Heat Pump Shop – Terms & Conditions of Trade

1. Definitions

1.1 "HPS" means Christie and Wills Pty Ltd T/A Heat Pump Shop, its successors and assigns or any person acting on behalf of and with the authority of Christie and Wills Pty Ltd T/A Heat Pump Shop.

1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3 "Goods" means all Goods or Services supplied by HPS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Goods as agreed between HPS and the Client in accordance with clause 4 below.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with HPS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and HPS.

2.3 Any advice, recommendation, information, assistance or service provided by HPS in relation to Goods or Services supplied is given in good faith is based on HPSs own knowledge and experience and shall be accepted without liability on the part of HPS and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.

2.4 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, HPS reserves the right to vary the Price with alternative Goods as per clause 4.2. HPS also reserves the right to halt all Services until such time as HPS and the Client agree to such changes.

3. Change in Control

3.1 The Client shall give HPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by HPS as a result of the Client's failure to comply with this clause.

4. Price and Payment

4.1 At HPS's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by HPS to the Client; or
(b) HPS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 HPS reserves the right to change the Price if a variation to HPS's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to HPS in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, availability of stock, change in design and/or specifications or prerequisite work by any third party not being completed etc. which are only discovered on commencement of the Services) will be charged for on the basis of HPS's quotation and will be shown as variations on the invoice.

4.3 At HPS's sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by HPS, which may be:
(a) on delivery of the Goods;
(b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HPS.

4.5 Payment may be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to two and half percent (2.5%) of the Price), or by any other method as agreed to between the Client and HPS.

4.6 Unless otherwise stated the Price includes GST. In addition to the Price the Client must pay to HPS an amount equal to any GST HPS must pay for any supply by HPS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Goods at HPS's address; or
(b) HPS (or HPS's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

5.2 At HPS's sole discretion the cost of delivery is included in the Price.

5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then HPS shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4 HPS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by HPS to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and HPS will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, HPS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HPS is sufficient evidence of HPS's rights to receive the insurance proceeds without the need for any person dealing with HPS to make further enquiries.

6.3 HPS shall not be held responsible for any damage to the Goods or delays to delivery caused by outside agents. Where the Client requests HPS to repair such damage then HPS reserves the right to charge the Client for any costs incurred in rectifying such damage.

7. Title

7.1 HPS and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid HPS all amounts owing to HPS; and
(b) the Client has met all of its other obligations to HPS.

7.2 Receipt by HPS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

7.3 It is further agreed that:
(a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to HPS on request.
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for HPS and must pay to HPS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for HPS and must pay or deliver the proceeds to HPS on demand.
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of HPS and must sell, dispose of or return the resulting product to HPS as it so directs.
(e) the Client irrevocably authorises HPS to enter any premises where HPS believes the Goods are kept and recover possession of the Goods.
(f) HPS may recover possession of any Goods in transit whether or not delivery has occurred.
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HPS.
(h) HPS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

8. Client's Disclaimer

8.1 The Client hereby disclaims any right to rescind, or cancel any contract with HPS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentations made to the Client by HPS and the Client acknowledges that the Goods are bought relying solely upon the Client's own skill and judgement.

9. Personal Property Securities Act 2009 ("PPSA")

9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by HPS to the Client.

9.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HPS may reasonably require to;
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
(b) indemnify, and upon demand reimburse, HPS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of HPS;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of HPS;
(e) immediately advise HPS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 HPS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by HPS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Client must unconditionally ratify any actions taken by HPS under clauses 9.3 to 9.5.

9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

10.1 In consideration of HPS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

10.2 The Client indemnifies HPS from and against all HPS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HPS's rights under this clause.

10.3 The Client irrevocably appoints HPS and each director of HPS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

11.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify HPS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow HPS to inspect the Goods.

11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

11.3 HPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, HPS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. HPS's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Client is a consumer within the meaning of the CCA, HPS's liability is limited to the extent permitted by section 64A of Schedule 2.

11.6 If HPS is required to replace the Goods under this clause or the CCA, but is unable to do so, HPS may refund any money the Client has paid for the Goods.

11.7 If the Client is not a consumer within the meaning of the CCA, HPS's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by HPS at HPS's sole discretion;
(b) limited to any warranty to which HPS is entitled, if HPS did not manufacture the Goods;
(c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 11.1; and
(b) HPS has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, HPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by HPS;
(e) fair wear and tear, any accident, or act of God.

11.10 HPS may in its absolute discretion accept non-defective Goods for return in which case HPS may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

11.11 Notwithstanding anything contained in this clause if HPS is required by a law to accept a return then HPS will only accept a return on the conditions imposed by that law.

12. Intellectual Property

12.1 Where HPS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of HPS.

12.2 The Client warrants that all designs, specifications or instructions given to HPS will not cause HPS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HPS against any action taken by a third party against HPS in respect of any such infringement.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HPS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Client owes HPS any money the Client shall indemnify HPS from and against all costs and disbursements incurred by HPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HPS's contract default fee, and bank dishonour fees).

13.3 Without prejudice to any other remedies HPS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HPS may suspend or terminate the supply of Goods to the Client. HPS will not be liable to the Client for any loss or damage the Client suffers because HPS has exercised its rights under this clause.

13.4 Without prejudice to HPS's other remedies at law HPS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HPS shall, whether or not due for payment, become immediately payable if:
(a) any money payable to HPS becomes overdue, or in HPS's opinion the Client will be unable to make a payment when it falls due;
(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

14.1 HPS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice HPS shall repay to the Client any money paid by the Client for the Goods. HPS shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by HPS as a direct result of the cancellation (including, but not limited to, any loss of profits).

15. Privacy Policy

15.1 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.

15.2 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

15.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

15.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.
(e) The Supplier may give information about the Customer to a CRB for the following purposes:
(f) to obtain a consumer credit report;
(g) allow the CRB to create or maintain a credit information file about the Customer including credit history.

15.5 The information given to the CRB may include:
(a) personal information as outlined in 15.1 above;
(b) name of the credit provider and that the Supplier is a current credit provider to the Customer;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

15.6 The Customer shall have the right to request (by e-mail) from the Supplier:
(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
(b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.

15.7 The Supplier will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

15.8 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

16. Unpaid Seller's Rights

16.1 Where the Client has left any item with HPS for repair, modification, exchange or for HPS to perform any other service in relation to the item and HPS has not received or been tendered the whole of any moneys owing to it by the Client, HPS shall have, until all moneys owing to HPS are paid:
(a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

16.2 The lien of HPS shall continue despite the commencement of proceedings, or judgment for any moneys owing to HPS having been obtained against the Client.

17. General

17.1 The failure by HPS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HPS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Tasmania in which HPS has its principal place of business, and are subject to the jurisdiction of the courts in that state.

17.3 Subject to clause 11 HPS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HPS of these terms and conditions (alternatively HPS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by HPS nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 HPS may license or sub-contract all or any part of its rights and obligations without the Client's consent.

17.6 The Client agrees that HPS may amend these terms and conditions at any time. If HPS makes a change to these terms and conditions, then that change will take effect from the date on which HPS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for HPS to provide Goods to the Client.

17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

17.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from HPS on request.

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