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## Thermotec (Australia) Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Thermotec” means Thermotec (Australia) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Thermotec (Australia) Pty Ltd.
- 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 Thermotec 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 Thermotec and the Client in accordance with clause 5 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 Thermotec’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Thermotec.
- 2.3 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, Thermotec reserves the right to vary the Price with alternative Goods as per clause 4.2. Thermotec also reserves the right to halt all Services until such time as Thermotec and the Client agree to such changes.

### 3. Change in Control

- 3.1 The Client shall give Thermotec 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 Thermotec as a result of the Client’s failure to comply with this clause.

### 4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Thermotec as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Thermotec in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Thermotec in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Thermotec for all additional costs incurred by Thermotec (including Thermotec’s profit margin) in providing any works, materials, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

### 5. Price and Payment

- 5.1 At Thermotec’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Thermotec to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Thermotec’s current price list; or
  - (c) Thermotec’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 5.2 Thermotec reserves the right to change the Price if a variation to Thermotec’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 Thermotec in the cost of taxes, levies, materials and labour) will be charged for on the basis of Thermotec’s quotation and will be shown as variations on the invoice.
- 5.3 At Thermotec’s sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Thermotec, which may be:
  - (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Thermotec’s payment schedule;
  - (c) thirty (30) days following the end of the month in which a statement is posted/emailed to the Client’s address or address for notices;
  - (d) the date specified on any invoice or other form or email as being the date for payment; or

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- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Thermotec.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and Thermotec.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Thermotec an amount equal to any GST Thermotec must pay for any supply by Thermotec 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.
- 6. Delivery of Goods**
- 6.1 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 Thermotec’s address; or
  - (b) Thermotec (or Thermotec’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 At Thermotec’s sole discretion the cost of delivery is included in the Price.
- 6.3 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 Thermotec shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Thermotec 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.
- 6.5 Any time or date given by Thermotec to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Thermotec will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7. Risk**
- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Thermotec is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Thermotec is sufficient evidence of Thermotec’s rights to receive the insurance proceeds without the need for any person dealing with Thermotec to make further enquiries.
- 7.3 If the Client requests Thermotec to leave Goods outside Thermotec’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.
- 7.4 Where Thermotec gives advice, recommendations, information, assistance or service to the Client or the Client’s agent, regarding the Goods or Services then it is given in good faith and Thermotec shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same.
- 8. Accuracy of Clients Plans and Measurements for Orders**
- 8.1 Thermotec shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Thermotec accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, it is the Client’s responsibility to verify the accuracy of the measurements and quantities, before the Client or Thermotec places an order based on these measurements and quantities. Thermotec accepts no responsibility for any loss, damages, or costs however resulting from the Client’s failure to comply with this clause.
- 9. Title**
- 9.1 Thermotec and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Thermotec all amounts owing to Thermotec; and
  - (b) the Client has met all of its other obligations to Thermotec.
- 9.2 Receipt by Thermotec 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.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Thermotec on request.
  - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for Thermotec and must pay to Thermotec 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

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the Client must hold the proceeds of any such act on trust for Thermotec and must pay or deliver the proceeds to Thermotec 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 Thermotec and must sell, dispose of or return the resulting product to Thermotec as it so directs.
- (e) the Client irrevocably authorises Thermotec to enter any premises where Thermotec believes the Goods are kept and recover possession of the Goods.
- (f) Thermotec 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 Thermotec.
- (h) Thermotec may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**10. Personal Property Securities Act 2009 (“PPSA”)**

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 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 Thermotec to the Client.
- 10.3 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 Thermotec 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 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Thermotec 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 Thermotec;
  - (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 Thermotec;
  - (e) immediately advise Thermotec 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.
- 10.4 Thermotec 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Thermotec, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Thermotec under clauses 10.3 to 10.5.
- 10.9 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.

**11. Security and Charge**

- 11.1 In consideration of Thermotec 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).
- 11.2 The Client indemnifies Thermotec from and against all Thermotec's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Thermotec's rights under this clause.
- 11.3 The Client irrevocably appoints Thermotec and each director of Thermotec as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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

- 12.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Thermotec in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The

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- 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 Thermotec to inspect the Goods.
- 12.2 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**).
- 12.3 Thermotec acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Thermotec makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Thermotec's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Thermotec's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Thermotec is required to replace the Goods under this clause or the CCA, but is unable to do so, Thermotec may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Thermotec'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 Thermotec at Thermotec's sole discretion;
  - (b) limited to any warranty to which Thermotec is entitled, if Thermotec did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) Thermotec 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Thermotec 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 Thermotec;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if Thermotec is required by a law to accept a return then Thermotec will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 Where Thermotec has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Thermotec.
- 13.2 The Client warrants that all designs, specifications or instructions given to Thermotec will not cause Thermotec to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Thermotec against any action taken by a third party against Thermotec in respect of any such infringement.
- 13.3 The Client agrees that Thermotec may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Thermotec has created for the Client.
- 14. Default and Consequences of Default**
- 14.1 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 Thermotec's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes Thermotec any money the Client shall indemnify Thermotec from and against all costs and disbursements incurred by Thermotec in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Thermotec's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies Thermotec may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Thermotec may suspend or terminate the supply of Goods to the Client. Thermotec will not be liable to the Client for any loss or damage the Client suffers because Thermotec has exercised its rights under this clause.

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- 14.4 Without prejudice to Thermotec's other remedies at law Thermotec shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Thermotec shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Thermotec becomes overdue, or in Thermotec'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.

**15. Compliance with Laws**

- 15.1 The Client and Thermotec shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 15.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 15.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

**16. Dispute Resolution**

- 16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**17. Cancellation**

- 17.1 Thermotec 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 Thermotec shall repay to the Client any money paid by the Client for the Goods. Thermotec shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 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 Thermotec as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**18. Privacy Act 1988**

- 18.1 The Client agrees for Thermotec to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Thermotec.
- 18.2 The Client agrees that Thermotec may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 18.3 The Client consents to Thermotec being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 18.4 The Client agrees that personal credit information provided may be used and retained by Thermotec for the following purposes (and for other purposes as shall be agreed between the Client and Thermotec or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by Thermotec, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or

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- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 18.5 Thermotec may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 18.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that Thermotec is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of Thermotec, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by Thermotec has been paid or otherwise discharged.
- 19. General**
- 19.1 The failure by Thermotec to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Thermotec'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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which Thermotec has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Subject to clause 12 Thermotec 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 Thermotec of these terms and conditions (alternatively Thermotec's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4 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 Thermotec nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 Thermotec may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that Thermotec may amend these terms and conditions at any time. If Thermotec makes a change to these terms and conditions, then that change will take effect from the date on which Thermotec notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Thermotec to provide Goods to the Client.
- 19.7 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.
- 19.8 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.