

TERMS AND CONDITIONS OF SALE

1. Contracts of Sale

- 1.1 These Terms and Conditions of Sale (**Terms**) shall apply to and form part of any contracts of sale for the supply of any or all Goods including unit(s), panels, products, materials and related services (**Goods**) by the Purchaser from Woodpecker Pty Ltd ACN 064 376 530 / Woodpecker Heating & Cooling Pty Ltd ACN 141 632 082 (**Woodpecker**) and any related body corporate of Woodpecker within the meaning of Section 50 of the Corporations Act 2001(Cth).
- 1.2 The Goods generally consist of (i) Heating - electric panels, hydronic, split systems and accessories; (ii) Cooling – portable air conditioners, split systems; (iii) Fireplaces – electric and gas wood heaters, outdoor fireplaces and accessories and (iv) BBQ – pizza ovens, Weber BBQ's and accessories.

2. Quotations, Prices, Orders /Specifications/Installations

- 2.1 Unless otherwise specified, any quotation(s) given by Woodpecker to the Purchaser shall be exclusive of a Goods and Services Tax (**GST**) and will constitute an offer to sell Goods to the Purchaser.
- 2.2 Prices given in any quotation by Woodpecker are generally for the supply only of a unit applicable to that quotation without additional extra's such as trims, fascia, side panels and remotes and will not include installation and the cost of the delivery of the Goods, including but not limited to costs incurred by Woodpecker arising out of a late notification by the Purchaser of a change to an agreed delivery point, unless otherwise specified in the quotation.
- 2.3 Quotations and prices are valid for a period of fourteen (**14**) days from the date of issue by Woodpecker, or as otherwise specified in the quotation and discounts only apply to the recommended retail price and not trade and Goods already discounted.
- 2.4 The price of the Goods will be the current price determined by Woodpecker at the time of delivery and may be subject to variation at any time at the sole discretion of Woodpecker. The price will be exclusive of all applicable taxes and charges, unless otherwise stated or agreed between Woodpecker and the Purchaser.
- 2.5 The Purchaser shall be liable for all excise, sales, GST or any other tax, charge or government impost (**domestic or foreign**) imposed upon the Goods or any part of the Goods, or upon the manufacture, use, sale or delivery of the Goods which shall be in addition to the price to purchase. The Purchaser must pay the GST at the same time as payment for the Goods is made.
- 2.6 Any order(s) must be clearly communicated by the Purchaser to Woodpecker quoting an order number, full description of the Goods to be purchased (including, if applicable, lengths, weights and dimensions using conventional units of measurements) and the delivery time and address. Reference to a Woodpecker quotation number to the Purchaser must be made if a quotation was provided by Woodpecker.
- 2.7 These Terms apply to the Purchaser and Woodpecker in respect of Goods ordered by the Purchaser and any terms and conditions set out in the Purchaser's order deviating from or are inconsistent with these Terms will not bind Woodpecker including any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms.
- 2.8 If the Purchaser's order refers to a specification of the Purchaser then the Purchaser must deliver such specification to Woodpecker without charge. The Purchaser represents and warrants to Woodpecker that any such specification does not, including any Goods produced by Woodpecker pursuant to such specification, breach or in any way infringe upon the rights or intellectual property of any third party including, without limitation, patent, design, copyright or other intellectual property rights.
- 2.9 Installation charges are subject to site inspection. All offers for a free installation are only for a standard installation for that particular unit and only to the value of \$800 or less. Any further variations to a standard installation under offer will be quoted accordingly. Any offer of a free installation is only applicable for addresses within a 30km radius of a Woodpecker showroom.
- 2.10 The Purchaser may not cancel an order for Goods without the prior consent of Woodpecker.

2.11 If the Purchaser repudiates a contract in force between Woodpecker and the Purchaser under these Terms, or refuses to accept delivery for any or all of the Goods other than on circumstances permitted under these Terms, or if Woodpecker terminates any contract in force between it and the Purchaser on the Terms pursuant to Clause 11 then the Purchaser will be liable for any loss or damage suffered by Woodpecker, whether directly or indirectly in relation to the repudiation by the Purchaser. In the case of Goods produced to the Purchaser's specification or which are in the process of being produced, the Purchaser must pay to Woodpecker as liquidated damages the full contract price and any costs included by Woodpecker less the current scrap value of the Goods (if applicable) as determined by Woodpecker.

