

## TERMS & CONDITIONS OF TRADE

### 1. Introduction

- 1.1 These terms and conditions govern the sale of goods ("Goods") and the provision of services including installation services ("Services") provided by Aquaheat New Zealand Limited and any other company within the Horizon Energy Group<sup>1</sup> ("Supplier") to the person/company receiving the goods or services ("Customer") unless the Supplier has agreed to other terms by way of a construction, maintenance or services contract or agreement ("Other Agreement").
- 1.2 If there is an Other Agreement or any specific terms relating to these Goods or Services (Supplemental Terms), the terms of the Other Agreement or Supplemental Terms will take precedence and priority in the event of any conflict in the terms.
- 1.3 Where the Supplier and the Customer are subject to a Use-of-System Agreement (available at <http://www.horizonnetworks.nz/information-disclosure-regulation>) or the terms of the Electricity Industry Participation Code 2010 ("Code"), in the event of any inconsistency between these Terms or any Supplemental Terms and the Use-of-System Agreement or the Code (as applicable), the Use-of-System Agreement or the Code (as applicable) shall prevail in respect of any activity regulated by the Use-of-System Agreement or the Code. Otherwise these Terms shall apply.
- 1.4 By placing an order or requesting Services, the Customer agrees to be bound by these terms and conditions unless the parties agree to an Other Agreement. All orders for Goods and Services are subject to acceptance by the Supplier and the Supplier reserves the right to refuse any order or request for Services for any reason.
- 1.5 Nothing in these Terms affects any rights that the Customer may have as a "consumer" under the Fair Trading Act 1986 ("FTA") and the Consumer Guarantees Act 1993 ("CGA"). A Customer will not be a "consumer" if the Customer acquires the Goods and/or Services, or holds itself out as acquiring the Goods and/or Services, in trade.

### 2. Pricing and Payment

- 2.1 Unless otherwise stated in the Supplemental Terms, the prices that apply to the supply of any Goods and/or Services will be those applying at the date of delivery and shall exclude GST (and any other taxed and duties assessed or levied in connection with the supply of Goods or Services).
- 2.2 Payment must be made in full by the 20th day of the month in which the invoice is dated without any form of deduction, counterclaim or set off.
- 2.3 If the Customer disputes any or all of an amount contained in an invoice, it will:
  - a) Immediately notify the Supplier of the dispute and provide reasons for the dispute;
  - b) Pay the undisputed portion of the invoice by the due date specified in the invoice; and
  - c) Negotiate in good faith to resolve the dispute in accordance with clause 12.
- 2.4 If payment is not made by the due date the Supplier may, without prejudice to its other rights and remedies (including, but not limited to suspending or cancelling further deliveries of Goods or Services), charge default interest (compounding monthly) on the unpaid amount at a rate equal to one and a half times the monthly small to medium-sized enterprise (SME) overdraft rate published by the Reserve Bank of New Zealand over the relevant period or deduct or withhold any amount (whether by way of counterclaim, set-off or otherwise) from any money owing by the Supplier to the Customer on any account whatsoever.
- 2.5 In the case of export sales, payment shall be made in advance by a letter of credit (unless otherwise agreed) through a first class bank and be irrevocable, confirmed and otherwise in a form satisfactory to the Supplier.
- 2.6 If the Supplier's considers in its sole discretion, at any time, that the Customer's credit rating is or has become unsatisfactory, the Supplier may require security for payment or payment in advance and may suspend performance of the Supplier's obligations until the provision of sufficient security. All reasonable costs and expenses of or incurred by the Supplier as a result of such suspension and any recommencement shall be payable by the Customer upon

<sup>1</sup> Companies or legal entities included within the Horizon Energy Group are Aquaheat New Zealand Limited (including AquaFire and Colt), Aquaheat Facility Services Limited (including Hamilton Plumbing, McAra, and CH Faults), Aquaheat South Pacific Limited, CoolLogic Refrigeration Limited, Caldwell and Levesque Limited, ElectriServ, ElectriNet, and Horizon Networks.

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- 2.7 If the Customer's act or omission delays delivery or performance beyond 30 days, the Supplier may adjust pricing to reflect increased costs of supply (including materials, freight, currency) on evidence of actual increases.
- 2.8 The Supplier shall be entitled to payment for increases in the Price for price fluctuations, increases, taxes and surcharges on consumables, fuels and goods and materials arising directly or indirectly from geopolitical events including wars and natural disasters, trade restrictions, supply chain disruptions and related causes.

