

**Kirby HVAC&R Pty Ltd**  
**Kirby Splash Into Summer Promotion**  
**Terms and Conditions**

1. The Promoter is Kirby HVAC&R Pty Ltd (T/A Kirby), ABN 42 624 910 041, 286 Horsley Road, Milperra, NSW, 2214. Telephone 13 23 50.
2. Information on how to enter & the prizes form part of these Terms and Conditions. Any entry not complying with these Terms and Conditions is invalid. Participation in this promotion is deemed to be acceptance of these Terms and Conditions.
3. There are two (2) separate components to this promotion: a major prize draw component and a skill component. The major draw component is only open to Australian residents aged 18 years or over who are account customers of Kirby HVAC&R Pty Ltd. The skill component is only open to Australian residents aged 18 years or over.
4. Employees of the Promoter, the Promoter's associated companies, competitors, the Promoter's agencies associated with this promotion and each of their immediate families (i.e. spouse, parent, child or sibling) are ineligible to enter.
5. The promotion commences at 7.00am Australian Eastern Standard Time (AEST) on 1 October 2019 and closes at 4.00pm Australian Eastern Daylight Savings Time (AEDST) on 13 December 2019 ("**Promotional Period**").

**Component 1: Major Prize Draw**

6. To receive an automatic entry to the major prize draw, eligible entrants must purchase one (1) compressor of any brand from any Kirby branch using their account details during the Promotional Period. Every compressor purchased equals one (1) automatic entry into the draw, subject to the limit of ten (10) entries permitted per account.
7. The major prize draw will take place at the Promoter's office, 286 Horsley Road, Milperra, NSW, 2214 at 12.00pm AEDST on 17 December 2019 and the Promoter may draw additional reserve entries and record them in order in case an invalid entry or ineligible entrant is drawn. The winner will be notified in writing and via a phone call by 18 December 2019. The name and postcode of the winner will be published at [www.kirbyhvacr.com.au](http://www.kirbyhvacr.com.au) on 18 December 2019.
8. The first valid entry drawn will win the major prize of a \$10,000 credit applied to their Kirby HVAC&R Pty Ltd account.
9. Entrants' accounts must be within the Promoter's trading terms throughout the Promotional Period and must not have overdue monies owing as at the draw date in order to be eligible to claim the prize.
10. Subject to the unclaimed prize draw clause below, if for any reason the major prize winner does not claim the prize at/by the time stipulated by the Promoter, then the prize will be forfeited.
11. A draw for the major prize, if unclaimed, may take place on 18 March 2020 at the same time and place as the original draw, subject to any directions from a regulatory authority. The winner, if any, will be notified in writing and via a phone call by 19 March 2020. The name and postcode of the winner will be published at [www.kirbyhvacr.com.au](http://www.kirbyhvacr.com.au) on 19 March 2020.
12. Total prize pool value of component 1 is \$10,000.

## Component 2: Skill

13. To enter the skill component of the promotion, eligible entrants must, during the Promotional Period, post a Kirby related (e.g. includes a Kirby product, installation containing equipment or tools purchase from Kirby, a Kirby t-shirt or Kirby Apprentice fund related) photograph ("**Photograph**") to their Instagram page and include either the tag @kirbyhvacr or use the hashtag #kirbyhvacr or #kirbytshirt. For the removal of doubt, the Photograph must be uploaded to an eligible entrants Instagram feed during the Promotional Period and cannot be uploaded to their story or be an existing photograph. Entrants Instagram accounts must be set to public in order to be eligible.
14. Each Friday of the Promotional Period (i.e. from 4 October 2019 through to 13 December 2019) the Promoter will judge all Photographs submitted. All judging will take place at the Promoter's office, 286 Horsley Road, Milperra, NSW, 2214 after 4pm AEDT. The judges may select additional reserve entries which they determine to be the next best, and record them in order, in case of an invalid entry or ineligible entrant. Each entry received will be individually judged based on the creative merit of the Photograph posted as well as the caption in the Instagram post.
15. The best valid entry each week, as determined by the judges, will win the minor prize of a \$250 PrePaid Visa Gift Card.
16. Any ancillary costs associated with redeeming the gift card are not included. Any unused balance of the gift card will not be awarded as cash. Redemption of the gift card is subject to any terms and conditions of the issuer including those specified on the gift card.
17. Minor prize draw winners will be notified via Instagram direct message and their post will be reposted on the @kirbyhvacr Instagram page.
18. If for any reason a minor prize winner does not take / redeem a prize by the time stipulated by the Promoter, then the prize will be forfeited.
19. Total prize pool value of component 2 is \$2,750.

