

**QUIK-COOL AUSTRALIA PTY TD**  
**TERMS AND CONDITIONS**

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**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In these Conditions, unless the context otherwise requires:

**Quik-Cool** means Quik-Cool Australia Pty Ltd ACN 606 482 580 (including Quik-Cool's successors and permitted assigns).

**Quik-Cool's Warranty Work** means the performance by Quik-Cool of any of those activities described in clause **Error! Reference source not found..**

**CC Act** means the *Competition and Consumer Act 2010* (Cth) and includes the *Australian Consumer Law* contained in Schedule 2 of that Act.

**Conditions** means these terms and conditions, as varied in writing by Quik-Cool and the Customer.

**Customer** means the person identified as the Customer in the Quotation (including the Customer's successors and permitted assigns).

**Excluded Items** means any items or activities which are identified in the Quotation as either excluded or not included.

**Goods** means:

- (a) any goods purchased by the Customer from Quik-Cool; and
- (b) any services provided to the Customer by Quik-Cool in connection with such goods, as described in the Quotation.

**Non-Excluded Guarantees** means those statutory guarantees and warranties (including those under the CC Act) which are implied into these Conditions and cannot be excluded.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Register** means the Personal Property Securities Register established pursuant to the PPS Act.

**Price** is the amount payable by the Customer for the Goods, as calculated in accordance with Quotation.

**Quotation** means the quotation (for the supply and delivery of the Goods) to which these Conditions are attached.

**Secured Property** means all Goods that are supplied to the Customer by Quik-Cool (whether now or in the future).

**Security Interest** means the following interests of Quik-Cool:

- (a) the retention of title in the Goods provided for in clause 4.1;
- (b) the charge over the Secured Property provided for in clause 5.1; and

- (c) any other security interest in or charge over personal property in favour of Quik-Cool arising under these Conditions.

**Warranty Period** means the applicable warranty period specified in the Quotation in respect of the Goods.

## 1.2 Interpretation

In these Conditions, unless the context otherwise requires:

- (a) words denoting the singular number include the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) words denoting natural persons include bodies corporate and vice versa;
- (e) references to clauses are to clauses of these Conditions;
- (f) headings are for convenience only and do not affect interpretation;
- (g) references to the word 'include' or 'including' are to be construed without limitation;
- (h) a reference to any party to these Conditions or to any other document includes that party's executors, administrators, successors and permitted assigns (as the case may be);
- (i) references to any document include references to such document as amended, novated, supplemented, varied or replaced from time to time;
- (j) references to any legislation or to any provision of any legislation include any modification or re-enactment of that legislation or legislative provision or any legislation or legislative provision substituted for, and all regulations and instruments issued under, such legislation or provision; and
- (k) reference to dollars and \$ are to amounts in Australian currency.

## 1.3 Construction

A provision of these Conditions must not be construed to the disadvantage of Quik-Cool merely because Quik-Cool was responsible for the preparation of these Conditions or the inclusion of the provision in these Conditions.

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## 2. GENERAL

### 2.1 Linking of Quotation and Conditions

All Quotations are offered to the Customer on the express understanding that:

- (a) these Conditions apply in relation to Quik-Cool's delivery of the Goods, unless variations are agreed by Quik-Cool and the Customer in writing; and
- (b) for the avoidance of doubt, Quik-Cool's "Conditions for Providing Service and Support" (which may apply in respect of Quik-Cool's provision of service work for the Customer from time to time) do not apply in respect of Quik-Cool's delivery of any of the Goods described in the Quotation.

## 2.2 **Acceptance**

Acceptance of a Quotation by the Customer:

- (a) constitutes both acceptance of the Quotation and acceptance and an agreement to be bound by these Conditions, whether such acceptance is communicated orally or in writing; and
- (b) shall be deemed to include a representation by the Customer that the Customer is solvent and able to pay the Price and each of the Customer's other debts as and when they fall due.

