

# Terms & Conditions of Sale

## 1. General

The whole of the Agreement between Rinnai Australia Pty Ltd ABN 74 005 138 769 and its related bodies corporate ("Rinnai") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time 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 products 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. All Goods are charged at the price ruling at the date of invoice and any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 ("GST") or other government imposts shall be payable by the Customer in addition.

## 2. Credit Terms

2.1 Payment is due on or prior to thirty (30) days from the last business day of the calendar month of the supply of the Goods unless otherwise stated in writing by Rinnai. Rinnai may 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 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 legal costs referred to in Clause 2.2, and then to principal.

2.2 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Rinnai for enforcement of obligations and recovery of monies due from the Customer to Rinnai. Any monies received by Rinnai from the Customer will be applied first in relation to such costs and expenses.

## 3. Delivery & Supply

3.1 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.

3.2 Any description of Goods contained in a quotation or other documents or pamphlets which may precede or accompany the Goods, is given by way of identification only and the use of such description does not constitute a contract of sale by description.

## 4. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Rinnai from time to time:-

4.1 All sums outstanding become immediately due and payable by the Customer to Rinnai if the Customer makes default in paying any other sums due to Rinnai, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

4.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Rinnai (returning the same to Rinnai on request). The Goods shall nevertheless be at the risk of the Customer from the time of delivery/supply and the Customer must insure the Goods from the time of delivery/supply.

4.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Rinnai provided that there shall be no right to bind Rinnai to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Rinnai pursuant to the fiduciary relationship.

4.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Rinnai. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.

4.5 Rinnai is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods.

4.6 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 under this or any other contract.

## 5. Returns, Cancellations and Claims

5.1 The Customer shall not return any Goods to Rinnai without obtaining prior authorisation from Rinnai which must be requested in writing within fourteen (14) days of delivery of the Goods. The Customer must at all times comply with the Rinnai Goods Returned Policy as amended from time to time ("Goods Returned Policy"). The Goods Returned Policy is generally available for viewing on the Rinnai Internet web site ([www.rinnai.com.au](http://www.rinnai.com.au)).

5.2 Agreed returns may be subject to a minimum handling charge of fifteen (15) percent at the absolute discretion of Rinnai.

5.3 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, as determined by Rinnai, will indemnify Rinnai against all loss, without limitation. Cancellation will not be accepted on Goods that are not regular stock which are in the process of manufacture or ready for shipment.

5.4 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 fourteen (14) days of the date of delivery of the Goods and the Customer must comply with the Goods Returned Policy. 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.

## 6. Privacy Act 1988 ("Privacy Act")

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

6.1 To obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the *Privacy Act*; and

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

AND in accordance with Section 18N(1)(b) of the *Privacy Act* 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 the information can be used for the purposes of assessing its application for credit (Section 18L(4) *Privacy Act*), assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its credit worthiness.

## 7. Notification

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

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

7.2 The issue of any legal proceedings against the Customer.

- 7.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 7.4 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.

## **8. Warranties**

No warranties except those implied and which cannot be excluded by law are given by Rinnai in respect of goods or services 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, the supplying of the services again or the payment of the cost of having the services supplied again, as determined by Rinnai.

## **9. Legal Construction**

- 9.1 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.
- 9.2 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.

## **10. Equitable Charge**

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) ("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 costs (including legal costs on a full indemnity basis) incurred by Rinnai and including the costs to prepare and lodge a caveat against the Land and to remove the caveat.