



HARTNELL COOLHEAT LTD

TERMS AND CONDITIONS OF SALE AND CREDIT COMMERCIAL

1 *General*

- 1.1 The acceptance of Hartnell Coolheat Limited's quote or tender price includes the acceptance of the following terms and conditions.
- 1.2 **Definitions.**
- 1.3 **PPSA** means the Personal Property Securities Act 1999.
- 1.4 The terms **collateral, debtor, financing statement, financing change statement, inventory, proceeds, and security interest** have the meanings as defined in the **PPSA**. Purchase Money Security interest (**PMSI**) has the meaning defined in Section 16 of the **PPSA**.
- 1.5 **Hartnell Coolheat** means Hartnell Coolheat Limited, Hartnell Coolheat North Canterbury Limited and Hartnell Coolheat Sheetmetals Limited.
- 1.6 **Goods** means all **goods** supplied from time to time by **Hartnell Coolheat** and includes all **proceeds** of such **goods provided that:**
- 1.6.1 Where the **goods** supplied are the client's **inventory** then all references to **goods** shall in respect of those **goods** be read as references to **inventory**; and
- 1.6.2 Where the **goods** supplied are not **inventory** then all references to **goods** shall in respect of those **goods**, mean heat pumps, air conditioning units, ventilation and refrigeration products, all heating and cooling systems of whatsoever nature and air filtration and circulation systems of whatsoever nature together with all items of a kind.
- 1.6.3 **Client** means the client to whom the **goods** are supplied pursuant to the quotation/tender provided by Hartnell Coolheat. Where the client is a company it means the registered name of the company. Where the client is a sole trader it means the full name of the sole trader. Where the

client is a partnership it means both the partnership name and each partner of the partnership.

2 *Prices*

- 2.1 Prices quoted are based upon costs current at the date of quotation but are subject to increase between the date of quotation and date of installation of the **goods**. **Hartnell Coolheat** may withdraw any quotation before it is accepted and in any event, any quotation will lapse without notice 30 days after it is given. Any quoted price may be altered prior to delivery of the **goods** and completion of the work. All prices quoted are exclusive of GST and any other duties and taxes will be payable as an additional amount on all prices and charges.
- 2.2 Unless otherwise agreed in writing, all freight and delivery charges will be additional to the price quoted.

3 *Terms of Payment*

- 3.1 Unless otherwise agreed in writing, payment for **goods** must be made no later than the twentieth day of the month following issue of invoice. Payment will be accepted by cash, company cheque, personal cheque, bank cheque, direct credit or credit card.
- 3.2 Where other payment terms are agreed, payment must be made in accordance with those terms.
- 3.3 Any deposit requested by **Hartnell Coolheat** shall be payable upon acceptance of the quotation.
- 3.4 Where progress claims are required payment must be made within thirty (30) days from the date of invoice.
- 3.5 Should payment in full not be made on the due date, then without prejudice to any other remedies available to **Hartnell Coolheat** it may:
- 3.5.1 cancel or withhold the supply of further **goods**;
- 3.5.2 charge and recover interest charged on a daily basis at a rate of 2% per month during the period of default up until the date of payment; and
- 3.5.3 the client shall be responsible for all costs (including costs on a solicitor/client basis) and debt collection charges incurred by **Hartnell Coolheat** in recovering all outstanding amounts.

4 *Dimensions of Other Descriptive Details*

- 4.1 Photographs, illustrations, weights, dimensions and any other particulars given in or accompanying quotation or descriptive literature, represent generally the **goods** offered but are subject to alteration

without notice by the manufacturer and **Hartnell Coolheat** shall not be bound as to the details thereof.

