

YOUR LOGO
HERE

**THE DEED OF OPTION OVER
UNISSUED SHARES**

DATED THE ___ DAY OF _____ 20__

Company Pty Ltd ACN 111 222 333
("the Grantor")
of the First Part

AND

Other Company Pty Ltd ACN 555 666 999
("the Grantee")
of the Second Part

AND

the Directors
of the Third Part

AND

the Shareholders
of the Fourth Part

THIS DEED OF OPTION DATED _____ **20** _____ .

BETWEEN Company Pty Ltd ACN 111 222 333 a Company duly incorporated in New South Wales and having its registered office at 1 Sydney Street Sydney 2000 (**the “Grantor”**) of the First Part;

AND Other Company Pty Ltd ACN 555 666 999 a Company duly incorporated in Queensland and having its registered office at 1 Brisbane Street Brisbane 7000 (**the “Grantee”**) of the Second Part;

AND: The individuals named and described in Item 5 of Schedule One (**the “Directors”**) of the Third Part;

AND: The individuals and companies named and described in Item 4 of Schedule One (**the “Shareholders”**) of the Fourth Part.

RECITALS

- A.** The Grantor has by this Deed agreed to grant an option (**the “Option”**) to the Grantee to subscribe for and be allotted up to that number of ordinary shares in the capital of the Grantor set out in Item 1 of Schedule One (**the “Option Shares”**) at a subscription price per share set out in Item 2 of Schedule One (**the “Subscription Price”**).
- B.** The Grantee has by this Deed agreed to pay to the Grantor the sum set out in Item 3 of Schedule One as the Option Fee (**the “Option Fee”**) as the consideration for the granting of this Option.
- C.** The Shareholders are the holders of the number fully paid ordinary shares in the capital of the Grantor as are set out opposite each of their names in Item 4 of Schedule One. The Shareholders have by entering into this Deed agreed to give certain covenants and undertakings as set out in this Deed to the Grantee and also to give consent to the Grantor entering into this Deed and granting this Option to the Grantee to take up the Option Shares and each of the Shareholders has agreed to waive any pre-emptive rights or rights of first refusal they or any of them may have to be offered over the Option Shares prior to their allotment to the Grantee.
- D.** The Directors have entered into this Deed for the purposes of providing covenants to the Grantee as set out in this Deed.

NOW BY THIS DEED OF OPTION IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Deed these words and phrases have the following meanings:

“**Act**” means any Act, statute, regulation, by-law or ordinance whether State or Federal that has any application to this Deed, any party to this Deed and/or to the Business.

“**Allotment**” means all the steps involved in the passing by the Directors of a resolution to allot that number of the Option Shares subscribed for by the Grantee.

“**Application for Allotment**” means the form of application for allotment of Shares in the Grantor as set out as Schedule Two to this Deed.

“**Business**” means the business currently conducted by the Grantor as described in Item 6 of Schedule One.

“**Claims**” means all claims of whatsoever kind or nature that any person may have against the Grantor.

“**Constitution**” means the constitution of the Grantor.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Deed**” means this Deed of Option.

“**Directors**” means the parties named and described as directors, all of whom are directors of the Grantor.

“**Dollars**” means Australian dollars.

“**Essential Term**” means any provision of this Deed which the parties have expressly agreed is a fundamental term of this Deed the absence of which would cause one or other of the parties not to enter into this Deed.

“**Exercise Notice**” means a duly signed exercise notice the form of which is set out as Schedule Three.

“**Members Register**” means the register of members required to be maintained by the Grantor pursuant to Section 168(1) of the Corporations Act containing the information required by Section 169 of the Corporations Act.

“**Nominee**” means any individual, company or entity which the Grantee nominates by signing a Notice of Appointment of Nominee in the form set out in Schedule Four to be the individual, company or entity to exercise this Option as the Grantee’s Nominee.

“**Notice of Appointment of Nominee**” means a Notice in the form of Schedule Four.

