

TERMS AND CONDITIONS OF SALE (the SALE TERMS)

1. DEFINITIONS

- 1.1 "Contract" means, together, these Sale Terms, the Quotation and any other document that is deemed or stated to form part of the Contract.
- 1.2 "EECA" means the New Zealand Energy Efficiency & Conservation Authority.
- 1.3 "Goods" means all goods supplied, or to be supplied, to the Purchaser by the Supplier pursuant to this Contract.
- 1.4 "Goods and/or Services" or "Goods or Services" or "Goods and Services" means all products, services and/or advice provided by, or to be provided by, the Supplier to the Purchaser pursuant to this Contract; and shall include without limitation the design, manufacture, development, sale, installation of equipment and the supply of componentry and parts.
- 1.5 "Order" means the Purchaser's request (evidenced by their signing of the Quotation) to purchase Goods and/or Services pursuant to these Sales Terms.
- 1.6 "Quotation" means the quotation (or, in the absence of a quotation, any other document(s) which form(s) part of this Contract), agreed with you in writing, specifying the particulars relating to the Purchaser's order of Goods and/or Services.
- 1.7 "Price" means the cost of the Goods and/or Services, as determined according to clause 4 of these Sale Terms.
- 1.8 "Purchaser or you" means the party described as such in the Quotation.
- 1.9 "Supplier or us" means the party described as such in the Quotation.

2. ORDERING GOODS AND SERVICES

- 2.1 When you place an Order with us for Goods and/or Services, and we accept that Order, a contract is formed on the basis of these Sale Terms and the Quotation.
- 2.2 These Sales Terms take priority, and supersede and cancel any terms and conditions of supply that you make seek to impose in any purchase order or other document that you issue to us in connection with any Order.
- 2.3 We may vary the Sale Terms from time to time. The Sales Terms published on our website at <https://www.ees.co.nz/customer-sales-agreement-terms> on the date of your Order shall apply to such Order.

3. REFUSING OR CANCELLING ORDERS

- 3.1 In the unlikely event that the Goods and/or Services ordered are no longer available, or if there has been a typographical price error, we reserve the right to refuse or cancel an Order.
- 3.2 In addition, we reserve the right to refuse or cancel any Orders that we consider, solely in our discretion, have been placed for any reason other than ordinary use in a home or business (e.g. if we have reason to believe that you are any kind of reseller). We also reserve the right to refuse or cancel any Orders that we consider, solely in our discretion, have been placed fraudulently.
- 3.3 Our right to cancel Orders in the circumstances set out in clauses 3.1 and 3.2 also applies to Orders that we have previously accepted.
- 3.4 If an Order is cancelled, we will refund any amount you have already paid, less (in the case of cancellation under clause 3.2 only) any reasonable costs that we have incurred towards the satisfaction of your Order.

4. PRICE & QUOTATION

- 4.1 Where a quotation (including a completed but unsigned Quotation) is given by the Supplier for Goods and/or Services:
- 4.1.1 Unless otherwise agreed, the quotation shall be valid for 14 calendar days from the date of issue; and
- 4.1.2 The Supplier reserves the right to alter the quotation price because of circumstances beyond its control.
- 4.2 The Price for the Goods and/or Services is the amount agreed between the Supplier and the Purchaser as recorded in a signed Quotation (or, in the absence of a Quotation, any other mutually agreed document which forms part of the Contract)
- 4.3 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and/or Services that is beyond the control of the Supplier and arises between the date of the Quotation and the date scheduled for installation of the Goods and/or Services.
- 4.4 If the Price increases pursuant to clause 4.3 then the Supplier will notify the Purchaser as soon as practicable. If the Purchaser does not wish to proceed at the new Price, then the Purchaser will have 5 working days from the date of notification to cancel their Order and receive a full refund of any amounts paid. The Supplier shall not proceed with installation until such time as the Purchaser's right to cancel the Order has expired.

