

## TERMS AND CONDITIONS

1. The following terms shall be incorporated into every contract between Ignite Heat Pumps Limited ("Ignite Heat Pumps") and the customer for the supply by Ignite Heat Pumps of goods or services unless specifically excluded in writing and annexed hereto. No variation of these terms will be binding upon Ignite Heat Pumps unless made in writing. In the event of inconsistency between these terms or any quotation or other agreement entered into between Ignite Heat Pumps and the customer, then these terms shall take precedence at all times.

### 2. DEFINITIONS

"**Ignite Heat Pumps**" means Ignite Heat Pumps Limited or any agents, divisions, subsidiaries or employees.

"**Customer**" means the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods and/or services from Ignite Heat Pumps.

"**Defect**" means a fault or flaw in the workmanship or materials provided by Ignite Heat Pumps that consists of:

- Workmanship that has not been carried out in a competent manner and with reasonable skill and care.
- A significant, adverse and unauthorised departure from what was prescribed by the drawings and specifications.
- In matters not specifically prescribed by the drawings and specifications, a material and unauthorised departure from manufacturer's tolerances (if manufacturer's tolerances are not available, then current tolerance schedules published by the Ministry of Business Innovation and Employment will apply, and if they are not available then current tolerance schedules published by New Zealand Standards will apply).

"**Goods**" mean all goods, chattels or services, provided by Ignite Heat Pumps to the customer, and shall include without limitation the supply of electrical and refrigeration equipment, fixtures and fittings.

"**Latent Condition**" means any physical condition on or below or within the site, or the area surrounding the site, which differs materially from the physical conditions which could reasonably have been expected by Ignite Heat Pumps at the time the Contract was entered into.

"**Substantial Completion**" means when the Works or a stage of the Works is 95% complete.

"**Works**" means the work that Ignite Heat Pumps is to carry out in accordance with its quotation or any agreed contract documents, including variations and any design work carried out by Ignite Heat Pumps.

### 3. IGNITE HEAT PUMP WARRANTIES

3.1 Ignite Heat Pumps warrants that the Works it is responsible for will be carried out:

- A. In a proper and competent manner;
- B. With reasonable care and skill;
- C. In accordance with any building consents;
- D. Using materials that are fit for purpose; e. Using materials that are new (unless agreed otherwise); and
- E. In accordance with all applicable laws and legal requirements.

### 4. VARIATIONS

4.1 The customer may order any variation to the Works that:

- A. Increases or decreases the scope of the Works;
- B. Omits any work; or
- C. Changes the nature, position, location, or quality of any work or materials.

4.2 Ignite Heat Pumps may claim a variation to any Latent Condition for any increase in the works due.

4.3 The customer shall not, without the consent of Ignite Heat Pumps remove work from the Works to have that work carried out by another contractor or the customer.

4.4 The parties written agreement to vary the Works must:

- A. state the scope of work the subject of the variation;
- B. state the price of the Variation or how the price of the variation is to be calculated; and
- C. be approved by the Customer and Ignite Heat Pumps.

4.5 The contract sum or quotation price is to be adjusted by the price of a variation and the adjustment is to be included by Ignite Heat Pumps in its next payment claim.

4.6 Wherever practicable, the value of any variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the variation or Ignite Heat Pumps entitlement to be paid the reasonable value of the variation.

### 5. PAYMENT

5.1 Ignite Heat Pumps may serve on the customer a payment claim by email or post in respect of:

- A. a deposit; and/or
- B. in respect of any costs and expenses incurred by Ignite Heat Pumps in making an application for, and/or uplifting any consents in relation to the Works, including but not limited to the costs of obtaining such approvals and professional advice, reports, plans, and drawings as may be necessary in the circumstances and all fees, expenses and levies charged by the building consent authority together with Ignite Heat Pumps associated administration and processing costs; and/or
- C. on substantial completion of the Works; or
- D. on substantial completion of any stages of the Works, if the Work has been separated into stages; or
- E. by way of progress claims during each monthly period commencing on the day of the month in which the Works were first carried out and ending on the last day of that month, and each month after that first period.

