

## Dieselheat Terms and Conditions

The following terms and conditions apply to all Goods and Services supplied by **Dieselheat Pty Ltd** ACN 624 228 780 ("**Dieselheat**"). Nothing in these terms and conditions is intended to have the effect of contracting out of the Australian Consumer Law:

### DEFINITIONS OF TERMS:

- "**Approved Credit Account Customer**" means a Customer with whom **Dieselheat** has entered into a credit account.
- "**Business Day**" means Monday to Friday inclusive, except gazetted public holidays applicable to the location defined as Hobart, Tasmania, Australia.
- "**Business Hours**" means the hours between 9.00am and 5:00pm of a Business Day in Hobart, Tasmania, Australia.
- "**Customer**" means the purchaser of Goods or Services and includes a person, business or company.
- "**Customer Document**" means a quotation, proposal, bill of materials, scope of work, invoice, credit note or other specifications applicable to the sale or supply of Goods and Services by **Dieselheat**.
- "**Goods**" means Goods supplied by **Dieselheat** to the Customer procured or supplied pursuant to these terms and conditions.
- "**Incidental Costs**" means freight, tax, installation, support or maintenance costs, preparation of the site, audit of customer's physical environment, overtime rates, and miscellaneous expenses such as travel and accommodation to deliver the Goods and services.
- "**Price**" means the cost of the Goods and/or the Services set out in the Customer Document for the Goods and/or Services required by the Customer and unless specifically noted, does not include Incidental Costs.
- "**Purchase Order**" means a valid, written authority, which references applicable Customer Document and stipulates the procurement from **Dieselheat** of the required Goods or Services.
- "**Services**" means all services supplied by **Dieselheat** to the Customer includes trade services, support services, and any other services that may be offered.
- "**Terms of Trade**" unless otherwise advised or specified in a Customer Document, **Dieselheat** standard terms of trade for an Approved Credit Account Customer, are payment at end of month of invoice (EOM) from Invoice date. Trading Terms for customers without an approved credit account, are COD in all circumstances.

### GOODS & SERVICES: ORDERS AND DELIVERIES

Orders for Goods on credit will only be accepted from Approved Credit Account Customers. Such customers will need to have completed and submitted a Credit Application and have received confirmation of approval prior to any supply on credit.

Goods may only be procured upon receipt of a Purchase Order, email or equivalent approval from the Customer.

Once a purchase order or written approval has been received by **Dieselheat**, the order is considered to be a firm and binding contract of sale.

If the customer is not an Approved Credit Account Customer, payment is required prior to shipment of the Goods or provision of any services.

List prices and specifications of Goods are subject to change without notice. Orders are accepted on the basis that **Dieselheat** reserves the right to vary the prices payable to accord with those ruling at the date of order except where prior negotiation allows an order on an alternative basis.

**Dieselheat** will arrange for Goods to be shipped by an authorised Courier to the Customer's nominated delivery address. **Dieselheat** takes no responsibility for the Goods once received by the Customer.

If there is no one available to accept and sign for the delivery of the Goods at the Customer's nominated delivery address, within Business Hours on a Business Day the Customer is responsible for any additional costs incurred on account of subsequent delivery attempts having to be made.

Estimated delivery dates are based on information available to **Dieselheat** from suppliers and are subject to change at any time, without prior notice. **Dieselheat** is not responsible for delays in delivery caused for reasons beyond its control. **Dieselheat** is not liable for delay in delivery of the Goods or Services, howsoever caused.

Goods and Services Tax is included in quoted prices unless otherwise stated but will be charged to Applicant's account where applicable.

## PERFORMANCE OF SERVICES

Unless otherwise agreed, Services will be performed during Business Hours of Business Days, in accordance with the applicable Customer Document. **Dieselheat** will perform the Services utilising such resources, employees and subcontractors as we deem appropriate.

## PRICE & PAYMENT

Unless the Customer is an Approved Credit Account Customer, payment must be made by the Customer prior to shipment of the Goods or prior to performance of the Services.

A customer may apply to be considered for an Approved Credit Account by completing the application form process and agreeing to the general terms and conditions.

Payment by Approved Credit Account Customers is to be made in accordance with the agreed terms of credit, the terms shown on the Invoice, or in the case of projects, the terms specified, including progress payments, and agreed to in the Quotation or Proposal document.

Payment by Customers will be by online payment gateway or direct bank account deposit when possible.

## DEFAULT & CONSEQUENCES OF DEFAULT

To the extent a customer is a credit customer, **Dieselheat** may, in its sole discretion, suspend the provision of credit to the customer at any time until all amounts owing are paid for in full.