## General

20. Total prize pool value of the promotion is \$12,750. Prizes are not transferable or exchangeable and cannot be taken as cash.
21. Entrants agree that they are fully responsible for any materials they submit via the promotion including but not limited to comments, recordings and images ("**Content**"). The Promoter shall not be liable in any way for such Content to the full extent permitted by law. The Promoter may remove or decline to publish any Content without notice for any reason whatsoever. Entrants warrant and agree that:
  - a. they will not submit any Content that is unlawful or fraudulent, or that the Promoter may deem in breach of any intellectual property, privacy, publicity or other rights, defamatory, obscene, derogatory, pornographic, sexually inappropriate, violent, abusive, harassing, threatening, objectionable with respect to race, religion, origin or gender, not suitable for children aged under **15**, or otherwise unsuitable for publication;

- b. their Content shall not contain viruses or cause injury or harm to any person or entity;
- c. they will obtain prior consent from any person or from the owner(s) of any property that appears in their Content;
- d. they will obtain full prior consent from any person who has jointly created or has any rights in the Content to the uses contemplated by these Terms and Conditions, and the Content does not infringe the rights of any third party;
- e. they consent to any use of the Content which may otherwise infringe the Content creator's/creators' moral rights pursuant to the *Copyright Act 1968* (Cth) and warrant that they have the full authority to grant these rights; and
- f. they will comply with all applicable laws and regulations, including without limitation, those governing copyright, content, defamation, privacy, publicity and the access or use of others' computer or communication systems.

Without limiting any other terms herein, the entrant agrees to indemnify the Promoter for any breach of the above terms.

- 22. As a condition of entering the skill component of the promotion, each entrant licenses and grants the Promoter, its affiliates and sub-licensees a non-exclusive, royalty-free, perpetual, worldwide, irrevocable, and sub-licensable right to use, reproduce, modify, adapt, publish and display their entry (which shall include Content) for any purpose, including but not limited to future promotional, marketing or publicity purposes, in any media, without compensation, restriction on use, attribution or liability.
- 23. Entrants consent to the Promoter using their name, likeness, image and/or voice (including photograph, film and/or recording of the same) in the event they are a winner in any media for an unlimited period without remuneration for the purpose of promoting this promotion (including any outcome), and promoting any products manufactured, distributed and/or supplied by the Promoter.
- 24. The Promoter collects personal information in order to conduct the promotion and may, for this purpose, disclose such information to third parties, including but not limited to agents, contractors, service providers, prize suppliers and, as required, to Australian regulatory authorities. Entry is conditional on providing this information. The Promoter may, for an indefinite period, unless otherwise advised, use the information for promotional, marketing, publicity, research and profiling purposes, including sending electronic messages or telephoning the entrant. Entrants should direct any request to opt out, access, update or correct information to the Promoter. All entries become the property of the Promoter. All personal details will be held and used in accordance with the Privacy Policy of the Promoter available at [http://www.kirbyhvacr.com.au/privacy\\_policy](http://www.kirbyhvacr.com.au/privacy_policy). The Privacy Policy also contains information about how entrants may complain about a breach of the Australian Privacy Principles or any other applicable law and how those complaints will be dealt with. The Promoter will not disclose entrants' personal information to any entity outside of Australia.
- 25. The Promoter reserves the right to verify the validity of entries and entrants (including an entrant's identity, age and place of residence), and reserves the right, in its sole discretion, at any time and to disqualify any entry that is not in accordance with these Terms and Conditions. Any entrant who tampers with the entry process, including but not limited to engaging in any unlawful or other improper misconduct calculated to jeopardise fair and proper conduct of the promotion will also be disqualified. Errors and omissions may be accepted at the Promoter's discretion. Failure by the Promoter to enforce any of its rights at any stage does not constitute a waiver of those rights. The Promoter's legal rights to recover damages or other compensation from such an offender are reserved.

