

PRO FORMA TERMS AND CONDITIONS OF SALE

These terms & conditions of sale (Terms & Conditions) apply for the supply of all Products, merchandise, merchandise displays and services ("Products") by Electrolux Home Products Pty Ltd (ABN 51 001 762 341) and its associated and subsidiary companies (all of which are referred to as the "Supplier") to any person, firm or company ("Customer"). Except as otherwise expressly agreed in writing between the Supplier's duly authorised officer and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued in relation to the Products.

1. AGREEMENT

1.1 An agreement is made between the Supplier or its authorised agent and the Customer for the purchase of the Products as specified in an order ("Agreement") if and when the Supplier issues an order confirmation to the Customer in respect of that order and payment is received from the Customer in accordance with clause 3.1.

1.2 The Agreement comprises the order, the order confirmation, these terms and conditions and any additional terms as specified.

2. PRICE

2.1 The price payable by the Customer to the Supplier for the Products is the price specified in the order confirmation.

2.2 Any quote will remain valid for 30 days from the day of issue listed on the quote.

3. PAYMENT

3.1 A minimum of 25% of the price is payable as a security payment upon submission of the order by the Customer. This may be waived at the discretion of the Supplier.

3.2 Full payment of the price for the Products is required prior to the delivery of the Products.

3.3 If the Agreement relates to two or more Products and they are delivered on different dates, that part of the price (or the balance of it) which relates to the Product delivered on a particular date is payable on that date and by the time of delivery.

4. DEFAULT IN PAYMENT

4.1 If the Customer fails to make any payment for the Product when due, the Customer must, without prejudice to any other right or remedy of the Supplier:

- i) Charge an account keeping fee at the rate of two per centum (2%) per month on a cumulative basis calculated on a day to day basis on any monies due but unpaid to the Supplier. Such amounts will be calculated from the due date for payment. The parties agree that such amounts are not a penalty but are a true measure of damages incurred by the Supplier. Payments received from the Customer will be credited first against any account keeping fees and all such fees shall be payable on demand.
- ii) reimburse the Supplier for all reasonable costs and expenses incurred in relation to the outstanding debt and pursuing payment of it; and
- iii) upon reasonable notice by the Supplier, return the Products to the Supplier or permit a representative of the Supplier reasonable access to the location of the Products to repossess the Products.

5. DELIVERY

5.1 Subject to clause 5.2, the Supplier will home deliver the Products to the location specified in the order. Where no location is specified, the Supplier will deliver the Products to the selling agent's address as set out in the order.

5.2 The Supplier is not required to home deliver the Products in accordance with clause 5.1 if the location to which the Products are to be delivered is outside metropolitan Melbourne, Sydney, Adelaide, Perth, and Brisbane. In those circumstances delivery will be made to the selling agent's address.

5.3 The Supplier shall endeavour to effect delivery of the Products at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render the Supplier liable for any loss or damage directly or indirectly sustained by the Customer as a result thereof.

5.4 The Supplier's delivery obligation is discharged on arrival of the Products at the Customer's nominated delivery destination, the Supplier's selling agent or the address appearing on the invoice.

5.5 The risk in the Products shall pass to the Customer upon delivery to the Customer.

5.6 The Customer shall examine the Products immediately after delivery and the Supplier shall not be liable for any misdelivery, shortage, defect or damage unless the Supplier receives details in writing within seven (7) days of the date of delivery of the Products.

5.7 Subject of clause 5.6 any Products shall be left in the state and condition in which the Product was delivered until such times as the Supplier, or its duly authorised agent has inspected the Product, such inspection to be carried out within a reasonable time after the notification by the Customer. If the Product is not left in the state and condition in which it was delivered, the Customer shall be deemed to have accepted the Product.

5.8 Subject to clause 5.6, acceptance of the Products shall be deemed for all purposes to have taken place when delivery has occurred.

5.9 Subject to clause 8, no Products will be accepted for return by the Supplier unless agreed in writing by the Supplier prior to such return and then only upon conditions acceptable to the Supplier and at the Customer's entire risk as to loss or damage. Where the Supplier agrees to accept Products for return, it may at its discretion charge a 20% restocking fee to the Customer, which will be immediately payable.

6. PRODUCT INSTALLATION

6.1 The Supplier requires that the Products be installed in accordance with the Supplier's instruction and/or installation manual that accompany each Product. If the Suppliers Product is not installed in accordance with the instruction and/or installation manual, the Supplier's warranty offered under clause 8 will not apply. A Supplier installation means that the Products will be installed in accordance with the instruction and/or installation manual. A request to verify or rectify the installation of the Supplier's Products installed by a party other than the Supplier or the Supplier's service agent will incur a service fee.

6.2 The Supplier is not liable for any loss or damage to Products which occurs through the installation of the Products by parties other than the Supplier or the Supplier's service agent.