5. PAYMENT

- 5.1 Subject to the remainder of this clause, a deposit of 50% of the Price must be paid immediately by the Purchaser on signing of the Quotation. The deposit is in part payment of the Price. For purchases made under the EECA's Warner Kiwi Homes initiative the deposit that is payable shall be the full 20% of the Price that is payable by the Purchaser (with the remainder of the Price being paid by the EECA in accordance with the terms of that initiative). Any deposit amount will, subject to these Sales Terms, be fully refundable in the event this Contract is cancelled in accordance with these Sales Terms.
- 5.2 Payment of the Price of the Goods and/or Services (or the balance thereof when a deposit has been paid) shall be made immediately on completion of delivery and (where applicable) installation.
- 5.3 Payment may be made in cash, by bank transfer, by credit card or by finance arrangement. We currently accept Visa and MasterCard credit cards. Payment by credit card will incur an additional 2.5% administration processing fee. Payment by finance arrangement is subject to the terms, conditions and fees of that arrangement (please refer to <https://www.ees.co.nz/finance>).
- 5.4 Default interest may be charged on any amount owing after the due date at the rate of 10% per annum or part thereof.
- 5.5 Any reasonable debt collection costs incurred by the Supplier in the enforcement of its rights contained in this Contract due to a default by the Purchaser shall be paid by the Purchaser.
- 5.6 For the avoidance of doubt, the Supplier and the Purchaser each acknowledge and agree that this Contract is not a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003 because the whole of the Price is due and payable within 2 months of the date of the Quotation, namely, in accordance with clauses 5.1 and 5.2.

6. ASSESSMENT, PRODUCTS AND INSTALLATION

- 6.1 We will carry out a home assessment before providing you with a Quotation.
- 6.2 Once your Order is confirmed, we will contact you to make subsequent appointments for a pre-installation inspection and product installation.
- 6.3 In the unlikely event that, during the pre-installation inspection, we find that:
- 6.3.1 the Goods you have been quoted are unsuitable for your home, then we will recommend an alternative product if available; and / or
- 6.3.2 additional costs (e.g. building works) will be necessary to complete the installation in your home, then we will provide you with a price estimate for those additional items.
- If the price of the alternative product is different from the Price agreed in your Order, or you are not comfortable with the need to pay the additional costs, then you have the option to cancel the Contract and receive a full refund of your deposit.
- 6.4 Where the Price includes installation of the Goods, we will quote a standard installation charge. However, during installation we may encounter circumstances that we could not have reasonably foreseen and which cause additional costs over and above the standard installation charges. Should this happen then we will notify you as soon as possible of such additional costs. You must pay for these additional installation costs.
- 6.5 If you are not home when we arrive for a pre-arranged appointment, you must reimburse us for all reasonable travel costs.

7. RISK AND DELIVERY

- 7.1 The Goods remain at the Supplier's risk until delivery to the Purchaser's nominated physical New Zealand address, at which point the Goods transfer to the Purchaser's risk.
- 7.2 Delivery of Goods shall be deemed complete when the Supplier gives possession of the Goods directly to the Purchaser. Please note that a signature is required for all deliveries. If Goods are lost or damaged in transit, please contact us within 7 business days. We will use this

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delivery information to make a claim against our courier company. We will offer you the choice of a replacement or a full refund, once we have satisfied ourselves that delivery was not successful.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by the Supplier passes to the Purchaser only when the Purchaser has made payment in full for all Goods and/or Services provided by the Supplier and of all other sums due to the Supplier by the Purchaser on any account whatsoever. Until all sums due to the Supplier by the Purchaser have been paid in full, the Supplier has a security interest in all Goods. The Supplier shall retain title in accordance with this clause 8.1 even if the Goods are attached, fixed, or incorporated into any property of the Purchaser, by way of any manufacturing, installation, or assembly process.
- 8.2 The Purchaser gives irrevocable authority to the Supplier to, upon prior reasonable notice, enter any premises occupied or owned by the Purchaser, or on which Goods are situated, at any reasonable time after default by the Purchaser or before default if the Supplier reasonably believes a default is likely, to remove and repossess any Goods. The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Purchaser or any third party as a result of the Supplier taking any action that is reasonably necessary in order to exercise this right, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded, except where any loss is caused solely and directly because the Supplier has been negligent or wilfully caused damage. The Supplier may either resell any repossessed Goods and credit the Purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Purchaser's account with the invoice value thereof less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 8.3 Where Goods are to be repossessed by the Supplier pursuant to clause 8.2, the Purchaser waives its rights to receive notice and to object that would otherwise apply under sections 120 and 121 of the Personal Property Securities Act 1999.
- 8.4 The following shall constitute defaults by the Purchaser:
- 8.4.1 Non payment of any sum by its due date.
- 8.4.2 Before full payment of the Price is made by the Purchaser, any Goods and Services are seized by any other creditor of the Purchaser or any other creditor intimates that it intends to seize such Goods, or the Purchaser is bankrupted or put into liquidation or a receiver is appointed to any of the Purchaser's assets or a landlord distrains against any of the Purchaser's assets, or a Court judgment is entered against the Purchaser and remains unsatisfied for seven (7) days, or the Purchaser is unable to pay its debts in the ordinary course of business or becomes subject to any other form of insolvency or external administration.

