

# Terms and Conditions

## TERMS AND CONDITIONS OF TRADE

### 1. Definitions

In these terms of trade:

"Account" means the Customer's account with the Vendor.

"Application" means the application for credit addressed to the Vendor which the Customer completes for supply of goods and services.

"Customer" means the person or entity making the application or any person acting with ostensible authority on behalf of the Customer.

"Goods" means goods supplied by the Vendor to the Customer at any time.

"Guarantor" means any party executing a Guarantee of the Customer's Account with the Vendor.

"Notice" means notice by telephone call or in writing acknowledged by the Vendor at least two (2) working hours prior to the agreed time for the provision of the Services. For the purposes of this definition working hours includes the hours of 8.00am to 5.30pm on any week day that is not a public holiday.

"Order" or "Orders" means the order or orders of the Customer to the Vendor to supply Goods and Services.

"PPSA" means the Personal Property Securities Act 1999.

"Services" means services supplied by the Vendor to the Customer at any time.

"Vendor" means Wishart Appliance Repair Co Limited.

### 2. Orders

Orders will be on such forms as the Vendor may require from time to time.

### 3. Acceptance

Each Order shall constitute acceptance by the Customer of these Terms and Conditions of Trade.

### 4. Prices

(a) All Orders will be charged at prices prevailing at the date of delivery of the Goods and Services. Prices are subject to change without notice.

(b) The Customer is responsible for determining whether the Goods to be repaired are covered by any manufacturers or extended warranty. Where such warranty applies the Customer shall have the benefit of such manufacturers or extended warranty. In all other instances clause 4(a) applies.

### 5. Delivery

Where the Order makes provision for delivery then delivery shall take place at the place stated in the Order. If no place is indicated then delivery shall be made at the physical address of the Customer set out in the Application.

### 6. Access for Installation and Provision of Services

(a) The Customer shall provide for the purposes of installation and provision of Services at no cost to the Vendor, all necessary facilities including power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and employee amenities which comply with the statutory requirements.

(b) Upon the Vendor delivering Goods or providing Services the Customer shall ensure adequate safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to the Vendor at no cost to the Vendor.

(c) The Customer acknowledges that it solely shall be responsible for arranging and providing convenient access for the Goods and provision of Services to the proposed place of installation including but not limited to access thereto by way of stairs, lift or crane as the case may require.

(d) If the Customer fails to supply convenient access as aforesaid for any reason then the Vendor may make a further charge to the Customer to cover the additional costs it incurs arising from such failure as the Vendor considers reasonable.

(e) If the Customer is not in a position to accept or take delivery of the Goods or accept provision of the Services as scheduled the Customer shall be responsible for all additional charges caused thereby.

(f) Where installation or supply of the Goods or provision of the Services is required of the Vendor by the Customer and installation or supply is required to be co-ordinated with other trades the Customer shall provide the Vendor with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for the Vendor to meet delivery or supply dates.

(g) The delivery or supply period shall be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Vendor's control.

(h) The Vendor's minimum charge and labour rates can be viewed at [www.wishart.net.nz/services](http://www.wishart.net.nz/services) or by telephoning the Vendor at the telephone number on the Application.

(i) If the Customer wishes to cancel the Order, the Customer must give Notice. If Notice is not given, the Customer agrees to pay the Vendor's minimum service fee.

(j) If the Customer fails to provide access at the agreed appointment time, the Vendor may charge an administration fee.

### 7. Health and Safety in Employment Act 1992

The Vendor shall be responsible for the actions of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ("HSEA"). The Customer shall be responsible for compliance with the HSEA in respect of the Customer's site and shall advise the Vendor prior to commencement of any work of any hazards on the Customer's site.

### 8. Time of Performances

Time shall in no case be of the essence in respect of the delivery of Goods or the provision of Services. The Vendor shall not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer shall not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase. Delivery of Goods by the Vendor to a carrier is deemed to be delivery to the Customer.

### 9. Terms of Payment

(a) Unless otherwise specified, payment for all Goods and Services shall be made on completion of repair.

(b) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.

(c) An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.

(d) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day by day basis until payment is made in full.

(e) All costs of or incurred by the Vendor as a result of a default by the Customer including but not limited to administration charges, debt collection costs and legal costs as between solicitor and client shall be payable by the Customer.

(f) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

### 10. Quotation

Where a quotation is given by the Vendor for the supply of Goods and Services:

(a) unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;

(b) the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.

### 11. Taxes and Duties

Unless expressly included in any quotation given by the Vendor, Goods and Services Tax and other taxes and duties assessed or levied in connection with the supply of the Goods and Services to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

### 12. Payment Allocation

The Vendor may in its discretion allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Vendor's purchase money security interest in the products.

### 13. Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

### 14. Risk

From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

### 15. Ownership/General Lien

(a) The Vendor shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.

(b) If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.

(c) The Vendor shall have a right to stop and retrieve the Goods in transit whether or not ownership has passed.

### 16. Ownership

Until payment is made by the Customer, the Customer agrees to:

(a) enable the Goods to be readily identifiable as the property of the Vendor;

(b) hold the Goods as trustee for the Vendor and will deal with the Goods as agent for and on behalf of the Vendor (but will not hold the Customer out as an agent to any third parties);

(c) if the Goods are re-sold, the proceeds of re-sale will belong to the Vendor and the Customer shall keep the proceeds of sale in a separate account for which separate records are kept.

### 17. Merger with Other Goods

If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products and services shall remain with the Vendor until the Customer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new goods title to those new goods shall be deemed to be assigned to the Vendor as security for the full satisfaction by the Customer of the full amount owing by the Customer to the Vendor.

### 18. Recovery of Goods

(a) In the event of non-payment or if payment of the Customer's Account is overdue the Vendor shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether at the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.

(b) The Customer warrants to the Vendor that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.

(c) The Vendor will not be responsible for any damage reasonably caused in the course of removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.

(d) The Vendor may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.

### 19. Warranties

(a) Unless otherwise specified, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and Services.

(b) The Vendor warrants the workmanship of the Goods and Services free from material defect for a period of three months following supply. The Customer must notify the Vendor in writing of the defect in workmanship within a reasonable time from discovering such defect and within three months following supply.

(c) Where applicable, manufacturer's warranties will attach to the Goods.

(d) Where the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods and Services supplied by the Vendor under any order with the Vendor are being acquired by the Customer for the purpose of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods and Services.

(e) Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order, the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

### 20. Compliance

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.

### 21. Cancellation

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

### 22. Returns

The Customer shall not be entitled to return Goods or cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

### 23. Personal Property Securities Act 1999

(a) The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor in all Goods and Services previously supplied by the Vendor to the Customer