“Option” means the option granted by the Grantor to the Grantee in this Deed to take up the Option Shares.

“Option Fee” means the amount set out in Item 3 of Schedule One which the Grantee has paid to the Grantor simultaneously with the entering into of this Deed as the consideration for the granting of this Option (the receipt of which sum is hereby acknowledged by the Grantor).

“Options Register” means the register of options required to be maintained by the Grantor pursuant to Section 168(1) of the Corporations Act containing the information required by Section 170 of the Corporations Act.

“Option Shares” means that number of shares in the capital of the Grantor as is set out in Item 1 of the Schedule.

“Schedule” means a Schedule to this Deed.

“Shareholders” means the persons named and described as the First Shareholder and the Second Shareholder.

“Shareholders Agreement” means any agreement or understanding, whether formal or informal, whether written or oral between the Shareholders or any of them that in any way relate to any of their rights, privileges or obligations as members of the Grantor.

“Subscription Price” means the price per share which the Grantor will accept as full payment for the allotment to the Grantee for each Option Share subscribed for by the Grantee.

“Term” means the period during which the Grantee can exercise the Option, which period commences on the date of this Deed and expiring one minute before midnight on the 01/01/2011.

1.2. Interpretation

- 1.2.1. Words used in the singular in the appropriate context include the plural and visa versa.
- 1.2.2. Words that import any gender shall include all other genders including the neuter gender.
- 1.2.3. References to clauses are references to clauses of this Deed.
- 1.2.4. Reference to “true” is intended to mean true at the time of Allotment.
- 1.2.5. The provision of an index, of headings and of clause numbers are for convenience of reference only and do not affect the construction of this Deed.
- 1.2.6. The Schedules form part of this Deed. A reference to this Deed includes a reference to any Schedule.

2. GRANT OF OPTION

- 2.1. In consideration of the payment of the Option Fee by the Grantee to the Grantor (the

receipt whereof is hereby acknowledged by the Grantor) the Grantor hereby grants to the Grantee the Option to subscribe that number of the Option Shares as is set out in Item 1 of Schedule One at any time within the Term. The Option may only be exercised by the Grantee in the manner set out in this Deed.

2.2. This Option will lapse and no longer be capable of being exercised upon the first to happen of any of the following events:

2.2.1. the expiry of the Term;

2.2.2. the Allotment of any of the Option Shares pursuant to the Grantee exercising the Option;

2.2.3. where the Grantee is a company, upon the Grantee having a liquidator appointed to it or an administrator appointed to it under the Corporations Act or having a receiver appointed to any of its assets;

2.2.4. where the Grantee is a living person and he or she:

(a) becomes a bankrupt or enters into any scheme or arrangement with any of his or her creditors under the *Bankruptcy Act* 1966 (Cth); or

(b) upon the Grantee becoming of unsound mind; or

(c) upon the Grantee's death and the legal personal representative of his or her estate failing to exercise the Option within thirty (30) days of the grant of probate or letters of administration in his/her estate.

2.3. The Grantor will promptly enter the name and details of the Grantee in the Grantor's Options Register in accordance with Section 170 of the Corporations Act as the holder of the Option over the Option Shares.

3. EXERCISE OF OPTION

3.1. This Option can be exercised by the Grantee or its Nominee in respect of the whole or any part of the Option Shares. To exercise this Option, the Grantee or its Nominee must:

3.1.1. Serve on the Grantor a duly executed and completed Exercise Notice in the form set out in Schedule Three. The Exercise Notice must set out the full name and address of the Grantee or its Nominee and the number of Option Shares over which the Option has been exercised;

3.1.2. At the same time as the Grantee serves the Exercise Notice on the Grantor, the Grantee or its Nominee must serve a duly executed and completed Application for Allotment in the form set out in Schedule Two. The Application for

Allotment must set out the full name and address of the allottee and the number of Option Shares applied for;

3.1.3. At the same time as the Grantee serves the Exercise Notice on the Grantor, the Grantee or its Nominee must also deliver a bank cheque for an amount equal to the Subscription Price multiplied by the number of Option Shares applied for.

