



Terms and Conditions of Trade

1. Interpretation

- 1.1 In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:
 - 1.1.1 **Company** means Heat Pump Air Conditioning Limited;
 - 1.1.2 **Conditions** means these terms and conditions to be read and construed with each Quotation provided by the Company;
 - 1.1.3 **Customer** means the purchaser of Products and/or Services from the Company;
 - 1.1.4 **Contract** means an agreement between the Customer and the Company comprising the Quotation and the Conditions;
 - 1.1.5 **Products** means the products sold by the Company to the Customer under a Contract;
 - 1.1.6 **Quotation** means the quotation provided by the Company to the Customer for the purposes of supplying Products and/or Services which shall form part of and be read and construed with these Conditions;
 - 1.1.7 **Services** means the services supplied by the Company to the Customer under a Contract.
- 1.2 Unless the Company and the Customer otherwise agree in writing:
 - 1.2.1 These Conditions and the items set out in the attached Quotation shall apply to all sales of Products and supply of Services and no other conditions shall apply;
 - 1.2.2 In the event of any conflict arising between these Conditions and any Contract these Conditions shall prevail; and
 - 1.2.3 Quotations by the Company remain open for acceptance within 30 days from the date of the Quotation.

2. Formation of Contract

- 2.1 No contract shall come into existence until the Customer's order has been accepted by the Company. The Customer may place an order by either:
 - 2.1.1 The Customer signing and returning the Quotation to the Company; or
 - 2.1.2 Paying the deposit (if any) referred to in the Quotation; or
 - 2.1.3 Communicating its order to the Company in a manner otherwise than in accordance with (a) above.
- 2.2 The Customer cannot cancel a Contract after an order has been accepted by the Company and is bound to pay the quoted price.
- 2.3 The Customer acknowledges that neither the acceptance of a Quotation nor the placing of an order guarantees the supply of the Products quoted or ordered. The Company will use its best endeavours to source all Products quoted or ordered.

3. Prices

- 3.1 Unless otherwise specified, all prices quoted for Products are ex works and include the cost of basic packaging.
- 3.2 In addition to the quoted price, the Customer shall pay for all shipping, handling and insurance charges, and all taxes (including goods and services tax), duties, excise, imports and any other levies upon demand.
- 3.3 Prices are quoted in New Zealand currency.
- 3.4 Prices agreed at time the Contract is made shall remain firm subject to the condition that prices for imported Products may be varied by the Company on the basis of prices charged to the Company and exchange rate fluctuations.
- 3.5 The Company reserves the right to correct any typographical or clerical errors contained in the prices or specifications in the Contract.
- 3.6 The Company reserves the right to alter its prices where additional Products and/or Services are required as a result of a lack of precision in the Customers specifications or the Customer alters the specifications after the date of the Quotation.
- 3.7 The Company reserves the right to alter its prices where the Customer fails to provide an appropriate installation site in accordance with the project specifications.

4. Payment

- 4.1 Payment for the Products and/or Services shall be made within 10 working days following the date of invoice. The Company reserves the right to require the Customer to pay for Products and/or Services prior to their supply by the Company.
- 4.2 Time for payment is of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due:
 - 4.2.1 The Company may treat the Contract as repudiated by the Customer or may until payment in full is made, suspend delivery of Products without incurring any liability whatsoever to the Company;
 - 4.2.2 The Customer shall (if so required by the Company) pay interest to the Company at the default interest rate of three per cent (3%) per annum above the current base lending rate set from time to time by the Company's bankers in Christchurch. Interest shall be payable daily until the date when payment is received; and
 - 4.2.3 The Customer shall be liable for all expenses and costs (including legal costs) in relation to the Company enforcing or attempting to enforce a Contract or these Conditions.

- 4.3 Notwithstanding any rights of lien to which the Company may otherwise be entitled, the Company shall have a specific lien (including a right of sale) over the Products the subject of a Contract until the price of the Products has been paid.

- 4.4 The Customer shall not be entitled to make any deduction from the price of the Products and/or Services in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of the Company.

5. Delivery and Risk

- 5.1 Delivery shall be deemed to have occurred at the Company's premises upon transfer of possession of the Products to the Customer or to any agent or carrier and the Customer shall insure the Products for their full insurable value from the time it takes delivery.
- 5.2 All risk in the Products shall pass to the Customer upon delivery.
- 5.3 If the Customer indicates to the Company that it will refuse to accept delivery, then the Products shall be deemed to have been delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 5.4 The Company reserves the right to deliver the Products in instalments.
- 5.5 Any dates quoted by the Company for delivery are approximate only and shall not form part of the Contract. The Company shall use its best endeavours to deliver the Products by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of a delay in delivery.

