

TERMS AND CONDITIONS

- 1 General**

The whole of the Agreement between Rinnai Australia Pty Ltd ABN 74 005 138 769 ("Rinnai") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, materials and/or parts and/or labour and/or services supplied by Rinnai under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. Rinnai may change and update these Terms and Conditions from time to time. Please refer to the current Terms and Conditions on Rinnai's website www.rinnai.com.au
- 2 Credit Terms**
 - 2.1 Payment is due on or prior to thirty (30) days from the date of statement rendered in respect of the supply of the Goods. Rinnai may on 7 days written notice to the Customer, charge liquidated damages at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 if payment is not received by the due date.
 - 2.2 Prior to Rinnai approving a request for credit by a Customer, Rinnai may require the Customer to pay a deposit on the initial purchase order.
 - 2.3 Rinnai's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Rinnai at any time, and Rinnai reserves the right to demand full payment of outstanding monies immediately.
 - 2.4 Rinnai is entitled to set-off against any money owing to the Customer amounts owed to Rinnai by the Customer on any account whatsoever.
 - 2.5 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and reasonable legal costs referred to in clause 2.6, and then to principal.
 - 2.6 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and reasonable legal costs (on a full indemnity basis) incurred by Rinnai for enforcement of obligations and recovery of monies due from the Customer to Rinnai.
- 3 Quotations and Pricing**
 - 3.1 Quotations will remain valid for fourteen (14) days from the date of the quotation.
 - 3.2 Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.
 - 3.3 Unless otherwise specified by Rinnai, the prices exclude:
 - 3.3.1 Any statutory tax, including any GST, duty or impost levied in respect of the Goods and which has not been allowed for by Rinnai in calculating the price.
 - 3.3.2 Costs and charges in relation to insurance, packing (other than the standard packing of Rinnai), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
 - 3.4 The contract between Rinnai and the Customer shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department with regard to either classification or value of duty or landing charges occasioned thereby. Any such impositions shall be to the account of the Customer.
 - 3.5 Any claim or dispute in relation to the invoiced price must be notified to Rinnai in writing within sixty (60) days of the date of invoice, and must include copies of the relevant invoice, proof of agreed price or applicable price list, and purchase order.
- 4 Rebate Payments**

Subject to the terms of any applicable Customer rebate agreement, the following shall apply in relation to Customer rebates, if any:

 - 4.1 The rebate is calculated on the total value of the Goods purchased during the relevant trading period (exclusive of GST).
 - 4.2 Rebates are subject to change without notice. The applicable rebates are the current rebates as at the date of invoice.
 - 4.3 The GST exclusive value of the Goods upon which a rebate is calculated will:
 - 4.3.1 be reduced by any discounts or price deductions applying to any of the Goods;
 - 4.3.2 exclude any advertising allowances and promotional incentives; and
 - 4.3.3 exclude any delivery charges payable by the Customer.
 - 4.4 Rinnai may pay the rebate by tax adjustment note or any other method as agreed with the Customer.
 - 4.5 Any errors or miscalculations in respect of the payable rebate shall be adjusted by Rinnai at its discretion.
 - 4.6 Rinnai will request the Customer to refund rebate payments on returned Goods to Rinnai.
 - 4.7 Rinnai may withhold payment of any accrued rebates if the Customer account is overdue.
 - 4.8 The following rebates may apply to the Customer:
 - 4.8.1 Auto Rebates
 - (i) The rebates are calculated on the percentage of sales invoiced in the relevant month;
 - (ii) The rebate is paid monthly, and is not accumulative; and
 - (iii) Where the accrued rebate amounts per month is less than \$200.00 inclusive of GST, Rinnai will not make any rebate payments.
 - 4.8.2 Manual Rebates
 - (i) The rebates are calculated on the percentage of sales for the agreed period;
 - (ii) The Customer must produce the rebate claim via tax invoice or tax adjustment note to Rinnai, within sixty (60) days of 31 December each year; and
 - (iii) The rebate effective date is as determined by Rinnai, and cannot be back dated.
 - 4.8.3 Advertising Rebates
 - (i) The Customer must produce the rebate claim to Rinnai, as approved by the Customer's state sales manager, or equivalent, within sixty (60) days of 31 December each year; and
 - (ii) Rebate claim must include proof of advertising and comply with any advertising guidelines given by Rinnai.
 - 4.8.4 Target Rebates
 - (i) The applicable sales target is as agreed with the Customer's sales manager, or equivalent;
 - (ii) The agreed sales target must be achieved by the Customer within the relevant period; and
 - (iii) The Customer must produce the rebate claim within sixty (60) days of end date of the relevant period

Any unclaimed rebate entitlements will be considered void if not claimed within the timeframe specified above.
 - 4.9 Where the Customer is a member of a Buying Group or a similar collective organisation ("Buying Group"), and purchases Goods directly from Rinnai on behalf of the Customer, the Customer:
 - 4.9.1 must promptly notify Rinnai in writing if it leaves the relevant Buying Group; and
 - 4.9.2 acknowledges that its entitlement to rebates is dependent on the rebates applicable to the Buying Group.
 - 4.10 Where the Buying Group has entered a collective rebate agreement with Rinnai, the terms of such rebate agreement would apply to all members of the Buying Group, to the extent of any inconsistency with this clause 4.
 - 4.11 Where two or more Customers form a new Buying Group, the relevant Customers must promptly notify Rinnai. The rebates applicable to the new Buying Group must be agreed by Rinnai.