## 2.3 **Entire Agreement**

It is acknowledged that the entire agreement between Quik-Cool and the Customer in respect of the supply and delivery of the Goods is contained within:

- (a) the Quotation; and
  - (b) these Conditions.
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# 3. **PRICE AND PAYMENT**

## 3.1 **Calculation of Price**

Unless otherwise stated in the Quotation:

- (a) the Price has been calculated by reference to the costs of labour and materials at the date of Quotation;
- (b) the Quotation remains valid (and capable of acceptance by the Customer) for 30 days after the date of its issue;
- (c) 30 days after the date of a Quotation's issue, Quik-Cool may withdraw the Quotation, refuse to supply the Goods in accordance with the Quotation or otherwise change the Quotation by notice in writing to the Customer; and
- (d) Quik-Cool is not bound by any of the details or prices relating to the Goods (as set out in the Quotation) in respect of any future supply of goods or services to the Customer.

## 3.2 **Payment of Price**

The Customer must pay the Price:

- (a) by the instalments, at the times and on the terms set out in the Quotation;
- (b) in full and without retention or deduction; and
- (c) within such period of time after the date of Quik-Cool's invoice(s) as is specified in the Quotation (unless otherwise agreed by Quik-Cool and the Customer in writing).

## 3.3 **Interest on Late Payments**

The Customer agrees to pay interest to Quik-Cool on that part of the Price which is outstanding at any time after its due date, calculated daily in arrears at a rate equal to the

#### **4. RETENTION OF TITLE**

##### **4.1 Quik-Cool - Owner until Payment in Full**

The Customer acknowledges that until all of the Price and other amounts owed by the Customer are received by Quik-Cool:

- (a) ownership of all the Goods supplied and delivered by Quik-Cool shall not pass to the Customer; and
- (b) Quik-Cool remains the legal and equitable owner of the Goods.

##### **4.2 Customer's Interim Dealings**

The Customer may only sell or deal with the Goods in the ordinary course of business and may for that purpose part with possession of the Goods, but the proceeds of any such sale or dealing must be held by the Customer on trust for Quik-Cool and appropriated solely for the payment of all sums owing to Quik-Cool.

##### **4.3 Customer's Restrictions**

For as long as Quik-Cool remains the legal and equitable owner of the Goods:

- (a) the Customer shall ensure that the Goods are clearly identifiable as the exclusive property of Quik-Cool, wherever the Goods are stored;
- (b) the Customer must not charge the Goods in any way, nor grant nor otherwise give to any third party any security interest in the Goods unless subject to the Security Interest of Quik-Cool;
- (c) the Customer shall keep the Goods in good working order and condition (fair wear and tear excepted);
- (d) the Customer shall insure and keep insured the Goods against all usual risks and liabilities for Goods of that nature with a reputable insurer;
- (e) the Customer shall be deemed to be a bailee of the Goods for and on behalf of Quik-Cool; and
- (f) Quik-Cool shall be entitled to all the rights and remedies of a bailor.

##### **4.4 Customer Default – Quik-Cool's Right of Entry**

If the Customer breaches any of the Customer's obligations under these Conditions (including in relation to the payment of any portion of the Price) then (subject always to clause 4.5) the Customer irrevocably grants to Quik-Cool a right and licence to:

- (a) enter any premises occupied by the Customer to take possession of (and remove from such premises) the Goods or any equipment or parts comprised in the Goods; and/or
- (b) render inoperative any of the equipment comprised within the Goods (including by removing some component, part or device from the Goods).

##### **4.5 Exercise of Quik-Cool's Right of Entry**

Quik-Cool's rights under clause 4.4 may be exercised:

- (a) by any employee, agent or contractor of Quik-Cool;
- (b) without prejudice to any other rights or remedies that may be available to Quik-Cool from time to time;
- (c) upon giving 24 hours prior notice to the Customer; and
- (d) without Quik-Cool being liable in any way to the Customer (or to any other person or company claiming through the Customer) for compensation.

