

# TERMS & CONDITIONS OF SALE AND HIRE

## 1. INTERPRETATION

Where used in this document the following terms shall have the following meanings unless the context shall require otherwise:-

- 1.1 (a) "Heatcraft" means Heatcraft Australia Pty Ltd (ABN 67 000 056 717) and its successors and assigns;
  - (b) "Buyer" means the purchaser of any Goods and/or hirer of the Cylinder(s) and in the case of a company shall include its successors agents and permitted assigns and in the case of an individual shall include that individual's administrators and executors;
  - (c) "Conditions" means these terms and conditions of sale, the general warranty conditions of Heatcraft, any other conditions provided on Heatcraft's website and any agreed written variations; If there is any conflict, then in the absence of an express written variation from Heatcraft, the warranty provided on the Heatcraft website from time to time shall apply;
  - (d) "Cylinder" means the gas cylinder which may be supplied to the Buyer upon purchase of any Gas2Go® or other Goods;
  - (e) "Cylinder Service Charge" has the meaning set out in clause 11.1(a);
  - (f) "Cylinder Service Rate Charge Schedule" means the schedule of fees for the Cylinder service as displayed at Heatcraft's premises and/or available upon request;
  - (g) "Non Standard Goods" means any goods that are purchased by the Buyer through a Non Standard Goods Order;
  - (h) "Non Standard Goods Order" means Goods made or acquired by Heatcraft, at the specific request of the Buyer, and which are not standard goods of Heatcraft;
  - (i) "Default" means a default under clause 14 of these Conditions;
  - (j) "Goods" means any goods purchased by the Buyer from Heatcraft from time to time and includes any Non Standard Goods;
  - (k) "GST" means any tax including any additional tax imposed on the supply of or payment for Goods which is imposed or assessed under GST Law, which is excluded from the Price;
  - (l) "GST LAW" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and all other related and ancillary legislation;
  - (m) "Order" means an invitation to treat by the Buyer for the supply of Goods;
  - (n) "Price" is the amount payable by the Buyer for the Goods exclusive of any other sum payable by the Buyer;
  - (o) "Specified Period" means the period of thirty (30) days calculated from:
    - a. for the purposes of clause 3.2, the quotation date; and
    - b. for the purposes of clauses 3.4 and 3.5, the sales invoice date;or such other further period as Heatcraft may from time to time agree in writing.
- 1.2 If there shall be more than one (1) Buyer this agreement shall bind each of them jointly and severally.

## 2. APPLICATION OF THE TERMS & CONDITIONS

- 2.1 Entire Agreement. The entire agreement between Heatcraft and the Buyer for the purchase of the Goods by the Buyer from Heatcraft is:
  - (a) these Conditions; and
  - (b) any other terms and conditions which are imposed by law and cannot be excluded.
- 2.2 Acceptance. Acceptance of an Order by Heatcraft constitutes acceptance of these Conditions by the Buyer, and (without limitation) these Conditions apply to all good and services provided by Heatcraft whether arising from an Order received from the Buyer, or resulting from a quotation by Heatcraft, or arising from oral acceptance of repeat or future orders for the same and/or similar Goods and shall terminate, cancel and supersede any previous written or oral agreements and understandings entered into between the Buyer and Heatcraft.

## 3. PRICE & PAYMENT

- 3.1 The Price payable by the Buyer for the Goods shall be that as published from time to time by Heatcraft, including (without limitation) on its website, in its price lists or as quoted or advised by Heatcraft upon receipt of an Order for Goods from the Buyer. For the avoidance of doubt, in the absence of specific prices of any Goods as provided by Heatcraft, the prices of the Goods as published in Heatcraft's ruling price list at the time of delivery shall apply.
- 3.2 Subject to clause 3.3, quotations are valid for the Specified Period, after which they may be subject to change without notice. Heatcraft may at any time alter its price in respect of future orders.
- 3.3 If, between the date of the Order from the Buyer and delivery of the Goods, there is an increase in the cost of the supply of the Goods by Heatcraft which are due to reasons beyond Heatcraft's control, then Heatcraft will be entitled to increase the Price of the Goods and/or Cylinder Service Charge to compensate Heatcraft for the increase, such increase to be paid by the Buyer.
- 3.4 The Buyer shall pay the full Price (plus GST) and all other sums owing (including the Cylinder Service Charge) immediately on delivery of the Goods provided except when the Buyer has completed an "Application for Credit" to Heatcraft's approval, in which case the Buyer shall have until the end of the Specified Period to pay.
- 3.5 In the event that the Buyer fails to pay the Price (plus GST) or any other sum payable (including the Cylinder Service Charge) within the Specified Period:
  - (a) Heatcraft may at its option require cash on delivery and/or stop the supply of any further Goods or Cylinders to the Buyer;
  - (b) The Buyer shall pay to Heatcraft interest on the Price (plus GST) and all other sums (including the Cylinder Service Charge) payable at a rate 3% higher than the National Australia Bank's overdraft rate, for amounts

exceeding \$100,000, from time to time, on any monies due to Heatcraft from the time of Default until such monies are paid in full.