3. Payment

- 3.1 Unless otherwise agreed in writing by Woodpecker, the Purchaser must make payment in full at the time of purchase.
- 3.2 The extension of credit to the Purchaser by Woodpecker shall be at its sole discretion and in contracts for large scale works and following approval in writing by Woodpecker of the Purchaser's credit application and deed of guarantee, the payment structure will be by way of an initial 25% deposit; 25% at rough in; 25% at fit off and the balance of 25% strictly 30 days from date of completion of the works.
- 3.3 Without in any way limiting the right of Woodpecker to require payment in full by the due date, Woodpecker may at its sole discretion charge interest on overdue accounts at the rate of 2% above the rate of the *Penalties Interest Rate Act 1983*(Vic).
- 3.4 Payments made by credit card may be subject to an applicable surcharge.
- 3.5 In order to assess the Purchaser's credit worthiness, the Purchaser agrees that Woodpecker shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser.
- 3.6 Time is of the essence for payment.

4 Delivery

- 4.1 Unless otherwise agreed in writing, Woodpecker may arrange for delivery of the Goods to the Purchasers nominated delivery point during normal working hours, to a site position decided on by Woodpecker.
- 4.2 Woodpecker reserves the right to arrange transport of the Goods by any means in its absolute discretion.
- 4.3 At all times the Purchaser must sign the delivery docket as confirmation of receipt of Goods and provide the signed delivery docket to the carrier representing Woodpecker, if no one is present to sign another delivery charge will apply.
- 4.4 Woodpecker is deemed to have affected delivery of the Goods when they are made available for unloading at the Purchaser's nominated delivery point.
- 4.5 The Purchaser is responsible for unloading the Goods from the Woodpecker delivery vehicle or the vehicle procured by Woodpecker for delivery.
- 4.6 If the Goods are to be collected by the Purchaser from the premises of Woodpecker, delivery occurs when the Goods are loaded on the Purchaser's vehicle.
- 4.7 Woodpecker is not liable for any claims for non-fulfillment or late delivery of Goods or of any loss or damage (including consequential loss or damage suffered by the Purchaser arising whether directly or indirectly out of delay in delivery or failure to deliver due to circumstances beyond reasonable control of Woodpecker and the Purchaser shall accept and pay for the Goods notwithstanding late delivery.
- 4.8 The Purchaser shall in its purchase order, advise Woodpecker of the nominated delivery point and required delivery time.
- 4.9 Unless otherwise agreed by the Purchaser and Woodpecker, Woodpecker shall be entitled to deliver the Goods in one or more lots. Where delivery of the Goods is affected by way of part delivery, Woodpecker shall be entitled to invoice the Purchaser for pro-rata progress in respect thereof.
- 4.10 Where the Purchaser's order requires the Goods to be delivered by installments then a separate contract arises on the subject to the provisions of these Terms in relation to each installment. If Woodpecker fails to deliver an installment of Goods on time, or at all, the Purchaser must not and is not entitled to terminate any other contract in force between Woodpecker and the Purchaser for the sale or supply of Goods.
- 4.11 In the event the Purchaser is unable to accept the Delivery of Goods, Woodpecker shall be deemed to have delivered the Goods in accordance with these Terms and the Goods shall be at the Purchaser's risk from the time when the Goods have been loaded onto the Purchaser's collecting vehicle or made available for unloading at the Purchaser's nominated delivery point or as the case may require.

5. Additional Charges

5.1 Woodpecker reserves the right to charge for any costs, charges or expenses whatsoever that it may incur as a result of vehicle or wagon detention of the Goods, but only to the extent the same is not caused or materially contributed to by Woodpecker; demurrage on ships as a consequence of any act or omission of the Purchaser; any special requirements or stipulation of the Purchaser accepted by Woodpecker in writing but not provided for in the Terms; and any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Purchaser's order by Woodpecker to the date of Delivery.

6. Storage

6.1 If in the event Woodpecker notifies the Purchaser that the Goods are ready for delivery and the Purchaser requests either orally or in writing for Woodpecker to hold the Goods on its behalf, such Goods will be held by Woodpecker at the Purchaser's risk and Woodpecker shall be entitled to charge its usual storage fees in respect of the Goods stored.

