

# HEATCRAFT NEW ZEALAND LIMITED GENERAL TERMS AND CONDITIONS

Unless otherwise expressly agreed, all goods and services (including without limitation all consultation, design, commissioning and other engineering and advisory services whether in connection with the sale of goods or otherwise) are supplied by Heatcraft New Zealand Limited strictly upon the following general terms and conditions where applicable, and these terms and conditions shall be implied in each contract for the supply of goods and/or services by Heatcraft New Zealand Limited without qualification.

In the event of any conflicting terms and conditions in any order received by Heatcraft New Zealand Limited, the supply of goods and/or services by Heatcraft New Zealand Limited is made on the strict basis that these terms and conditions shall prevail.

## CONTRACT

Each contract for the supply of goods and/or services shall comprise the express essential terms agreed between the customer and Heatcraft New Zealand Limited as specified in the applicable estimation/quotation/order confirmation/invoice/other documentation and these terms and conditions, together with

- (a) any further specifications or other details, terms or conditions in other documentation which may be expressly agreed and included by reference or attachment in writing;
- (b) any variation or exclusion of these terms and conditions which may be expressly agreed in writing.

No other terms or conditions are to be made or implied.

## PRICE AND PAYMENT

Unless otherwise stated, all prices are in New Zealand dollars based on the supply of goods and/or services ex the principal premises of Heatcraft New Zealand Limited, and exclusive of:

- (a) goods and services tax (GST);
- (b) insurance, handling and freight, and any particular packaging, delivery or other requirements of the customer.

All prices are given as current prices at the time of the contract, and Heatcraft New Zealand Limited reserves the right to vary any price to account for any variation in the cost of the supply of the goods and/or services after the time of contract and before the supply of those goods and/or services is completed, including without limitation any increase in cost attributable to applicable currency exchange rates, shipping and freight charges, and costs of materials or labour.

The above costs, where applicable, shall be treated as a variation to the prices shown and shall be payable by the customer on the same date as the due date for the payment of the stated price, and otherwise upon demand.

All prices shall be due and payable 30 days after the date of invoice by the customer or the completion of supply of the goods and/or services to the customer. All payments shall be made in cash without right of set-off or deduction and time shall be of the essence in all payments.

In the event of the non-payment of all or any of the price on the due date for payment then, in addition to any rights and remedies available in law, Heatcraft New Zealand Limited reserves the right to:

- (a) charge interest on the amount not paid from the due date until payment at the prevailing unsecured overdraft interest rate of Heatcraft New Zealand Limited's bankers, calculated on a daily basis and payable upon demand;
- (b) retain possession, stop in transit, or otherwise recover any goods and to suspend or cancel any services then still to be supplied;
- (c) recover from the customer all costs reasonably expended in the recovery of the unpaid amount or recovery of possession of the goods, including collection commissions, legal and other enforcement costs.

Heatcraft New Zealand Limited reserves the right to cancel or suspend the completion or delivery of goods and/or services where there is reason for cause to believe that due payment for those goods and/or services will not be made by the customer.

## DELIVERY

The delivery of all goods and/or services shall be subject to the reasonable demands and capacity of Heatcraft New Zealand Limited to supply those goods and/or services within the stated or anticipated time, or within a reasonable time where the delivery time is not stipulated, and subject to any delay or interruption attributable to matters outside the reasonable control of Heatcraft New Zealand Limited.

Heatcraft New Zealand Limited shall be entitled to determine its own sources and brands of materials, components and goods, and to use its own representatives, agents, and contractors in the supply and delivery of those goods and/or services to the customer at its complete discretion.

Heatcraft New Zealand Limited shall in no event be liable for any loss in delay or failure of delivery, including without limitation any consequential loss, to the customer whether caused by the default or negligence of Heatcraft New Zealand Limited in delivery or otherwise.