5 *Warranties*

- 5.1 **Hartnell Coolheat** warrants the **goods** are supplied free of defects in materials or workmanship under normal usage. In the event of defect in materials or workmanship **Hartnell Coolheat** will repair or exchange any defective part provided that the defect is brought to the attention of **Hartnell Coolheat** within one (1) year from the date of sale of the **goods** and **Hartnell Coolheat** is reasonably satisfied the defect is caused by fault in the materials or manufacturing workmanship. This warranty is exclusive to the client and is not transferable.
- 5.2 Where possible extended manufacturing warranties will be passed on to the client but **Hartnell Coolheat** will not liable if such warranty is not passed on.
- 5.3 **Hartnell Coolheat** shall not be liable for any consequential or special damages under any circumstances whatsoever.
- 5.4 All quoted performance figures are based upon previous experience and reasonable expectation of ordinary usage. Any units not reasonably performing to those quoted standards will be replaced, if replaced **Hartnell Coolheat** will have no further liability to the client.

6 *Credit*

- 6.1 There is no obligation for **Hartnell Coolheat** to continue to provide credit and it may at any time withdraw the credit facility granted and require immediate payment of the total amount due and outstanding by the client including the purchase price of the **goods**, and all interest and expenses.

7 *Insurance*

- 7.1 The **goods** become the responsibility of the purchaser upon delivery to the purchaser and all risk (including loss, damage or deterioration) passes to the purchaser. **Hartnell Coolheat** is not required to insure the **goods** from delivery.

8 *Delivery and non-availability*

- 8.1 Any delivery dates quoted by **Hartnell Coolheat** are estimates only. **Hartnell Coolheat** will use reasonable endeavours to see that deliveries are made according to schedule but shall not be responsible for delivery delays due to causes beyond **Hartnell Coolheat** 's control and the client agrees to accept delivery as soon as the **goods** are able to be delivered.
- 8.2 All **goods** ordered by the client are subject to such **goods** being available for delivery and **Hartnell Coolheat** accepts no responsibility

for non-availability of **goods** and shall not be liable for any act of God or force majeure event, including, but not limited to, industrial disputes, war or delays or defaults of manufacturers, which delays or frustrates the performance of this agreement.

9 ***Consumer Guarantees Act 1993 (CGA)***

9.1 If the CGA applies, the terms and conditions shall be read subject to the client's rights under the CGA, provided that where the client is acquiring **goods** for business purposes, the CGA shall not apply. Where the client on supplies **goods** purchased from **Hartnell Coolheat** to persons for business purposes, the client shall in contracting with those persons provide that the CGA shall not apply to the extent permitted by law. The client indemnifies **Hartnell Coolheat** in respect of any failure to comply with this provision.

10 ***Cancellation or Return of Goods***

10.1 **Hartnell Coolheat** will accept the return of **goods** or cancellation of a contract for credit **provided that** the **goods** are returned within fourteen (14) days of sale and are in the same condition as at time of despatch. A ten (10) per cent handling fee on all returned **goods** will be charged.

10.2 Custom made **goods** will be subject to a cancellation fee based upon expenses sustained as a result of design, overhead and production labour hours and materials costs incurred up until the date of cancellation.

11 ***Personal Property Securities Act 1999 (PPSA)***

11.1 To secure payment of all amounts owing by the client to **Hartnell Coolheat** from time to time, the client as **debtor** grants a **security interest** in all goods owned by the client including all goods purchased from **Hartnell Coolheat** previously supplied by **Hartnell Coolheat** to the client and all present and after acquired goods owned by the client including goods supplied by **Hartnell Coolheat** to the client. The client agrees that the **goods** are **collateral** securing payment of all outstanding indebtedness owing by the client to **Hartnell Coolheat**.

11.2 The client acknowledges and agrees that the **security interest** given to **Hartnell Coolheat** includes a **security interest** in all **proceeds** of **collateral**.

11.3 The client acknowledges and agrees that the **security interest** in respect of goods purchased given to **Hartnell Coolheat** is a **PMSI**.