4.12 Where a Customer is a member of more than one Buying Group, Rinnai will only recognise the rebates of one Buying Group, and the Customer must notify Rinnai which Buying Group rebates should apply.

5 Delivery and Supply

5.1 Any times quoted for delivery and/or supply are estimates only and Rinnai shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Rinnai reserves the right to stop supply at any time if the Customer fails to comply with the Terms, after first giving the Customer a reasonable period of time to comply with the Terms.

5.2 Rinnai may make acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

5.3 If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer:

5.3.1 shall be liable for any additional cost, charge and expense incurred by Rinnai in complying with the Customer's direction;

5.3.2 shall pay for the whole of the invoiced value of the Goods notwithstanding the staggered deliveries; and

5.3.3 such action shall be deemed to be delivery to the Customer.

5.4 The Customer is deemed to accept delivery of the Goods when:

5.4.1 it is delivered to the Customer's premises;

5.4.2 Rinnai notifies the Customer that the Goods are available for collection; or

5.4.3 If the Customer arranges the pick-up, when it is picked up from Rinnai.

5.5 A consignment note signed by the Customer, its employees or agents at the time of delivery, or pick-up, shall be considered as proof of delivery or pick-up.

5.6 If the Customer is unable or fails to accept delivery of the Goods, Rinnai may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place reasonably determined by Rinnai. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all reasonable cost, charge and expense incurred by Rinnai on account of storage, detention, double cartage/delivery or similar causes.

6 Property

In addition to any lien to which Rinnai may, by statute or otherwise, be entitled, Rinnai shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to the Customer in Rinnai's possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to the Customer.

7 Availability of Stock

Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Customer's stated standard policy not to accept back orders or the Customer specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and Rinnai will not be liable for any charges due to product unavailability.

8 Returns, Cancellations and Claims

8.1 The Customer shall not return any Goods to Rinnai without obtaining prior authorisation from Rinnai. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A tax adjustment note will be issued by Rinnai once the returned Goods have been assessed and approved by Rinnai. The Customer shall not deduct the amount of any anticipated credit from any payment due to Rinnai but must await receipt of a tax adjustment note.

8.2 All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shop-soiled, are not price ticketed and are still listed in the current price list.

8.3 If Rinnai accepts the return of any Goods, Rinnai may charge the Customer fifteen per cent (15%) of the invoice price as a handling fee inclusive of freight charges. The risk in the Good shall remain with the Customer until Rinnai accepts the return.

8.4 No cancellations or partial cancellation of an order by the Customer shall be accepted by Rinnai unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which compensates Rinnai for all loss. Cancellation will not be accepted on goods that are not regular stock which are ready for shipment. Cancellation will not be accepted on goods that are custom-made to specifications and requirements of the Customer to accommodate specific projects.

8.5 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Rinnai in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

9 Title and Risk

9.1 The title and ownership in the Goods remain with Rinnai until full payment is received for all the Goods, and any other payments owing to Rinnai by the Customer together with any collection, repossession and or legal costs incurred by Rinnai.

9.2 Risk in the Goods passes to the Customer upon delivery to the Customer's premises.

10 Personal Property Security Interest

10.1 The Customer grants Rinnai security interests (as defined under the *Personal Property Securities Act 2009* (Cth) ("PPSA")):

10.1.1 in the Goods supplied (including the proceeds of any sale or insurance claim in respect of the Goods); and

10.1.2 in all present and future personal property of the Customer, whether beneficially owned or otherwise,

to secure the performance of the Customer under the terms of this Agreement including without limitation to pay the purchase price of the Goods ("Security Interests"), and agrees to Rinnai registering the Security Interests on the Personal Property Securities Register ("PPSR") and, to the extent permitted by law, without the giving of notice. The Customer waives any right to receive notice of registration of such Security Interests.

10.2 As and when required by Rinnai, the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Rinnai to register the Security Interests and generally to obtain, maintain, register and enforce Rinnai's Security Interests in respect of the Goods supplied.

10.3 The Customer shall not change its name or any other details relating to this Agreement that appear on the PPSR without first notifying Rinnai of the new details not less than 7 days before the change takes effect.

