



Equipment Service Agreement

These terms and conditions, together with Air-Met's standard "Terms of Sale" conditions, make up the Agreement between Air-Met and the Customer. To the extent of any inconsistency between these terms and the Air-Met standard "Terms of Sale" conditions, these terms conditions will prevail to the extent of the inconsistency.

STANDARD TERMS AND CONDITIONS FOR EQUIPMENT SERVICE

In these terms and conditions:

"Air-Met" means Air-Met Scientific Pty Ltd (ACN 006 849 949),

"Agreement" means these terms and conditions,

"Business Day" means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Melbourne Victoria.

"Corporations Act" means *Corporations Act 2001 (Cth)*

"Customer" means the individual or organisation specified in the Schedule,

"Default Rate" means the rate equal to 2% above the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) applicable as at the date of non-payment.

"Equipment" or **"Goods"** is defined in item 5 of the Schedule.

"Force Majeure Event" means an event beyond the control of a party (the 'Affected Party') which may include an act of God, lightening storm, flood, cyclone, fire, earthquake, explosion, act of public enemy or war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, endemic, pandemic, strike, lockout or industrial dispute, where (and to the extent only) the Affected Party was not the cause of (and did not contribute to) the event/cause.

"GST" has the meaning given to that term in the GST Law.

"GST Law" has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Insolvency Event" means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

"Normal Working Hours" means from 8:30am AEST until 5:00pm AEST on a Business Day.

"Services" are described in Item 6 of the Schedule.

"Service Payments" means as set out item 7 of the Schedule.

"Service Schedule or Schedule" means the document title "Service Schedule" and annexure to the back of this Agreement.

"Term" is as defined in the Service Schedule.

Agreement

1. Air-Met has agreed to hire to the Customer, and the Customer has agreed to hire from Air-Met, the Equipment on the terms and conditions contained in the Agreement.
2. Equipment will only be released or dispatched to the Customer after the signing of the Agreement by the Customer or their authorised representative. Signing the Agreement by the Customer indicates acceptance of these terms and conditions and these terms and conditions shall apply and be deemed to be incorporated in the Agreement and will prevail over any

inconsistent terms or documents (including those for the avoidance of doubt any terms or documents supplied by the Customer even where they are signed by the representative of Air-Met) unless otherwise agreed in writing by a duly authorised representative of Air-Met.

Delivery and Return of Equipment

3. The Customer must take delivery of the Equipment at the address specified in the Schedule or as otherwise notified to Air-Met (**Location**).
4. The Customer must pay all costs associated with returning the Equipment to Air-Met for servicing, repair or for any other reason (including under clause 21) and notify Air-Met promptly upon return of the Equipment to Air-Met of the address where the Equipment is to be returned after it has been serviced or repaired in accordance with this Agreement. The returning of serviced or repaired Equipment from Air-Met to the Customer is included in the Agreement at no additional cost to the Customer.

Payment of the Services

5. The Customer agreed to pay the amount for the Services specified in the Schedule for the Term, plus any applicable GST.
As agreed between the parties:
 - (a) Air-Met is liable for and must pay any taxes (including stamp duty) imposed by any government authority prior to Delivery to the Customer or otherwise associated with the purchase or import of the Equipment from the manufacturer or supplier (as the case may be); and
 - (b) the Customer is liable for and must pay any taxes (including stamp duty) imposed by any government authority after Delivery or otherwise connected with the use or insurance of the Equipment by the Customer (excluding any income tax payable by Air-Met).
6. The Customer must:
 - (a) pay to Air-Met on the date this Agreement is executed the first Service Payment and each subsequent payment on the 1st day of each month of the Term;
 - (b) make all payments to the office of Air-Met or as directed by Air-Met. Where Service Payments are made by direct debit, Air-Met shall process charges to appear on the Customer's bank statement on the 1st day of each the month; and
 - (c) the Customer shall pay interest on overdue amounts under this Agreement at a rate equal to 2% above the rate fixed under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* applicable as at the date of non-payment .

