



## KIRBY ONLINE CUSTOMER SERVICE FACILITY TERMS OF USE

### 1. Your agreement with us

1.1 By using or accessing the Kirby Online Customer Service Facility, including ordering goods ("Service") provided on the website [www.kirbyhvacr.com.au](http://www.kirbyhvacr.com.au) ("Website"), you agree to be bound by the terms and conditions set out below ("Terms of Use"). 1.2 In these Terms of Use, a reference to "we", "us", "our" and

"Kirby" means Kirby HVAC&R Pty Ltd. (ABN 42 624 910 041).

1.3 In these Terms of Use, supply of the Service to:

(a) Australian customers will be described as the "Australian Service".

1.4 A reference to "you" or "your" in these Terms of Use is a reference to Kirby customers who have been provided with secure login details (in the form of an account number and password) to access, review or use the Service.

1.5 Except to the extent that these Terms of Use apply or as required by law, your use of this Service and receipt of any information from us does not create any legal relationship between you and us.

### 2. What the Service does

2.1 The purpose of our Service is to provide an online customer self-service portal, enabling you, as a Kirby customer, to login to the Service and:

(a) place an order for goods offered by Kirby ("Product") for collection by you from the selected branch;

(b) view your net pricing of Products;

(c) check Product availability;

(d) view the Kirby online Product catalogue;

(e) produce heatload calculations and Product selections;

(f) view your account information;

(g) view your invoices (for up to 120 days);

(h) view your statements (for up to 12 months);

(i) view your gas statements (for up to 12 months);

(j) pay your invoices online;

(k) track and manage your refrigerant cylinders;

(l) access pricing; and

(m) as the Primary Account Holder, to create multiple user accounts (User Accounts), by adding additional users to your account with their own unique password and defined level of access.

For further information regarding the Primary Account Holder please refer to **clause 4**.

### 3. Use of this Website and Access

3.1 You may access our Website and our Service at any time, unless we have restricted access in order to perform necessary maintenance, updates or upgrades. Your ability to access our Website and our Service will otherwise depend on factors out of our control and we do not take or share any responsibility for those factors such as the quality of your internet connection and the state of your hardware.

3.2 Through our Website, you may view, cache, browse, display, print or download a copy of any content featured on our Website to your computer, provided that you:

(a) use it for personal use only and not for any purposes that are commercial, unlawful or may prejudice the reputation or interests of Kirby;

(b) keep your account username and password secure. You must not share your password with any person. You may only use your own account, and must not use or access any other person's account, except where you have been authorised by the initial account holder as an additional user;

(c) do not hide, deface, alter or delete any copyright symbol, trade mark or other proprietary rights notice;

(d) do not use or access our Website in a manner or for a purpose contrary to the law;

(e) do not hack into, change or otherwise knowingly transmit a virus or otherwise damage our Website or any information contained within it;

(f) do not link it to another website; and

(g) do not breach any other terms of these Terms of Use, or our terms and conditions of sale and hire ("Sale Terms", a copy of which is available at <http://www.kirbyhvacr.com.au/terms-and-conditions>, or our Privacy Policy which both appear on our Website.

### 4. Placing an Order

a. You may place an order for a Product through the Website. Each order placed by you and accepted by Kirby is a binding agreement between you and Kirby for the supply of the Products specified in that order on these terms of use and the Sale Terms.

b. To the extent that there is any inconsistency existing between:

i. the Sale Terms; and

ii. these Terms of Use, then the document listed earlier in this **clause 4(b)** prevails to the extent of the inconsistency. Your placing of an order for Products constitutes an acceptance by you of the supply by Kirby of such Products solely on these Terms of Use and the Sale Terms.

c. The Terms of Use that apply at the time you place an order will apply to an existing order that has been accepted by us. Kirby may vary these Terms of Use for future orders.

d. Except as set out in these Terms of Use, you will be required to pay Kirby for the Products ordered in accordance with the Sale Terms.

### 5. Cancellation of Orders

a. Kirby may cancel an order (including any orders that Kirby has accepted) or any part of an order without any liability to you for that cancellation at any time if:

i. the Products that you order are not available;

ii. there is an error in the price or Product description posted on the Website for that Product in that order; or

iii. Kirby reasonably believes your order has been placed in breach of these Terms of Use, the Sale Terms or the Agreement.

c. If an order has been canceled pursuant to **clauses 5(a)(i) or 5(a)(ii)**, Kirby will not charge you any fees and charges for the canceled order.

### 6. Responsibilities of the Primary Account Holder

6.1 The Primary Account Holder must apply manually for use of our Service and will be the signatory on all applications. The Primary Account Holder is a person authorised by their company to grant access to other staff members within their company to their account information. The Primary Account Holder may create multiple User Accounts for these staff members with separate login details and restricted access to only some areas of the portal.

6.2 The Primary Account Holder is responsible for the deletion of any User Accounts created, and must delete the User Account if the staff member leaves the company. Kirby takes no responsibility for the level of access granted to the staff members, or for the deletion of these User Accounts.

