Terms and Conditions

In all sales with Perth Home of Heating, terms and conditions apply. For more information on any of the terms and conditions listed on this page please give us a call.

Warranty

All new heaters sold through Perth Home of Heating have a manufacturers nationally covered Warranty.

Keep your final Invoice (showing all balances paid) with your units' serial number in a safe place as it will be required for any Warranty claims.

Pease refer to the individual Manufacturer's Warranty card for terms and conditions.

Pricing

Please note that all prices provided are supply only and do not include installation or delivery. Any prices provided for special orders are indicative only and does not represent a quotation, unless specified.

Returns

Perth Home of Heating follow Fair Trading recommendations regarding refunds.

All heaters require a 50% deposit on ordering, if the sale is cancelled the deposit will be forfeited to cover Freight costs and a restocking fee.

Special orders will incur a re-stocking fee of 20% and freight costs.
Custom made orders of goods to your requirements are non-refundable.

There will be no refunds for a change of mind, so please consider all aspects on your order.

Lay-By

- A Layby of 3 months will require a 20% payment on initiation with completion in full by the due date. The heater will be ordered once the Layby payments has reached 50% of the total invoice. At this point if the Layby is cancelled all payments will be forfeited to cover freight costs and restocking fees.
- Layby may be cancelled at any time PRIOR to the ordering of goods and a refund less 5% to cover administration charges will be issued.
- The term of a layby may be extended at the discretion of the salesperson and details to this effect will be stated on the customers invoice.
- The products may be held for a further 3 months by Perth Home of Heating, at the request of a customer; after which time it will need to be picked up.
- Layby will not be offered for custom made orders which are non refundable.

These fees may be reduced or waived at the discretion of the manager depending on the product/s ordered and the length of time with which the layby has been held at the time of cancellation

Storage

Any unit held in storage with us for more than a period of three (3) months may incur storage fees.

1. **Definitions**

1.1 "Seller" means Perth Home of Heating Pty Ltd T/A Perth Home of Heating, its successors and assigns or any person acting on behalf of and with the authority of Perth Home of Heating Pty Ltd T/A Perth Home of Heating.

1.2 "Buyer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.

1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 below.

2. **Acceptance**

2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Seller.

3. **Change in Control**

3.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, address, contact phone or fax number/s, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

4. **Price and Payment**

4.1 At the Seller's sole discretion the Price shall be either:

(a) as indicated on any invoice provided by the Seller to the Buyer; or

(b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation/order is requested.

4.3 At the Seller's sole discretion a deposit of up to seventy five percent (75%) may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:

(a) before delivery of the Goods;

(b) the date specified on any invoice or other form as being the date for payment; or

(c) by way of instalments/progress payments in accordance with the Seller's payment schedule;

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Buyer and the Seller.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. **Lay-by Conditions**

5.1 In the event that the Client purchases the Goods on lay-by then these terms and conditions shall be deemed to be a lay-by agreement.

5.2 The lay-by agreement shall commence upon payment by the Client to the Supplier of a deposit of twenty percent (20%) of the Price of the Goods and final payment for the Goods on lay-by shall be due no later than twelve weeks after the deposit is paid.

6. **Delivery of Goods**

6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

(a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or

(b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.

6.2 At the Seller's sole discretion the cost of delivery is in addition to the Price.

6.3 The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 Any time or date given by the Seller to the Buyer is an estimate only. The Buyer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Buyer as a result of the delivery being late.

7. **Risk**

7.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights

to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.

8. **Title**

8.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:

(a) the Buyer has paid the Seller all amounts owing to the Seller; and

(b) the Buyer has met all of its other obligations to the Seller.

8.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

(a) until ownership of the Goods passes to the Buyer in accordance with clause 8.1 that the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request.

(b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.

(d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.

(e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.

(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.

(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

11.1 The Buyer must inspect the Goods on delivery and must within two (2) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Buyer must allow the Seller to inspect the Goods.

11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

11.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Buyer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.

11.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Buyer has paid for the Goods.

11.7 If the Buyer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Buyer by the Seller at the Seller's sole discretion;

(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;

(c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:

(a) the Buyer has complied with the provisions of clause 11.1; and

(b) the Seller has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Buyer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Buyer failing to properly maintain or store any Goods;

(b) the Buyer using the Goods for any purpose other than that for which they were designed;

(c) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Buyer failing to follow any instructions or guidelines provided by the Seller;

(e) fair wear and tear, any accident, or act of God.

11.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Buyer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

11.11 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.

12. **Intellectual Property**

12.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.

12.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

12.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

13. **Default and Consequences of Default**

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.

13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;

(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

14. **Cancellation**

14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage (including, but not limited to costs incurred in the processing of financial transactions), whatsoever arising from such cancellation.

14.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.

15. **Privacy Act 1988**

15.1 The Buyer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.

15.2 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Buyer; and/or

(b) to notify other credit providers of a default by the Buyer; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Buyer.

The Buyer understands that the information exchanged can include anything about the Buyer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

15.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time):

(a) the provision of Goods; and/or

(b) the marketing of Goods by the Seller, its agents or distributors; and/or

(c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or

(e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.

15.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Buyer;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

15.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Buyer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Buyer's application for credit or commercial credit and the amount requested;

(c) advice that the Seller is a current credit provider to the Buyer;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Buyer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Buyer's credit obligations);

(g) advice that cheques drawn by the Buyer for one hundred dollars ($100) or more, have been dishonoured more than once;

(h) that credit provided to the Buyer by the Seller has been paid or otherwise discharged.

16. **Unpaid Seller's Rights**

16.1 Where the Buyer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Buyer, the Seller shall have, until all moneys owing to the Seller are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

16.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Buyer.

17. **General**

17.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Western Australia in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts of Perth in that state.

17.3 Subject to clause 11 the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

17.4 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

17.6 The Buyer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. The Buyer will be taken to have accepted such changes if the Buyer makes a further request for the Seller to provide Goods to the Buyer.

17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

17.8 The Buyer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.