

Appliance Tech Services Limited – Terms & Conditions of Trade

1. GENERAL

1.1 All Goods and/or Services provided to the Customer by the Vendor are subject to the following terms and conditions ("Terms"). These Terms, together with any credit application or quotation acceptance or works requisition or similar order form constitute the entire agreement ("agreement") between the Customer and the Vendor for the Goods provided and/or Services performed.

1.2 Any amendments to these Terms must be agreed by the Vendor in writing.

1.3 If any provision of these Terms is invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect.

1.4 If the Customer is a company or trust, each director or trustee (as the case may be) of the Customer who signs these Terms warrants that he/she is authorized to enter into the contract on behalf of the Customer.

1.5 If anything in these Terms is inconsistent or conflicts with any provision of any credit application or quotation acceptance or works requisition or similar order form or other document between the parties, these Terms shall prevail.

1.6 The Customer must not assign or transfer any of their rights or obligations under this Agreement to any other person.

1.7 If, at any time, the Vendor does not enforce any of these Terms or grants the Customer time or other indulgence, the Vendor will not be construed as having waived that term or its rights to later enforce that or any other term.

1.8 These Terms are subject to and governed by the laws of New Zealand.

1.9 If the Customer orders or accepts Goods or Services, the Customer will be deemed to have accepted these Terms.

2. DEFINITIONS

2.1 In these terms and conditions of trade and in any credit application or works requisition or quotation acceptance or similar order: "Account" means the Customer's account with the Vendor. "Customer" means the person or entity on any credit application, work requisition, quotation or similar form or communication, or any person acting with ostensible authority on behalf of the Customer, when ordering or purchasing goods or services from the Vendor. "Goods" means any goods and/or products supplied by the Vendor to the Customer at any time. "Guarantor" means any party executing a Guarantee of the Customer's Account with the Vendor, "Order" or "Orders" means the order or orders of the Customer to the Vendor to supply Goods and Services. "PPSA" means the Personal Property Securities Act 1999. "Services" means any services supplied by the Vendor to the Customer at any time. "Vendor" means Appliance Tech Services Limited.

3. ACCEPTANCE

3.1 Any instructions received by the Vendor from the Customer for the supply of Services and/or Goods shall constitute acceptance by the Customer of these Terms and Conditions of Trade, and the Customer agrees that no further acceptance, signing or notification is required for enforcement of the provisions herein.

4. USE OF INFORMATION

3.1 For the purposes of facilitating the administration of the Vendor business, the Customer authorizes the Vendor:

3.1.1 To collect all information it may require about the Customer from any third parties and authorizes those third parties to release that information to the Vendor;

3.1.2 To hold all information given by the Customer or any third party to the Vendor; and

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3.1.3 To use that information including giving the information to any other person to facilitate collection of debts from the Customer.

3.2 The information will be collected, held and used on the condition that:

3.2.1 It will be held securely at the Vendor Offices referred to on the credit account application, works requisition or similar order form or database and/or the Vendor invoice;

3.2.2 It will be accessible to any of the Vendor employees and agents who need access to it for the administration of the Vendor business; and

3.2.3 The Customer may request access to and correction of it at any time. Where the Order makes provision for delivery then delivery shall take place at the place stated in the Order. If no place is indicated then delivery shall be made at the physical address of the Customer set out in the application.

5. PRICE AND QUOTATIONS

5.1 Unless otherwise expressly stated, all prices will be those applying at the date of delivery of the Goods and Services charged by the Vendor.

5.2 Unless otherwise stipulated in writing, the price of all Goods and Services excludes any amount payable in respect of GST, which will be paid by the Customer in addition to the price.

5.3 Prices are subject to change without notice.

5.4 Where a quotation is given by the Vendor to the Customer for Goods and/or Services, unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue.

5.5 Quotations are based on cost of labour, materials and equipment, freight and variable and fixed expenses and, where appropriate, rates of currency exchange operating at the date of quotation. Any increase in the cost to the Vendor which may occur between the date of quotation and delivery shall be payable by the Customer and any

such increase shall include a pro rata increase in the Vendors profit margin.