6. Ownership

- 6.1 Until payment in full of all indebtedness to the Company in relation to the sale of Products or supply of Services, the Company and the Customer agree that:
 - 6.1.1 The title to the Products supplied remains with the Company;
 - 6.1.2 The Customer hereby irrevocably gives the Company, its agents and servants, license upon giving reasonable notice to enter premises occupied by the Customer to search for and remove any of the Products supplied without in any way being liable to the Customer or any person claiming through the Customer;
 - 6.1.3 If the Company exercises its right to reclaim the Products it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:
 - (a) Any shortfall incurred by it on realisation against the price at which such Products were contracted to be bought by the Customer;
 - (b) Any costs incurred by the Company in the exercise of its right to reclaim the Products, whether relating to the repossession, storage or resale of the Products (including legal costs as between solicitors and own client);
 - 6.1.4 Nothing in this clause shall be construed as permitting the Customer to return the Products or any part of them for any reason.
 - 6.1.5 If the Products or any part them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be the property of the Company. The Customer will hold all proceeds of sale or disposition on trust for the Company.

7. Warranty

- 7.1 Subject to clause 8, the Company warrants to the Customer that the Company's Products (excluding third party products) will be free from defects in materials and workmanship affecting normal use for a period of 12 months from the invoice date ("Standard Warranty"), unless otherwise specified.
- 7.2 During the Standard Warranty, the Company will make good by repair or replacement (at the Company's option) defects in Products returned to the Company.
- 7.3 The Customer shall contact the Company to obtain a Returned Materials Authorisation (RMA) prior to returning any Products. The Standard Warranty will not apply if the Customer has not notified the Company of the defect within seven (7) days of the alleged defect first coming to the Customer's attention.
- 7.4 The Customer must prepay shipping and transportation charges, and insure the shipment or accept the risk of loss or damage during such shipment and transportation. The Customer must include proof of purchase. The Company will ship the repaired or replacement products to Customer freight prepaid.

8. Exclusion of Warranties and Liability

- 8.1 This Standard Warranty does not cover damage, fault, failure or malfunction due to:
 - 8.1.1 External causes, including accident, abuse, misuse and problems with electrical power;
 - 8.1.2 Any repairs, servicing or work on the Products which is not authorised by the Company;
 - 8.1.3 Usage, storage or installation not carried out in accordance with Company and/or manufacturer's instructions;
 - 8.1.4 Failure to perform required preventative maintenance;
 - 8.1.5 Normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; or
 - 8.1.6 Problems caused by use of parts and components not supplied by the Company.

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- 8.2 The Standard Warranty does not cover any third party components or materials that are purchased for or used in Products for the Customer. The third party manufacturer's warranty shall be the sole warranty in respect of such components or materials.
- 8.3 To the full extent permitted by law, but subject to the express provisions of clause 7:
- 8.3.1 The Company gives no representation or warranty whatsoever as to the condition or quality of the Products or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Products in any contract or other document shall not import any such condition or warranty on the part of the Company;
- 8.3.2 All statutory and implied conditions and warranties except as to title are excluded; and
- 8.3.3 It is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of the Products for its purposes and the Customer accepts the Products on this basis.
- 8.4 The Company shall be under no liability whatsoever for any failure of the Products to correspond with any description, including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transporting of the Products.
- 8.5 The Company shall, except to the extent expressly provided in clause 7, be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Products.
- 8.6 If, notwithstanding clause 8.5, the Company is found to be liable to the Customer in any circumstances then, notwithstanding the provisions of clause 7, the maximum combined amount the Company will be liable for to the Customer under any Contract shall be an amount equal to the lesser of:
- 8.6.1 The purchase price of the Products and/or Services under the Contract; or
- 8.6.2 The cost of replacement or repair of the Products.
- 8.7 In the event that the Products and/or Services are supplied for business purposes the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 shall not apply.

9. Indemnity

- 9.1 The Customer shall comply with all instructions of the Company in relation to the handling, fitting, installation and use of the Products and, notwithstanding such compliance, the Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Products, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the Company or the negligence of a duly authorised employee or agent of the Company.

