

# **ARGUS HEATING LIMITED**

## **TERMS OF TRADE**

### **1. Definitions and Interpretation**

#### **1.1** In these terms:

**"Amount Owning"** means, at any time, the monies and any other amounts which we are entitled to recover from you whether under these Terms or otherwise;

**"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in Christchurch, New Zealand;

**"Default Event"** means any of the following:

- a breach of any term of these Terms and failure to rectify such breach within 20 Business Days of notification of same;
- you are 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 us, which in the our opinion, materially affects your creditworthiness, the value of the Products, or your ability or willingness to comply with your obligations under these Terms; and
- any guarantor of your obligations under these Terms (if any) is in default under any agreement between the guarantor and us;

**"Delivery Date"** means, in respect of any Products, the date specified in an Order for the delivery of those Products;

**"Lead Time"** means the minimum lead time for the supply of a Product by us that we have notified to you in writing;

**"Manufacturer's Warranty"** means the warranty titled as such in relation to the Products provided to you by us as a separate document;

**"Minimum Order Quantity"** means the minimum quantity of Products required for each Order (if any) that we have agreed with you in writing;

**"Order"** has the meaning given to that term in clause 2.1;

**"PPSA"** means the Personal Property Securities Act 1999 and its subsequent amendments;

**"Products"** means all products and goods supplied by us to you from time to time and includes products or 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 us on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be accepted by you;

**"Quote"** means a quote for the provision by us to you of any Products the subject of an Order or any other request for the supply of Products;

**"Terms"** means these Terms of Trade;

**"you"** and **"your"** means the customer purchasing the Products from us; and

**"we"**, **"our"** and **"us"** means Argus Heating Limited (NZCN 128497).

#### **1.2** Unless the context requires otherwise:

1.2.1 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"; and

1.2.2 Products shall include all proceeds of such products or goods and any objects, products or mass of which the products or goods subsequently become part.

### **2. Placement and Acceptance of Orders**

#### **2.1** All orders for Products ("**Order**") must be submitted in writing setting out:

2.1.1 the Products and quantity ordered (including the relevant product code) such quantity not to be less than the Minimum Order Quantity;

2.1.2 the address for delivery of the ordered Products;

2.1.3 the Delivery Date (which must be no earlier than the Lead Time for any of the Products calculated from the date the Order is received by the Supplier); and

2.1.4 the identity of your freight forwarder and the type of delivery mode to be used (e.g. airfreight or sea freight).

2.2 Subject to clauses 2.1, 2.3 and 2.4, we will confirm in writing acceptance or rejection of any order for Products within 5 Business Days of receipt. Orders will be deemed to be accepted by us in the event we do not provide written acceptance within the said 5 Business Day period. It is at our sole discretion to accept or reject an Order.

2.3 In the event that any Order or other request for the provision of Products requires work to be performed or goods to be supplied which are in addition to what we would usually be required to undertake when supplying our standard range of Products (such as if you have requested an incremental change to a standard Product or a new Product entirely), we will provide you with a Quote for your review and acceptance.

2.4 Any Quote provided by us will be able to be accepted by you in writing within 30 days of its receipt following which the Quote lapses.

2.5 Any request to change an Order or Quote must be provided to us in writing and we may accept or reject such request in our absolute discretion.

2.6 No Order or Quote which has been accepted may be cancelled by you except with our written agreement and you indemnify us, on a full indemnity basis, and will keep us indemnified, against all losses, costs, damages, charges and expenses incurred by us as a result of such cancellation.

### **3. Prices**

3.1 The price payable in respect of any Products ordered will:

3.1.1 in accordance with any applicable Quote; or

3.1.2 if no Quote is provided, will be our current for the Product as at the date of the Order.

3.2 Unless otherwise agreed in any Quote, our prices are exclusive of the costs for any related services, freight, insurance and delivery charges, any customs duties applied on import of the Products, and any state or federal sales tax (including Goods and Services Tax in New Zealand), which will be charged to you at the prevailing rate at the time of delivery.

### **4. Payment**

4.1 We may require that you pay for any Products ordered in cash up front. In such circumstances, we will not be required to supply you with any Products until such time as we have received payment in full.

4.2 We will provide you with invoices in respect of all amounts owed by you to us. You must pay any such invoice on or before the 20<sup>th</sup> of the month following the month that the invoice is dated. If you do not, we will be entitled to:

4.2.1 defer supplying you with any more Products;

4.2.2 charge you interest at the rate of 12% per annum accruing on a daily basis on all overdue amounts from the day after the due date for the payment until the date of payment to us.

4.3 You will pay us on demand all expenses and costs incurred by us recovering or attempting to recover any overdue amount owed by you to us.

### **5. Title and Risk**

5.1 Risk of loss of or damage to, or deterioration of, the Products will pass to you upon delivery to the address nominated by you in the relevant Order or set out in any applicable Quote and you will be responsible for insurance of the Products after risk has passed.

5.2 Title to the Products will pass to you when the Products have been paid in full.

5.3 Without limitation to any other rights afforded to us under the PPSA, until you have paid for any Products in full:

5.3.1 where you are in possession of the Products, you hold the Products on trust for us as bailee; and

5.3.2 where you use, or sell to a third party, the Products before payment in full is made, then you act as our agent and receive and hold the proceeds of such sale on trust for us.

