

TERMS AND CONDITIONS OF SERVICE

Any instructions received by Queenstown Heatpumps and Refrigeration Limited (**QHRL**) from the Customer for the supply of goods or services shall constitute acceptance of the terms and conditions contained herein.

1. COLLECTION AND USE OF INFORMATION

1.1 The Customer authorises QHRL to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, or for enforcing any rights under this contract. The Customer authorises QHRL to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

2. PRICING

2.1 The Customer agrees to pay the price charged for all goods and services in accordance with the Schedule.

3. PAYMENT

- 3.1 All invoices must be paid in full on or before the 7th day from the date the invoice is received.
- 3.2 QHRL may impose a credit limit on the Customer, and alter the credit limit without notice. Where the credit limit is exceeded QHRL may refuse to supply goods or services to the Customer.
- 3.3 QHRL may notify the Customer at any time that it has ceased to supply goods or services on credit to the Customer.
- 3.4 Interest may be charged by QHRL on any amount owing from time to time from the due date until the date payment is received by QHRL at a default rate of 15% per annum, calculated daily. The customer shall indemnify QHRL against any expenses, disbursements and legal costs incurred by QHRL in connection with the enforcement of any rights contained in this contract, including legal fees on solicitor / client basis and/or debt collection agency fees.
- 3.5 QHRL will apportion payments received to outstanding accounts as it thinks fit. QHRL reserves the right to request payment for any goods / services from the Customer prior to the commencement of any services.

4. AGENCY

4.1 The Customer authorises QHRL to contract either as principal or agent for the provision of goods or services that are the matter of this contract. Where QHRL enters into any such necessary subcontract it shall be read with and form part of this contract and the Customer agrees to pay any amounts due under that contract.

5. RETENTION OF TITLE

5.1 If QHRL provides any goods to the Customer, title to those goods shall remain with QHRL until such time as payment in full for the goods and/or the services has been received by QHRL (notwithstanding any period of credit allowed by QHRL).

6. PPSA SECURITY INTEREST

6.1 The Customer grants to QHRL a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in all of the Customer's present and after acquired personal property that QHRL supplies the Customer and all present and after acquired personal property being proceeds of such property, which shall secure the obligation of the Customer to pay the amount owing and any other obligations of the Customer to QHRL under this contract.

6.2 As and when required by QHRL the Customer shall, at its own expense, provide all reasonable assistance and relevant information and do all things necessary to enable QHRL to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, perfect, register and enforce QHRL's security interest in respect of the goods supplied, in accordance with the PPSA.

6.3 The Customer shall not change its name without first notifying QHRL of the new name not less than 7 days before the change takes effect.

6.4 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this contract.

6.5 The Customer waives their right to: receive notice under section 120(2) and 129; receive a statement of account under section 116; receive surplus distributed under section 117; recover any surplus under section 119; object to any proposal of QHRL to retain collateral under section 121; not have goods damaged in the event that QHRL were to remove an accession under section 125; apply to the Court for an order concerning the removal of an accession under section 131; redeem collateral under section 132; and receive a verification statement under section 148.

7. DEFAULT

7.1 The security interest created by clause 6 of this contract becomes immediately enforceable if any of the following events occur:

- (a) the Customer fails to pay any amount owing on the due date;
- (b) the Customer sells, parts with possession, leases or disposes of any goods or does anything inconsistent with QHRL's ownership of the goods prior to making payment in full to QHRL;
- (c) QHRL believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver, liquidator, statutory manager or voluntary administrator appointed, or is insolvent or unable to pay its debts as they fall due; or
- (d) the goods are at risk, as that term is defined in the PPSA.

8. LIABILITY

8.1 To the full extent permitted by law, QHRL shall not be liable:

- (a) for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by QHRL to the Customer and without limiting the generality of the foregoing of this clause QHRL shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss;
- (b) except as provided in this contract in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by QHRL to the Customer; or
- (c) for any delay or failure to supply goods or services.

8.2 The Customer shall indemnify QHRL against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of QHRL or otherwise, brought by any person in connection with any matter, act, omission, or error by QHRL its agents or employees in connection with the goods or services.

9. WARRANTIES

- 9.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from QHRL for the purposes of a business in terms of section 2 and 43 of that Act.
- 9.2 Nothing in this contract is intended to contract out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by the Act.
- 9.3 The only guarantees applying to the goods and services supplied by QHRL are those confirmed by QHRL in writing.

10. CANCELLATION

- 10.1 QHRL shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any amount owing after the due date or the Customer commits an act of bankruptcy or becomes otherwise insolvent or unable to pay its debts as they fall due. Otherwise, QHRL may cancel this contract by providing the Customer 2 weeks' written notice.
- 10.2 Any cancellation or suspension under clause 10.1 of this contract shall not affect QHRL's claim for amount due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to QHRL under this contract.
- 10.3 If the Customer requests suspension or cancellation of the supply of goods and/or services, QHRL may increase the agreed price to cover any resulting extra expense should this apply or, any out of pocket expenses incurred by QHRL in connection with the same.
- 10.4 Two weeks' written notice is to be given by the Customer to QHRL in the event of suspending or cancelling contracted the supply of supply of goods and/or services.

11. NOTICE

- 11.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to the Customer or to any director or representative of the Customer.

12. VARIATION

- 12.1 QHRL shall be entitled at any time by notice in writing to the Customer to vary any provision of this contract and the Customer shall be bound thereby except as provided in clause 12.2.
- 12.2 The Customer shall be entitled within seven (7) days of the Customer's receipt of the notice referred to in clause 12.1 to give 2 weeks' written notice to QHRL terminating this contract.
- 12.3 In the event of the Customer giving written notice pursuant to clause 12.2 to QHRL the purported variation of this contract shall have no effect as between QHRL and the Customer.
- 12.4 For the avoidance of doubt, QHRL's provision to the Customer of an updated Price List referred to in the Schedule hereto shall not constitute a variation for the purposes of this clause.

13. MISCELLANEOUS

- 13.1 The Customer shall not assign, novate or otherwise transfer all or any of its rights or obligations under this contract without the written consent of QHRL.
- 13.2 QHRL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

- 13.3 Failure by QHRL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations QHRL has under this contract.
- 13.4 The law of New Zealand shall apply to this contract.
- 13.5 Where the terms of this contract are inconsistent with the order or instruction from the Customer, this contract shall prevail.
- 13.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.7 If any dispute or difference arises in relation to any aspect of this contract or the implementation or performance of its terms, the parties agree that before taking any formal contentious step, they shall attempt to resolve the dispute or difference by negotiation. If within two weeks of a dispute or difference being raised by a party (by notice in writing to the other party) it has not been resolved by negotiation, the parties shall refer the matter to mediation. If the matter remains unresolved within four weeks of such a referral to mediation, either party may take action in such forum as it sees fit. This clause shall not preclude any party from taking any injunctive or other interim legal proceedings considered necessary for the urgent protection of its rights.
- 14. DEFINITIONS**
- 14.1 "amount owing" means the price charged by QHRL for the goods and/or services, and any other sums which QHRL is entitled to charge under this contract which remains unpaid.
- 14.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing goods or services from QHRL.
- 14.3 "goods" shall mean all goods and/or chattels supplied by QHRL to the Customer and shall include any fee or charge associated with the supply of goods by QHRL to the Customer, including but not limited to the goods listed in the Schedule.
- 14.4 "price" shall mean the cost of the goods or services as agreed between QHRL and the Customer subject to clause 2 of this contract as further detailed in the Schedule.
- 14.5 "services" shall mean all services provided by QHRL to the Customer and shall include without limitation the provision of all services noted in the Schedule.