

“ARGUS HEATING LIMITED”
NEW ZEALAND TERMS & CONDITIONS OF TRADE

January 04

1. The Purchaser's acceptance of the Company's terms and conditions of trade is and constitutes a security agreement in favour of the Company and creates a security interest in all of the Purchaser's personal and after acquired property excluding property not supplied by the Company.
- 1.1 The security interest granted by the Purchaser to the Company secures the payment by the Purchaser to the Company of all amounts the Purchaser may owe the company from time to time.
- Interpretation**
In these terms:
- “Amount owing” means, at any time, the monies and any other amounts which the Company is entitled to recover under any Contract (including these Terms);
- “Company” means Argus Heating Limited;
- “Contract” means any agreement between the Company and the Purchaser for the supply of Goods, whether created by electronic mail, order form or by any other means;
- “Purchaser” means the party referred to as the “account name” on the attached credit application form or (if applicable) the party identified as such on any document which incorporates these Terms;
- “Default Event” means any of the following:
- The Purchaser fails to comply with the Contract;
 - The Purchaser is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally proceeds such an event;
 - An event occurs or information becomes known to the Company, which in the Company's opinion, materially affects the Purchaser's creditworthiness, the value of the Goods, or the Purchaser's ability or willingness to comply with its obligations under the Contract;
 - Any Guarantor of the Purchaser's obligations under the Contract is in default under any agreement between the guarantor and the Company.
- “Goods” means all goods supplied by the Company to the Purchaser from time to time and include goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be accepted by the Purchaser and including in the forms part of the Contract; and
- Unless the context requires otherwise, Goods shall include all proceeds of such goods and any objects, products or mass of which the goods subsequently become part;
- “PPSA” means the Personal Property Securities Act 1999 and its subsequent amendments.
- Unless the context requires otherwise, the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: “after-acquired property”, “at risk”, “financing statement”, “future advance”, “goods”, “inventory”, “perfection”, “personal property”, “proceeds”, “purchase price”, “security agreement”, “security interest” and “verification statement”.
- 2. Acceptance of Orders**
- 2.1 The Company (“We”) will only supply to, the Purchaser, (“You”), goods on these terms unless we have agreed in writing to different terms.
- 2.2 You shall obtain written confirmation from us where you believe a representation made by or on behalf of us is an essential term of the contract for supply. We will not be liable should you suffer any loss where you fail to obtain written confirmation.
- 3. Price**
- 3.1 The price of the goods:
- 3.1.1 Will be at our current price at the date of delivery unless we have quoted a firm price;
- 3.1.2 Always exclude GST;
- 3.2 When we have quoted a firm price and no period of effectiveness is given, then the price will only apply for 90 days from the date of the quote.
- 4. Payment**
- 4.1 You must pay us by the 20th day of the month following the date of our invoice. If you do not, we will be entitled to:
- 4.1.1 Defer supplying you with any more goods;
- 4.1.2 Charge you interest on the amount owing to us at the rate of 5% above the overdraft rate charged by our Bank at the time payment was due.
- 4.1.3 Treat the contract as having been cancelled by you.
- 5. Title and Risk**
- 5.1 Goods are at your risk as soon as they have been delivered to you;
- 5.2 We remain the owner of the goods we supply you on the terms specified in clause 4 herein until you have paid in full all amounts owed to us for all the goods supplied by us to you.
- 5.3 We are the owner of the goods:
- 5.3.1 Title in the goods does not pass to you.
- 5.3.2 You will always keep the goods clearly identified as our property;
- 5.3.3 We will still own the goods even if you re-package them;
- 5.3.4 You mix the goods with other material, we will own a share of the mixture that equals the proportion that the cost of the Company's goods bear to the total cost of material comprising the mixture;
- 5.3.5 You may sell the goods only if you keep enough of the sale proceeds to pay us for the goods in a separate bank account in trust for us;
- 5.3.6 You irrevocably grant a licence for us to enter any of the premises during normal business hours to repossess the goods while you owe us money.
- 5.3.7 The fact that you own the goods will not affect our right to sue you for the price if the Customer does not pay us on time. We have no obligation to accept returned goods instead of being paid for them. We have no obligation to do anything to limit any loss we might suffer if you do not pay us on time.