### **3. Delivery of Goods**

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- 3.1 If the stated price of any Goods includes the costs of delivery to an agreed delivery point, the delivery of the Goods will be by the Supplier's usual methods of transportation, between the hours of 7.30am and 5pm Monday to Friday (excluding statutory holidays). If the Customer requests Goods to be delivered by other means or at other times, the Supplier shall be entitled to charge the Customer for all additional costs that the Supplier may reasonably incur.
- 3.2 While the Supplier will use reasonable endeavours to have the Goods delivered on the agreed delivery dates (if any), the time for delivery or installation of the Goods shall be approximate only and time shall not be deemed to be of the essence. The Customer agrees to accept the Goods if they are delivered within a reasonable time after any specified time for delivery.
- 3.3 The Supplier may make partial deliveries and issue interim invoices. Each delivery is a separate supply and may be invoiced separately.
- 3.4 Notwithstanding any obligation for the Supplier to carry out any installation work, delivery will be deemed to have been made, and risk with respect to the Goods shall pass to the Customer, when the Goods arrive at the delivery point or are collected from the Suppliers premises by the Customer or its agent.
- 3.5 All claims for errors in delivery, or for Goods damaged in transit only when a delivery point has been agreed, must be made in writing within five working days of delivery or Goods being collected by the Customer. Unless a written rejection specifying the non-conformity is received within 5 Working Days of delivery (or collection), the Goods are deemed accepted.
- 3.6 In the case of export sales, delivery on a sale F.O.B., C.I.F., or C.&F. shall, unless otherwise stated, be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for dispatch or leave the Supplier's custody for shipment to the Customer. Delivery may be affected at our election by one or more shipments.
- 3.7 If the manufacture, supply or delivery of any Goods and/or Services, or where these Terms provide for the installation of the Goods, the installation or any commissioning or testing of the Goods, is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Customer, the Supplier may, without prejudice to our other rights and remedies, require payment by the Customer of such portion of the price payable to the extent to which the Supplier would have performed its obligations up to the date such payment is required together with any expenses or additional costs incurred as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may without prejudice to its other remedies, terminate the supply or delivery of the Goods and/or Services.

### **4. Installation Services**

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- 4.1 The Supplier will perform the installation services at the location specified by the Customer at the time agreed upon between the parties. Time is not of the essence unless expressly stated.
- 4.2 The Customer is responsible for ensuring that the installation site is ready and complies with all applicable laws and regulations. The Customer must ensure safe access, availability of power, lighting, network and services, the area is clean, level and structurally ready and all consents, third party approvals are in place.
- 4.3 The Supplier reserves the right to refuse to perform installation services if the site is not ready or if performing the services would be unsafe and such suspension does not waive any right to payment for works done or costs incurred.
- 4.4 If the Site is not ready, unsafe or access is denied, the Supplier may suspend works, charge stand down/attendance fees and recover all additional costs including travel, accommodation, subcontractor and equipment costs.

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## 5. Risk and Title

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- 5.1 The Supplier shall retain the legal and equitable title to any Goods supplied to the Customer until full payment is made. Notwithstanding that ownership of any Goods remains with the Supplier, all risk of any loss, damage or deterioration in relation to any Goods supplied shall pass to the Customer on delivery.
- 5.2 Until title passes, the Customer must store Goods separately and clearly identified as the Supplier's property, keep Goods insured for full replacement value, and not encumber or dispose of Goods except in the ordinary course of business.
- 5.3 If any Goods are damaged or destroyed following delivery but prior to the legal and equitable title passing to the Customer, the Supplier shall be entitled, without prejudice to any of its other rights or remedies, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such goods has become payable) and these Terms shall be sufficient evidence of its right to receive payment of such insurance proceeds without the need for further enquiry by any person.
- 5.4 The Customer grants the Supplier a Security Interest, under the Personal Property Securities Act 1999 ("PPSA"), in all goods and/or materials supplied to the Customer and agrees to do all things required to enable registration of a financing statement and to keep the Goods properly insured and stored separately.
- 5.5 The Customer irrevocably grants to the Supplier the right to enter upon the Customer property or premises, without notice, and without being in any way liable to the Customer or to any third party, to exercise any of its rights under section 109 of the PPSA, and the Customer shall indemnify us from any claims made by any third party as a result of such exercise.
- 5.6 The Customer agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these terms and conditions, or the security interest under these terms and conditions.

