

ENVIRO MASTER LIMITED
TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 "Account Application" means an account application to open a credit account incorporating these Terms.
- 1.2 "Customer" means any purchaser of Goods from Enviro Master.
- 1.3 "Goods" means all goods (and services) supplied by Enviro Master to the Customer including, but not limited to, heat pumps, air conditioning systems, ventilation systems and refrigeration products.
- 1.4 "Enviro Master" means Enviro Master Limited.
- 1.5 "Terms" means the terms and conditions of trade set out herein.

2. Acceptance

- 2.1 Except where an existing agreement for the supply of Goods already exists between the Customer and Enviro Master, these Terms shall be incorporated into every contract between Enviro Master and the Customer for the supply of Goods. Any instructions or order received and accepted by Enviro Master from the Customer for the supply of Goods shall constitute a binding contract and acceptance of these Terms whether or not the Customer has completed an Account Application.
- 2.2 The Customer may purchase Goods from time to time by supplying to Enviro Master an order, including but not limited to a purchase order, for Goods stipulating the quantities required, the delivery date and the delivery address for each order of Goods.
- 2.3 The Customer cannot cancel any order for Goods accepted by Enviro Master, and is bound to pay the agreed price.

3. Delivery, Title, and Risk

- 3.1 Risk in the Goods shall pass to the Customer upon delivery.
- 3.2 Delivery of the Goods, unless otherwise agreed, shall be deemed effected by Enviro Master, or through Enviro Master's carrier agent, by delivery to the Customer at the nominated location. Enviro Master will arrange freight and insurance for the delivery of the Goods and, unless otherwise agreed, shall invoice the Customer for the freight and insurance in addition to the applicable price of the Goods.
- 3.3 Enviro Master shall endeavour that all Goods are dispatched to the Customer to meet the delivery date requested on the purchase order or, where not specified, within 5 working days of the receipt of an order or purchase order. Where Enviro Master cannot dispatch the required Goods within 5 working days Enviro Master will contact the Customer and advise a revised delivery date. Enviro Master shall not be liable for any delay in delivery of the Goods.
- 3.4 Title in the Goods shall remain with Enviro Master until the Customer has paid the price for the Goods in full and has paid all other amounts due to Enviro Master by the Customer.

4. Security

- 4.1 By placing an order for the Goods, the Customer agrees to grant Enviro Master a security interest in the Goods supplied to the Customer for the purposes of the Personal Property Security Act 1999 as security for payment by the Customer of all amounts due to Enviro Master.
- 4.2 The Customer agrees to promptly do all things including delivering and executing all documents that Enviro Master requires to register its security interest in the Goods.
- 4.3 To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on Enviro Master in the Customer's favour, will not apply and where Enviro Master has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 4.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 4.5 The Customer hereby waives its right to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing charge statement registered by Enviro Master.
- 4.6 In the event that the Customer breaches any of its obligations under these Terms, or the contract between the parties is terminated, the Customer acknowledges and agrees that Enviro Master may enter onto its premises and take immediate possession of any of the Goods which have not been paid for.

5. Payment

- 5.1 Unless otherwise agreed by Enviro Master or in accordance with clause 5.2 below, the Customer shall pay the price for the Goods (and any freight and insurance costs) by cash or electronic funds transfer in cleared funds, upon completion of installation of the Goods.
- 5.2 If Enviro Master has accepted the Customer's Account Application then the Customer shall pay Enviro Master for each order of the Goods, in accordance with the price notified by Enviro Master from time to time, by the 20th of the month following the month of invoice, or such other terms specified on the Customer Account Application.
- 5.3 The Customer shall pay Enviro Master interest on any overdue amounts owing to Enviro Master at a rate equal to Enviro Master's bank overdraft rate, plus any costs incurred by Enviro Master as a result of enforcing the contract and any related invoice from the date that such amounts are due until the date that such amounts are paid.

- 5.4 The price of the Goods may be increased by Enviro Master on one month's notice to the Customer.

6. Customer's Commitments

- 6.1 If the Customer is a retailer then:
- 6.1.1 The Customer will process all forms and carry out all administration that may be reasonably required by Enviro Master.
- 6.1.2 The Customer shall not describe himself as an agent or representative of Enviro Master.
- 6.1.3 The Customer shall only use Enviro Master-approved advertising imagery and logos in all advertising of the Goods. The Customer shall not do anything which might harm Enviro Master's reputation or goodwill.

7. Representations

- 7.1 To the fullest extent lawfully possible, all statutory and other implied warranties are excluded.
- 7.2 If the Customer is a retailer, the Customer acknowledges that in placing an order for the Goods it has not relied on any condition, warranty or representation by or on behalf of Enviro Master whether expressed or implied as to the description, merchantability, fitness for purpose or condition of the Goods.
- 7.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer purchases the Goods for the purposes of a business in terms of section 43(2) of that Act.

8. Force Majeure

- 8.1 Force Majeure: Neither party shall be liable for any failure to perform or delay in performance of its obligations hereunder caused by circumstances of "force majeure" beyond its reasonable control. The performance of each party's obligations shall be suspended to the extent affected by such delay or failure.
- 8.2 Definition: For the purposes of clause 8.1, "force majeure" means any of the following events or occurrences and the effects thereof: fire, storm, flood, earthquake, landslide, explosion, accident, act of the public enemy, war, rebellion, insurrection, riot, civil commotion, sabotage, epidemic, quarantine restrictions, labour disputes, stock delivery delays, transportation embargoes, acts of God, acts of government or any agency or judicial action.

9. Indemnity

- 9.1 The Customer shall comply with all instructions of Enviro Master in relation to the handling, operating, storage and use of the Goods and shall keep Enviro Master indemnified against all costs, claims, demands, expenses and liabilities including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits) which may be made against or incurred by in connection with the manufacture, sale or use of the Goods, unless such cost, claim, demand, expense or liability shall be directly attributable to the negligence of Enviro Master or the negligence of a duly authorised agent of Enviro Master.

10. Limitation of Liability

- 10.1 The Customer agrees that Enviro Master's liability, howsoever arising, for any loss or damage suffered or incurred by the Customer arising directly or indirectly from any act or omission of Enviro Master shall be limited to the price payable to Enviro Master by the Customer for the Goods supplied pursuant to an order.
- 10.2 Enviro Master shall not be liable for any indirect, consequential or financial loss suffered by the Customer that arises directly or indirectly from Enviro Master's supply of Goods to the Customer.

11. Dispute Resolution

- If a party believes that there is a dispute in respect of the contract formed by the acceptance of a Customer's order by Enviro Master, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to representatives of each party for resolution. If they do not resolve the dispute within 10 working days, either party may require that the dispute be submitted to the arbitration of a single arbitrator to be appointed by the parties or, failing agreement within 10 working days, to be appointed by the President of the New Zealand Law Society. Any arbitration will be conducted in accordance with the Arbitration Act 1996 and its amendments or any act in substitution for that Act. Any arbitration shall be paid for by the party requesting the arbitration.

12. Miscellaneous

- 12.1 Confidentiality: Except as required by law each party shall preserve as confidential the contents of the contract formed between Enviro Master and the Customer in relation to the supply of Goods and any other information provided by one party to the other relating to, or for the purposes of the supply.
- 12.2 Failure by Enviro Master to enforce any of the Terms shall not be deemed to be a waiver of any of the rights or obligations of Enviro Master.
- 12.3 Enviro Master reserves the right to change any or all of the Terms at any time by giving two (2) days notice in writing to the Customer.