



DESIGN LICENCE AGREEMENT

DATED THE ___ DAY OF _____ 20__

BETWEEN

Company Pty Ltd ACN 111 222 333

AND

Other Company Pty Ltd ACN 333 222 111

DESIGN LICENCE AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 20__.

BETWEEN: Company Pty Ltd ACN 111 222 333 having its registered office at 1
Sydney Street Sydney 2000 (the “Licensor”);

AND: Other Company Pty Ltd ACN 333 222 111 having its registered office at 1
Brisbane Street Brisbane 7000 (the “Licensee”).

BACKGROUND:

- A. The Licensor is the owner of a registered design for Air-conditioning units and has the right to license the design.
- B. The Licensee wishes to produce that product and seeks a licence from the Licensor to use the design for that purpose.
- C. The Licensor has agreed to grant the licence and the Licensee accepts the licence on the following terms and conditions.

THE PARTIES AGREE:

1. LICENCE

- 1.1. The Licensor grants an exclusive, revocable licence to the Licensee to apply the Design for the Term in the Territory for the Purpose.
- 1.2. The Licensee may assign the Licence only with the prior written consent of the Licensor
- 1.3. The Licensee may sub-license the Licence only with the prior written consent of the Licensor

2. TERM OF LICENCE

- 2.1. The parties agree that the Licence is valid to 01 March 2019 (the “Term”) unless terminated by either party pursuant to this Agreement.

3. LICENCE FEE, ACCOUNTING & PAYMENTS

- 3.1. In consideration for the Licence, the Licensee will pay the Licensor the Licence Fee set out in Part E of the Schedule.
- 3.2. The Licensee is not obliged to pay the Licence Fee due unless it has received a Tax Invoice from the Licensor.
- 3.3. The Licensee will render to the Licensor an account Three (3) months due 7th of each month. The account will include both the number of products produced from

Initial: _____

application of the Design and any defective products for which Royalties are not payable.

3.4. The Licensee is responsible for paying any government tax, duty or impost relating to the grant of this Licence including any fee to record the Licence.

3.5. The Licensee will permit the Licensor at reasonable times and on reasonable notice access to inspect and make copies of the Licensee's books and accounting records for the purpose of verifying the Licensee's compliance with its obligations under this Agreement.

4. MINIMUM QUALITY AND QUANTITY REQUIREMENTS

4.1. The Licensee must comply with any Minimum Quality Requirement set out in Part G of the Schedule, which the Licensor considers necessary for the satisfactory application of the Design.

4.2. Should the Licensee fail to meet a Minimum Quality Requirement, the Licensor reserves the right to terminate the Agreement and the Licensor will be entitled to all remedies available for breach of this Agreement.

5. INTELLECTUAL PROPERTY

5.1. The Licensee acknowledges that the Licensor is the owner of the Design and that ownership of the Design will remain vested with the Licensor.

5.2. If the Licensee enhances the Design prior to or during the manufacturing process, the Intellectual Property Rights in such enhanced design will vest immediately in the Licensor.

6. CONFIDENTIAL INFORMATION

6.1. Each party undertakes not to use or disclose to any other person or entity any of the other party's Confidential Information and will only use such Confidential Information in good faith and for the proper purposes of this Agreement and subject to any restrictions imposed by the party that provides the Confidential Information. This clause survives the end or termination of this Agreement.

6.2. Notwithstanding Clause 6.1, a party may disclose information if and to the extent that such disclosure is required by law or court order.

7. LICENSOR REPRESENTATIONS AND WARRANTIES

7.1. The Licensor represents and warrants that it has the right to license the Design to the Licensee.

7.2. The Licensor will renew registration of the Design when due and, if the Design is not yet registered, will do everything reasonably necessary to obtain registration during

the Term, however the parties acknowledge that the Design registration will in any event expire:

- (a) ten (10) years from the date of application if filed under the *Designs Act 2003* (Cth); or
- (b) sixteen (16) years from date of application if filed under the *Designs Act 1906* (Cth) and not converted under transitional provisions.

7.3. The Licensee's exploitation of the Design for the Purpose will not infringe the rights including Intellectual Property Rights and/or moral rights of any third party.

8. LICENSEE OBLIGATIONS, WARRANTIES & ACKNOWLEDGEMENTS

8.1. The Licensee may only exploit the Design during the Term for the Purpose. This is an essential term which survives the end or termination of this Agreement.

8.2. The Licensee will ensure that all products created pursuant to this Licence will bear whatever proprietary statement is required from time to time by the Licensor.

8.3. The Licensee is not permitted to sell, charge, mortgage or otherwise encumber the Design in any way.

8.4. The Licensee is not permitted to claim or hold itself out, engage in any conduct or make any representation the effect of which would suggest that it is the agent of the Licensor.

8.5. During the Term, the Licensee undertakes to promptly advise the Licensor of any legal proceedings, threat of legal proceedings or claim which may involve the Design including any allegation of infringement.

8.6. In the event of a matter arising as contemplated in Clause 8.5, if requested by the Licensor the Licensee undertakes to keep the Licensor fully informed of the progress of any such proceeding or claim. In relation to any proposed settlement of such proceeding or claim, the Licensee must take into account and adhere to the views of the Licensor.

8.7. In the event of a matter arising as contemplated in Clause 8.5, at the Licensor's request the Licensee will provide the Licensor with copies of any and all documents and materials including legal advice relating to such proceeding or claim.

8.8. The Licensee warrants that it has not relied upon any representation made by the Licensor other than as set out in this Agreement.