Heatcraft New Zealand Limited reserves the right to accept or reject the return of any goods. Credit (if granted) will only be allowed on goods returned within 30 days of invoiced date and with both product and packaging in new and resalable condition. If an order has been executed correctly, and return of goods is accepted, a charge of \$20 or 10% of purchase price of goods (whichever is the largest) will be made to cover handling, restocking, documentation etc. Goods which are not normal stock items are not returnable.

## TITLE AND RISK

Title in all goods and the proprietary right and interest comprised in all services supplied by Heatcraft New Zealand Limited shall not pass to the customer in any circumstances whether by reason of despatch, delivery, or otherwise until payment of the price and all other amounts due in respect of the supply of those goods and/or services has been received by Heatcraft New Zealand Limited in full in cleared funds, provided that risk in any goods supplied by Heatcraft New Zealand Limited will pass to the customer immediately upon delivery of the goods by Heatcraft New Zealand Limited to the customer.

In the event of non-payment, Heatcraft New Zealand Limited shall have the right to recover possession of the goods to which that contract relates and to enter the premises of the customer or the customer's agents or representatives without notice for such purpose.

Until the price has been paid in full the customer shall:

- (a) maintain possession of the goods directly or through recognised independent storage agents in a distinct and identifiable manner from other goods, including other goods supplied by Heatcraft New Zealand Limited for which payment has been made;
- (b) store the goods in a safe and secure manner and keep the goods insured for their full price value, with any insurance proceeds received to be held in trust and promptly remitted to Heatcraft New Zealand Limited;
- (c) not disassemble, alter, add to, or incorporate the goods with any other goods in any manner except to bona fide third parties in the ordinary course of trade, and where the goods are so altered or added to or incorporated with other goods then to hold and deal with such composite goods under constructive trust for Heatcraft New Zealand Limited;
- (d) not sell the goods (including any goods which have been altered or goods to which those goods have been added to or incorporated with) other than to bona fide third parties in the ordinary course of trade and upon the strict condition that the proceeds of sale are retained in trust for Heatcraft New Zealand Limited to the extent of the unpaid price and such amount promptly remitted to Heatcraft New Zealand Limited;
- (e) not allow the goods to be charged or subject to risk of seizure or lien of any manner, or to otherwise deal with the goods in any manner inconsistent with the interests of Heatcraft New Zealand Limited as owner and unpaid seller.

# HEATCRAFT NEW ZEALAND LIMITED GENERAL TERMS AND CONDITIONS

## PERSONAL PROPERTY SECURITIES ACT

In this clause the terms **PPSA** means the Personal Property Securities Act 1999; **PPSR** means the Personal Property Securities Register and the terms "financing statement", "financing change statement", "verification statement", "security interest" and "proceeds" have the same meaning given thereto in the PPSA.

The customer acknowledges that that retention of title in these terms and conditions gives rise to a security interest in all present and after acquired refrigeration products and ancillary products supplied by Heatcraft New Zealand Limited to the customer under these terms and conditions (and any proceeds of the sale of any products supplied by Heatcraft New Zealand Limited) and to secure the customers performance of its obligations under these terms and conditions.

The customer undertakes to:

- (a) promptly do all things, execute all documents and/or provide any information which Heatcraft New Zealand Limited may reasonably require to enable Heatcraft New Zealand Limited to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
- (b) give Heatcraft New Zealand Limited not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details; and
- (c) immediately on request by Heatcraft New Zealand Limited (and at customers expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of any refrigeration products and ancillary products supplied by Heatcraft New Zealand Limited to ensure that at all times Heatcraft New Zealand Limited has a first priority security interest in any refrigeration products and ancillary products supplied by Heatcraft New Zealand Limited to the customer.

The customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Heatcraft New Zealand Limited and the customer, the customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and where Heatcraft New Zealand Limited has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

## LIMITATION OF LIABILITY

Subject to the qualifications herein Heatcraft New Zealand Limited warrants that all goods and/or services will be supplied to a good standard using:

- (a) in the case of goods, materials, parts and components of good standard and,
- (b) in the case of services, appropriate skill and expertise to a good and professional standard.