7. Indemnity

7.1. Without prejudice to any other rights Woodpecker may have against the Purchaser, and to the extent permitted by law, the Purchaser indemnifies Woodpecker and will hold it harmless from and against any loss, damage, liability or expenses, including, without limitation, legal costs and disbursements, whether or not the subject of a court order, suffered or incurred by it arising out of the breach by the Purchaser of these Terms including, without limitation claims arising out of or in relation to:

- (i) the cancellation by the Purchaser of any order or part thereof for the Goods after acceptance by Woodpecker;
- (ii) any fault, defect, state of being or thing in relation to or in respect of Goods made pursuant to the Purchaser's specifications arising, whether directly or indirectly, out of the terms of the specification provided by the Purchaser to Woodpecker; and
- (iii) where Woodpecker or its agents enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, any damage occasioned to the Purchaser's or third party's premises or injury to persons arising out of such delivery to the extent that such loss, damage or liability suffered by Woodpecker does not arise out of the negligence or carelessness of Woodpecker or its agents.

8. Claims>Returns

8.1 The Purchaser shall inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in conformity with the order by the Purchaser, the Purchaser shall give written notice to Woodpecker of the details within seven days of the date of delivery.

8.2 In the event the Purchaser fails to give notice to Woodpecker within seven days, the Purchaser shall be deemed to waive and release Woodpecker from any claim it may have had it in relation to the Goods and must pay the purchase price for the Goods to Woodpecker.

8.3 Any Goods the subject of a written notice pursuant to clause 8.1 shall be left in the state and condition in which they were delivered until such time as Woodpecker or its duly authorised agent had inspected the Goods, such inspection to be carried out within a reasonable time after notification by the purchaser. If the Goods are not so left in the state and condition in which they were delivered, the Purchaser shall be deemed to waive and release Woodpecker from any claim it may have had against it but for this release in relation to the Goods and must pay the purchase price for the Goods to Woodpecker.

8.4 No Goods will be accepted for return by Woodpecker unless it agrees in writing prior to such return and then only upon conditions acceptable to Woodpecker and at the Purchaser's entire risk as to loss or damage. Where Woodpecker agrees to accept Goods for return, its current handling and restocking charge of 30% of the value of the Goods will be charged to the Purchaser and shall be immediately due and payable.

8.5 Any Goods won or supplied through promotions cannot be returned and/or transferred or redeemed for cash for any other products than those nominated.

9. Retention of Title

- 9.1 Whilst the risk in the Goods passes on delivery, legal and equitable title remains with Woodpecker until payment is made to it in full for those Goods and all other Goods and services supplied to the Purchaser by Woodpecker at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser must:
- (i) hold the Goods as bailee and fiduciary agent of Woodpecker;
 - (ii) where feasible store the Goods within the business premises of the Purchaser and separate from its own Goods and those of any other third party, or alternatively, in such a way as to clearly identify at all times that the Goods are owned by Woodpecker; and
 - (iii) ensure that, at all times, the Goods are properly stored, protected, readily identifiable and insured.
- 9.2 With the prior written consent of Woodpecker, the Purchaser may sell or deal in the ordinary course of business with the Goods provided that any such sale or dealing is at arms' length and on market terms and any such sale is held on trust for Woodpecker in a separate account.
- 9.3 Woodpecker however reserves the following rights in relation to the Goods until all amounts owed by the Purchaser are fully paid:
- (i) legal and equitable ownership of the Goods;
 - (ii) to retake possession of the Goods; and
 - (iii) to keep or resell any of the Goods repossessed pursuant to clause 9.2 above.
- 9.4 Where the Purchaser processes the Goods either by using the Goods to manufacture other Goods or by incorporating the Goods in or with any other Goods, before title in the Goods has passed to the Purchaser, the Purchaser:
- (i) holds such part of the new Goods (processed Goods) on trust for Woodpecker as bailee and fiduciary agent of Woodpecker;
 - (ii) must store such part of the processed Goods separately from the Purchaser's own Goods and those of any other third party in such a way as to clearly indicate at all times that the processed Goods are owned by Woodpecker and;
 - (iii) must ensure that such part of the processed Goods are properly stored, protected, readily identifiable and insured.
- 9.5 For purpose of this clause 9, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to Woodpecker at the time the Goods are used in the manufacture of, or incorporated into, the processed Goods.
- 9.6 The Purchaser may sell or deal with the processed Goods provided that:
- (i) any such sale or dealing is at arms-length and on market terms; and
 - (ii) the Purchaser holds on trust such part of the proceeds of any sale of or dealing in the processed Goods that is equal in dollar terms to the amount owing by the Purchaser to Woodpecker at the time the Goods are used in the manufacture of, or incorporated into, the processed Goods, in a separate identifiable account as the beneficial property of Woodpecker and must pay such amount to it upon request.
- 9.7 Without prejudice to the rights of Woodpecker in clause 9.3 above, in the event of a breach of this contract by the Purchaser including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by Woodpecker to the Purchaser, the Purchaser must return the Goods to Woodpecker on demand. If the Purchaser does not return the Goods to Woodpecker within 48 hours of receipt of the demand, Woodpecker shall be entitled without notice to enter the Purchaser's premises at any time to do all things necessary to recover the Goods.
- 9.8 The Purchaser hereby grants full leave and irrevocable license to Woodpecker and any person it authorizes to enter upon any premises where the Goods may for the time being be placed or stored for the purpose of retaking possession of the Goods. In that event the Purchaser hereby agrees it;
- (i) shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by Woodpecker, including consequential losses and damages as a result of Woodpecker retaking possession of the Goods or otherwise exercising its rights under this clause 9; and
 - (ii) shall indemnify Woodpecker for all fees (**including legal fees on a full indemnity basis**), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Woodpecker in connection with the retaking possession of the Goods or the exercise by Woodpecker of its rights under this clause 9, and the Purchaser shall repay all such fees, costs, losses, damages expenses or any other sums of money on demand.
- 9.9 The parties agree that this clause 9 is not intended to create a charge or any other form of security interest and to the extent, as a matter of law, this clause creates a charge or any other form of security interest, the offending words shall be deleted.