- 3.6 The Buyer agrees that a statement of indebtedness from Heatcraft to them is binding and conclusive, except in the event of manifest error.

## 4. DISCOUNTS AND REBATES

- 4.1 Heatcraft reserves the right to cancel, or at it's option suspend all trade discounts or rebates given to the Buyer, in the event that the Buyer fails to comply with any of these Conditions.

## 5. ORDERS

- 5.1 Heatcraft shall have no obligation to accept any order from the Buyer.
- 5.2 The Buyer also agrees that:
  - (a) each Order it places shall be deemed to include a representation that it is solvent and able to pay off its debts as and when they fall due;
  - (b) when any Order is placed, the Buyer shall inform Heatcraft of any facts which might reasonably affect any decision to accept the Order and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of Heatcraft and to be unconscionable, misleading and deceptive;
  - (c) from the time of placing the Order, the Buyer is obliged to accept and pay for the Goods in accordance with these Conditions and a cancellation of the Order or change in mind of the part of the Buyer as to the content of the Order, shall not discharge this obligation to accept the Goods and make payment;
  - (d) Heatcraft shall use its reasonable endeavours to ensure that the Goods are available and provided to the Buyer within the time frame requested by the Buyer, but shall not be liable for any loss or damage caused by delay. The Buyer shall not be entitled to reject the Goods due to any such delay; and
  - (e) Without prejudice to any other rights that Heatcraft may have in these Conditions, the Buyer shall indemnify Heatcraft for any loss, damage, or expense incurred by Heatcraft should the Buyer cancel any Order or part of any Order.
- 5.3 The Buyer acknowledges that if the Buyer places a Non Standard Goods Order with Heatcraft, the Buyer, at Heatcraft's discretion, must pay up to a 50% deposit at the time of the Non Standard Goods Order, which (for the avoidance of doubt) is a non-refundable deposit.
- 5.4 The Buyer further acknowledges that any Non Standard Goods Order(s) cannot be cancelled once the Non Standard Goods Order(s) has been placed with Heatcraft and to the fullest extent permitted by law the Non Standard Goods cannot be returned to Heatcraft at any stage.

## 6. DELIVERY

- 6.1 Heatcraft accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion without liability, at the Buyer's cost and risk in all things;
- 6.2 All delivery dates referred to by Heatcraft are given in good faith. Heatcraft shall use its reasonable endeavours to deliver the Goods to the Buyer on or before such delivery date. However, such delivery dates shall not be binding upon Heatcraft;
- 6.3 Heatcraft shall not be liable for any delay, failure, or inability to deliver, or for any consequential loss or cost of any property of the Buyer including in particular any food or product loss;
- 6.4 A charge will be made for frustrated delivery to cover Heatcraft's cost of attempts;
- 6.5 The Buyer shall not reject Goods for partial or late delivery; and
- 6.6 Unless agreed in writing to the contrary, Heatcraft reserves the right to make part deliveries of any Order. A failure by Heatcraft to make delivery of the entire Order shall not invalidate the Buyer's Order. If Heatcraft only delivers part of the Goods which are ordered by the Buyer, Heatcraft will still be entitled to invoice the Buyer for those Goods delivered.
- 6.7 The Buyer shall notify Heatcraft in writing of any shortages in quantity of any Goods delivered or of any defect in any such Goods within seven (7) days of delivery and after that time the Buyer will not be entitled to any claim.
- 6.8 If the Buyer requests Proof of Delivery ("POD") in writing to Heatcraft:
  - (a) within 120 days of the despatch date of the Goods, the POD will be supplied by Heatcraft free of charge;
  - (b) beyond 120 days of the despatch date of the Goods, Heatcraft will charge a reasonable administration fee at its standard rates which must be paid by the Buyer within 7 days following receipt of the invoice.

## 7. RETURNS

- 7.1 In the event that Heatcraft agrees in writing to accept return of any Goods for credit, Heatcraft will not be responsible for transport costs (except where due to error of supply) and will at its discretion, charge a re-stocking fee not greater than 20% of the Price.