Title to Equipment and Risk

7. The Customer acknowledges and agrees that:
 - (a) title to the Equipment shall remain vested at all times with Air-Met and that the Customer has rights to possess the Equipment as a mere bailee only;
 - (b) no right, title, or interest in the Equipment shall pass to the Customer other than as granted by this Agreement;
 - (c) the Customer does not have any right to pledge Air-Met's credit and agrees not to agree, or attempt to offer or purport to sell, assign, pledge,

mortgage or otherwise deal with the Equipment in any way other than to on-hire the Equipment in the ordinary course of its business and not to conceal or alter the Equipment or make any addition or alteration to, or repair of, the same; and

- (d) the Customer will only use the Equipment for business purposes and for the purposes for which the Equipment is intended to be used.
- 8. Risk in the Equipment shall pass to the Customer immediately upon delivery, and the Customer must insure and keep insured the Equipment during the Term. The Customer must provide evidence of such insurance to Air-Met within 3 Business Days of a request.
- 9. All express and implied terms, conditions and warranties which otherwise might apply to or arise from this Agreement or the Equipment are excluded to the fullest extent permitted by law, except as provided for in this Agreement.

Service and Maintenance

- 10. Air-Met agrees to provide the services specified in the Schedule and Services Schedule for the term and costs specified in the Schedule and payable monthly. Air-Met agrees to:
 - (a) provide the Customer with all manuals and initial training where applicable; and
 - (b) provide Services between 8:30am AEST until 5:00pm AEST on a day (not being a Saturday, Sunday or public holiday) on which Australian banks are open for general banking business in Melbourne (**Normal Working Hours**). Any Services provided outside Normal Working Hours will incur additional charges at Air-Met's then current charges;
 - (c) provide the Services with due care, skill and diligence;
 - (d) use reasonable endeavours to repair or service the Equipment within 7 Business Days of the Customer providing the Equipment to Air-Met for repair or service (**Repair Deadline**); and
 - (e) notify the Customer promptly if the Equipment cannot be repaired within the Repair Deadline and specify a revised timeframe to the Customer in writing for the service or repair of the Equipment (**Revised Repair Deadline**).
- 11. The parties agree to develop and agree a procedure to distinguish between:
 - (a) servicing and repairs required to the Equipment in the ordinary course of business and covered under the price referred to in the Schedule (**Service Job**); and
 - (b) servicing or repairs required to Equipment due to damage by either the Customer or any end user of the Customer who has on-hired, leased or otherwise obtained the Equipment from the Customer during the Term and to be charged in addition to the price referred to in the Schedule (**Damage Job**),
(together, the **Priority Procedures**).
- 12. The parties agree:
 - (a) Damage Jobs are to be given higher priority than Service Jobs;

- (b) Air-Met will provide the Customer with a quote for service or repair of the Equipment the subject of each Damage Job;
- (c) to materially comply with the Priority Procedures.

- 13. Either party may give notice to the other party that they believe the Equipment (or a single piece of Equipment) is not capable of repair and is not performing adequately in a manner which such Equipment is usually used or supplied, specifying in reasonable detail (having regard to the facts which the other party is actually aware), the matters or circumstances giving rise to that claim (**Equipment Defect Notice**).
- 14. The Customer and Air-Met agree to use best endeavours to consult and agree an outcome in respect of Equipment the subject of an Equipment Defect Notice within 7 Business Days (which outcome may, without limitation, include repair or replacement of that Equipment).
- 15. The Customer agrees to:
 - (a) only operate the Equipment in accordance with Air-Met and the manufacturer's instructions;
 - (b) only use in the Equipment those materials that are recommended by Air-Met or the manufacturer;
 - (c) promptly advise Air-Met of any malfunction in the operation of the Equipment;
 - (d) accept liability for costs arising from the use of the Equipment in contravention to the manufacturers or Air-Met's instructions such as, use of incorrect materials, interference, or unauthorised repairs; and
 - (e) recognise Air-Met's only liability in respect of the supply of Services shall be limited to re-supplying the service or the cost of re-supplying the service.

