

TERMS AND CONDITIONS

1. The following terms shall be incorporated into every contract between Wellington Refrigeration Air Conditioning & Electrical Limited ("us", "we" or "our") and the customer for the supply by us of goods or services unless specifically excluded in writing. No variation of these terms will be binding on us unless made in writing. In the event of inconsistency between these terms or any quotation or other agreement entered into between us and you, then these terms shall take precedence at all times.
2. **DEFINITIONS**

"Customer" means the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods and/or services from us.

"Defect" means a fault or flaw in the workmanship or materials provided by us that consists of:

 - workmanship that has not been carried out in a competent manner and with reasonable skill and care.
 - a significant, adverse and unauthorised departure from what was prescribed by the drawings and specifications.
 - in matters not specifically prescribed by the drawings and specifications, a material and unauthorised departure from manufacturer's tolerances (if manufacturer's tolerances are not available, then current tolerance schedules published by the Ministry of Business Innovation and Employment will apply, and if they are not available then current tolerance schedules published by New Zealand Standards will apply).

"Goods" mean all goods, chattels or services, provided by us to the customer, and shall include without limitation the supply of electrical and refrigeration equipment, fixtures and fittings.

"Latent Condition" means any physical condition on or below or within the site, or the area surrounding the site, which differs materially from the physical conditions which could reasonably have been expected by us at the time our quotation was provided. It also includes the actions or effects of mould, fungi, mildew, rot, decay or any similar or like forms in any existing building or structure or the failure of an existing building or structure to meet or conform to the requirements of the New Zealand Building Code.

"Substantial Completion" means when the Works or a stage of the Works is 95% complete.

"Works" means the work that we are to carry out in accordance with its quotation or any agreed contract documents, including variations and any design work carried out by us.
3. **WARRANTIES**

We warrant that the Works we are responsible for will be carried out:

 - a. In a proper and competent manner;
 - b. With reasonable care and skill;
 - c. In accordance with any building consents;
 - d. Using materials that are fit for purpose;
 - e. Using materials that are new (unless agreed otherwise); and
 - f. In accordance with all applicable laws and legal requirements.
4. **INSURANCE**
 - 4.1 We will effect and maintain a public liability insurance policy for an amount of not less than one million dollars. The policy will be kept continuously in force until any work required to remedy defects has been completed.
 - 4.2 If the Works are new construction or involve the alteration, addition or repair of an existing building, the customer must effect and maintain a policy of insurance for contract works insurance.
 - 4.3 Where requested in writing by the other party, a party liable to insure must provide satisfactory evidence as to the existence, maintenance and terms of any insurance policy.
5. **VARIATIONS**
 - 5.1 The customer may order any variation to the Works that:
 - a. Increases or decreases the scope of the Works;
 - b. Omits any work; or
 - c. Changes the nature, position, location, or quality of any work or materials.
 - 5.2 We may claim a variation for any Latent Condition that becomes apparent after the Works have commenced.
 - 5.3 The customer shall not, without our consent, remove work from the Works to have that work carried out by another contractor or the customer.
 - 5.4 The parties written agreement to vary the Works must:
 - a. state the scope of work the subject of the variation;
 - b. state the price of the Variation or how the price of the variation is to be calculated; and
 - c. be approved by both parties.
 - 5.5 The contract sum or quotation price is to be adjusted by the price of a variation and the adjustment shall be included by us in our next payment claim. To price a variation there is a one-off cost of \$150 or 5% of the variation value, whichever is greater. The lesser of these costs is payable even if you do not go ahead with the variation to meet our costs of administration.
 - 5.6 Wherever practicable, the value of any variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the variation or our entitlement to be paid the reasonable value of the variation.
6. **PAYMENT**
 - 6.1 We may serve on the customer a payment claim by email or post in respect of:
 - a. a deposit; and/or
 - b. in respect of any costs and expenses incurred by us in making an application for, and/or upholding any consents in relation to the Works, including but not limited to the costs of obtaining such approvals and professional advice, reports, plans, and drawings as may be necessary in the circumstances and all fees, expenses and levies charged by the building consent authority together with our associated administration and processing costs; and/or
 - c. on substantial completion of the Works; or
 - d. on substantial completion of any stages of the Works, if the Works have been separated into stages; or
 - e. by way of progress claims during each monthly period commencing on the day of the month in which the Works were first carried out and ending on the last day of that month, and each month after that first period.
 - 6.2 The due date for payment of a payment claim is seven (7) calendar days after the relevant payment claim is served on the customer ("the Due Date").
 - 6.3 If the customer intends to pay us less than the amount claimed in a payment claim, then the customer must respond to the payment claim by providing a payment schedule to us within five (5) calendar days after the date the payment claim is received.
 - 6.4 Any payment schedule issued by the customer must comply with the requirements of

the Construction Contracts Act 2002 and may only be sent by way of email to tim@wellingtonrefrigeration.co.nz.