### **6. Delivery**

6.1 We will endeavour to deliver any Products that you have ordered on or before your specified Delivery Date. However:

6.1.1 we will be entitled to deliver the Products to you after the Delivery Date (and we will not be liable for any damage, loss, costs or expenses that you may suffer as a result of any delay in delivery) or cancel the applicable Order without being liable to you in any way if the delay in delivery is in respect of causes outside our control; and

6.1.2 we may deliver the Products to you by instalments in any quantities.

6.2 You may not refuse to accept delivery of Products except where we have agreed to such refusal in writing.

6.3 We will only be liable to you for shortfalls, losses, damage or failure to meet specifications or an Order where you have notified us of those matters within 7 days of the date of delivery of the Products to you.

6.4 Products 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;

6.4.2 you have not had the Products for more than 14 days; and

6.4.3 you pay the cost of returning the Products.

### **7. Exclusions and Limitations to our Liability**

7.1 With the exception of those warranties expressly stated in these Terms and/or the Manufacturer's Warranty, all warranties, representations and conditions relating to the Products or anything else provided under these Terms, whether express or implied or provided under statute or any other law (including the Contact and Commercial Law Act 2017, Fair Trading Act 1986 and the Consumer Guarantees Act 1993), are expressly excluded to the fullest extent permitted by law. In particular:

- 7.1.1 we do not warrant that the Products will be fault-free, and
- 7.1.2 you acknowledge that the Products are acquired for the purposes of business and that the Consumer Guarantees Act 1993 does not apply.
- 7.2 Our total liability for defective or damaged Products supplied by us is limited at our option to either replacing or repairing the defective or damaged Products. We will use reasonable endeavours to replace or repair defective Products as soon as practical but will not be liable for any delay. If the Products have already been paid for, the ownership of any defective or damaged Products will pass to us on retrieval and we may dispose of them at our discretion.
- 7.3 To the fullest extent permitted by law, all liability for any loss of profit or revenue or any indirect, special or consequential loss or damage of any kind incurred or suffered by you under or in connection with these Terms is expressly excluded.
- 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 Products and to bring all warnings supplied by us to the attention of all persons who might be at risk from the Products and will indemnify us for all costs incurred by us in respect of claims made against us except where those claims are directly caused by our gross negligence or wilful default.
- 9. Supplier's Undertaking Relating to Consumer Guarantees Act 1993**
- 9.1 You undertake in relation to Products acquired from us:
- 9.1.1 not to give any express written guarantee or warranty on behalf of the manufacturer or New Zealand importer, or distributor of the Products, or on behalf of us except with our prior written approval;
- 9.1.2 that you will not use any Products 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 the Products should or should not be put; and
- 9.1.3 effectively and in writing contract out of the Consumer Guarantees Act 1993 wherever you supply Products to be used for business purposes.
- 10. Intellectual Property**
- 10.1 All our trademarks or other intellectual property rights in respect of the Products remain our property and you may not use, remove, interfere with or alter them in any way.
- 10.2 We make no representation that the Products 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 Products and if we consider ourselves to be affected, we shall be entitled to completely control the defence or settlement of the claim.
- 11. Default**
- 11.1 If a Default Event occurs, and without prejudice to any other rights, powers or remedies that we may have:
- 11.1.1 we may suspend or terminate the supply of Products to you and any of our other obligations under these Terms (and any other contract), or cancel all or any part of any order with you which remains unperformed; and
- 11.1.2 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.
- 11.2 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.
- 11.3 You agree that, at any time after a default event has occurred or at any time if any Products are at risk we may:
- 11.3.1 retake possession of any Products; and/or
- 11.3.2 sell or dispose of any Products in such manner and generally on such terms and conditions as we think fit.
- 11.4 As agent for you, we (and our employees and agents) may, without prior notice, enter upon any land or premises where we believe the Products 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.
- 12. Costs**
- 12.1 You will pay to us on demand any costs or expenses that we incur (including any legal costs (on a solicitor/own client basis)) in enforcing any terms of these Terms.

**13. Security Agreement and the PPSA**

- 13.1 You agree that:
- 13.1.1 these Terms constitute a security agreement for the purposes of the PPSA;
- 13.1.2 you grant us a security interest in accordance with the PPSA in respect of all Products ordered by you (whether acquired in the past or future) to secure the payment by you to us of all amounts owing, and the performance of all obligations, under these Terms;
- 13.1.3 nothing in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this to these Terms, and you waive any and all of your rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA.
- 13.2 You undertake to:
- 13.2.1 sign any further documents and provide any further information which we may reasonably require to register a financing statement on the Personal Property Securities Register;
- 13.2.2 upon demand, reimburse us for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register or releasing any Products charged thereby;
- 13.2.3 not register a financing change statement or a change demand without our prior written consent;
- 13.2.4 you will give us written notice of any change in its name or contact details at least 14 days before such a change takes effect.
- 13.3 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.
- 14. General Terms**
- 14.1 We shall be entitled to appoint subcontractors to perform any of our obligations under these Terms.
- 14.2 Any variations to these Terms shall only be effective if agreed in writing and signed by our authorised representative.
- 14.3 You shall not, without our prior written consent, assign or transfer any of your rights or obligations under these Terms. You will obtain our prior written consent to a 20% or more change in your beneficial ownership.
- 14.4 No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.
- 14.5 Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.
- 14.6 These Terms will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand Courts will have non-exclusive jurisdiction in respect of all matters.