oceania quotation and the price shall not be subject to reduction or variation unless agreed in writing. The Buyer shall not be entitled to apply any set off against any sums owing to Airius Oceania.

10. TERMS OF PAYMENT

OUR TERMS OF PAYMENT ARE AS FOLLOWS:

- **AS PER QUOTATION**
- **ALL VARIATIONS NOT INCLUDED IN THE CONTRACT MAY BE CHARGED SEPARATELY AND ARE IN ADDITION TO THE AMOUNT QUOTED.**
- **ALL INVOICES ARE PAYABLE WITHIN 30 DAYS FROM THE INVOICE DATE.**
- **AMOUNTS UNPAID BEYOND 30 DAYS ARE SUBJECT TO INTEREST CALCULATED AT THE VARIABLE INTEREST RATE PUBLISHED BY WESTPAC BANK FROM TIME TO TIME ON OVERDRAFT AMOUNTS EXCEEDING \$100,000 PLUS 2%**
- **ANY INVOICE QUERIES SHALL BE NOTIFIED WITHIN 7 DAYS FROM RECEIPT OF INVOICE, OTHERWISE THE INVOICE AMOUNT IS DEEMED TO BE ACCEPTED.**
- If part of an Invoice is disputed by the Buyer for good cause, only the disputed part may be withheld and the balance must be paid by the due date.
- Where part delivery or part service work is carried out, an Application for Payment on Account will be made and payment is due to Airius Oceania 7 days from the date of the Application.
- Payments may be made by Electronic Funds Transfer (EFT) as Airius Oceania directs.
- Any cheque payments will incur a 5% fee (being 5% of the contract price). Airius does not accept cheques unless by prior arrangement.
- If the Buyer fails to make any payment by the due date then without prejudice to any other rights or remedies available Airius Oceania reserves the right to:
 - i. Cancel the order or suspend any further deliveries of Goods and/ or Services.
 - ii. Take down and retrieve any Goods or systems not affixed or installed.

11. RETENTION OF TITLE AND PASSING OF PROPERTY

- a. Ownership in the Goods shall remain with Airius Oceania until full payment for the Goods and/or Services has been received by Airius Oceania.
- b. Until such time, the Buyer shall keep the Goods free from any charge, lien or other encumbrance whatsoever and the Buyer shall hold the Goods as bailee for Airius Oceania.
- c. Furthermore, the Buyer shall store the Goods owned by Airius Oceania separately from its own.
- d. Until payment in full for the Goods and Services has been received, Airius Oceania may at any time require the Goods to be returned to it and if such requirement is not complied with forthwith, it may retake possession of the Goods and for such purposes is irrevocably authorised to enter upon any premises whether or not occupied by the Buyer and retrieve the Goods without in anyway being liable to the Buyer.
- e. Where Airius Oceania has exercised its rights in relation to retaking possession of the Goods Airius Oceania may re-sell the Goods to a third party.

12. PERSONAL PROPERTY SECURITIES ACT 2009 ('PPSA')

- a. The Buyer acknowledges and agrees that the agreement once accepted will be a security agreement for the purposes of the PPSA and that Airius Oceania may register its security interest in the goods and their proceeds as a purchase money security interest ('PMSI') on the PPSA register.
- b. The Buyer acknowledges and agrees that Airius Oceania may register its security interest (including registering it as a PMSI in the goods at any time before or after delivery.
- c. Airius Oceania may apply amounts it receives from the Purchaser towards amounts owing to it as Airius Oceania may choose.
- d. Where the PPSA applies to action taken by Airius Oceania in relation to the goods, the Purchaser waives its right to the maximum extent permitted by law to receive any notices or statements required under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

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- e. The Purchaser waives its rights under section 157 of the PPSA to receive notice of a verification statement.
- f. The parties agree not to disclose information of the kind referred to in section 275(1) except in circumstances required by sub-sections 275(7)(b)-(e) of the PPSA.
- g. The Purchaser must do anything requested by Airius Oceania to ensure that Airius Oceania's security interest is a perfected security interest and a PMSI and has priority over all other security interests in the goods.
- h. Nothing in this clause 12 is limited by any other provision of these terms or any other agreement between the parties.
- i. If a term used in this clause 12 has a particular meaning in the PPSA, it has the same meaning in this clause.