10 Application of the *Personal Property Securities Act 2009*(PPSA)

- 10.1 This clause 10 applies to the interest in any Goods of Woodpecker as a security interest for registration in the PPSA Register.
- 10.2 The Purchaser acknowledges and agrees that Woodpecker may register its security interest in the Goods at any time before and after delivery.
- 10.3 The Purchaser acknowledges and agrees to waive its rights under section 157 of the PPSA to receive verification of the registration.
- 10.4 Woodpecker may apply amounts it receives from the Purchaser towards amounts owing to it as Woodpecker may choose.
- 10.5 In the event of any default by the Purchaser of any obligation owed to Woodpecker under these terms or any other agreement for the supply of the Goods, Woodpecker is at liberty to enforce its security interest in any Goods by exercising all or any of its rights pursuant to these terms and/or the PPSA.
- 10.6 The Purchaser must do anything requested by Woodpecker to ensure that its security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 10.7 Nothing in this clause 10 is limited by any provision of these terms or any other agreement between the parties.
- 10.8 If a term used in this clause 10 has a particular meaning in the PPSA, it has the same meaning as in this clause.

11 Default

- 11.1 If the Purchaser fails to perform or observe any obligation or agreement expressed or implied in or given in relation to these Terms including, without limitation, the payment of money, or if the Purchaser including a Purchaser under a Consumer Contract, is the subject of any personal insolvency even including, without limitation, arising out of an act of bankruptcy or, has a receiver, receiver and manager, official manager, trustee, administrator, other controller (**as defined in the Corporations Act 2001(Cth)**) or similar official appointed or steps are taken for such appointment over any of the assets or undertaking of the Purchaser, or if the Purchaser suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the Corporations Law or if the Purchaser ceases or threatens to cease to carry on business then Woodpecker may, without limiting any other rights it may have, do any or all of the following things:
- (i) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all monies owed to Woodpecker by the Purchaser.
 - (ii) suspend or terminate any contract in force between Woodpecker and the Purchaser and, without limitation, withhold any deliveries of Goods or performance of services pursuant to any purchase order accepted by Woodpecker.
 - (iii) in respect of Goods already delivered, enter the premises of the Purchaser to recover and resell same for its benefit.

12 Warranties

- 12.1 To the extent permitted by Legislation, all implied conditions, warranties and undertakings are expressly excluded from these Terms.
- 12.2 No statement or recommendation made or advice, supervision or assistance given by Woodpecker, its employees, agents, or representatives whether oral or written must be constructed as or constitutes a warranty or representation by Woodpecker or a waiver of any clause in these Terms. Woodpecker is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
- 12.3 Except as provided in the clause, Woodpecker shall not be liable for any loss or damage, whether direct or indirect, including consequential losses or damage, arising out of any breach of these Terms by Woodpecker, or any negligence of its employees or agents in respect of matters in any way connected with the subject matter of these Terms.
- 12.4 Should Woodpecker be liable for a breach of a condition or warranty pursuant to Legislation then its liability for a breach of any such condition or warranty express or implied shall be limited to the extent permitted by law, as its option to any one or more of the following:
- (i) in the case of Goods;
 - (ii) the replacement of the Goods or the supply of equivalent Goods;
 - (iii) the repair of Goods;
 - (iv) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - (v) the payment of the cost of having the Goods repaired;
 - (vi) in the case of services;