9. PRODUCT WARRANTY

- 9.1 Third party manufacturer's product warranties apply where applicable to the Goods.
- 9.2 Any written product warranty provided by the Supplier to the Purchaser also forms part of this Contract.
- 9.3 The Purchaser shall ensure that it complies with the filter requirements, including recommended timing for replacement of filters, as set out in the product warranty to ensure the validity of the warranty and the optimum performance of the Goods and/or Services purchased.

10. SYSTEM PERFORMANCE

- 10.1 To the fullest extent permitted by law, any liability of the Supplier (at law or under this Contract) is subject to the representations set out in this clause 10.
- 10.2 It is possible that factors outside the control of the Supplier may reduce the performance of the Goods. Such factors could include sufficient indoor heating; the Purchaser's lack of adherence to the published instruction manual; the features of the property where the Goods are installed such as its layout, building materials and design; climatic conditions at the location of the property.
- 10.3 The Goods alone may not be enough to maintain a comfortable indoor environment. In addition to installing the Goods, reducing condensation requires sufficient heating, ventilation and insulation. If ventilation alone is being used to control internal temperature without additional heating or adequate insulation, then moisture / dampness already present within the building envelope (e.g. in the roof cavity and / or sub-floor) may result in condensation. Even in well managed properties, condensation can still appear during very cold periods.

11. INTELLECTUAL PROPERTY

- 11.1 The Supplier owns and has the intellectual property rights, including copyright, in all designs, specifications, documents, work and software produced by the Supplier in connection with the Goods and/or Services provided pursuant to this Contract. The Purchaser may use the Goods and/or Services (and the Supplier's intellectual property in them) only if paid for in full and only for the purpose for which they were intended and supplied by the Supplier. under this Contract.

12. CONSUMER GUARANTEES ACT

- 12.1 Where the Purchaser is 'in trade' (with a reference to 'in trade' in clauses 12.1 and 12.2 having the meaning given to it in the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, as applicable), the parties each confirm, acknowledge and agree that:
- 12.1.1 they are each in trade;
- 12.1.2 the Goods and Services are supplied to and acquired by the Purchaser in trade;
- 12.1.3 the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993, and sections 9, 12A and 13 of the Fair Trading Act 1986, are excluded to the fullest extent permitted at law and do not apply; and
- 12.1.4 it is fair and reasonable that the parties are bound by this clause 12.1.
- 12.2 Where the Purchaser is a consumer and clause 12.1 does not apply, nothing in this Contract affects the Purchaser's rights under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.
- 12.3 To the fullest extent permitted by law, the Supplier shall not be liable for:
- 12.3.1 any indirect or consequential loss in connection with this Contract; or
- 12.3.2 any claims, action, demand, loss or damage of any kind in connection with this Contract arising from the negligence, or wilful acts or omissions of the Purchaser.

13. COLLECTION AND USE OF INFORMATION

- 13.1 The Supplier may collect, retain, disclose and use any personal information about the Purchaser, in accordance with its privacy statement available at <https://www.ees.co.nz/privacy-policy>.

14. MISCELLANEOUS

- 14.1 The Supplier may receive a payment or rebate if you choose to use the services of third parties (e.g. credit providers) who are presented to you in connection with your purchase.
- 14.2 Failure by us to enforce any condition of this Contract shall not be deemed to be a waiver of any of the rights or obligations we have under the Contract.
- 14.3 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.
- 14.4 This Contract is governed by, and is to be construed in accordance with, New Zealand law. The parties agree to submit to the exclusive jurisdiction of New Zealand courts.

EES December 2024