9. LIMITATION OF LIABILITY

- 9.1. To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions including without limitation implied warranties as to merchantability and fitness for purpose of the Design.
- 9.2. To the extent that any liability of the Licensor under the *Trade Practices Act 1974* (Cth) cannot be excluded, the Licensor's liability is limited to replacing the Design.
- 9.3. To the fullest extent permitted by law, the Licensor excludes all liability for indirect or consequential loss including loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement.

10. INDEMNITY

- 10.1. The Licensor indemnifies and holds harmless the Licensee from and against any loss, liability, cost or expense that the Licensee suffers directly or indirectly because of an Intellectual Property Rights claim in the Design.
- 10.2. The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any use of the Design including any unauthorised exploitation of the Design by the Licensee.

11. TERMINATION

- 11.1. Either party may terminate this Agreement immediately by Notice if:
- (a) the other party breaches a term of this Agreement and fails to remedy such breach within 20 Business Days of being notified of such breach;
 - (b) the other party becomes subject to external administration or being a natural person becomes bankrupt or dies;
 - (c) the Licensee (if a partnership) dissolves or enters a process of dissolution or (if a corporation) undergoes a Change of Control event; or
 - (d) the Licensee ceases or notifies of its intention to cease trading as a business.
- 11.2. If Notice is given under Clause 11.1, the Licensee will immediately cease exploiting the Design and if requested by the Licensor will promptly return the Design including any copies and/or derivative materials to the Licensor.
- 11.3. Either party may serve Three (3) Weeks Notice of termination on the other party without in any way affecting rights accrued under this Agreement.

11.4. Following termination, the parties agree that the provisions in Clause 9 (Limitation of Liability) will continue to be binding.

12. NOTICES

12.1. Any Notice given pursuant to this Agreement must be signed by an officer of the sender, addressed to the recipient at the address, facsimile number or email address set out in Part F of the Schedule or as a party may from time to time notify in writing to the other.

12.2. A Notice will be deemed given on the same day if hand delivered with authorised receipt; if posted, then three (3) business days after date of posting; if faxed, upon successful transmission record; and if by email, by return email to the sender informing receipt of the email.

13. DISPUTE RESOLUTION

13.1. In the event of a dispute arising between the parties in respect of any right or obligation under this Licence, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.

13.2. In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the Licence and the dispute, then either party may apply to their local State/Territory Alternative Dispute Resolution centre for resolution of the dispute.

14. GENERAL PROVISIONS

14.1. **(Law and Jurisdiction)** This Agreement shall be governed by and construed in accordance with the laws of New South Wales and any claim made by one party against the other in any way arising out of this Agreement will be heard in New South Wales and the parties submit to the jurisdiction of those Courts.

14.2. **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.

14.3. **(Entire Agreement)** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.

14.4. **(Invalidity)** If any provision of this Agreement is invalid under any law the provision will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid provision

will be deleted from the Agreement and the remaining provisions will remain in full force and effect.

- 14.5. **(Waiver)** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.
- 14.6. **(Implied Terms)** Any implied term under law that can be excluded is expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.
- 14.7. **(Counterparts)** This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement provided that those counterparts have been exchanged.
- 14.8. **(Advice)** Each party acknowledges and represents to each other that it has had the opportunity to seek and obtain separate and independent legal advice before entering into this Agreement. If either party has entered this Agreement without first taking legal advice it has done so at its sole and absolute discretion and it will not be entitled to rely upon the absence of legal advice as a defence to any breach of any of the provisions of this Agreement.

15. INTERPRETATION

15.1. Definitions

“**Agreement**” means this licence agreement including the Schedule and any amendments in writing signed by both parties.

“**Change of Control**” means, in relation to a corporation, a change in control of the board of directors, a change of control of more than half the voting rights attaching to shares in the corporation, or a change of control of more than half the issued shares to which voting rights are attached.

“**Commencement Date**” means the date specified in Part B of the Schedule.

“**Confidential Information**” means all information in whatsoever form that is:

- (a) marked or identified as “Confidential”, “Secret”, “Not to be Disclosed” or “Private”;
- (b) is designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed;
- (c) the receiving party knows or ought to know is confidential;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly or was developed by the receiving party independently of the disclosing party.

“**Design**” means the design specified in Part A of the Schedule.

“**Intellectual Property Rights**” means all rights in copyright, circuit layout, designs, trade marks, patents and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention whether registrable, registered, patentable or not.

“**Licence**” means the licence granted by the Licensor to the Licensee in Clause 1.

“**Notice**” means a notice in writing in English including those sent by facsimile, letter and email to the party’s address for notices set out in Part F of the Schedule.

“**Purpose**” means the purpose set out in Part C of the Schedule.

“**Tax Invoice**” means an invoice that is GST compliant.

“**Territory**” means the State/Territory or States/Territories set out in Part D of the Schedule.

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

SCHEDULE

PART A – DESIGN

Pipe system for the Aircon system called Interpiping.

PART B – COMMENCEMENT DATE

The _____ day of _____ 20__.

PART C – PURPOSE

to manufacture and sell the pipes with the air conditioning unit.

PART D – TERRITORY

New South Wales

PART E – LICENCE FEE

\$20,000 including GST

PART F – NOTICES

Company Pty Ltd (the Licensor)

of: _____

Attention: _____

Facsimile N°: _____

Email: _____

Other Company Pty Ltd (the Licensee)

of: _____

Attention: _____

Facsimile N°: _____

Email: _____

PART G – MINIMUM QUALITY REQUIREMENT

5,000 units per month

Initial: _____

EXECUTED as an Agreement by the parties on the day and year first mentioned.

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

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

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

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

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