- 5.3.8 Until property in Goods passes to you, you will hold the Goods as our bailee and, as agent for you, we (and our employees and agents) may, without prior notice, enter upon any land or premises where we believe the Goods are kept in order in respect of the Goods. You must store the Goods so they can be identified separately from your own goods. We authorise you, in the ordinary course of the Purchaser's business, to use the Goods or resell them for full consideration. This authority is revoked immediately if:
- 5.3.9 A default event occurs; or
- 5.3.10 We notify you in writing that this authority is revoked.
- 6. Delivery**
- 6.1 If you have specified a delivery date, we will try and deliver the goods to you by that date. However:
- 6.1.1 We will be entitled to deliver the goods to you after the agreed delivery date or cancel the contract without being liable to you in any way if the delay in delivery is in respect of causes outside our control;
- 6.1.2 We may deliver the goods to you by instalments in any quantities and each delivery will be a separate contract independent from other deliveries;
- 6.2 You may not refuse to accept delivery of goods except where we have agreed in writing;
- 6.3 We will only be liable to you for shortfalls, losses, damage or failure to meet specifications where you have notified us of those matters within 7 days of taking delivery;
- 6.4 Goods which do not meet your order may not be returned to us unless:
- 6.4.1 We have agreed in writing that they may be returned; and
- 6.4.2 You have not had the goods for more than 14 days; and
- 6.4.3 The goods containers have not been opened nor have their packaging been damaged in any way ; and
- 6.4.4 You will pay the cost of returning the goods; and
- 6.4.5 You will pay our handling fee.
- 7. Exclusions and Limitations to our Liability**
- 7.1 Where we are permitted by law, we exclude or contract out of all statutory conditions, guarantees and warranties including, but not limited to, the warranties and guarantees imposed by the Sale of Goods Act 1908.
- 7.2 We give technical advice or assistance entirely at your risk.
- 7.3 We warrant only that goods comply with our specifications where we are the manufacturer or that they comply with the manufacturer's specifications where we are not the manufacturer.
- 7.4 All descriptions of the goods are to enable their identification and does not mean that the sale of the goods is a sale by description.
- 7.5 We will not be liable to you for any direct or indirect loss in respect of the goods or for any delay or failure to supply the goods except where it is due to our gross negligence or wilful default. However, our liability to you in that instance is limited to the amount that we may receive from the manufacturer if we are not the manufacturer or to the sale price of the goods where we are the manufacturer.
- 8. Safety**
- 8.1 You will comply with all health and safety laws and regulations and our instructions in regard to the storage, handling and use of goods and to bring all warnings supplied by ARGUS HEATING LIMITED to the attention of all persons who might be at risk from the goods and will indemnify ARGUS HEATING LIMITED for all costs incurred by ARGUS HEATING LIMITED in respect of claims made against ARGUS HEATING LIMITED except where those claims are directly caused by the gross negligence or wilful default of ARGUS HEATING LIMITED.
- 9. Packages and Containers**
- 9.1 If the goods are provided with reusable packaging we may charge a deposit, which will be noted separately on the invoice. We will refund the deposit provided the packaging:
- 9.1.1 Is returned to us in a condition acceptable to us; and
- 9.1.2 Is returned by the time that we may have stated; and
- 9.1.3 Has not been used for any other purpose; and
- 9.1.4 All other stipulations that we may have made have been met.
- 9.2 Where we have not charged a deposit for reusable packaging, you will be responsible for:
- 9.2.1 The return of these containers in a condition satisfactory to ARGUS HEATING LIMITED within 14 days of delivery; and
- 9.2.2 Any loss or damage to that packaging while it was in your possession.
- 10. Customers Undertaking Relating to Consumer Guarantees Act 1993**
- 10.1 You undertake in relation to goods acquired from ARGUS HEATING LIMITED:
- 10.1.1 Not to give any express written guarantee or warranty on behalf of the manufacturer or New Zealand importer, or distributor of the goods, or on behalf of ARGUS HEATING LIMITED except with the prior written approval of ARGUS HEATING LIMITED
- 10.1.2 That you will not use ARGUS HEATING LIMITED goods for any purpose for which they are not suitable, and that you will wherever appropriate correctly advise your customers as to the purposes to which ARGUS HEATING LIMITED goods should or should not be put;
- 10.1.3 That any literature that it may supply and which relates to ARGUS HEATING LIMITED goods will comply with the Consumer Guarantees Act 1993;

- 10.1.4 To immediately notify ARGUS HEATING LIMITED in writing of any claim you may receive pursuant to the Consumer Guarantees Act 1993, giving details of the ARGUS HEATING LIMITED goods concerned, and the claimant's contract information.