#### **4.6 Customer to Pay Costs**

The Customer will promptly pay to Quik-Cool all of those costs and expenses reasonably incurred by Quik-Cool:

- (a) in exercising its rights under clause 4.4; and
- (b) in reinstating the Goods to good working order following:
  - (1) Quik-Cool's exercise of its rights; and
  - (2) the Customer making good its breach of these Conditions to Quik-Cool's satisfaction.

#### **4.7 Dealings by Quik-Cool**

The Customer agrees that if Quik-Cool retakes possession of the Goods in accordance with clause 4.4, then Quik-Cool (as the owner of the Goods):

- (a) has the absolute right to retain, sell or deal with the Goods;
- (b) may sell the Goods with the trade mark or name of the Customer on those Goods, and the Customer grants an irrevocable licence to Quik-Cool to do so and the Customer will do all things necessary to enable Quik-Cool to lawfully sell the Goods bearing the name or trade mark of the Customer.

#### **4.8 Legal Proceedings**

Without prejudice to any other right or remedy that may be available to Quik-Cool, the Customer acknowledges that Quik-Cool may issue legal proceedings at any time to recover outstanding amounts that are owed by the Customer to Quik-Cool in respect of:

- (a) the Goods (even if ownership in the Goods has passed to the Customer);
- (b) the Quotation; or
- (c) these Conditions.

#### **4.9 Payment on Default**

Quik-Cool and the Customer agree that on the happening of any default by the Customer any outstanding Price and other amounts owed by the Customer to Quik-Cool shall become due and payable 7 days after written notice of the default is given by Quik-Cool to the Customer if the customer fails to remedy the default within that 7 day period.

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## **5. PPS ACT**

### **5.1 Charge over Secured Property**

The Customer grants to Quik-Cool a charge over the Secured Property (and, for avoidance of doubt, the proceeds of sale of the Secured Property as contemplated by clause 4.2) to

secure performance of the Conditions by the Customer and payment of the Price and all other monies due by the Customer to Quik-Cool in accordance with these Conditions.

## **5.2 Consent to Registration**

The Customer consents to Quik-Cool effecting a registration on the PPSR (in any manner Quik-Cool considers appropriate) in relation to a Security Interest arising under these Conditions.

## **5.3 Enforcement**

If Chapter 4 of the PPS Act applies to the enforcement by Quik-Cool of a Security Interest arising under these Conditions, the Customer agrees:

- (a) to the extent that section 115 of the PPS Act allows this, the following provisions of the PPS Act will not apply to Quik-Cool's enforcement of that Security Interest:
  - (1) section 95 of the PPS Act, to the extent that it requires Quik-Cool to give notice to the Customer;
  - (2) section 96 of the PPS Act;
  - (3) section 121(4) of the PPS Act;
  - (4) section 125 of the PPS Act (relating to the obligation to dispose of or retain collateral);
  - (5) section 130 of the PPS Act, to the extent that it requires Quik-Cool (as the Secured Party) to give notice to the Customer;
  - (6) section 132(3)(d) of the PPS Act;
  - (7) section 132(4) of the PPS Act;
  - (8) section 142 of the PPS Act; and
  - (9) section 143 of the PPS Act (relating to reinstatement of security agreement);and
- (b) to the extent that section 115(7) of the PPS Act allows this, the following provisions of the PPS Act will not apply to Quik-Cool's enforcement of that Security Interest:
  - (1) section 127 of the PPS Act;
  - (2) sections 129(2) and (3) of the PPS Act;
  - (3) section 132 of the PPS Act;
  - (4) section 134(2) of the PPS Act;
  - (5) section 135 of the PPS Act;
  - (6) sections 136(3), (4) and (5) of the PPS Act; and
  - (7) section 137 of the PPS Act.

## **5.4 Applying Payments at Quik-Cool's Discretion**

If the Customer makes any payment to Quik-Cool at any time (whether in connection with these Conditions or otherwise) Quik-Cool shall apply that payment first against the debts of the Customer with the earliest due date for payment.

### **5.5 Change of Customer Details**

The Customer agrees to notify Quik-Cool immediately of any changes to its name or address (as specified in the Quotation).