If the customer owes **Dieselheat** any money, the customer shall indemnify **Dieselheat** from and against all costs and disbursements incurred by **Dieselheat** in recovering the debt including but not limited to internal administration fees, legal fees and charges on a Solicitor and own client basis, filing fees, stamp duty, taxes or any other fees payable, or incurred in relation to such recovery process.

## INSPECTION, ACCEPTANCE, OWNERSHIP, RISK

Risk of loss or damage of Goods passes to the Customer upon collection or delivery, or where the customer has nominated their preferred carrier, when delivered to or collected by that carrier.

Notwithstanding passing of risk, **Dieselheat** retains ownership of Goods until payment has been made in full and the applicant acknowledges that it is in possession of these Goods as a bailee of **Dieselheat**. Until title in the Goods passes to the Customer, it is the Customer's responsibility to separately store, identify and insure the Goods appropriately.

Upon non-payment within the trading terms **Dieselheat** is entitled to retrieve the Goods. When called upon to do so, the Customer must deliver up the Goods to **Dieselheat**. The Customer irrevocably authorises **Dieselheat** to enter any premises where **Dieselheat** believes the Goods are kept and recover possession of the Goods. The Customer indemnifies **Dieselheat** against any claim, action or damages arising out of any such action, and against the cost, including recovery costs of the same.

It is the Customer's responsibility to inspect all Goods upon delivery. Unless the Customer notifies **Dieselheat** in writing, to the contrary within 24 hours of delivery, the Goods will be deemed to have been accepted by the Customer.

## AUSTRALIAN CONSUMER LAW

Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- a. to cancel your service contract with us; and
- b. to a refund of the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or service.

## WARRANTY

Nothing in this clause affects a Customer's rights under the Australian Consumer Law.

The conditions applicable to the warranty given on Goods and Services supplied by **Dieselheat** are contained in the Warranty Sheet supplied with the Goods and/or Services.

## GOODS, RETURNS AND REFUNDS

Nothing in this clause affects a Customer's rights under the Australian Consumer Law. Unless specified otherwise and in addition to any rights the Customer may have under statute. When a Customer has ordered Goods incorrectly, or changes its mind, the Customer may apply to return them to Dieselheat for a credit, provided that:

The Goods are returned within 30 days of the invoice date;

- Modified Goods may not be returned;
- Goods returned more than 30 days from the invoice date may not be accepted for a credit;
- Special, non-standard Goods or Goods supplied as custom made for a Customer order will not be accepted for credit;
- Freight charged on the original invoice for the Goods will not be credited on returned Goods;
- The Customer is responsible for the cost of returning the Goods to **Dieselheat**.

**Dieselheat** will not accept the return of the Goods unless such return is expressly authorised by **Dieselheat**. The process for returning Goods is as follows:

- The Customer must advise **Dieselheat** in writing of their intention to return the Goods, detailing the reason for the return of the Goods.

- **Dieselheat** will advise the Customer as to the outcome of the return request, but no credit or refund will be issued until the manufacturer or distributor has issued an acceptance of the returned product.
- A service fee may apply if there is no fault found with Goods returned for repair.

## LIMITATION OF LIABILITY

To the extent permitted by law, **Dieselheat** limits its liability for any loss or damage caused by or arising out of the use of the Goods, or arising out of failure, malfunction, or deterioration of such Goods, to the cost of repair or replacement of the Goods.

To the extent permitted by law, in no event shall **Dieselheat** be liable for any indirect, special, or consequential damages whether such damages are alleged as a result of tortious conduct (including negligence) or breach of contract or otherwise. **Dieselheat's** liability in aggregate for all claims made against **Dieselheat** in contract, tort or any other common law or statutory cause of action in connection with this Contract is limited to:

- In respect of Goods, the component of the Price paid for such Goods under this Contract.
- In respect of Services, the component of the Price paid for such Services under this Contract.

Where a claim relates to both Goods and Services, the limits on **Dieselheat's** liability shall operate separately and independently of each other in respect of such Goods and Services. A party's liability for a claim of another party will be reduced proportionately to the extent that any act of omission of the first mentioned party or any of its officers, agents, employees or contractors causes or contributed to those liabilities, losses, damages, cost or expenses.

## TERM AND TERMINATION

This Contract will continue in force for the term set out in a Customer Document or until **Dieselheat** has fulfilled its obligations under this Contract. Either party may otherwise terminate this Contract upon 30 days prior written notice, where the other party is in material default.

The provisions of this Contract are enforceable independently of each of the others and if a provision is or becomes illegal, invalid, void or deemed unenforceable, it shall not affect the legality, validity or enforceability of any other provisions of this Contract.

Waiver failure or delay by either party to enforce any provision of this Contract shall not be deemed waiver of future enforcement of that or any other provision.

This Contract shall be governed by the laws of Tasmania, Australia.