

# GME Services Pty Ltd T/A Total Kooling Solutions - Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Total Kooling Solutions" means GME Services Pty Ltd T/A Total Kooling Solutions, its successors and assigns or any person acting on behalf of and with the authority of GME Services Pty Ltd T/A Total Kooling Solutions.
- 1.3 "Client" means the persons, entities or any person acting on behalf of and with the authority of the Client requesting Total Kooling Solutions to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Total Kooling Solutions to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Total Kooling Solutions and the Client in accordance with clause 2 below.
- 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Price and Payment**
- 2.1 The Price shall be as indicated on invoices provided by Total Kooling Solutions to the Client in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.
- 2.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Total Kooling Solutions nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Total Kooling Solutions an amount equal to any GST Total Kooling Solutions must pay for any supply by Total Kooling Solutions under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
3. **Risk**
- 3.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Total Kooling Solutions is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Total Kooling Solutions is sufficient evidence of Total Kooling Solutions' rights to receive the insurance proceeds without the need for any person dealing with Total Kooling Solutions to make further enquiries.
4. **Title to Goods (including any incidental items supplied as part of any Services)**
- 4.1 Total Kooling Solutions and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid Total Kooling Solutions all amounts owing to Total Kooling Solutions; and
  - (b) the Client has met all of its other obligations to Total Kooling Solutions.
- 4.2 Receipt by Total Kooling Solutions of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Client in accordance with clause 4.1 that the Client is only a bailee of the Goods and must return the Goods to Total Kooling Solutions on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Total Kooling Solutions and must pay to Total Kooling Solutions the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Total Kooling Solutions and must pay or deliver the proceeds to Total Kooling Solutions on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Total Kooling Solutions and must sell, dispose of or return the resulting product to Total Kooling Solutions as it so directs.
  - (e) the Client irrevocably authorises Total Kooling Solutions to enter any premises where Total Kooling Solutions believes the Goods are kept and recover possession of the Goods.
  - (f) Total Kooling Solutions may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Total Kooling Solutions.
  - (h) Total Kooling Solutions may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
5. **Personal Property Securities Act 2009 ("PPSA")**
- 5.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 5.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Total Kooling Solutions for Services – that have previously been supplied and that will be supplied in the future by Total Kooling Solutions to the Client.
- 5.3 The Client undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Total Kooling Solutions may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 5.3(a)(i) or 5.3(a)(ii).
  - (b) indemnify, and upon demand reimburse, Total Kooling Solutions for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Total Kooling Solutions;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Total Kooling Solutions;
  - (e) immediately advise Total Kooling Solutions of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.4 Total Kooling Solutions and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 5.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 5.7 Unless otherwise agreed to in writing by Total Kooling Solutions, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 5.8 The Client must unconditionally ratify any actions taken by Total Kooling Solutions under clauses 5.3 to 5.5.
- 5.9 Subject to any express provisions to the contrary (including those contained in this clause 5), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
6. **Security and Charge**
- 6.1 In consideration of Total Kooling Solutions agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 6.2 The Client indemnifies Total Kooling Solutions from and against all Total Kooling Solutions' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Total Kooling Solutions' rights under this clause.
- 6.3 The Client irrevocably appoints Total Kooling Solutions and each director of Total Kooling Solutions as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 6 including, but not limited to, signing any document on the Client's behalf.
7. **Default and Consequences of Default**
- 7.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Total Kooling Solutions' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 If the Client owes Total Kooling Solutions any money the Client shall indemnify Total Kooling Solutions from and against all costs and disbursements incurred by Total Kooling Solutions in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Total Kooling Solutions' contract default fee, and bank dishonour fees).
- 7.3 Further to any other rights or remedies Total Kooling Solutions may have under this Contract, if a Client has made payment to Total Kooling Solutions, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Total Kooling Solutions under this clause 7 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
8. **Privacy Policy**
- 8.1 All emails, documents, images or other recorded information held or used by Total Kooling Solutions is Personal Information, as defined and referred to in clause 8.3, and therefore considered Confidential Information. Total Kooling Solutions acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Total Kooling Solutions acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Total Kooling Solutions that may result in serious harm to the Client, Total Kooling Solutions will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 8.2 Notwithstanding clause 8.1, privacy limitations will extend to Total Kooling Solutions in respect of cookies where transactions for purchases/orders transpire directly from Total Kooling Solutions' website. Total Kooling Solutions agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Total Kooling Solutions when Total Kooling Solutions sends an email to the Client, so Total Kooling Solutions may collect and review that information ("collectively Personal Information")**In order to enable / disable the collection of Personal Information by way of cookies, the Client shall have the right to enable / disable the cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Total Kooling Solutions' website.**
- 8.3 The Client agrees for Total Kooling Solutions to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Total Kooling Solutions.
- 8.4 The Client agrees that Total Kooling Solutions may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 8.5 The Client consents to Total Kooling Solutions being given a consumer credit report to collect overdue payment on commercial credit.
- 8.6 The Client agrees that personal credit information provided may be used and retained by Total Kooling Solutions for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 8.7 Total Kooling Solutions may give information about the Client to a CRB for the following purposes:
  - (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 8.8 The information given to the CRB may include:
  - (a) Personal Information as outlined in 8.3 above;
  - (b) name of the credit provider and that Total Kooling Solutions is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Total Kooling Solutions has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Total Kooling Solutions, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 8.9 The Client shall have the right to request (by e-mail) from Total Kooling Solutions:
  - (a) a copy of the Personal Information about the Client retained by Total Kooling Solutions and the right to request that Total Kooling Solutions correct any incorrect Personal Information; and
  - (b) that Total Kooling Solutions does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 8.10 Total Kooling Solutions will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 8.11 The Client can make a privacy complaint by contacting Total Kooling Solutions via e-mail. Total Kooling Solutions will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
9. **General**
- 9.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which Total Kooling Solutions has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.
- 9.3 Where applicable nothing in this Contract is intended to have the effect of contracting out of the Competition and Consumer Act 2010 (CCA). Total Kooling Solutions shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Total Kooling Solutions of these terms and conditions (alternatively Total Kooling Solutions' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 9.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 9.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.