5.6 Any variation in the quantity of Goods and/or Services supplied to the Customer after the date of the quotation shall be at the Customer's expense. The Goods and/or Services shall be priced at either the price applicable to the original quantity under the quotation or such other price as the Vendor may determine in its absolute discretion.

5.7 Any variation in the quality of Goods supplied to the Customer after the date of the quotation shall be at the Customer's expense. The Goods shall be priced such price as the Vendor may determine in its absolute discretion.

5.8 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services at such a price as the Vendor may determine in its absolute discretion.

5.9 Unless otherwise stipulated in writing, the Customer agrees that retentions do not apply to these terms and conditions of trade.

6. PAYMENT

6.1 Payment for Goods and/or Services shall be made in full on or before the 7th day following the date of delivery or completion of work or as otherwise indicated on the GST Tax Invoice ("the due date").

6.2 Where work continues from one calendar month to the next the Vendor may issue a progress claim or invoice in relation to the Goods and/or Services started, completed and organized to date, for an amount as the Vendor may determine in its absolute discretion.

6.3 The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order and/or starting the delivery of any Goods and/or Services.

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6.4 If the Customer disputes any or all of an amount contained in an invoice, the Customer will:

6.4.1 Immediately notify the Vendor of the dispute and provide reasons for the dispute;

6.4.2 Pay the full amount of the Invoice including the disputed amount by the due date specified in the invoice; and

6.4.3 Negotiate in good faith with the Vendor to resolve the dispute.

6.5 An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.

6.6 If payment is not made by the due date the Vendor may, without prejudice to its other remedies, charge the Customer default interest on the unpaid amount at a rate equal to 2.5% per month on the outstanding balance.

6.7 All costs of or incurred by the Vendor as a result of a default by the Customer including but not limited to internal and external administration charges, collection agency costs, enforcement costs, expenses, disbursements and legal costs as between solicitor and client shall be payable by the Customer.

6.8 The Vendor may deduct or withhold any amount (whether by way of counterclaim, set-off or otherwise) from any money owing by the Vendor to the Customer on any account whatsoever.

7. DELIVERY

7.1 If the price of any Goods includes the costs of delivery, unless otherwise agreed by the Vendor prior to delivery, the price of the Goods includes the costs of delivery of the Goods by the usual methods of transportation used by the Vendor, between the hours of 8:00am and 4:30pm Monday to Friday (excluding statutory holidays). The Vendor may, if the Customer requests, arrange for Goods to be delivered by other means or at other times, but will be entitled to charge the Customer for any additional costs that the Vendor may incur.

7.2 The Vendor will endeavour to have the Goods delivered on the agreed delivery dates but will not be held liable for late delivery. Late delivery does not entitle any Customer to cancel any order or part order.

7.3 Delivery will be deemed to have been made when Goods arrive at the delivery point agreed with the Customer or if the Customer is to arrange delivery of the Goods, when the Goods are available for collection by the Customer. The Customer or its authorized representative must sign the Vendor's copy of the delivery docket or packing slip before the Goods are unloaded or collected.

7.4 All claims for errors in delivery or for Goods damaged in transit must be made to the Vendor within two days of delivery in respect of Goods delivered by courier, and within seven days of delivery in respect of Goods delivered by any other means or Goods collected by the Customer, and in accordance with the procedures advised by the Vendor from time to time.

7.5 If the Customer fails or refuses to take delivery of any Goods at an agreed delivery time, the Vendor may (without limiting any other rights or remedies the Vendor may have) charge the Customer for any expenses or additional costs incurred by the Vendor as a result of delay.