- (vii) the supply of the services again;
- (viii) the payment of the cost of having the service supplied again;

12.5 Woodpecker will not be liable under any implied warranty for the costs of recovery of the Goods from the field, loss of use of the Goods, loss of time, inconvenience, incidental or consequential loss or damage, not for any other loss or damage other than as stated above, whether ordinary or exemplary caused either directly or indirectly by the use of the Goods. No implied warranty may be invoked in respect of any defects to other malfunctions insofar as such defects or malfunctions are caused to Goods by accident, neglect, vandalism, misuse, alteration, modification or unusual physical, environment or electrical stress.

13. Fitness of Goods

13.1 Subject to the rights pursuant to Legislation and unless the Goods have been supplied to the Purchaser by Woodpecker under a Consumer Contract, the Purchaser agrees that it does not rely on the skill or judgment of Woodpecker in relation to the suitability of any of the Goods for a particular purpose, unless it has indicated that purpose in writing to Woodpecker and it has acknowledged in writing that the Goods will be fit for the particular purpose.

14 Force Majeure

14.1 Woodpecker shall not be liable to the Purchaser where an event of Force Majeure prevents or delays Woodpecker from performing any obligation under these Terms.

15. Miscellaneous

15.1 These Terms set out the entire agreement between the parties in relation to their subject matter.

15.2 Woodpecker reserves the right to review and amend these Terms from time to time. Written notification forwarded to the Purchaser by ordinary mail shall be deemed sufficient notification to bind the Purchaser to any revised or amended Terms for all orders placed by the Purchaser and accepted by Woodpecker after receipt of such notification.

15.3 The laws of Victoria are applicable to the agreement between Woodpecker and the Purchaser and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any court that may hear appeals from any of those courts and the parties waive any right it might have to claim that those courts are an inconvenient forum.

15.4 A party waives a right under these Terms only if it does so in writing. A party does not waive a right simply because it fails to exercise a right, delays exercising the right, or only exercises part of the right. A waiver of one breach of any of the Terms does not constitute as a waiver of another breach of the same term or of any other term.

15.5 Woodpecker may assign or otherwise deal with the benefit of any contract made pursuant to these Terms without the consent of the Purchaser.

15.6 The parties may conduct business by Electronic Data Interchange and in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these terms are incorporated.

15.7 Any provisions of these Terms which are unenforceable or partly unenforceable is where possible to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of the Terms.

15.8 One week only offers or similar offers(**offers**) are for unit(s) only unless otherwise specified and apply from the date of initial publication and cannot be applied to predated quotes, order or invoices. Offers are limited to one per customer unless specified differently.

15.9 All offers generally expire at 5pm on the nominated date, or at the sole discretion of Woodpecker can be extended to until stocks last on certain promotions. All offers are not available with any other promotional offer or with discounted offers.

15.10 To be eligible for any promotional offers Goods must be ordered and paid for in full by 5pm on the nominated date of the promotion.

15.11 Any prizes do not include delivery and all prizes and offers are limited to one per customer. Unless specified differently.

15.12 Gift cards are non-refundable and not redeemable for cash and Lost or stolen gift cards will not be replaced or refunded. Gift cards past the expiry are invalid and will not be accepted.

16. Interpretation

In these terms:

- 16.1 **Consumer** means a person who acquires Goods from Woodpecker where the (a) amount paid or payable for the Goods did not exceed \$40,000; or (b) Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; unless the Goods were acquired for the purpose of re-supply or the purpose of using the Goods up or transforming them in trade or commerce.
- 16.2 **Dollar terms** means a reference to Australian currency;
- 16.3 **Force Majeure** means an act of God, war, government restraint, industrial dispute or other event not within the control of Woodpecker acting reasonably;
- 16.4 **GST** means the tax payable on Taxable Supplies within the meaning of the GST Act;
- 16.5 **GST Act** means the A New Tax System (**Goods and Services Tax**) Act 1999(Cth) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
- 16.6 **Legislation (including subordinate legislation)** means that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 16.7 **Purchaser** means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from Woodpecker and includes a Consumer;
- 16.8 **Working Hours** means generally between the hours of 9am- 5pm Monday to Saturday (inclusive) excluding public holidays and during the summer season also on a Sunday between the hours of 10am- 3pm.

Date of Issue: November 2018