## 8. RETENTION OF TITLE AND RISK

- 8.1 Title and risk in the Goods shall pass to the Buyer on delivery but the equitable title in the Goods shall not pass to the Buyer until full payment is received by Heatcraft for the Goods and any other goods sold to the Buyer by Heatcraft and until all cheques and other instruments are honoured or met in full.
- 8.2 The risk in the Goods shall pass to the Buyer immediately upon the Buyer or Buyer's agent taking possession of the Goods. The Buyer shall in all cases be responsible for the payment of any insurance in respect of the Goods and in the event that Heatcraft shall contract for any such insurance the Buyer shall reimburse the cost of the relevant insurance premium to Heatcraft.

## TERMS & CONDITIONS OF SALE AND HIRE

- 8.3 The Buyer may sell or deal in the ordinary course of business with the Goods and with the interest of Heatcraft in the Goods and may for those purposes part with possession of the Goods but the proceeds of any such sale or dealing must be held by the Buyer on trust for Heatcraft and appropriated solely for the payment of all sums owing to Heatcraft.
- 8.4 Whilst Heatcraft retains the legal and equitable title in the Goods the Buyer shall ensure that the Goods are clearly identifiable as the exclusive property of Heatcraft wherever the Goods are stored.
- 8.5 Heatcraft and the Buyer agree that any credit contract between them shall be terminated immediately on the happening of any Default. Until full payment is received by Heatcraft the Buyer shall be deemed to be a bailee of the Goods for and on behalf of Heatcraft and Heatcraft shall be entitled to all the rights and remedies of a bailor.
- 9. BUYER'S WARRANTY**
- 9.1 The Buyer warrants and agrees that the Buyer purchases all Goods from Heatcraft in the ordinary course of the Buyer's business for the purpose of reselling or re-supplying them or using or transforming them as part of a process of manufacture carried on by the Buyer. The Buyer also warrants and agrees that no Goods are purchased by the Buyer for the Buyer's domestic, household, personal or private use or consumption.
- 9.2 The Buyer warrants and acknowledges that it has not relied on any representation made by Heatcraft or any of its employees which has not been stated in these Conditions or on any description or illustration or specification contained in any document produced by Heatcraft or supplied directly or indirectly to the Buyer.
- 10. EXCLUSION OF LIABILITY AND INDEMNITY**
- 10.1 Subject to these Conditions, Heatcraft shall not be liable, to the maximum extent permitted by law, to the Buyer for any Loss in respect of Goods or performance of the contract and the Buyer shall indemnify Heatcraft against any action suit demand and proceeding in relation to any loss. Heatcraft shall not be liable for any food or product loss which may occur whether directly or indirectly as a result of any defect, malfunction or stoppage of the Goods.
- 10.2 Subject to these Conditions, the Buyer shall indemnify Heatcraft for any loss, damage or expense incurred by Heatcraft, to the maximum extent permitted by law, for any breach of these Conditions by the Buyer.
- 10.3 It is agreed that all terms, warranties, conditions, undertakings inducements or representations express or implied by statute or any other rule or regulation relating in any way to Goods or to these Conditions are excluded to the maximum extent permitted by law. To the extent that a breach of a Condition or warranty cannot be excluded then, subject to the Conditions, the liability shall be limited to the supply or replacement or repair of the Goods.
- 10.4 For the avoidance of doubt, any warranty given by Heatcraft in the Conditions may vary depending on the Goods supplied, with such variation to be notified. Any warranty provided in the Conditions, may only be varied and/or modified by Heatcraft in writing.
- 11. CYLINDER HIRE**
- 11.1 Notwithstanding any other terms of these Conditions, if the Buyer is supplied a Cylinder by Heatcraft then the Buyer agrees to be bound by the following terms and conditions:
- (a) Unless otherwise agreed in writing, the Buyer must pay a periodic charge ("Cylinder Service Charge") for the hire of the Cylinder(s) by the Buyer at Heatcraft's standard rates (as set out in the Cylinder Service Rate Charge Schedule) in accordance with Clause 3.
  - (b) The Cylinder Service Charge covers Heatcraft's reasonable costs associated with the Cylinders, including but not limited to, cost of tracking, inspecting the Cylinder prior to filling, periodic testing and routine maintenance of the Cylinder (painting and labelling).
  - (c) The Buyer must, at its own cost, return all Cylinders to Heatcraft as soon as they are empty. Cylinders are not deemed 'returned' until received by Heatcraft (or its authorised agent) at their premises and Heatcraft provides to the Buyer a written receipt, acknowledging the Cylinder's return.