Warranty, Limitation of Liabilities and Indemnity

- 16. Implied Terms
 - (a) It is acknowledged by Air-Met that under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)* (**Competition and Consumer Act**), certain statutory express and implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act will be implied into these terms (**Non- Excluded Guarantees**).
 - (b) Air-Met further acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.
 - (c) Except as expressly set out in this Agreement or in respect of the Non-Excluded Guarantees, Air-Met makes no warranties or other representations under any contract with the Customer or this Agreement. Air-Met's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17. Guarantees
 - Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
 - a) to cancel your Service contract with us; and
 - b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

Warranties

18. Subject to clauses 18 and 19, Air-Met warrants that for the Term, each item of Equipment is of merchantable quality and fit for purpose for which it was designed and Air-Met undertakes to repair Equipment, which has failed due to defects in materials or workmanship. Subject to the limitations of this clause 18, we warrant that the Goods and Services supplied will be free from defects for a period of twelve (12) months from the date of delivery of the Goods or performance of the Services unless the original manufacture offers a greater or lesser period in which case that manufacturer's warranty period will apply. Without limiting the generality of the forgoing and aforesaid warranty does not extend to repair or replacement of Equipment occasioned by:

- (a) the failure of the Customer to comply with any instructions or literature supplied with the Equipment (including but not limited to information relating to the storage, installation, operation or servicing of the Equipment);
- (b) faulty installation or workmanship by a third party, which causes damage to the Equipment;
- (c) the misuse, neglect or alteration in any manner by the Customer, its agents or employees or any third party of the Equipment.

The warranty given by Air-Met in these terms and conditions is given by Air-Met Scientific Pty Ltd (ACN 006 849 9490, of 7-11 Ceylon Street, Nunawading VIC 3131 Australia, Ph – 1300 137 067. E – sales@airnet.com.au. All Goods subject to warranties must be returned to us or our nominated representative for inspection and assessment at your cost.

19. Limitation of liability

- (a) Subject to clause 18, the Customer acknowledges that it has not relied upon any statement, skill or judgment by Air-Met in respect of the Equipment including whether it is fit for purpose.
- (b) Subject to clauses 18-22, and so far as may be permitted by law, if a failure of Air-Met to comply with the Non-Excluded Guarantees cannot be remedied or is a major failure, the Customer's right to recover damages is limited to the reasonably foreseeable loss or damage suffered as a result of that failure. However Air-Met is not liable for loss or damage that results from a failure of Air-Met to comply with the Non-Excluded Guarantees if that failure was caused independent of human control and occurred after the Equipment left the control of Air-Met.

20. In circumstances where the Non-Excluded Guarantees do not apply, Air-Met, its employees and/or agents, shall not be liable for any loss or damages, claims, liabilities and costs (including any consequential loss or damage which includes without limitation, loss of profit and loss of revenue) of any kind arising as a result of or in connection with this Agreement, even due to the

negligence of Air-Met, its employees and/or its agents. Air-Met's rights under this clause 22 continue notwithstanding the Agreement expiring, terminating, being repudiated or any other matter, fact or thing.

Termination and Default

21. The following shall constitute an event of default:

- (a) if the Customer fails to pay any money payable under this agreement when due and payable;
- (b) a representation or warranty made by the Customer in connection with this Agreement is found to be incorrect or misleading;
- (c) if the Customer stops paying, or ceases to carry on its business or a material part of it, or threatens to do either of those things other than with the prior written consent of the other party;
- (d) if an Insolvency Event occurs in respect of the Customer;
- (e) if an order is made or an effective resolution is passed for the winding up of a the Customer or a meeting is called to consider a resolution to wind up or dissolve the party or to place it in administration or receivership, or if the Customer proposes or enters into any arrangement with its creditors or otherwise is unable to pay its debts as and when they fall due; or
- (f) if the Customer fails to observe any other material obligation under this agreement.

22. Upon an event of default Air-Met shall be entitled to (in addition to any other rights terminate this Agreement) and require the payment by the Customer of the unpaid balance of all work performed to the termination date, plus a payment equal to 25% of the balance of the cost for the remainder of the Term.