13. CONSIGNMENT

If Airius Oceania has supplied Goods on consignment (whereby the Buyer will not be pay for the Goods until the Buyer has found a purchaser from it of the Goods) the Buyer must use its best efforts to sell the Goods.

All Goods which have not been sold by the Buyer within 30 days (or any such other period agreed in writing by the parties before dispatch by Airius Oceania to the Buyer) from the date of delivery to the Buyer must be returned to Airius Oceania without delay at the Buyer's expense in as new condition in the original cartons.

In such a case, Airius Oceania shall not be liable for any costs, expenses, damages or losses incurred by the Buyer or by any third party, and furthermore, the Buyer shall be responsible for all costs and expenses incurred by it in respect of any installation, removal, delivery, and transportation.

Within 7 days from the date of sale of any Goods the Buyer must remit the price to Airius Oceania in relation to the Goods sold. 14.

14. QUALITY AND PURPOSE

The Goods are warranted in accordance with the specification set out in Airius Oceania's Quotation or in its Guarantee Document which is available upon request, or if there is no such specification, to be within normal limits of quality or description, statutory or otherwise.

While all product information is given in good faith, the use or application of the Goods and /or Services is outside the control of Airius Oceania and accordingly Airius Oceania gives no warranty as to the fitness of the Goods or Services for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded insofar as such exclusion is permitted by law.

Airius Oceania's liability in respect of the quality or fitness for the purpose of the Goods or Services supplied shall not extend to the Buyer's loss of profits, increased cost or work or any other consequential loss. Any liability arising in connection with the order owed by Airius Oceania to the Buyer shall at all times be limited to the value of the Goods and/or Services (as the case may be) and shall not exceed an amount which is just and equitable taking into account the relative contributions to any loss suffered by the Buyer of Airius Oceania and other parties who have entered into any arrangements (contractual or otherwise) with the Buyer.

15. FORCE MAJEURE

Notwithstanding any agreement to the contrary, any delivery may be totally or partially suspended by Airius Oceania as a result of delay in manufacture, supply or delivery arising from acts of God, unforeseeable circumstances, acts of Government or local authority, war, revolution, fires, ice, strikes, industrial disputes, inability to obtain necessary and/or proper materials, facilities, transportation or labour or any other cause beyond Airius Oceania's control. Any Goods, the delivery of which has not been totally or partially suspended shall be accepted by the Buyer as soon as it is reasonably practicable after the reason for delay has abated.

16. LAW

Any order governed by these conditions shall in all respects be subject to the laws in force in New South Wales and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals therefrom.

17. COPYRIGHT

Subject to the rights of any third party in respect of copyright where applicable, all rights to reproduce or adapt any drawings, plans, designs, or similar material created by or at the direction of Airius Oceania ('Designs and Drawings') shall remain with Airius Oceania. The Designs and Drawings may not be reproduced or used in any way whatsoever without the prior written consent of Airius Oceania which may be withheld or granted upon conditions in Airius Oceania's absolute discretion.

Airius Oceania Pty Ltd. These Terms and Conditions supersede all previous Terms and Conditions.

Warranty and Guarantee for Airius Oceania P/L

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"Airius" - Means Airius Oceania P/L, 2/14 Brandon St, Suffolk Park; NSW, 2481 (ABN 44159838543)

"End-user" - Means the natural or legal person who owns the Goods and who has not acquired them with a view to re-selling or installing them in the course of business.

"Goods" - Airius Oceania's range of thermal destratification fans only.

1. Commencement of the Guarantee

The Guarantee period shall run from the time the Goods are delivered to the End-user and shall only take effect from the date the goods were delivered to the customer and Airius Oceania is notified, in writing, (via email or registered letter) by the customer of their receipt within three days of the units being received in good and fair condition.

2. Extent of the Guarantee

Airius Oceania P/L guarantees its Goods to be reasonably free from defects in materials and workmanship when under normal use. All other warranties and representations, whether express or implied, are excluded to the fullest extent permitted by law. This guarantee shall apply for a period of 5 years for all fans in Australia and Australian territories only (except Airius Pearl Models and any fans installed into indoor pools or corrosive environments) and shall also provide an additional cover of 5 years past the 5 initial years where any faulty unit is rebuilt by Airius Oceania P/L at Airius Oceania's P/L cost for half the purchase price (excluding freight) of a similar sized new unit. Balance of the price (and any relevant freight costs from domestic customer to NSW warehouse) is to be paid by the customer prior to the rebuilt unit being despatched back to the customer.