8. DEFAULT

8.1 If the Customer fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then the Vendor reserves the right, and the Customer agrees that the Vendor is entitled:

8.1.1 To treat all sums due or to become due from the Customer whatsoever as immediately due and payable;

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8.1.2 To immediately cancel or suspend delivery of Goods and the provision of Services;

8.1.3 By its agents to enter onto the Customer's premises where the Goods may be installed or stored and to search for and remove and take possession of the Goods without being in any way liable to the Customer or anyone claiming under it for so doing; and

8.1.4 To withhold the further supply of Goods and Services on credit.

8.2 Any expenses, disbursements and legal costs incurred by the Vendor in the enforcement of any rights contained in these Terms shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

9. SECURITY AND TITLE

9.1 the Vendor retains legal and equitable title to any Goods supplied to the Customer until full payment is made for the Goods and all other Goods and Services supplied by the Vendor.

9.2 Notwithstanding that ownership of any Goods may remain with the Vendor; all risk in relation to any Goods supplied will pass to the Customer on delivery.

9.3 The Customer gives irrevocable authority to the Vendor to enter any premises occupied by the Customer, or any other party on which Goods and Services are situated, at any reasonable time after default by the Customer, in order to remove and repossess any Goods, and to sell those Goods if necessary to recover unpaid monies.

9.4 The Customer grants the Vendor a "security interest" for the purposes of section 37(b) of the Personal Property Securities Act 1999 (the PPSA) in all present and after acquired Goods as security for the Customer's obligations to the Vendor.

9.5 The Customer is to execute documents and do such further acts as may be required by the company to register the "security interest" granted to the Vendor under these Terms under the PPSA.

9.7 Until ownership of the Goods passes, the Customer waives its right under the PPSA:

9.7.1 To receive a copy of any verification statement;

9.7.2 To receive a copy of any financing charge statement;

9.7.3 To receive any notice that the Vendor intends to sell the Goods or to retain the Goods on enforcement of the "security interest" granted to the Vendor under these Terms;

9.7.4 To object to a the Vendor proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Vendor;

9.7.5 To receive a statement of account on sale of the Goods;

9.7.6 To redeem the Goods; and

9.7.7 Where any Goods become an "accession" (as defined in the PPSA), to not have any Goods damaged when the Vendor removes the accession, to receive notice of the removal of the accession and to apply to the court for an order concerning the removal of an accession.

10. CREDIT

10.1 The Vendor may review, limit, vary or withdraw credit at any time without liability to the Customer.

10.2 If the Vendor shall at any time deem the credit of the Customer to be unsatisfactory, it may require security for payment in a form satisfactory to the Vendor in its absolute discretion and may suspend performance of its obligations under the agreement until the provision of such security.

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11. EXCLUSION AND LIMITATION OF LIABILITY

11.1 Except as expressly provided in these Terms, all warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Goods, Services or to these Terms are, to the maximum extent permitted by law, expressly excluded.

11.2 Nothing in these Terms limits any rights the Customer has under the Consumer Guarantees Act 1993 (“Act”) and these Terms must be read subject to those rights.

11.3 Where these Terms would otherwise be subject to the Act and the Customer is acquiring the Goods and/or Services supplied by the Vendor for business purposes, the Customer agrees that the Act will not apply.

11.4 Except where applicable law expressly requires otherwise, the Vendor is not liable in any event for any special, indirect or consequential damage, loss or injury of any kind, or for any loss of business, profit, data or anticipated savings, suffered by the Customer or any other person, however caused, even if the Vendor had been advised of the possibility of such damage, loss or injury.

11.5 Insofar as the Vendor may be liable, the maximum liability of the Vendor, whether in contract, tort (including negligence), equity, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any breach of the Vendor’s obligations under the agreement is, except where applicable law expressly requires otherwise, limited, at the option of the Vendor, to any one or more of the following:

11.5.1 If the breach relates to Goods:

- (a) The replacement of the Goods or the supply of equivalent Goods;
- (b) The repair of such Goods;
- (c) The payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) The payment of the cost of having the Goods repaired; and

11.5.2 If the breach relates to Services:

- (a) The supplying of the Services again; or
- (b) The payment of the cost of having the Services supplied again.

11.7 The Vendor is not liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control.

Contact details:

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