5.2 **A 50% deposit is required prior to Ignite Heat Pumps booking an installation. The remaining balance is payable within 14 days of the completion of the installation.**

5.3 Deposit is non-refundable if scope work does not commence.

### 6. DEFAULT

6.1 If the customer does not make payment on the Due Date, the customer shall be liable to pay:

- default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
- any legal costs on a solicitor/client basis that Ignite Heat Pumps incurs incidental to the enforcement or attempted enforcement of its rights, remedies and powers under these Terms and Conditions.

6.2 If at any time Ignite Heat Pumps agrees that any outstanding account may be paid off over time, it is strictly on the basis that should any payment be missed, then the full balance owing as at the date that payment is missed becomes due and owing immediately and Ignite Heat Pumps may pursue the customer for the full outstanding amount notwithstanding the agreement for time payment.

6.3 Any amount claimed by Ignite Heat Pumps for Goods whether such Goods are invoiced/claimed separately or within a payment claim for both goods and services must be paid in full without set-off or deduction.

6.4 If the customer fails to pay any amount owing on the Due Date and any such default continues for five (5) calendar days then:

- A. Ignite Heat Pumps shall be entitled to immediately suspend the Works without notice and such suspension shall be on the same basis as if it were a suspension under s24A(2) and (3) of the Construction Contracts Act 2002; and/or
- B. Ignite Heat Pumps may by written notice to the customer, cancel this contract and any rights exercised by Ignite Heat Pumps pursuant to this clause shall not terminate the customer's liabilities under the contract, or to pay damages for any breach of it.

### 7. COLLECTION AND USE OF INFORMATION

7.1 The customer authorises Ignite Heat Pumps to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Ignite Heat Pumps to any other party.

7.2 The customer authorises Ignite Heat Pumps to disclose any information obtained to any person for the purposes set out in clause.

7.3 Where the customer is a natural person the authorities under clauses 7.1 and 7.2 are authorities or consents for the purposes of the Privacy Act 1993.



7.4 Where the customer is a company and a director has signed on behalf of the company, that director hereby authorises Ignite Heat Pumps for the purposes of the Privacy Act 1993, to undertake credit checks of the director for the purposes of assessing the customer's creditworthiness or enforced any rights under this contract.

## 8. QUOTATION PRICE

8.1 Where a quotation is given by Ignite Heat Pumps for goods and services:

- A. The quotation shall be valid for thirty (30) days from the date of issue.
- B. Ignite Heat Pumps reserves the right to alter the quotation where the quotation has been submitted based on plans or has been based upon work in an area of a building that cannot be viewed until the work is undertaken, or a Latent Condition exists or circumstances exist beyond the control of Ignite Heat Pumps dictate the quotation may be reviewed and altered at Ignite Heat Pumps discretion. Notwithstanding that any quotation has stated that it is a quotation in the circumstances set out in this clause 9b, it shall be read as an estimate only.

## 9. RETURN OF GOODS

9.1 The customer may not return or refuse delivery of any Goods purchased from Ignite Heat Pumps unless agreed to in writing by Ignite Heat Pumps.

## 10. TITLE

10.1 Title in the goods passes to the customer when the customer has made payment in full without deduction for all Goods supplied by Ignite Heat Pumps. 10.2 The customer gives irrevocable authority to Ignite Heat Pumps to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Ignite Heat Pumps shall not be liable for costs, damages for expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

10.3 Under no circumstances may Goods be returned other than as defective and authority for return will not be given for the following - shop soiled or where the Goods have been used and the customer has damaged them.

## 11. DEFECTS LIABILITY PERIOD

11.1 The customer must notify Ignite Heat Pumps of any Defect in writing as soon as reasonably possible after the Defect becomes apparent.

