



## North Canterbury Refrigeration & Electrical Limited

### TERMS OF BUSINESS

#### 1. DEFINITIONS

- 1.1 "NCRE" shall mean North Canterbury Refrigeration & Electrical Limited.
- 1.2 "Contract" shall mean the supply of Products and/or Services from NCRE to the Customer in accordance with these terms of business.
- 1.3 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Products and/or Services from NCRE.
- 1.4 "Products" shall mean:
  - 1.4.1 all goods, hardware, software (including source code or security codes), equipment or products of the general description specified on any invoice and supplied by NCRE to the Customer.
- 1.5 "Services" shall mean all installation services, remedial services, fault diagnosis services, labour charges or any fee or charge associated with the supply of Products and/or Services by NCRE to the Customer.
- 1.6 "Price" shall mean the cost of the Products and/or Services as agreed between NCRE and the Customer and includes all disbursements and allowances NCRE pay to others on the Customer's behalf subject to clause 4 of this Contract.

#### 2. ACCEPTANCE

- 2.1 Any instructions received by NCRE from the Customer for the supply of Products and/or Services shall constitute a binding Contract and acceptance of the terms of business contained herein.
- 2.2 No order accepted by NCRE can be cancelled, varied or suspended without NCRE's prior written agreement.

#### 3. PRICE

- 3.1 Where no price is stated in writing the Products and/or Services shall be deemed to be sold at the then current amount charged for such Products and/or Services sold by NCRE at the time of delivery of the said Products and/or Services.
- 3.2 The Price may be increased by the amount of any reasonable disbursements incurred by NCRE in providing the Products and/or Services to the Customer.
- 3.3 Any disbursements will be charged at cost, plus an additional 15% administration fee which will be added to the disbursement costs to cover administration costs.
- 3.4 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and/or Services that is beyond the control of NCRE between the date of the Contract or request for the supply of Products and/or Services (whichever may be applicable) and date of delivery of the Products and/or Services.

#### 4. PAYMENT

- 4.1 Unless otherwise agreed in writing, payment for Products and/or Services shall be made without deduction or set-off for any reason seven (7) days following the date of the invoice ("the due date").
- 4.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.
- 4.3 Any expenses, disbursements and legal costs incurred by NCRE in the enforcement or attempted enforcement of any rights, powers or remedies contained in this Contract shall be paid by the Customer, including any reasonable solicitor's fees (on a solicitor-client basis) or debt collection agency fees.
- 4.4 Where any payment has not been made by the due date, NCRE may withhold the supply of Products and/or Services at its sole discretion.

#### 5. QUOTATION

- 5.1 Where a quotation is given by NCRE for Products and/or Services to a Customer:
  - 5.1.1 Unless otherwise agreed the quotation shall be valid for seven (7) days from the date of issue; and
  - 5.1.2 The quotation shall be exclusive of GST unless specifically stated to the contrary; and
  - 5.1.3 NCRE reserves the right to alter the quotation because of circumstances beyond its control.
- 5.2 Where Products and/or Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and/or Services.

#### 6. RISK AND DELIVERY

- 6.1 The Products and/or Services remain at NCRE's risk until delivery to the Customer.
- 6.2 The time agreed for delivery shall not be an essential term unless the Customer gives written notice to NCRE making time of the essence and NCRE accepts in writing that time shall be of the essence.

- 6.3 Where NCRE delivers Products and/or Services to the Customer by instalments and NCRE fails to deliver or supply one or more instalments, the Customer shall not have the right to cancel the Contract or any order.
- 6.4 NCRE shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

#### 7. LIABILITY

- 7.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon NCRE which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on NCRE, NCRE's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 7.2 The Customer acknowledges that:
  - 7.2.1 The Products are being purchased for business purposes and the guarantees contained in the Consumer Guarantees Act 1993 are excluded.
  - 7.2.2 Specifications, descriptions, measurements and other data provided by NCRE in relation to the Products are indicative only and the Products may differ from the specification provided.
  - 7.2.3 The Customer relies upon its own judgment as to the nature, quality and condition of the Products and the suitability of the Products for any particular purpose.
  - 7.2.4 To the maximum extent permitted by law, any warranties or conditions imposed on NCRE by the Sale of Products Act 1908, Fair Trading Act 1986 and any other statute is excluded.
- 7.3 Except as otherwise provided by clauses 8.1-8.3, NCRE shall not be liable for:
  - 7.3.1 Any loss or damage of any kind whatsoever including loss of profits and consequential loss whether suffered or incurred by the Customer or another person and whether in Contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and/or Services provided by NCRE to the Customer;