10.4 The Customer warrants that the Goods are not purchased for personal, domestic or household purposes.

10.5 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by Rinnai in the following order:

10.5.1 To any obligation owed by the Customer to Rinnai which is unsecured, in the order in which the obligations were incurred;

10.5.2 To any obligations that are secured, but not by a Purchase Money Security Interest, in the order in which those obligations were incurred;

10.5.3 To obligations that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.

10.6 Until the Customer has paid all money owing to Rinnai the Customer shall at all times ensure that:

10.6.1 all Goods supplied by Rinnai, while in the Customer's possession, can be readily identified and distinguished; and/or

10.6.2 all proceeds (in whatever form) that the Customer received from the sale of any of the Goods are readily identifiable and traceable.

10.7 Where the Goods are purchased by the Customer and held as inventory (as defined under the PPSA), nothing in this clause shall prevent the Customer from selling or leasing and delivering the Goods in the ordinary course of the Customer's business. Otherwise until the Customer has paid all money owing to Rinnai, the Customer shall not sell or grant a security interest in the Goods without Rinnai's written consent.

10.8 In the event that the Customer defaults in the payments owed to Rinnai, Rinnai reserves the right to enter without notice upon the Customer's premises, or any other premises where the Goods are stored, to repossess the Goods. The Customer shall grant reasonable access to Rinnai, its employees and or agents to do all things required to secure repossession.

10.9 The parties agree to contract out of the PPSA in accordance with Section 115 of the PPSA to the extent that Section 115 applies for the benefit of, and does not impose a burden on, Rinnai. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement (as defined under the PPSA) registered by or on behalf of Rinnai in respect of the Security Interest created by these terms and conditions.

11 Privacy Act 1988 ("Privacy Act")

Rinnai shall collect, handle, store and disclose any Customer personal information in accordance with the Privacy Act, and as set out in its Privacy Statement. Please refer to Rinnai's Privacy Statement on the website www.rinnai.com.au/. By completing and submitting an application for credit, the Customer warrants that all individuals whose personal information is provided by the application, have consented to Rinnai's use of the personal information for the purposes relating to the application for credit, and as set out in Rinnai's Privacy Statement.

To enable Rinnai to assess the Customer's application for credit, the Customer authorises Rinnai:-

11.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors; and

11.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and

11.3 To give to a credit reporting agency information including identity particulars and application details.

AND the Customer authorises Rinnai to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

The Customer understands that information can be used for the purposes of assessing its application for credit, assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.

12 Notification

Any notice under these Terms must be in writing and delivered, posted or emailed to the other persons last known address, or email address, respectively.

The Customer must notify Rinnai in writing within seven (7) days of:

12.1 Any alteration of the name or ownership of the Customer.

12.2 The issue of any legal proceedings against the Customer.

12.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.

12.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Rinnai for all Goods supplied to the new owner by Rinnai until notice of any such change is received.

13 Warranties

13.1 No warranties except those implied and that by law cannot be excluded are given by Rinnai in respect of Goods supplied. Where it is lawful to do so, the liability of Rinnai for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods.

13.2 The Customer acknowledges and warrants to Rinnai that:

13.2.1 it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures;

13.2.2 it is purchasing Goods as the principal and not as an agent;

13.2.3 it is not insolvent and will not be insolvent at the time any payments are made pursuant to these Terms; and

13.2.4 it will not become insolvent within 6 months and 1 day after any payment is made by it to Rinnai.

14 Force Majeure

Rinnai shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible.

15 Security

14.1 The Customer as beneficial owner and/or registered proprietor now charges in favour of Rinnai all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) held now or in the future ("Land") to secure payment of accounts rendered by Rinnai to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and reasonable costs (including reasonable legal costs on a full indemnity basis) incurred by Rinnai and including the reasonable costs to prepare and lodge a caveat or mortgage, as the case may be, against the Land and to remove the caveat or mortgage.

14.2 The Customer further irrevocably agrees in the event any breach of these Terms is not rectified by the Customer within the timeframe provided under these Terms, the Customer shall deliver to Rinnai such mortgage over the Land as Rinnai may reasonably require, duly executed by the Customer, to further secure the Customer's performance of any of the obligations under these Terms. In the event that the Customer fails to deliver the requested mortgage, the Customer hereby irrevocably appoints Rinnai to be its lawful attorney and the Customer authorises Rinnai to do on its behalf anything that it may lawfully authorise an attorney to do in respect of such mortgage including without limitation executing and registering such mortgage.

16 Failure to act

Rinnai's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or Rinnai's failure to exercise any right or remedy available under these Terms or at law, or Rinnai's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Rinnai's right to demand timely payment of future obligations or strict compliance with the Terms.

17 Legal Construction

17.1 These Terms shall be governed by and interpreted according to the laws of Victoria and Rinnai and the Customer consent and submit to the jurisdiction of the Courts of Victoria.

17.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

The Customer acknowledges that where the Customer consists of more than one party or entity, any liability under these Terms shall apply to all parties jointly and severally.