6.3 a. You must ensure that your login identification details and password that are used to access the Website and the details of your account are kept in a safe and secure manner.

b. You must notify Kirby if you are or become aware that there is or has been an unauthorised use of your login identification details and password or account, or any other security breach relating to your account.

c. You must promptly advise Kirby of any changes to your information provided to Kirby as part of the customer registration process.

d. You are responsible for any costs associated with your access to or use of the Website, including internet access fees.

e. You are responsible and liable for any person that uses your login identification details and password or account including without limitation to order Product(s) through the Website.

f. You agree that, subject to **clause 6.3(b)**, Kirby may charge you for all Products that Kirby agrees to supply to you that have been ordered using your login identification details or account and password through the Website.

### 7. Technical Information and Security

7.1 The transmission of data over the internet is not always secure. Although we endeavour to secure our Website, we are not liable for any breaches of security and you use our Website entirely at your own risk.

7.2 We do not warrant that the functions available on our Website will be uninterrupted or error free, or free of viruses or programming bugs or interferences due to factors outside our control.

7.3 Your ability to access our Website will depend on factors out of our control and we do not take any responsibility or provide any warranties that this Website will be accessible through all web browsers or that it will be accessible at all times.

7.4 You acknowledge that it is your responsibility to implement sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy your particular requirements for the accuracy of data input and output.

### 8. Payment

8.1 The accepted methods of payment on our Website are Visa and MasterCard only. Payment made by either of these methods will incur a surcharge to the customer of 1.65% plus GST.

8.2 For further details regarding payment or our refunds policies, please refer to our Sale Terms which may be accessed from the following link: <http://www.kirbyhvacr.com.au/terms-and-conditions>.

### 9. Intellectual Property

9.1 Our Website contains intellectual property including trade marks, confidential information and copyright, together with any goodwill or reputation and intellectual property rights subsisting in those things.

9.2 You should assume that all intellectual property on our Website is owned by Kirby or third parties and unless permitted by law, you must not copy, reproduce, transmit, display or otherwise distribute any of that intellectual property in whole or in part without our prior written consent.

### 10. Suspension or Termination of Access

10.1 We reserve the right to suspend or terminate your account or access to our Website or our Service at our sole discretion if we believe that you have breached any of these Terms of Use.

10.2 When that happens, we will endeavour to notify you of the breach and ways in which you can remedy it.

### 11. Disclaimers

11.1 While we endeavour to ensure the accuracy and completeness of the information contained on our Website, that information may contain errors and omissions and is liable to change. We make no warranties and accept no responsibility for any loss or damage you may suffer as a result of your reliance on any of the material on our Website (including any as to the quality, accuracy, completeness or fitness for any particular purpose of such material).

11.2 Except to the extent required by law, the contents of our Website are provided without any express or implied representations or warranties. We exclude all implied conditions and warranties relating to the content of our Website to the extent permitted by law.

11.3 In the case of the Australian Service, where liability cannot be excluded any liability incurred by us in relation to the use of our Website or its contents is limited as provided under the Competition and Consumer Act 2010 (Cth).

11.4 To the maximum extent permitted by law:

(a) you agree that Kirby and its committee of management, officers, employees, agents, contractors, service providers, successors or assigns will not be liable for any direct or indirect loss or damage, whatsoever (including through negligence) arising out of, or in any way related to, the use of our Website;

(b) subject to **clause 11.1**, under no circumstances will we be liable for any incidental, direct, indirect, consequential, special, punitive or other losses, damages, liabilities, claims or expenses you or others may suffer including damages for loss of profits, loss of opportunity, business interruption or loss or corruption of data or information from the use of our Website;

(c) we are not responsible to you or anyone else for any loss suffered in connection with the use of our Website, any of its contents, for any loss incurred as a result of damage to your or another person's computer system or the transmission of any computer viruses; and

(d) you indemnify and agree to keep us indemnified against any loss or damage or costs incurred by us in connection with your breach of these Terms of Use or of any other legal obligation by you or your use of or conduct on our Website or our Service.

### 12. Privacy Policy

12.1 Our compliance with privacy legislation is set out in our separate Privacy Policy which may be accessed from the following link:

<http://www.kirbyhvacr.com.au/kirby-privacy-policy>

### 13. General

13.1 These Terms of Use are in addition to, and not in derogation of, any other terms or conditions that appear elsewhere on our Website, including our Sale Terms which may be accessed from the following link: <http://www.kirbyhvacr.com.au/kirby-privacy-policy> and must be interpreted accordingly.

13.2 These Terms of Use may be varied from time to time, and this may occur without notice to you. When these Terms of Use are updated, we will endeavour to provide notice to you on our Website, prior to you logging in to access our Service. Please ensure that you review these Terms of Use regularly as you will be deemed to have accepted a variation if you continue to use our Website or our Service after a variation to the Terms of Use has been posted.

13.3 If any part of these Terms of Use is determined to be illegal, invalid or otherwise unenforceable or void, that part shall be severed to the extent necessary and the remainder of these Terms of Use shall continue in full force and effect. 13.4 No waiver of any breach of these Terms of Use will be construed as a waiver of any other breach of these Terms of Use.

13.5 In the case of the Australian Service:

(a) the information on this Website is provided for Australian users (accessing the Website both in Australia and outside of Australia) and visitors to Australia (foreign person's accessing the Website whilst within Australia but only to the extent that they remain in Australia) only; and (b) the Terms of Use shall be governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.