#### 8. WARRANTY

- 8.1 Any warranty provided by NCRE under this Contract shall not assure uninterrupted operation of the Products and/or Services.
- 8.2 Any warranty provided by NCRE under this Contract is conditional upon:
  - 8.2.1 The use of Products and/or Services by the Customer in accordance with the information, instructions and specifications supplied by NCRE;
  - 8.2.2 The use of Products and/or Services only for the purpose for which they were designed.
- 8.3 Any warranty provided by NCRE under this Contract shall be invalid if:
  - 8.3.1 Any fault, damage or defect in the Products and/or Services is the result of alterations or modifications to the Products and/or Services and such alterations or modifications were not authorised in writing by NCRE;
  - 8.3.2 Any fault, damage or defect in the Products and/or Services is the result of the use of other hardware, software, equipment or products in combination with the Products and/or Services supplied by NCRE and such use was not authorised in writing by NCRE;
  - 8.3.3 Any fault, damage or defect in the Products and/or Services has been caused by power surges or user error.
- 8.4 Any other written warranty that NCRE may agree to provide the Customer shall also form part of this Contract.
- 8.5 No representation, condition, warranty or promise whether expressed or implied by law or otherwise whatsoever applies to the Products and/or Services except where Products and/or Services are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this Contract.
- 8.6 NCRE does not provide any warranty that the Products and/or Services are fit and suitable for the purposes for which they are required by the Customer and shall not be liable if they are not.

#### 9. TITLE AND PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 9.1 Title in any Products supplied by NCRE passes to the Customer only when the Customer has made payment in full for all Products provided by NCRE and of all other sums due to NCRE by the Customer on any account whatsoever.
- 9.2 The Customer hereby grants NCRE a security interest pursuant to the PPSA over the Products and all of the Customer's present and after-acquired personal property as collateral for all monies owing by the

- Customer to NCRE for the supply of Products and any other monies that become payable under this Contract.
- 9.3 The Customer shall without cost to NCRE store any Products supplied by NCRE for which full payment has not been made separately from other Products in the possession of the Customer and shall clearly distinguish and identify such Products as having been supplied by NCRE.
  - 9.4 The Customer agrees that NCRE's rights in respect of the Products (and proceeds of the same) continue in respect of any Products with which the Products supplied become part of or are co-mingled with and extend further to include any moneys wherever held which are the proceeds of any sale of the Products supplied prior to full payment being made in respect of the same by the Customer to NCRE.
  - 9.5 Where the Customer has received payment for the Products but has not yet paid NCRE for the same, the Customer shall receive and hold all such proceeds of the sale in a separate account as a trustee for NCRE.
  - 9.6 The Customer shall insure and keep insured the Products to the full price payable against all risks until payment in full for the Products has been received by NCRE.
  - 9.7 The foregoing provisions shall not entitle the Customer to return the Products without demand from NCRE.
  - 9.8 The Customer gives irrevocable authority to NCRE to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if NCRE believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. NCRE shall not be liable for any costs, damages, expenses or 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 unless by statute such liability cannot be excluded. NCRE may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any such repossessed Products and credit the Customer's account with the invoice value thereof less such sum as NCRE reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
  - 9.9 The Customer undertakes that it shall not, except with the prior written agreement of NCRE, charge, mortgage, borrow against or otherwise encumber any of the Products in favour of any third party until the Customer has made payment in full to NCRE for the said Products.
  - 9.10 The following shall constitute defaults by the Customer:
    - 9.10.1 Non-payment of any sum by the due date.
    - 9.10.2 The Customer intimates that it will not pay any sum by the due date.
    - 9.10.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
    - 9.10.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to NCRE remains unpaid.
    - 9.10.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets.
    - 9.10.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
    - 9.10.7 Any material adverse change in the financial position of the Customer.
  - 9.11 The Customer hereby waives its rights contained in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
  - 9.12 NCRE may in its discretion allocate any payment received from the Customer towards any invoice that NCRE determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by NCRE, payment shall be deemed to be allocated in such manner as preserves the maximum value of NCRE's purchase money security interest in the Products.
- 10. FAULTS**
- 10.1 The Customer must immediately notify NCRE of any faults in the Products and/or Services. The Customer agrees to meet NCRE's then applicable charges for examining, investigating or diagnosing faults (including travelling time or associated expenses).
  - 10.2 The Customer undertakes with NCRE that the Customer will not permit any unauthorised third person to examine, investigate, diagnose or repair any faults with the Products and/or Services without the prior written consent of NCRE. The Customer further undertakes that it will be fully responsible for all NCRE's costs of rectifying the Products and/or Services should any such unauthorised action(s) take place.
- 11. MISCELLANEOUS**
- 11.1 NCRE shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
  - 11.2 Failure by NCRE to enforce any of the terms and conditions contained in this Contract shall not be deemed to be a waiver of any of the rights or obligations NCRE has under this Contract.
  - 11.3 If any provision of this Contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 11.4 The Customer shall not assign all or any of its rights or obligations under this Contract without the written consent of NCRE.
  - 11.5 Where these terms of business are at variance with the order or instructions from the Customer these terms of business shall prevail.