## 6. Health and Safety

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- 6.1 Each party will comply with the Health and Safety at Work Act 2015 and all reasonably applicable site rules. When the Supplier is on a Customer site, the Customer will:
  - (a) identify hazards and provide an up-to-date hazard/risk register;
  - (b) ensure safe access and suitable working conditions; and
  - (c) coordinate overlapping duties as PCBUs where relevant.
- 6.2 If the Supplier considers the site unsafe or non-compliant, it may suspend work and recover reasonable costs of delay. Work will resume once the site is made safe.

## 7. Warranties

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- 7.1 Subject to these Terms, the Supplier warrants that for 12 months from delivery (or 3 months for consumables, spare parts and finishes), the Goods will be free from material defects in either workmanship or materials and will conform in all material respects to the Supplier's written specification provided prior to the supply or work commencing.
- 7.2 This warranty does not cover defects caused by: misuse, improper storage, installation or maintenance by others, normal wear and tear, unauthorised modification or repair, surge or environmental damage, or use contrary to specifications.
- 7.3 The Customer must notify defects in writing within a reasonable time and in any event within the warranty period, provide proof of purchase, access, and (if required) return the Goods at the Customer's cost. If the claim is accepted, the Supplier will reimburse reasonable return freight.
- 7.4 Third-party manufacturer warranties will be passed through to the extent permitted and may provide different remedies or durations.
- 7.5 The Customer's sole remedies are as set out in the Limitation of Liability section.

## 8. Credit Reporting and Privacy

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- 8.1 The Customer agrees that the Supplier may conduct a credit check on the Customer and obtain credit reports from credit reporting agencies for the purposes of assessing the Customer creditworthiness.

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- 8.2 The Supplier may disclose the Customer's personal information to credit reporting agencies and debt collection agencies in accordance with its Privacy Policy that is available on the Supplier's website and outlines how the Supplier collect, use, and disclose Customer personal information.

## 9. Confidentiality

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- 9.1 Both parties agree to keep confidential all information disclosed by the other party in connection with these terms and conditions, except where such disclosure is required by law or with the prior written consent of the other party.

## 10. Intellectual Property

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- 10.1 All intellectual property in any Goods and/or Services created or developed by the Supplier shall remain the sole property of the Supplier and the Supplier grants the Customer a non-exclusive, non-transferable license to use the intellectual property solely for the purpose of fulfilling the terms of this agreement.
- 10.2 If any Goods are to be supplied to the Customer's design, the Customer warrants that the manufacture and supply of such goods the Supplier will not infringe any patent, copyright, registered design or other rights of any other person and the Customer agree to indemnify the Supplier against any liability incurred including any costs and expenses in the event of any claim being made that the manufacture or supply of such goods infringes any patent, copyright, registered design or other rights of any other person.
- 10.3 The Customer must not copy, decompile, disassemble, or reverse-engineer any Goods containing software or firmware. Any documentation, drawings, software or data supplied remains the Supplier's Intellectual Property and is licensed non-exclusively for the Customer's internal use with the Goods only.

## 11. Default

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- 11.1 If the Customer fail to make payment on any invoice when due (whether under contract or otherwise), is in default in the performance of the Customer obligations under these Terms or any Supplemental Terms, becomes insolvent or goes into liquidation, commits an act of bankruptcy, or makes any composition or arrangement with creditors, or has a receiver appointed then, without prejudice to any other rights the Supplier has at law or in equity, the Supplier reserves the right, and the Customer agrees that the Supplier is entitled (to the extent permitted by law):
- a) to treat all sums due or to become due from the Customer as immediately due and payable;
  - b) to immediately cancel or suspend the delivery of Goods and the provision of Services which remain unperformed;
  - c) by its agents, without prior written notice, to enter onto the Customer premises where the Goods may be installed or stored and to search for and remove and take possession of any Goods and the Supplier shall not be liable in contract, tort (including negligence) or otherwise, for any costs, losses, damages or expenses incurred by the Customer or any third party, and the Customer indemnifies the Supplier against any liability the Supplier may have to any third party (including, without limitation, legal costs on a solicitor-client basis), as a result of exercising its rights under this clause; and
  - d) to resell or dispose of any or all of the Goods noted in this clause and apply the proceeds in or towards payment of all sums due and all other moneys owing to it by the Customer in such a manner and generally on such terms and conditions as it thinks fit (subject to any requirements under law).
- 11.2 Upon termination or suspension, the Customer will promptly return or destroy the Supplier's Confidential Information, IP materials, loaned equipment and spares on request, and certify destruction if requested.