7. OWNERSHIP AND RISK

7.1 The Supplier remains the owner of the Products until the price is paid in full to the Supplier and the Products have been delivered to the Customer.

7.2 The Customer must not sell or otherwise deal with the Products until the price is paid in full to the Supplier. If the Customer purports to do so, the Customer will be deemed to hold the proceeds of sale or other realisation (or the amount equal to the outstanding) on trust for the Supplier.

7.3 Notwithstanding clauses 7.1 and 7.2, the risk of loss of or damage to the Products

passes to the Customer upon delivery. After delivery, the Customer is responsible for storing the Products prior to any installation and is liable for any loss or damage which occurs during such storage.

8. WARRANTY

8.1 The Products are warranted by the Product's manufacturer against defective workmanship and materials. The Customer acknowledges that such warranty is limited to the terms stated in the warranty card attached to the Product.

8.2 Nothing in these terms and conditions shall be read or applied so as to exclude, restrict or modify, or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

9. CANCELLATION

The Customer cannot cancel its order for the Products unless approved in writing by the Supplier. If the Customer cancels its order, the Customer must indemnify the Supplier against all losses arising from the cancellation. Deposits are refundable at the discretion of the Supplier.

10. RETURN OR EXCHANGE OF PRODUCTS

10.1 Except as required by law, the Supplier is under no obligation to accept Products which the Customer wishes to return or exchange. Any Products returned or exchanged are at the discretion of the Supplier and at the Customer's entire risk as to loss or damage.

10.2 The Customer agrees that the Supplier has discretion to accept any returned Products, provided that such Products shall only be accepted for return with prior approval of a duly authorised representative of the Supplier. Products returned for credit will be subject to a handling fee of 20% of the invoiced value of the returned Product. Return freight and other expenses will be paid for by the Customer. Any returned Product must be accompanied with the relevant invoice and or Goods Return Authority Form duly signed by the Supplier's duly authorised representative.

11. SERVICE & SPARE PARTS

11.1 The Supplier will use reasonable commercial endeavours to have all necessary spare parts available for the purpose of repair or service. The Supplier is not liable for delays due to sourcing of unusual parts which are required, or due to circumstances beyond the control of the Supplier.

11.2 The Supplier's Products are designed and manufactured to the highest standards of quality and durability, however, should a repair become necessary, the Supplier's original spare parts for the Products will be available following the end of series production.

11.3 Customers acknowledge that Products situated outside of the Supplier's service region may incur additional fees (such as travel and transportation) in respect of service or repair, details of which will be provided to the Customer by the Supplier prior to any agreement being made in respect of any service or repair.

12. PRIVACY

12.1 The Supplier will collect and deal with the Customer's personal information (including name, address, telephone contact or personal details) only in accordance with the Privacy Act.

12.2 The Customer agrees that the Supplier may disclose personal information to its related companies and to organisations which provide services (including delivery services) to or which assist the Supplier in providing services (including repair / warranty services) to its Customers.

13. GOVERNING LAW

These terms and conditions are governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

14. FORCE MAJEURE

The Supplier shall not be held liable for failure to comply with these terms & conditions to the extent that the Supplier's performance is prevented or delayed because of circumstances outside of the Supplier's control. This includes but is not limited to unforeseen events such as strikes, breakdown of machinery, adverse non foreseeable weather conditions, or action of government or a port authority.

15. DISPUTES

15.1 Any dispute between the parties arising from the performance of the provisions of these terms and conditions of sale must be settled through consultation by the parties. All disputes arising in respect of the terms and conditions of sale which are not resolved within thirty (30) days of first arising will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said rules. The place of arbitration will be Sydney, New South Wales. The procedural law applicable to the arbitration will be that of New South Wales. The decision of the arbitrator will be final and binding for both parties.

15.2 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these terms and conditions which are not under dispute and which are able to supply components by the due date.

16. GST AND OTHER TAXES

The Customer must pay the Supplier goods and services tax and any other taxes, duties, fees & levies for the Products supplied. The amount that the Customer owes the Supplier will be stated in an invoice to the Customer.

17. LIMITATION OF LIABILITY

17.1 These terms & conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which cannot be excluded, restricted or modified.

17.2 To the extent permitted by law all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.

17.3 To the extent permitted by law, the Supplier shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits however arising from the supply of the Products or arising from any breach, default or negligence of the Supplier in connection with the supply of the Products.

17.4 If the Customer is entitled to the benefit of any implied terms which cannot be excluded, the Supplier's liability shall be limited, at its option, in the case of a supply of goods to:

- i) the replacement of the Product or the supply of an equivalent or similar Product;
- ii) the payment of the costs of replacing the Products or acquiring the relevant Products;
- iii) the payment of the costs of having the Products repaired;
- iv) the repair of the Product;
- v) in the case of services, the resupply of the services; or
- vi) the payment of the cost of having the services performed again.