- 10.1.5 To effectively and in writing contract out of the Consumer Guarantees Act 1993 wherever you supply ARGUS HEATING LIMITED goods to the customer's own customer, for the purpose of that customer's business.
- 10.2 The Consumer Guarantees Act 1993 will NOT apply if the Purchaser has acquired or held themselves out as acquiring the goods for the purposes of business.
- 11. Intellectual Property**
- 11.1 All our trademarks or other intellectual property rights in respect of the goods remain our property and you may not use, remove, interfere with or alter them in any way.
- 11.2 We make no representation that the goods will not infringe the intellectual property rights of any other person and will not be liable for any costs that you may incur as a result. You will notify us immediately if you receive a claim from a person alleging that if the owner of any intellectual property rights relating to the goods and if we consider ourselves to be affected, we shall be entitled to completely control the defence or settlement of the claim.
- 12. No Assignment**
- 12.1 You may not assign your rights or delegate your performance under this agreement without the consent of ARGUS HEATING LIMITED in writing.
- 13. Change of Legal Identity**
- 13.1 You shall notify us in writing not less than 14 days' prior of any change in your legal entity and/or any other change in your details (including, but not limited to, changes in the Purchaser's address, facsimile number, trading name or business practice) and the Purchaser shall complete a new credit application in the name of the new entity if requested to do so by us.
- 13.2 You may not assign any of your rights or obligations under the Contract without our prior written consent.
- 13.3 We may assign any of our rights under the Contract without your consent.
- 14. Proper Law**
- 14.1 The conditions shall be interpreted and governed by the law of New Zealand.
- 14.2 The parties agree that any proceedings or determination of any dispute arising from or pursuant to this agreement shall be commenced and determined at Christchurch, New Zealand.
- 15. Change of Terms and Conditions**
- 15.1 We have the right to unilaterally change these Terms and Conditions by giving seven (7) days notice in writing to you.
- 16. Default**
- 16.1 If a default event occurs, and without prejudice to any other rights, powers or remedies that we may have:
- 16.2 We may suspend or terminate the supply of Goods to you and any of its other obligations under the Contract (and any other Contract, or cancel all or any part of any order with you which remains unperformed; and
- 16.3 All Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and we may enforce any security interest granted to it by you.
- 16.4 We will not be liable to you for any loss or damage you suffer because we exercise any rights, powers or remedies after the occurrence of any default event.
- 16.5 You agree that, at any time after a default event has occurred or at any time if any Goods are at risk we may:
- 16.6 Take possession of any Goods; and/or
- 16.7 Sell or dispose of any Goods in such manner and generally on such terms and conditions as we think fit.
- 16.8 As agent for you, we (and our employees and agents) may, without prior notice, enter upon any land or premises where we believe the Goods are kept in order to take possession and/or remove them. You agree to procure all other rights (including consents) necessary to enable, and to indemnify us (and our employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.
- 17. Arbitration**
- 17.1 All disputes and differences between the parties shall be submitted to the arbitration of a single arbitrator if one can be agreed upon or two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration) such arbitration to be carried out in accordance with the provisions of the Arbitration Act 1996 or any then statutory provision relating to arbitration. This clause shall not prevent ARGUS HEATING LIMITED from suing you for the cost of goods supplied or for any other monies payable pursuant to the conditions of sale.
- 18. Costs**
- 18.1 You should pay to ARGUS HEATING LIMITED any costs (on a solicitor/own client basis) incurred by ARGUS HEATING LIMITED in enforcing the within conditions of sale.
- 19. Security Agreement and the PPSA**
- 19.1 You shall promptly execute any documents and provide any information required from time to time by us to enable us to make a perfected security interest in the goods and any sale proceeds in priority to all other secured parties.
- 19.2 You shall meet all costs we may incur in filing a financing statement or financing change statement under the Act in relation to the goods supplied under these terms and conditions.
- 19.3 You waive your rights as debtor under section 120(2), 121, 125, 126, 127, 129, 131 of the Act.
- 19.4 You waive your rights to receive a verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by this document.