### **5.6 Customer to Co-Operate**

The Customer agrees to do anything Quik-Cool reasonably requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) in order to:

- (a) provide more effective security over the Secured Property;
- (b) register a Security Interest constituted by these Conditions at any time;
- (c) enable Quik-Cool to exercise its rights in connection with the Secured Property; and
- (d) demonstrate to Quik-Cool that the Customer has complied with these Conditions.

### **5.7 Default Costs on Demand**

The Customer shall pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by Quik-Cool under or in relation to the PPS Act, including any registration, or any response to an amendment, demand or a request under section 275 of the PPS Act.

### **5.8 PPS Act Notices**

Any notices or documents which are required or permitted to be given to Quik-Cool for the purposes of the PPS Act must be given in accordance with the PPS Act.

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## **6. DISCLOSURE**

### **6.1 Limited Disclosure**

Each party agrees to keep confidential and not disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7)(b) to (e) of the PPS Act.

### **6.2 Quik-Cool's Approval for Disclosure**

Each party agrees that it will only authorise the disclosure of information under section 275(7)(c) of the PPS Act or request information under section 275(7)(d) of the PPS Act, if the other party first approves in writing.

### **6.3 Necessary Disclosure**

Nothing in clause 6.1 will prevent any disclosure by a party that it believes is necessary to:

- (a) comply with its other obligations under the PPS Act;
- (b) comply with its obligations under any other applicable law; or
- (c) exercise its rights under these Conditions.

### **6.4 Permitted Disclosure**

To the extent that it is not inconsistent with clauses 6.1 - 6.3 of these Conditions constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act and provided that the information is not genuinely confidential, either party may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent

that that party is not doing so in response to a request by an “interested person” (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.

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## **7. CUSTOMER’S WARRANTIES**

### **7.1 Customer's Warranties**

The Customer warrants and acknowledges that:

- (a) the Customer is not acquiring the Goods for any personal, domestic, household use or consumption;
  - (b) it has not relied on any representation made by Quik-Cool or any of its employees which has not been affirmed in writing in either:
    - (1) the Quotation;
    - (2) these Conditions; or
    - (3) on any description, illustration or specification contained in any document produced by Quik-Cool or otherwise supplied to the Customer by Quik-Cool;
  - (c) the Customer acquires Goods in reliance on its own examination and assessment and it does not rely upon, and it is unreasonable for it to rely upon, Quik-Cool’s skill or judgment as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired; and
  - (d) the Customer shall at all times maintain adequate insurance against product loss, spoiling, loss of profits and other consequential losses arising from the breakdown or failure to perform of any of the equipment associated with the Goods.
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## **8. EXCLUSION OF LIABILITY AND INDEMNITY**

### **8.1 Non-Excluded Guarantees**

Quik-Cool acknowledges (and the Customer agrees) that:

- (a) those Non-Excluded Guarantees which are implied into these Conditions cannot be excluded;
- (b) nothing in these Conditions purports to modify or exclude the Non-Excluded Guarantees;
- (c) except as expressly set out in these Conditions or as may be imposed by the Non-Excluded Guarantees, Quik-Cool makes no other warranties or other representations to the Customer or under these Conditions; and
- (d) Quik-Cool’s liability in respect of the Non-Excluded Guarantees is limited to the fullest extent permitted by law.

### **8.2 Limitation of Liability**

Subject always to clause 8.1 and to the extent permitted by law, the liability of Quik-Cool and its employees and/or agents for a breach of a Non-Excluded Guarantee in relation to the supply of the Goods (except to the extent that the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption) shall, at Quik-Cool’s discretion (provided there is not a major failure within the meaning of the CC Act), be limited to:



- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the Goods repaired.

### **8.3 Exclusion of Liability for Consequential Loss**

Subject always to clause 8.1 and to the extent permitted by law, Quik-Cool, its employees and/or agents, shall not be liable to Customer for:

- (a) any consequential loss or damage, loss of profits, loss of reputation, loss of opportunity or loss of revenue even if such loss or damage is due to the negligence of Quik-Cool, its employees and/or agents; or
- (b) any loss or damage which was not reasonably foreseeable that the Customer would suffer as a result of Quik-Cool's failure to comply with the Non-Excluded Guarantees.