7. DEFAULT

- 7.1 If the customer does not make payment on the Due Date, the customer shall be liable to pay:
 - a. default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
 - b. any legal costs on a solicitor/client basis that we incur incidental to the enforcement or attempted enforcement of its rights, remedies and powers under these Terms and Conditions.
- 7.2 Any amount claimed by us for Goods whether such Goods are invoiced/claimed separately or within a payment claim for both goods and services must be paid in full without set-off or deduction.
- 7.3 If the customer fails to pay any amount owing on the Due Date and any such default continues for five (5) calendar days then we shall be entitled to immediately suspend the Works without notice and such suspension shall be on the same basis as if it were a suspension under s24A(2) and (3) of the Construction Contracts Act 2002.

8. PRICE

- 8.1 Where a price is given by us for goods and services:
 - a. The price shall be valid for thirty (30) days from the date of issue; and
 - b. We reserve the right to alter our price where that has been submitted based on plans or has been based upon work in an area of a building that cannot be viewed until the work is undertaken, if a Latent Condition exists or circumstances exist beyond our control then our price may be reviewed and altered at our discretion. Notwithstanding that any quotation has stated that it is a quotation in the circumstances set out in this clause 8b, it shall be read as an estimate only.

9. TITLE

- 9.1 Title in the goods passes to the customer when the customer has made payment in full without deduction for all Goods supplied by us.
- 9.2 The customer gives irrevocable authority to us to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. We shall not be liable for costs, damages for expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.
- 9.3 Under no circumstances may Goods be returned other than as defective and authority for return will not be given for the following - shop soiled or where the Goods have been used and the customer has damaged them.

10. DEFECTS LIABILITY PERIOD

- 10.1 The customer must notify us of any Defect in writing as soon as reasonably possible after the Defect becomes apparent.
- 10.2 We must, at our own cost, rectify any part of the Works that is agreed by both parties to be faulty or defective and our responsibility, and remove and replace any materials not in accordance with our quotation or any contract documentation as directed in writing by the customer for a period of 12 months from the date of Substantial Completion of the Works.
- 10.3 The customer shall give us all necessary and reasonable access to enable us to remedy any Defect and/or replace any materials during the 12 month period from the date of Practical Completion.
- 10.4 These defect provisions do not mitigate or absolve the customer's responsibility for maintenance.

11. LIMITATION OF LIABILITY

- 11.1 In respect of the supply of Goods, our liability under these Terms and Conditions or any contract collateral hereto is limited to replacing (or at our election to repair) any defective goods to the entire exclusion of any other remedy which, but for this clause, the customer might have and we shall be under no liability for any direct or consequential damage or loss, or loss of profits of costs, charges and expenses other person other than to repair or replace as mentioned above. We shall not be liable to the customer if for any reason beyond our control we are not able to deliver or supply any of the Goods.
- 11.2 In respect of the supply of services or any design obligation, the customer acknowledges that:
 - a. We will not be liable to the customer for any claim for alternative accommodation, disruption, inconvenience, removal/storage of furniture, loss of opportunity, revenue, profit or anticipated profit whether arising in contract, negligence or otherwise and
 - b. Save for any obligations under any applicable health and safety legislation, which cannot be contracted out of, our liability for any direct losses or any other losses not included in this clause shall be limited to the amount of our price for the Works and as may be adjusted by any variations.

12. PPSA

- 12.1 The customer acknowledges that it grants a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in all present and after acquired property as security for its obligations to us. The customer must do all things including executing all documents that we require to provide us with a first ranking security interest in the goods.
- 12.2 The customer waives the right to receive a copy of the verification stated under the PPSA and agrees it will have none of the rights under ss114(1Xa), 116, 117(1Xc), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where we have rights in addition to those in Parts 9 of the PPSA, the customer agrees that those rights shall continue to apply and in particular will not be limited by s109 of the PPSA.
- 12.3 The customer agrees to indemnify us for any costs we incur in registering, maintaining and for enforcing the security interest created by these terms including actual legal costs on a solicitor/client basis.
- 12.4 The customer must immediately notify us if it changes its name, registered office or place of business.

13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from us for the purposes of a business in terms of section 2 and 43 of that Act.

14. MISCELLANEOUS

- 14.1 We shall not be liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our reasonable control.
- 14.2 The customer shall not make any claim against any individual employee or employees or director of our company for any costs, losses or damages sustained by the customer

arising from the Works.

- 14.3 If any provision of these Terms and Conditions shall be invalid void or legal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.4 Unless otherwise agreed in writing, we are not responsible for obtaining a Code Compliance Certificate and we are entitled to issue our final payment claim for payment irrespective of whether a Code of Compliance Certificate has or has not been issued.