The bank cheque must be made out in favour of the Grantor.

4. ALLOTMENT OF OPTION SHARES

4.1. Upon receipt of the Exercise Notice together with the Application for Allotment and the Subscription Price, the Directors will take all steps necessary in order to convene a meeting of the Directors and at that meeting they will resolve to accept the Application for Allotment signed by the Grantee or its Nominee and will allot unto the Grantee or its Nominee the Option Shares applied for as fully paid ordinary shares in the Grantor.

4.2. Upon the allotment of the Option Shares the Grantor and the Directors will promptly take the following steps:

4.2.1. Enter the name of the Grantee or its Nominee in Members Register as the beneficial holder of those shares;

4.2.2. Remove the name of the Grantee from the Options Register and otherwise amend it in accordance with the requirements of Section 170 of the Corporations Act;

4.2.3. Issue a Share Certificate to the Grantee or its Nominee as the holder of those shares.

4.3. It is expressly agreed by the parties that the Grantee may nominate a person or company (the "Nominee") to exercise this Option. The form of that nomination must be as set out in Schedule Four to this Deed. The Nominee must:

4.3.1. In the case of a Grantee who is an individual, be the spouse, partner or child of the Grantee, or a company in which the Grantee, his/her spouse, partner or child is a shareholder or director; or a trust in which the Grantee is a beneficiary or discretionary beneficiary or in which his/her spouse, partner or child or any company in which he/she/they hold shares is a beneficiary.

4.3.2. In the case of a Grantee that is a company, be a company in which the Grantee or any shareholder of the Grantee is also a shareholder or any trust in which the

Grantee or any shareholder in the Grantee is a beneficiary or discretionary beneficiary.

4.4. The Notice of Appointment of a Nominee must be served on the Grantor either before or with the Exercise Notice and the Application for Allotment.

5. COVENANTS AND WARRANTIES GIVEN BY THE GRANTOR AND THE DIRECTORS

5.1. The Grantor and the Directors jointly and separately covenant and represent to the Grantee that as far as they are aware, except as disclosed to the Grantee in writing, the following are true in all material respects:

5.1.1. The Grantor has full power to grant this Option to the Grantee and does not require the consent or approval of any person to the granting of this Option or to the allotment of the Option Shares to the Grantee pursuant to any Exercise Notice;

5.1.2. The Grantor is not insolvent;

5.1.3. From the date of this Deed and throughout the Term the Grantor will continue to carry on the Business in the ordinary and usual course;

5.1.4. During the Term no shares will be allotted to any person including the Shareholders without the prior written consent of the Grantee;

5.1.5. The Grantor has not granted any other option that is still current to any other person, (other than the Grantee by this Deed) to subscribe for shares in the Grantee and will not grant any such option during the Term without the prior written consent of the Grantee;

5.1.6. There are no facts or circumstances which are known to the Grantor or to the Directors which if known to the Grantee could reasonably be expected to cause the Grantee not to enter into this Deed, or enter into this Deed on different terms or not exercise the Option;

5.1.7. The Grantor will not during the Term grant any charge, debenture or mortgage over any of its assets;

5.1.8. There are no Claims, litigation or circumstances that might give rise to litigation against the Grantor;

5.1.9. All contracts entered into between the Grantor and third parties relating to the Business are in good standing;

5.1.10. The Grantor will use all reasonable endeavours to ensure that during the Term

it will not breach any Act and will comply with all laws applicable to the Business.

- 5.2. The Grantor and the Directors acknowledge that the Grantee in entering into this Deed is relying upon the truth and accuracy in all respects of each of the representations and covenants given in Clause 5.1, the absolute truth and accuracy of which are Essential Terms.

