



Terms and Conditions

These Terms of Trading ("Terms") apply to the sale of any goods or services by BITZER Australia Pty Ltd (ACN 057 670 023) ("BITZER") to you on or after March 2018 and apply until further notice from BITZER. BITZER shall notify you of any substantive changes to the Terms by posting the updated terms and conditions on its website. The terms prevail over any other terms or conditions you provide to us.

Credit Terms

Credit facilities will not be available until BITZER has approved your application for a commercial credit account. You authorise BITZER to make such enquiries as BITZER thinks fit as to your credit worthiness in support of this application (including, without limitation, to trade referees, bankers and other credit providers) and subsequently in support of future trading and you authorise such persons to provide the information to BITZER that it requests.

If BITZER agrees to supply goods to you, you will pay all amounts invoiced to you within 30 days of the invoice date, or within such shorter period as BITZER may advise from time to time. The applicable credit terms will be set out on BITZER's invoice.

Time is of the essence in respect of your payment obligations. If any amount invoiced is not paid when due, all other amounts invoiced to you by BITZER will become due and payable immediately. BITZER reserves the right to subject overdue accounts to a late payment charge at a Commonwealth Bank overdraft rate chosen by BITZER plus 2%, until such time as the overdue amount and late payment charge have been paid in full. You will be liable for all costs BITZER incurs in the collection of outstanding amounts.

BITZER reserves the right to withdraw credit facilities at any time on 30 days written notice, if BITZER considers, in its absolute discretion, that it no longer wishes to provide those facilities.

Ordering Procedure

Any order you place with BITZER will be subject to acceptance by BITZER and will be deemed to be on these Terms. BITZER may accept an order in whole or in part. BITZER:

- (a) reserves the right to cancel orders in its discretion, including (without limitation) if any of the goods ordered are unavailable or in short supply;
- (b) reserves the right to supply goods ordered in part or in instalments;
- (c) will use reasonable efforts to meet requested delivery dates or times but BITZER will confirm the actual delivery date and time and will have

no liability for any loss or damage incurred due to a delay or a failure to deliver.

Retention Of Title Clause

You acknowledge that you will be the bailee of the goods, will hold the goods as a fiduciary and that title in the goods will not pass to you until all monies owing by you to BITZER in relation to the goods (including the full purchase price and any freight charges) have been paid in full. Until title to the goods passes to you:

- (d) you may not resell the goods
- (e) you must store the goods separately and identify them as belonging to BITZER;
- (f) you must allow BITZER to enter your premises at any time to inspect and, if payment is past due, repossess the goods.

If you re-supply the goods before title passes, you will hold the proceeds of sale on trust and as agent for BITZER until payment is made.

BITZER may register on the Australian personal property securities register any interest it holds in goods sold or to be sold to you, including its title retained pursuant to these Terms. You will do all things necessary, including executing all documents BITZER requires, to enable BITZER to register a financing statement on the register and to have a perfected security interest and/or a purchase money security interest (within the meaning of the Personal Property Securities Act 2009 (Cth) ("PPSA")) in respect of goods supplied under these Terms. Until all monies owing to BITZER are paid in full, you must not grant any other security interest in the goods, without BITZER's prior written consent. You waive your right under the PPSA to receive a copy of any statement in relation to security interests registered or to be enforced.

BITZER may apply monies received against any debts as it sees fit, without regard to the type of interest it holds in the goods under the PPSA.

Delivery And Payment

1. Goods are sold ex-works (BITZER's Sydney factory or other facility confirmed to you) Incoterms 2010. You must arrange all transport for such goods, unless agreed otherwise by BITZER in writing.
2. If BITZER agrees to deliver the goods to you, BITZER reserves the right to select the method of delivery and carrier.
3. List prices are based on current rates and are subject to alteration without notice. Goods will be invoiced at the list prices applicable at the date of delivery unless BITZER otherwise agrees.

4. Failure to pay for goods or services in accordance with our invoice may result in BITZER's refusal to deliver further goods or perform any service until payment has been made.
 5. Goods cannot be returned, unless you have a right under the Terms or at law to do so, or unless BITZER agrees. BITZER may, in its absolute discretion, permit you to return a standard catalogue item to BITZER within a reasonable time if the item is in as-new condition and you pay BITZER's specified restocking fee.
 6. BITZER will recognize claims for damage occurring in the course of transit where BITZER's price includes delivery to your premises. Subject to any rights you may have at law that cannot be excluded, such claims must be submitted to BITZER within 7 days of date of delivery and will not be accepted if the delivery was signed for as being "Received in Good Order and Condition". BITZER reserves the right to refuse claims after this date.
 7. Goods that are held at any of BITZER's premises at your request will be liable to costs incurred for the general upkeep of those goods. These costs may include packaging, storage and rent, insurance, and/or any other charge to maintain the goods in saleable condition.
- (a) register the product at <https://www.bitzer.de/webservices/activate.aspx> before its initial commissioning;
 - (b) provide BITZER with a complete operating parameters report ("data log") taken at commissioning of the delivery item in accordance with the specifications shown at <https://www.bitzer.de/webservices/activate.aspx> or, in relation to any BITZER IQ INTELLEGENT COMPRESSOR products and any compressor equipped with an optional BITZER IQ MODULE (**IQ Products**), the data log generated by the IQ-product or IQ-module (as applicable). This data log must be provided promptly following commissioning of the product;
 - (c) provide BITZER with an annual data log showing the operating parameters of the product. This data log must be provided promptly following each anniversary of the commissioning of the product within the Warranty Period;
 - (d) pay any extended warranty fees specified on the invoice for the product in accordance with the payment terms for that invoice; and
 - (e) in relation to any IQ Product, activate the application limit monitoring of the IQ product or the IQ module (as applicable) from first commissioning until the end of the Warranty Period.