No other warranties or representations are made or implied in respect of the supply of any goods and/or services by Heatcraft New Zealand Limited except as expressly stated or as may be required and imposed in law. To the extent that any warranties or representations are implied by law or otherwise and capable of being disclaimed or negated those warranties and representations are so disclaimed and negated.

Each supply of goods and/or services shall be deemed to have been accepted by the customer unless written notice of any shortage, defect, or other reason for non-acceptance is given within ten days from the date that such goods and/or services were supplied/shipped. In the event that such notice is accepted any liability of Heatcraft New Zealand Limited shall be discharged upon Heatcraft New Zealand Limited electing at its complete discretion where applicable to replace missing or defective goods, or to provide further or remedial services, or to refund an appropriate portion of the contract price for that supply, but no further liability of any nature will be accepted, and without limitation:

- (a) no responsibility is accepted for defects or the failure or deterioration of goods or parts

or components of those goods supplied by other manufacturers, or for failure or deterioration of goods due to improper handling or storage, contamination or other adverse conditions, alteration or interference by other parties, the use or application of goods outside the normal or intended purposes of those goods or outside the directions or limitations imposed by Heatcraft New Zealand Limited, or otherwise in any other improper or abnormal manner.

- (b) no liability is accepted for goods or parts or components of those goods supplied by or through the customer, or for services which have been supplied under the directions or to the specifications of the customer.

All goods and/or services are supplied upon the customer's own independent knowledge, skill and judgment, and upon such independent advice or consultation as the customer may require for that purpose particularly as to the particular use or suitability of such goods and/or services for the customer's purposes and to all other characteristics and specifications of the goods and/or services so supplied.

Except as expressly stated, Heatcraft New Zealand Limited accepts no liability of any nature in respect of the sale or supply of any goods and/or services to the customer howsoever arising, including without limitation any economic or consequential loss, and the customer shall protect Heatcraft New Zealand Limited from any claim or demand from other parties in respect of the use or application of the goods and/or services by the customer.

To the extent that any liability shall otherwise be determined, the liability of Heatcraft New Zealand Limited shall be limited to the lesser of the contract or purchase price or the amount actually paid to Heatcraft New Zealand Limited for the goods and/or services so supplied to the customer.

## INTELLECTUAL PROPERTY RIGHTS

The customer does not by reason of the supply of any goods and/or services by Heatcraft New Zealand Limited acquire any rights to the copyright, patent, trade mark, design, or other intellectual property rights in the goods or to any of the proprietary rights or interest comprised in the services so supplied.

The customer shall protect Heatcraft New Zealand Limited from any claims for infringement of the intellectual property rights of third parties which might result from goods or parts or components of those goods supplied by or through the customer, or services supplied under the directions or to the specifications of the customer.

## CONSUMER GUARANTEES ACT

Where the customer is acquiring, or holds itself out as acquiring, any goods and/or services for the purpose of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993, the customer will not assert or attempt to assert any rights or claims against Heatcraft New Zealand Limited under the provisions of that Act.

The customer acknowledges that it is not relying on Heatcraft New Zealand Limited's skill or judgment as to the suitability or otherwise of any goods and/or services provided by Heatcraft New Zealand Limited for any specified purpose whether or not such purpose was made known to Heatcraft New Zealand Limited.

## GENERAL

Except in respect of goods and/or services supplied to the particular proprietary requirements of the customer, the supply of all goods and/or services to the customer shall be on a non-exclusive basis and Heatcraft New Zealand Limited reserves the right to supply any goods and/or services to other parties at such prices and terms of sale as Heatcraft New Zealand Limited may determine in its complete discretion and without limitation.

The law and jurisdiction of New Zealand shall apply to the sale and supply of all goods and/or services by Heatcraft New Zealand Limited.