## 12. Exclusion and Limitation of Liability

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- 12.1 Except as expressly provided in these Terms, all warranties, undertakings, inducements, descriptions, conditions (including, but not limited to fitness or suitability for purpose), tolerance to any conditions, merchantability or otherwise or representations whether express, implied, statutory or otherwise relating in any way to the Goods, Services or to these Terms are, to the maximum extent permitted by law, expressly excluded.

To the fullest extent permitted by law, the Supplier shall not be liable for any indirect, incidental, special, consequential, or punitive damages, or any loss of profits, revenue, data, or use, arising out of or in connection with this agreement, whether in contract, tort (including negligence), or otherwise, even if the Supplier has been advised of the possibility of such damages.

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- 12.2 Where the Terms and/or any Supplemental Terms provide for any testing or commissioning procedure or any other acceptance procedure in respect of the Goods, no claim shall be made by the Customer if the Goods fail to comply with the requirements of these Terms at any time after the successful completion of such testing, commissioning or acceptance procedures, subject to the Supplier's warranty in respect of materially defective materials or workmanship.
- 12.3 Insofar as the Supplier may be liable, the maximum liability of Supplier, whether in contract, tort (including negligence), equity, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any breach of Supplier's obligations under these Terms relating specifically to the supply of the Goods and/or Services is, except where applicable law expressly requires otherwise, limited, at the option of Supplier,
- (a) the replacement of the Goods or the supply of equivalent Goods; or
  - (b) the repair of such Goods (at such place as the Supplier may specify and the Customer shall be responsible for shipment of the defective Goods to and from the place or places so specified); or
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired.
- 12.4 Notwithstanding the above, Supplier shall not be required to take any action:
- (a) if any attempt to repair the defective Goods and/or rectify the provisions of the Services is made by any person or persons not authorised by the Supplier to effect such repairs or rectification;
  - (b) if the defective Goods have been modified without the approval of Supplier;
  - (c) if the defective Goods have not been stored, maintained, installed, commissioned or operated in a proper manner; or
  - (d) if the Customer is in default in relation to any payment or in the performance of any obligation under these Terms.
- 12.5 The Customer indemnifies the Supplier against all claims, losses, liabilities, costs (including legal costs on a solicitor-client basis) arising from unsafe or non-compliant sites; customer instructions, specifications or designs, use, modification or integration of the Goods not in accordance with specifications; or breach of these Terms by the Customer.
- 12.6 Neither party is liable for delay or failure to perform due to events beyond its reasonable control including acts of God, extreme weather, fire, flood, epidemic or pandemic, war, civil unrest, terrorism, labour disputes, acts or omissions of government, or supply chain failure not caused by that party. The affected party must notify the other and use reasonable endeavours to mitigate the impact. If the event continues for more than 60 days, either party may terminate affected orders by written notice.

## 13. Disputes

- 13.1 The parties will use their best efforts to resolve the dispute in good faith and in accordance with this clause 13. If, after receipt of a written notice of dispute, that dispute is not resolved within 10 days the dispute will be escalated to senior management to be resolved within a further 10 days.
- 13.2 If the dispute is not resolved under clause 13.1 then, unless otherwise agreed, either party may refer the dispute to expert determination by written notice to the other party.
- 13.3 The expert will be appointed by agreement or, failing agreement within 10 days following the date of referral to expert, by the President (or his or her nominee) of the Arbitrators and Mediators Institute of New Zealand who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute. The parties shall agree the procedure for this expert referral, or failing agreement, the parties agree to the Expert determining the procedure to be followed provided that the Expert's decision is delivered no later 10 Working Days after receipt of the parties written submissions.
- 13.4 The Expert's fees will be at the parties' cost, and the Expert will determine the proportion of those fees that each party will be required to pay, having regard to (amongst other things) the conduct of the parties.
- 13.5 Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand Court.

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**14. Governing Law**

14.1 These terms and conditions are governed by the laws of New Zealand.

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**15. Changes to Terms and Conditions**

- 15.1 The Supplier reserves the right to change these terms and conditions at any time. Any changes will be effective immediately upon posting on its website.
- 15.2 The Customer's continued use of our Services and/or purchase of Goods or Services will be deemed acceptance of the amended terms and conditions.

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