23. The Customer may terminate the agreement in writing by providing 30 days' notice of the termination, subject to compliance with clause 29. Upon termination Air-Met shall be entitled to immediate payment by the Customer of the unpaid balance of all work performed to the termination date plus a payment equal to 25% of the balance of the Cost for the remainder of the Term.

Overdue Accounts

3. Air-Met may charge the Customer bona fide reasonable costs including the cost of any bank fees for dishonoured cheques, collection agency, solicitor or other legal or accounting costs incurred in the collection of monies overdue (on a full indemnity basis). These costs are to be in addition to any award of costs by a court of competent jurisdiction. Air-Met reserves the right to suspend shipments to the Customer if its account is overdue. Any monies owing under these terms which are not paid when due shall bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such moneys first become due to and including the date of payment to us in full.

Force Majeure

4. If Air-Met becomes aware of a Force Majeure Event that is or is likely to prevent it either partially or wholly from complying with its obligations (except payment obligations) under this Agreement, it must as soon as reasonably practicable notify the Customer:
- (a) the Force Majeure Event;

- (b) the obligations that Air-Met is prevented from performing; and
- (c) the expected duration of the period during which the Air-Met will be prevented by the Force Majeure Event from performing the obligations.

If Air-Met is prevented from performing its obligations under this Agreement by a Force Majeure Event:

- (a) Air-Met are not liable for failure to comply with these terms, any contract or an agreement for sale of Goods and/or Services if the failure (directly or indirectly) arises out of any circumstances that are as a result of the Force Majeure Event;
- (b) it may suspend the Agreement indefinitely; and
- (c) if the Force Majeure Event continues for the period of 60 Business Days, it may terminate the Agreement by 30 days written notice to the Customer.

Intellectual Property

- 25. Air-Met retains the copyright in all manuals, drawings, diagrams, specifications, and illustrations provided in connection with the Service (**Intellectual Property**). In no circumstances shall any Intellectual Property be copied, disclosed to third persons, or used for any purpose other than the purpose for which it is supplied (without prior written consent). Any invention or improvement made by the Customer and attributable in whole or in part to the Intellectual Property shall be the property of Air-Met. Any Intellectual Property must be returned to Air-Met upon termination or expiry of this Agreement, or upon its request.

Notices

- 26. A Notice to Air-Met under this Agreement must be in writing and left at or sent by registered post to the address of Air-Met.
- 27. A notice, demand, or certificate to the Customer under this Agreement must be either:
 - (a) left at or sent by pre-paid post to the Customer's last known address; or
 - (b) sent by email to the Customer's email specified in the Schedule.
- 29. Any notice is deemed to have been served in the case of delivery on the day it is delivered, in the case of posting, on the third Business Day following the date of posting, and if transmitted by email, on the day that transmission was completed.

General

- 30. The Customer may not assign its interest in this Agreement without the prior consent of Air-Met. Air-Met may assign, encumber, charge or otherwise deal with its interest in this Agreement without prior notice to the Customer.

- 31. This Agreement may not be modified, discharged or abandoned unless with the prior written consent of Air-Met, or as notified by Air-Met to the Customer.
- 32. No waiver by Air-Met of any default, breach or repudiation of this Agreement by the Customer shall affect the rights of Air-Met in respect of any further or continuing default, breach or repudiation.
- 33. This Agreement is to be governed by and construed in accordance with all applicable laws in force in the state of Victoria, and the parties submit to the non-exclusive jurisdiction of the courts of the state of Victoria.
- 34. Any right that Air-Met may have under this Agreement is in addition to, and does not replace or limit, any other right that Air-Met may have.
- 35. The parties agree that all prices specified in this agreement are exclusive of GST. In addition to the price for the Services, the Customer must pay Air-Met an amount equal to any GST that the Customer must pay for any supply by Air-Met under this Agreement or under any agreement for the provision of the Services. The Customer must pay to Air-Met, GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays for the Services.