### **8.4 Indemnity**

Subject always to clause 8.1, the Customer agrees to indemnify Quik-Cool against any action suit demand and proceeding in relation to any loss, damage or expense incurred by Quik-Cool as a direct or indirect consequence of any of the following:

- (a) any claim by a third party arising out of a defect, malfunction or stoppage of the Goods unless due to a Non-Excluded Guarantee;
- (b) Quik-Cool complying with any instruction of the Customer about the supply of the Goods;
- (c) any act or omission of any person occurring after the Goods have left the control of Quik-Cool;
- (d) the Customer's failure (or the failure of any third party who is associated with the Customer) to:
  - i) adequately provide or display safety markings or safety information on or with the Goods;
  - ii) comply with any law about the Goods or their use (for example, their sale, marketing, labelling or marking);
  - iii) take any reasonable precaution to bring to the attention of any potential users of the Goods (including the Customer's staff) any dangers associated with the use or operation of the Goods;
  - iv) take any reasonable precautions to detect, and notify Quik-Cool of, any matters in relation to which Quik-Cool may become liable in any way (for example, under the CC Act);
  - v) provide correct information to Quik-Cool; or
  - vi) immediately advise Quik-Cool (in writing) of any changes to the information provided to Quik-Cool;
- (e) the Customer making any statement about the Goods (for example, about their performance or characteristics) without Quik-Cool's approval;

- (f) the use or operation of the Goods by the Customer or any third party unless due to a Non-Excluded Guarantee;
- (g) the misuse of the Goods by the Customer or any third party; and
- (h) any negligence or breach of duty by the Customer or any third party or any breach by the Customer of these Conditions.

#### 8.5 Consumer Protection

If, despite clause 7.1(a), any Goods supplied to the Customer constitute a sale of goods to a "consumer" (as defined under section 3 of the *Australian Consumer Law*, as contained in the CC Act) then Quik-Cool informs the Customer that:

- (a) Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law;
- (b) You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage; and
- (c) You are also 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.

#### 8.6 Warranties Confined to Quik-Cool

The warranties given by Quik-Cool under these Conditions are given exclusively by Quik-Cool Australia Pty Ltd (ACN 606 482 580), of 20 Cormack Rd Wingfield SA, Phone 0411 603 625.

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### 9. QUIK-COOL'S WARRANTY

#### 9.1 No Defects at Delivery

Quik-Cool warrants that:

- (a) the Goods will be supplied to the Customer free from defects in workmanship and materials as at the date of supply or delivery; and
- (b) Quik-Cool will repair or replace, at its option, any work, equipment or component of the Goods which Quik-Cool determines to be defective at that time.

#### 9.2 Defective Components Repaired or Replaced

Subject to clause 9.3, any defective component of the Goods shall be repaired or replaced by Quik-Cool if the fault occurs within either:

- (a) the applicable Warranty Period; or
- (b) the time period specified by the manufacturer of any such component (subject to the manufacturer 's approval).

#### 9.3 Limitations of Warranty

Quik-Cool's warranty under clause 9.2 shall not apply:

- (a) unless notice of any defect has been given by the Customer within the Warranty Period;
- (b) to light globes, glass or plastic components, filters, fuses, drive belts, refrigerant or lubricants;

- (c) if any serial number of identification or installation plate attached to any part of the Goods has been altered, rendered illegible or removed; or
- (d) if any component of the Goods has been:
  - i) subject to misuse, abuse, negligence or accident;
  - ii) connected to improper, inadequate or faulty power, water or drainage service or operated using incorrect, insufficient or contaminated lubricants, coolants, refrigerants, or additives;
  - iii) installed, maintained or operated otherwise than in accordance with the instructions furnished by Quik-Cool;
  - iv) damaged by foreign objects;
  - v) serviced, repaired or altered otherwise than by Quik-Cool (or its approved contractors) or using replacement parts that have not been approved by Quik-Cool;
  - vi) used for any duty or subjected to any operating conditions varying from that for which it was specifically supplied by Quik-Cool; or
  - vii) subject to any damage arising from corrosion, matter or energy or physical or chemical properties of water, steam or chemical compounds, unless the Goods were supplied by Quik-Cool for a duty which contemplated the above contributing elements and in respect of which there was specific and detailed prior disclosure by the Customer.