  - (d) On receipt of each Cylinder Service Fee invoice, the Buyer is required to verify the total number of Cylinders held that is shown on the face of the invoice. Where there is any discrepancy written notification must be forwarded to Heatcraft within 14 days of receipt of the invoice failing which the number of Cylinders stated as being held by the Buyer on the cylinder fee invoice shall be conclusive and the Buyer will be liable to Heatcraft for the amount shown on the invoice.
  - (e) Heatcraft may charge a deposit upon supply of the Cylinder to the Buyer on terms satisfactory to Heatcraft having regard to the nature of the transaction with the Buyer. Once the Cylinder(s) is returned to Heatcraft in a clean, safe and serviceable condition, Heatcraft will refund the deposit (or appropriate part thereof) to the Buyer.
  - (f) Heatcraft will have the right to charge a reasonable administrative fee for the collection of any Cylinders from the Buyer.
  - (g) Cylinders remain the property of Heatcraft (or its supplier) and the Buyer shall be a Bailee of any Cylinders and shall not sell, offer for sale, mortgage, charge, or create any lien or encumbrance over the Cylinders.
  - (h) The Buyer shall not repair, modify, tamper with, or contaminate Cylinders and shall not permit the Cylinders to be filled by anyone other than Heatcraft.
- (i) Buyer shall be responsible for the safe use and storage of all Cylinders and shall not use the Cylinders for any other purpose other than as a container for gas sold by Heatcraft.
  - (j) The provisions of clause 10 apply to the hire of the Cylinders by the Buyer.
  - (k) Buyer shall be responsible for any loss or damage to the Cylinder. Compensation shall be at Heatcraft's current replacement cost of those Cylinders.
  - (l) A Cylinder will be deemed lost if the Buyer reports that a Cylinder is lost to Heatcraft or the Cylinder has not been returned and 12 months has elapsed since the Cylinder was supplied to the Buyer, whichever is the earlier.
  - (m) Heatcraft will issue an invoice for the replacement cost at the beginning of the 13th month and the amount of the invoice must be paid in accordance with Clause 3 if the cylinder is returned in good order after this date, the amount paid by the Buyer will be refunded less the appropriate Cylinder Service Charge for the extended period that the Cylinder was in the Buyer's possession.
  - (n) Title to the Cylinder(s) remains with Heatcraft (or its supplier) until payment in full is received, the risk in the lost or sold Cylinder(s) will pass to the Buyer upon Heatcraft issuing an invoice for the replacement cost for any lost Cylinders.
- 12. PROPER LAW**
- 12.1 These Conditions shall be governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.
- 13. ADDITIONAL COSTS, TAXES, ETC.**
- 13.1 If any duties, taxes, rates or other impost shall be levied in respect of any purchase of Goods or hire of the Cylinders, the Buyer shall pay such amount in addition to the Price (plus GST).
- 13.2 In the event that the Buyer shall specifically order Heatcraft to acquire Goods or components from any foreign source the Price (plus GST) payable by the Buyer may be increased by Heatcraft at any time whether before or after delivery and despite any quotation that may have been given by Heatcraft to the Buyer to compensate Heatcraft for any exchange loss which may have occurred as a result of the fall in value of Australian currency as against the relevant foreign currency.
- 14. DEFAULT**
- 14.1 The Buyer shall be in default under these Conditions, where:
- (a) the Buyer fails for any reason to pay any moneys due to Heatcraft as and when they fall due; or
  - (b) the Buyer fails to perform or observe any of its obligations under these Conditions; or
  - (c) the Buyer exceeds the limit of any credit account with Heatcraft; or
  - (d) any of the assets or property of the Buyer are subject to a warrant of execution or similar for more than seven days after its levy or issue; or
  - (e) the Buyer suspends payment of its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth) or enters or proposes to enter into any arrangement scheme or composition with its creditors or ceases or threatens to cease carrying on business or is wound up or suffers the appointment of any external administration.
- 14.2 In the event of Default by the Buyer, the Buyer must indemnify Heatcraft's legal costs fees charges expenses and outgoings on a solicitor and own client basis flowing from a Default
- 15. BUYER RESTRUCTURE**
- 15.1 The Buyer will notify Heatcraft in writing of any change in its structure or management including any change in director, shareholder, or change of management in partnership or trusteeship within 4 days of the date of such change.
- 16. FORCE MAJEURE**
- 16.1 Heatcraft will not be or deemed in default or breach of any contract as a result of the effects of force majeure. Force majeure will include any cause beyond the reasonable control of Heatcraft.
- 17. SEVERABILITY**
- 17.1 Any part hereof being a whole part of a clause shall be capable of severance without affecting any other part of these Conditions.
- 18. WAIVER**
- 18.1 A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or any other right.