11.2 Ignite Heat Pumps must, at its own cost, rectify any part of the Works that is agreed by both parties to be faulty or defective and the responsibility of Ignite Heat Pumps, and remove and replace any materials not in accordance with its quotation or any contract documentation as directed in writing by the customer for a period of 12 months from the date of Substantial Completion of the Works. 11.3 The customer shall give Ignite Heat Pumps all necessary and reasonable access to enable Ignite Heat Pumps to remedy any Defect and/or replace any materials during the 12 month period from the date of Practical Completion.

11.4 These defect provisions do not mitigate or absolve the customer's responsibility for maintenance.

## 12. LIMITATION OF LIABILITY

12.1 In respect of the supply of Goods, Ignite Heat Pumps liability under these Terms and Conditions or any contract collateral hereto is limited to replacing (or at the election of Ignite Heat Pumps repairing) any defective goods to the entire exclusion of any other remedy which, but for this clause, the customer might have and Ignite Heat Pumps shall be under no liability for any damage, injury direct or consequential or other loss, or loss of profits of costs, charges and expenses other person other than to repair or replace as mentioned above. Ignite Heat Pumps shall not be liable to the customer if for any reason beyond Ignite Heat Pumps control is not able to deliver or supply any of the Goods.

12.2 In respect of the supply of services, the Customer acknowledges that:

- A. Ignite Heat Pumps will not be liable to the Customer for any claim for alternative accommodation, disruption, inconvenience, removal/storage of furniture, loss of opportunity, revenue, profit or anticipated profit whether arising in contract, negligence or otherwise and
- B. Save for any obligations under any applicable health and safety legislation which cannot be contracted out of, Ignite Heat Pumps liability for any direct losses or any other losses not included in this clause shall be limited to

the amount of Ignite Heat Pumps contract sum or quotation value for the Works and as adjusted by any variations.

## 13. PPSA

13.1 The customer acknowledges that it grants a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in all present and after acquired property as security for its obligations to Ignite Heat Pumps. The customer must do all things including executing all documents that Ignite Heat Pumps requires to provide Ignite Heat Pumps with a first ranking security interest in the goods.

13.2 The customer waives the right to receive a copy of the verification stated under the PPSA and agrees it will have none of the rights under ss114(1Xa), 116, 117(1Xc), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where Ignite Heat Pumps has rights in addition to those in Parts 9 of the PPSA, the buyer agrees that those rights shall continue to apply and in particular will not be limited by s109 of the PPSA.

13.3 The customer agrees to indemnify Ignite Heat Pumps for any costs Ignite Heat Pumps incurs in registering, maintaining and for enforcing the security interest created by these terms including actual legal costs on a solicitor/client basis.

13.4 The customer must immediately notify Ignite Heat Pumps if it changes its name, registered office or place of business.

## 14. CONSUMER GUARANTEES ACT

14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Ignite Heat Pumps for the purposes of a business in terms of section 2 and 43 of that Act.

## 15. CAVEAT

15.1 For better securing the obligations of the customer to Ignite Heat Pumps, the customer agrees that it will upon demand execute in favour of Ignite Heat Pumps a good and registrable mortgage over any property held now by the customer either alone or jointly with any one or acquired by the customer at anytime hereafter. If the customer defaults in payment of any amount owed to Ignite Heat Pumps, the customer specifically authorises Ignite Heat Pumps to lodge a caveat against any such property to further secure this agreement to mortgage and the customer appoints Ignite Heat Pumps to be the customer's attorney for the purposes of signing a caveat, and or mortgage charge on the property to protect Ignite Heat Pumps interests.

## 16. MISCELLANEOUS

16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Ignite Heat Pumps.

16.2 Ignite Heat Pumps shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

16.3 Failure by Ignite Heat Pumps to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of the rights or obligations Ignite Heat Pumps has under this contract.

16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by the contract.

16.5 Where the terms of this contract are at variance with the order or instruction from the customer this contract shall prevail.

16.6 If any provision of this contract shall be invalid void or legal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.7 Unless otherwise agreed in writing, Ignite Heat Pumps is not responsible for obtaining a Code Compliance Certificate and Ignite Heat Pumps is entitled to issue its final payment claim for payment irrespective of whether a Code of Compliance Certificate has or has not been issued.