#### **9.4 Customer's Responsibilities**

During the Warranty Period, the Customer shall be responsible for all costs incurred by Quik-Cool in respect of:

- (a) making the Goods accessible for service, repair or replacement by Quik-Cool, including the removal, dismantling or reinstatement of any of component of the Goods from other plant to which it may be connected or from premises in which it may be installed;
- (b) any labour or communication expenses necessarily incurred in the provision of service or repairing any of the Goods at locations other than Quik-Cool branches or other nearer premises nominated by Quik-Cool; and
- (c) any surcharge applicable in respect of the provision of service or repairing any component of the Goods outside normal working hours.

#### **9.5 Scope of Warranty**

Subject to the Non-Excluded Guarantees, Quik-Cool's warranties under clauses 9.1 and 9.2:

- (a) are in lieu of all other rights, conditions, warranties and liabilities (whether expressed or implied) including any implied warranty of merchantability or fitness for a particular purpose; and
- (b) do not extend to any consequential loss or damage, loss of profits, loss of reputation, loss of opportunity or loss of revenue incurred by the Customer as a consequence of any breakdown of the Goods or the failure of the Goods to perform.

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10. **GST**

10.1 **Price GST-exclusive**

The Price specified in a Quotation is exclusive of GST unless expressly stated to include GST.

10.2 **Application of GST**

A party who is the recipient of a taxable supply made under these Conditions must pay the amount of the GST on the taxable supply in addition to any other amount (excluding GST) that is payable for that taxable supply at the same time and in the same manner as it is required to pay the amount due for the taxable supply.

10.3 **Tax Invoice**

A party making a taxable supply to another party must issue a tax invoice to the recipient in accordance with the GST Law, setting out the amount of the GST payable by the recipient at, or prior to, the time the recipient is required to pay the amount due for the taxable supply, unless the recipient is able to issue a recipient created tax invoice.

10.4 **Defined Terms**

In these Conditions GST, GST Law, tax invoice, recipient created tax invoice, supply and taxable supply have the meanings defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

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11. **MISCELLANEOUS**

11.1 **Damage in Transit**

The Goods to be delivered to the Customer's premises are at Quik-Cool's risk in transit until delivered and Quik-Cool shall maintain adequate freight insurance for all such items.

11.2 **Variations to Quotation**

Variations, alterations or modifications to the description of the Goods which may be requested by the Customer following the Quotation's acceptance:

- (a) will require written acceptance by Quik-Cool (which Quik-Cool may refuse in its discretion); and
- (b) may result in adjustments in the Price, which adjustments shall be added or deducted (as the case may be) from the Price.

11.3 **Noise**

Unless otherwise expressly specified in the Quotation, Quik-Cool does not guarantee or otherwise represent that any of the Goods supplied by Quik-Cool shall meet, or be capable of meeting, any particular sound and vibration levels as may be specified by the Customer or any other person.

11.4 **Delay**

Quik-Cool is not liable to the Customer (or to any other person) for any loss or damage arising out of any delay in either:

- (a) the delivery of the Goods; or
- (b) the performance of any of Quik-Cool's Warranty Work,

if such delay is attributable to strikes, lock-outs, industrial disputes, accidents, fire, flood or any other reason beyond Quik-Cool's control.

#### **11.5 Testing**

Unless otherwise expressly specified in the Quotation:

- (a) Quik-Cool will not be responsible for undertaking any performance tests relating to the Goods; and
- (b) if the Customer requires any performance tests to be undertaken in respect of the Goods, all costs associated with such testing will be to the Customer's account (in addition to the Price).