Intentional customers will return any parts covered under warranty to the Airius warehouse in NSW at their cost. If the unit is found to be faulty due to a failure of the Airius product, Airius will send the replacement unit back to the customer at Airius' cost. If it is shown the faulty fan is due to an error by the customer, then all freight costs will be borne by the customer.

For schools and other education facilities, a longer warranty period for Airius fans only (not ancillary products) is available with prior agreement with the customer.

Any Airius fans installed in a corrosive environment (such as indoor pools) have a 1- or 2- year warranty period (subject to prior agreement with Airius). When used in pools, Airius fans must be kept running at all times even at a low speed to reduce motor condensation.

For the 5-year component of the guarantee, upon arrival at the Airius Oceania office, the unit, if deemed to be faulty by Airius Oceania P/L subject to Clause 2.1, 2.2, 2.3, 2.4 the unit will be replaced or rebuilt as per the provisions of this clause (2).

Overseas fans have a two-year full replacement warranty only subject to the conditions noted above and below. The cost of shipping the unit to the NSW warehouse for domestic customers only for repair under the 5 years rebuild provision of the guarantee will be borne by the customer. If it is shown the Airius fans are faulty due to a manufacturing issue, then Airius will pay the return freight back to the customer. All/any Airius Pure fans have the same fan warranty as noted above, however the PHI components have a one-year warranty only.

The Guarantee shall not apply, and Airius Oceania P/L shall be under no liability in respect of any defect in the Goods arising from:

- i. the acts or omissions of persons other than Airius Oceania P/L or its authorised personnel or agents, including but not limited to damage in transit, repairs, modifications or additions made to the Goods by the End-user or any third party
- ii. failure to perform appropriate maintenance
- iii. any continued use of the Goods after they exhibit signs of any defect or malfunction
- iv. carelessness, mishandling, wear and tear, vandalism or unforeseen events
- v. use of the Goods contrary to Airius Oceania's P/L recommendations
- vi. any failure or defect in related products or systems which the Goods have been integrated with, operate with or are dependent on
- vii. defects in materials or workmanship which are the result of installation by others than Airius Oceania.
- viii. all freight costs for any warranty units, either new or rebuilt will be borne by the customer
- ix. inappropriate and unauthorised use or installation processes
- x. not following manufacturers recommended design, installation details or operations.
- xi. use of Airius fans in corrosive environments or in applications where Chemicals etc. or other corrosive products or gases etc. are in use or non-standard environments or non-typical environments are in use and Airius has not been advised prior to the purchase of the fans.

3. Repair or Replacement under the Guarantee

Airius Oceania will at Airius Oceania's sole discretion discharge in full any liability to the End-user under this Guarantee by repairing or replacing the relevant Goods (or any part thereof) at no charge so that the relevant Goods conforms to such Guarantee, and the Guarantee will continue for the remainder of the period set out in Clause 2.

Warranty and Guarantee for Airius Oceania P/L

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If in Airius Oceania's sole opinion, the end-user is unable to establish breach of the guarantee in Clause 2, the End-user shall be responsible for all costs and expenses incurred by Airius Oceania in investigating such alleged breach.

4. Data Protection

Airius Oceania P/L shall comply at all times with its obligations under the Commonwealth Privacy Act 1988 and any other legislation relating to the protection of personal data.

5. Notice

No notice to be given to Airius Oceania P/L shall be effective unless given in writing by registered post which will be deemed received three (3) business days after posting.

6. Miscellaneous

- i. Airius Oceania P/L may perform any of its obligations or exercise any of its rights under this Guarantee by itself or through any Airius Oceania P/L subsidiary or holding company or any subsidiary of any such holding company.
- ii. Subject to Clause 6.1, this Guarantee is not intended by the parties to give rise to any right which is enforceable by any third party.
- iii. This Guarantee is subject to NSW Law and the NSW Courts shall have exclusive jurisdiction over any dispute arising out of or in connection with this Guarantee.
- iv. This Guarantee does not and will not affect your Statutory Rights as a consumer.