10. Default

- 10.1 In the event that:
- 10.1.1 The amounts payable by the Customer to the Company are overdue, or the Customer fails to meet any other obligation to the Company, under this or any other Contract or agreement or in the Company's opinion the Customer is likely to be unable to meet any payment or other obligations to the Company; or
- 10.1.2 The Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
- 10.1.3 The Customer no longer carries on business or threatens to cease carrying on business; or
- 10.1.4 The ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; **then**
- 10.1.5 The Company shall be entitled to cancel all or any part of any Contract with the Customer which remains unperformed, in addition to and without prejudice to its other remedies; and
- 10.1.6 All amounts outstanding under this Contract or any other Contract shall, whether or not due for payment, immediately become due and payable; and
- 10.1.7 The Company shall be entitled to recover and re-sell the Products on commercially reasonable terms and apply the proceeds derived in or towards payment of the Contract price and other monies owing pursuant to the Contract and all costs and expenses incurred by the Company as a result of and incidental to any such action shall be payable to the Company by the Customer upon demand, including any shortfall incurred by the Company on realisation against the price at which the Products were contracted to be bought by the Customer; and
- 10.1.8 The Customer irrevocably gives the Company and its agents and servants leave and licence to enter on and into any premises or property occupied by the Customer or any property on which the Products is stored or held without notice, in order to inspect, search for and remove the Products supplied and the Company shall not be liable to the Customer or any third party for any damage of any kind whatsoever which may result from the exercise of its rights under this clause.

11. Intellectual Property

- 11.1 Copyright in all drawings, specifications and other technical information provided by the Company in connection with a Contract is vested in the Company. The Customer undertakes not to disseminate, reproduce, store or transmit any such material without first obtaining the written consent of the Company.

12. Health and Safety

- 12.1 The Customer shall be responsible to ensure that it complies in all respects with the relevant provisions of the Health and Safety in Employment Act 1992, the Health and Safety in Employment Regulations 1995 and any relevant code of practice. All reasonably practicable steps must be taken by the Customer in relation to ensuring there is a safe place of work, including (but not limited to) the storage, handling and use of the Products and the health and safety of the Company's staff working on the Customer's premises.

13. Guarantee

- 13.1 In consideration of the Company entering into a Contract to supply Products and/or Services to the Customer, the Guarantor:
- 13.1.1 Guarantees payment of all monies owed by the Customer to the Company under the Contract, and
- 13.1.2 Guarantees the performance by the Customer of all obligations, responsibilities and covenants under the Contract.
- 13.2 The Guarantor agrees that in the event of default by the Customer in any payment, obligation, responsibility or covenant under the Quotation, these Conditions or a Contract, the Guarantor may for all purposes be treated as the Customer by the Company who shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor, and the Guarantor will execute a mortgage over his/her or its property to secure payment of all monies owed and outstanding by the Customer to the Company if requested by the Company.
- 13.3 Should there be more than one Guarantor then their liability as Guarantors under this Guarantee shall be joint and several.

14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 The Contract constitutes a security interest in the Products for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.
- 14.2 The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest in any Products, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company in the Products.
- 14.3 To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA which are for the Customers benefit, or place any obligations on the Company in the Customers favour, shall not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 14.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 The Customer hereby waives its right to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

15. Miscellaneous

- 15.1 If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.
- 15.2 Failure by the Company to insist upon strict performance by the Customer of any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.
- 15.3 These Conditions and the Contract may only be varied by the Company in writing in its absolute discretion.
- 15.4 The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.
- 15.5 The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.
- 15.6 The Customer agrees that the Company may obtain information about the Customer from any source including credit assessment, debt collecting and direct marketing activities and the Customer consents to any person providing the Company with such information.
- 15.7 Neither party shall be liable for any delay, alteration or failure to perform its obligations under a Contract where occasioned by any event beyond that party's reasonable control ("Force Majeure") and such party shall be entitled to a reasonable extension of time for the performance of any such obligations.
- 15.8 The Customer shall pay the costs and expenses including legal fees incurred by the Company in exercising any of its rights or remedies or enforcing any of the Conditions.
- 15.9 All Contracts made between the Company and the Customer shall be governed by and construed in accordance with the laws of New Zealand and the Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 15.10 Any notice given by one party to the other shall be deemed to have been delivered 48 hours after posting to the recipients registered office or last known address and immediately if forwarded by facsimile or email.

Initial _____ Initial _____