Installing, Using And Servicing BITZER Products

You are responsible for ensuring that installation, use, repair and on-going servicing of the goods (as applicable) is in accordance with BITZER's recommendations. You acknowledge that, as with all engineered products, the life of BITZER goods will be reduced if they are not regularly and adequately serviced. If the goods are refrigerant products, you must ensure that you have a procedure in place to avoid damage to your own goods if your refrigeration fails for any reason.

BITZER's Express Warranty

1. Without limiting your remedies under the Australian Consumer Law, BITZER warrants that any BITZER-branded goods it supplies will be free from material defects in materials and workmanship for a period of 12 months from the date of commissioning of the product, or 18 months from the date of invoice, whichever occurs first. Certain new delivery items identified in BITZER's then-current price list are eligible for a warranty extension of between one and four years ("Warranty Period").
2. In order to qualify for a warranty extension in relation to an eligible product, you must:
 3. You may only make claims under this express warranty if:
 - (a) the goods have been paid for in full;
 - (b) you install, use, modify, service and repair the goods in accordance with BITZER's recommendations and generally accepted good engineering practice;
 - (c) you inspect the products after receipt and report any defects in writing to BITZER without delay (within two weeks of delivery), and in relation to any products that are found to be faulty after delivery, return the goods to BITZER's premises within 14 days of the failure;
 - (d) your claim includes a BRAN or NCAR number provided by a BITZER QA or state sales manager;
 - (e) if the failure occurs within the Warranty Period;
 - (f) if the claim is made under an extended warranty, you have complied with the extended warranty requirements at 2 above.
 4. BITZER's express warranty does not cover:
 - (a) normal wear and tear;



- (b) damage caused by using the goods with goods or with software not manufactured by BITZER;
 - (c) modification of the goods without BITZER's consent;
 - (d) damage caused by servicing conducted by someone other than BITZER.
5. To the extent permitted by law, BITZER does not warrant that the goods or services it supplies will meet your requirements.
6. BITZER's express warranty does not cover (and, to the extent permitted by law, BITZER excludes all liability for):
- (a) any costs arising from labour, travel or transport;
 - (b) loss of goods, loss of profit or loss of refrigerant;
 - (c) indirect, consequential or special damages.
7. To claim on the express warranty, you need to return the goods to BITZER's premises from which they were delivered, at your cost. If we consider that the warranty applies, we will at our discretion make available repaired or replacement goods, or a part free from defects, for you to collect at your cost. You can make enquiries regarding BITZER's express warranty to the addresses and phone numbers below or to info@BITZER.com.au.

If BITZER provides a replacement product under an express warranty, that replacement product will be eligible to be covered under the express warranty framework except that the maximum duration of the express warranty will be five years from the commencement of the Warranty Period in relation to the product initially supplied by BITZER.

If BITZER provides a replacement part under an express warranty, the Warranty Period for the product initially supplied by BITZER will be extended the number of days that elapsed between BITZER being notified of the defect and supplying the replacement part.

Your Rights At Law

If you are to resell the goods and we have any liability to indemnify you under Australian law, to the extent the law allows us to do so, we limit that liability to a liability to pay you, at our option, an amount equal to the cost of replacing the goods, the cost of obtaining equivalent goods, or the cost of having the goods repaired, whichever is the lowest.

Unless your order specifies that the goods are for your own use, you represent that you are acquiring the goods for the purpose of re-supply or to use or transform them to manufacture other goods.

If the goods are for your own use, and the price of the goods did not exceed \$40,000, you may have rights under the Australian Consumer Law. If this applies:

- (a) the goods come with guarantees that cannot be excluded under the Australian Consumer Law. You will be entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You will also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;
- (b) the benefits given to you under BITZER's express warranty are additional to, and do not detract from other rights and remedies that you may have under the Australian Consumer Law; and
- (c) BITZER's liability for failure to comply with a statutory guarantee, to the extent the law allows us to do so, is limited to, at BITZER's option, to the replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so), or the repair of the goods (or the payment of the cost of doing so).

You must notify BITZER of any claim or defect as soon as it arises.

GST

If GST is payable as a consequence of any supply made (or deemed to be made) in connection with the Terms, the party receiving the supply must pay to the party making the supply an amount equal to the GST payable in respect of the supply. If either party is required to reimburse or indemnify the other party for any cost, expense or other amount, the amount to be reimbursed must be reduced by any part which is recoverable as an input tax credit.

BITZER's Rights

If payment of any amount is not made when due, if you suffer an Insolvency Event or if BITZER believes that you are likely to suffer an Insolvency Event, BITZER may:

- (a) without any notice to you, enter upon the premises upon which goods owned by BITZER are stored and remove all of the goods;
- (b) suspend or cancel deliveries and/or provision of services to you; and/or
- (c) require payment in full of any moneys due and payable at that time.

"Insolvency Event" means:

- (a) you become insolvent, are presumed to be insolvent or fail to comply with a statutory



demand within the meaning of the Corporations Act;

- (b) a controller, administrator or liquidator is appointed to your or any of your assets; or
- (c) you enter into a compromise or arrangement with your creditors (or a class of them).

General

The Terms will be governed by the laws of the State of New South Wales. Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia; and
- (b) waives any objection based on absence of jurisdiction or inconvenient forum.