26. If there is a dispute as to the identity of an entrant, the Promoter reserves the right, in its sole discretion, to determine the identity of that entrant.
27. The Promoter's decision is final and no correspondence will be entered into.
28. If any prize is unavailable, the Promoter, in its discretion, reserves the right to substitute the prize with a prize of the equal value and/or specification, subject to any written directions from a regulatory authority.
29. If for any reason this Promotion is not capable of running as planned, whether caused by infection by computer virus, mobile phone failure, line drop out, bugs, tampering, unauthorised intervention, fraud, technical failures or any other cause beyond the control of the Promoter which corrupt or affect the administration, security, fairness or integrity of the Promotion, the Promoter reserves the right in its sole discretion, (subject to any written direction given by a relevant regulatory authority), to cancel, terminate, modify or suspend the Promotion. The Promoter may in its sole discretion disqualify any entrant that tampers with the entry process.
30. Entries are deemed to be received at the time of purchase, as recorded by the Promoter. The Promoter is not responsible for receipt of incorrect, inaccurate or incomplete information caused by an entrant, or occurring during transmission. The Promoter is not responsible for any problems or technical malfunction of any telephone, telephone or computer network, or lines, servers, or telephone or internet providers, traffic congestion on any phone or computer network, or any combination thereof, including any injury or damage to the entrant related to or resulting from participation or sending or receiving of any communication in this Promotion.
31. As a condition of accepting the major prize, the winner may be required to sign any legal documentation as and in the form required by the Promoter and/or prize suppliers in their absolute discretion, including but not limited to a legal release and indemnity form.
32. Nothing in these Terms and Conditions limits, excludes or modifies or purports to limit, exclude or modify the statutory consumer guarantees as provided under the Competition and Consumer Act, as well as any other implied warranties under the ASIC Act or similar consumer protection laws in the States and Territories of Australia ("**Non-Excludable Guarantees**"). Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, the Promoter (including its respective officers, employees and agents) excludes all liability (including negligence), for any personal injury; or any loss or damage (including loss of opportunity); whether direct, indirect, special or consequential, arising in any way out of the promotion.
33. Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, the Promoter (including its respective officers, employees and agents) is not responsible for and excludes all liability (including negligence), for any personal injury; or any loss or damage (including loss of opportunity); whether direct, indirect, special or consequential, arising in any way out of: (a) any technical difficulties or equipment malfunction (whether or not under the Promoter's control); (b) any theft, unauthorised access or third party interference; (c) any entry or prize claim that is late, lost, altered, damaged or misdirected (whether or not after their receipt by the Promoter) due to any reason beyond the reasonable control of the Promoter; (d) any variation in prize value to that stated in these Terms and Conditions; (e) any tax liability incurred by a winner; or (f) use of and taking of a prize.
34. Entry and continued participation in the promotion is dependent on entrants following and acting in accordance with the Instagram Rules, which can be found at <http://instagram.com/about/legal/terms>.

35. This promotion is in no way sponsored, endorsed or administered by, or associated with, Instagram. Entrants understand that they are providing their information to the Promoter and not to Instagram. The information an entrant provides will only be used for the purposes outlined in these Terms and Conditions. Any questions, comments or complaints about this promotion must be directed to the Promoter and not to Instagram. Instagram will not be liable for any loss or damage or personal injury which is suffered or sustained by an entrant, as a result of participating in the promotion (including taking/use of a prize), except for any liability which cannot be excluded by law.

**Authorised under permit numbers:**

**NSW Permit No. LTPS/19/37744**

**ACT Permit No. TP19/04115**

**SA Permit No. T19/1483**