11.4 The client agrees to waive its right to receive a verification statement in respect of any **financing statement** or **financing change statement** relating to the **security interest** and that the client contracts out of sections 114(1)(a), 117(1)(c), 133, or 134 of the **PPSA**. The rights of a **debtor** in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and

132 of the **PPSA** do not apply to the **security interest** given by the client to **Hartnell Coolheat**.

- 11.5 The client agrees to provide any information or sign any document required under the **PPSA** and the regulations under the **PPSA** to enable **Hartnell Coolheat** to register a **financing statement** or a **financing change statement**.

12 *Spreading of Payments*

- 12.1 **Hartnell Coolheat** may allocate any money received in payment for **goods** supplied towards debts, charges and expenses owing in any priority it determines so that payments can be applied in partial payment of all or any outstanding invoices to maintain a **PMSI** in the **goods**.

13 *Installation Charges*

- 13.1 Installation will be performed during normal business hours, any work performed outside normal business hours will be subject to extra payment at additional overtime rates.
- 13.2 **Hartnell Coolheat** shall not be charged any penalty whatsoever as a result of late completion of the contract caused by delay by a Head Contractor and nothing said to the contrary of this provision shall be binding on **Hartnell Coolheat**.

14 *Ownership*

- 14.1 Property in **goods** sold by **Hartnell Coolheat** shall not pass until the client has made payment in full of the purchase price for those **goods** to **Hartnell Coolheat**. Until such payment is made the client will hold the **goods** as bailee for **Hartnell Coolheat** and **Hartnell Coolheat** shall have the right to enter the premises occupied by the client and take possession of any of those **goods** at any time after payment is due.
- 14.2 If the **goods** or any of them are resold before payment is made, the client shall hold the sale **proceeds** for and on trust for **Hartnell Coolheat**. The **proceeds** of any such sale will reduce the debt to **Hartnell Coolheat** and **Hartnell Coolheat** may take such legal remedies as are available to it to recover any balance outstanding. The client agrees that any collection costs incurred by **Hartnell Coolheat** in collection of all or any part of any overdue debt on this account will be payable by it.

15 *Privacy Act*

- 15.1 The client expressly authorises **Hartnell Coolheat** to make any enquiries it considers necessary for confirmation of any information set out on this application. The client understands that it has rights under the Privacy Act 1993 to access and correct any information held by **Hartnell Coolheat** about the client.

16 ***Authority***

- 16.1 The persons signing the application confirm(s) having the authority to make and sign this application on behalf of the client.

17 ***Dispute Resolution***

- 17.1 The parties will endeavour to resolve any dispute arising under this contract reasonably and fairly and if agreement can not be reached the dispute shall be referred to a mediator in first instance and if a mediation is unsuccessful then the dispute shall be submitted to arbitration within the meaning of the Arbitration Act 1996 and adjudged by an arbitrator appointed by the Canterbury Manufacturers Association

18 ***Terms of Contract***

- 18.1 Any **goods** supplied by **Hartnell Coolheat** shall be subject to these terms unless agreed otherwise in writing. The client's acceptance of **goods** from **Hartnell Coolheat** is deemed to be an acceptance of these terms notwithstanding anything that may be stated to the contrary in or contained in the client's purchase order and whether the client has signed these conditions or not.
- 18.2 Waivers of or changes to these terms are effective only if made in writing and signed on **Hartnell Coolheat's** behalf. **Hartnell Coolheat** reserves the right to modify these terms at any time.

19 ***Agreement to Mortgage***

- 19.1 The client will at anytime before repayment of the debt, if required by Hartnell Coolheat, execute in favour of Hartnell Coolheat a registrable memorandum of mortgage in terms of the current Auckland District Law Society mortgage (all obligations) of the land upon which the goods supplied by Hartnell Coolheat have been installed or any other land owned by the client.

The client charges the land with repayment of the debt and authorise Hartnell Coolheat to register and maintain a caveat against the title to the said land to protect this agreement.