6. COVENANTS BY SHAREHOLDERS

- 6.1. The Shareholders covenant that they will not sell, transfer, dispose of, encumber or otherwise create any interest in any of the shares held by them in the Grantor without the express prior written approval of the Grantee.
- 6.2. The Shareholders hereby give their consent to the granting of this Option to the Grantee by the Grantor on the terms herein contained and each of them covenants that for the purposes of this Deed and the Constitution they will each do all things reasonably required of them in order to facilitate and give effect to all rights conferred on the Grantee under this Deed.
- 6.3. To the extent to which any of the Shareholders have any pre-emptive rights contained in the Constitution or in any Shareholders Agreement that are inconsistent with the terms of this Deed then to that extent each of the Shareholders with those rights forever waives and abandons those rights but only so far as may be reasonably necessary or required in order to give full effect to the terms of this Deed and to facilitate the issue to the Grantee of the Option Shares pursuant to any Exercise Notice.
- 6.4. The Grantor, the Shareholders and the Directors agree with the Grantee that upon the exercise of the Option and thereafter and for so long as the Grantee is the holder of the Option Shares:
- 6.4.1. No further shares will be allotted by the Company except with the prior written consent of all Shareholders including the Grantee;
- 6.4.2. There will be a board meeting convened at least once every two (2) months;
- 6.4.3. There will be no major change in the nature of the Company's business without the prior written consent of all Shareholders including the Grantee;
- 6.4.4. There will be no change to the Constitution except with the consent or approval of all shareholders including the Grantee;
- 6.4.5. No charge or other security will be granted by the Grantor over the Grantor's

assets without the prior written consent or approval of all Shareholders including the Grantee.

7. SALE OF SHARES OR SALE OF BUSINESS

- 7.1. In the event that the Shareholder wishes to sell the shares in the Grantor at any time after the exercise of the Option by the Grantee, then the Grantee is entitled to join in such sale and sell the Option Shares to the intended purchaser on the same terms and conditions as the Shareholder has negotiated for the sale of its own shares. The Shareholder will not be entitled to sell its shares separately or at a different price to the price offered to the Grantee. The Grantee will not be obliged to sell the Option Shares but has the right to join with the Shareholder in the event that the Shareholder decides to sell its shares in the Grantor.
- 7.2. In the event that the Grantee wishes to sell the Option Shares in the Grantor (other than pursuant to clause 7.1) then the Grantee must first nominate a price per share and must offer those Option Shares to the Shareholder at that price and on such other terms as the Grantee may propose and the Shareholder will have ninety (90) days from the date of such offer to accept or reject it. In the event that the Shareholder fails to either accept or reject the offer then it will be deemed to have rejected it. After the expiry of the ninety (90) days, if the Shareholder has not accepted the offer then the Grantee may sell the Option Shares to any third party at a price being not less than the price offered to the Shareholder and on terms not more favourable than the terms offered to the Shareholder.
- 7.3. In the event that the Grantor resolves after the exercise of the Option to sell the whole or any part of the Business then it is expressly agreed between the Directors and the Grantee that the following will apply:
- 7.3.1. If the whole of the Business is sold then a special resolution will be passed placing the Grantor into voluntary members' liquidation under the Corporations Act to facilitate the distribution of all of the proceeds of the sale;
- 7.3.2. If part only whole of the Business is sold then both the Director as the Shareholder and the Grantee as the holder of shares in the Grantor must do all things required in order to facilitate a partial buy-back in accordance with the Corporations Act on a *pro rata* basis of the shares they hold in the Grantor so as to distribute out to each of them not less than seventy percent (70%) of the amount received by the Grantor from the sale of that part of the Business after

allowing for any tax payable by the Grantor as a consequence of such sale.

8. NON MERGER

8.1. It is expressly agreed that clauses 5, 6 and 7 of this Deed and this clause shall not merge in or be modified by any exercise by the Grantee of the Option or by any Allotment of shares to the Grantee or its Nominee with the intent that clauses 5, 6 and 7 shall continue to be fully binding and enforceable after the exercise of the Option and after any Allotment to the Grantee or his Nominee.

9. RESIGNATION OF THE DIRECTOR AND APPOINTMENTS OF FURTHER DIRECTORS

9.1. In the event of any Director resigning or otherwise ceasing to be a Director of the Grantor during the Term then he or she will cease to be liable under this Deed for any act or omission occurring after that person ceased to be a Director.

9.2. The Shareholders and the Directors covenant with the Grantor that they will not appoint a person as a Director of the Grantor during the Term unless that person has first agreed in writing with the Grantee to be bound by the Terms of this Deed.

10. WHOLE AGREEMENT

10.1. The terms of this Deed constitute the whole agreement between the parties and any prior representations, discussions, undertakings, promises or documents between them that are not expressed as clauses of this Deed have no effect whatsoever and each party expressly agrees that in entering into this Deed he, she, it or they have relied entirely upon the terms of this Deed and not upon any such prior representations, discussions, undertakings, promises or documents.

11. ASSIGNMENT

11.1. It is expressly agreed that the Option is not assignable by the Grantee to any other person whatsoever, provided that this clause shall not prevent the Grantee nominating a suitable Nominee when exercising the Option.

12. INDEPENDENT ADVICE

12.1. Each party expressly acknowledges that he, she or it has had the opportunity to obtain independent and separate legal advice on the terms of this Deed and in particular upon the rights conferred and the obligations imposed on them under the terms of this Deed. No party may assert or claim after the date hereof that he, she or it did not have sufficient opportunity to obtain legal advice prior to entering into this Deed. This Deed and in particular this clause may be pleaded as a complete defence to any Claim

that is in any way based upon or relies upon an assertion by the claimant that he, she or it did not have an opportunity to obtain separate and independent legal advice.

12.2. Each party has taken its own tax advice as to the tax consequences that might flow from the entering into of this Deed or from the exercise of the Option, the Allotment of shares or the sale of any shares pursuant to its terms. No party may bring any Claim against any other party for contribution, compensation or any other sum where such Claim directly or indirectly relies upon an assertion by the claimant that he, she or it did not have an opportunity to obtain tax advice.

EXECUTED BY THE PARTIES AS A DEED on the day and year first mentioned.

SIGNED AS A DEED BY)
Company Pty Ltd)
ACN 111 222 333)
pursuant to Section 127 of the *Corporations*
Act 2001 in the presence of:

Director
Print Name

Signature of Witness
Print Name:

Director/Secretary
Print Name

SIGNED AS A DEED BY)
Other Compnay Pty Ltd)
ACN 555 666 999)
pursuant to Section 127 of the *Corporations*
Act 2001 in the presence of:

Director
Print Name

Signature of Witness
Print Name:

Director/Secretary
Print Name

SIGNED AS A DEED BY)
Angus Roads)
in the presence of:

Signature of Witness
Print Name:

Signature

SCHEDULE ONE

ITEM 1 – NUMBER OF OPTION SHARES

200000 Shares in the capital of the Grantor. The Option Shares the subject of this Option are fully paid.

The Option Shares are Ordinary Shares.

ITEM 2 – SUBSCRIPTION PRICE

Nine hundred dollars (\$900) per Option Share making the total price for the allotment of the Option Shares Ten Thousand dollars (\$10 000).

ITEM 3 – THE OPTION FEE

Eight Thousand dollars (\$8000) .

ITEM 4 – THE SHAREHOLDERS

ITEM 5 – THE DIRECTORS

NAME OF DIRECTOR	ADDRESS OF DIRECTOR
Angus Roads	1 Gamber Street Gosford 8000

ITEM 6 – THE GRANTOR'S BUSINESS

The Grantor's Business is Installation of air-conditioning unites

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE TWO

(Where the Grantee is a company)

To: _____ Pty Limited ACN _____

of: _____

APPLICATION FOR ALLOTMENT OF SHARES

_____ Pty Limited ACN _____ registered office at _____ (“the Applicant”) hereby applies for the allotment to it of _____ ordinary fully paid shares in the capital of _____ Pty Limited ACN _____ (“the Company”) and tenders the sum of \$ _____ as the subscription price for the allotment to it of these shares. Upon the allotment to the Applicant of the said shares the Applicant requests and directs the Company to enter its name and its details of its shareholding in the Members Register of the Company.

The Applicant undertakes to hold the said shares subject to all of the rights, powers and obligations attaching to the said shares in the Company’s Constitution.

Dated _____ day of _____ 20____

SIGNED BY

PTY LIMITED

ACN _____

pursuant to Section 127 of the *Corporations Act* 2001 in the presence of:

Signature of Witness

Print Name:

Signature of Director

Print Name:

Signature of Director/Secretary

Print Name:

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE THREE

EXERCISE NOTICE (where the Grantee is a company)

To: _____ Pty Limited ACN _____
(insert address)

NOTICE OF EXERCISE OF OPTION

WHEREAS by a Deed of Option granted by _____ Pty Limited ACN _____ (the Grantor) to _____ Pty Limited ACN _____ (the Grantee) and dated _____ day of _____ 20__ the Grantor granted an option to the Grantee to subscribe for and take up _____ ordinary fully paid shares in the capital of the Grantor at a subscription price of _____ dollars (\$ _____) per share.

THEREFORE TAKE NOTICE that the Grantee hereby gives notice to the Grantor of its exercise of its option to take up _____ shares in the Grantor. With this Notice of Exercise of Option is a duly completed and signed Application for Allotment of _____ fully paid ordinary shares in the Grantor together with a bank cheque in the sum of _____ dollars (\$ _____) made out in favour of the Grantor representing the total subscription price payable by the Grantee to the Grantor on such allotment.

FURTHER take notice that this Option is being exercised by the Grantee's Nominee.

DATED _____ day of _____ 20__

SIGNED BY

_____¹ PTY LIMITED)
ACN _____² pursuant to)
Section 127 of the *Corporations Act* 2001)
in the presence of:

Signature of Director
Print Name:

Signature of Witness
Print Name:

Signature of Director/Secretary
Print Name:

SIGNED BY

In exercise of this Option

Signature of Witness
Print Name:

Signature
Print Name:

¹ Delete this signing clause if the Grantee is not exercising the Option AND the Grantee's Nominee is not a Company. If the Grantee is exercising its Option or the Grantee's Nominee is a company exercising the Option then what is the name of the Grantee/Nominee? Do not include "Pty Ltd" in the name as it is already in the template.

² What is the Australian Company Number of the Grantee or the Nominee?

SCHEDULE FOUR

(NOTICE OF APPOINTMENT OF NOMINEE) (where the Grantee is a Company)

To: _____ Pty Limited ACN _____
(insert address)

NOTICE OF APPOINTMENT OF NOMINEE

WHEREAS by a Deed of Option granted by _____ Pty Limited
ACN _____ (the Grantor) to _____ Pty Limited
ACN _____ (the Grantee) and dated _____ day of _____ 20____ the Grantor
granted an option to the Grantee to subscribe for and take up _____ ordinary
fully paid shares in the capital of the Grantor at a subscription price of _____
dollars (\$ _____) per share.

THEREFORE TAKE NOTICE that the Grantee hereby gives notice to the Grantor that it has
appointed _____ of _____ as its Nominee for the purposes of exercising this Option.

DATED _____ day of _____ 20____

SIGNED BY _____)
Company Pty Ltd _____)
ACN 111 222 333 _____)
pursuant to Section 127 of the _____)
Corporations Act 2001 in the presence of: _____)

Signature of Witness
Print Name:

Signature of Director
Print Name:

Signature of Director/Secretary
Print Name: