



## INSTALLER TERMS AND CONDITIONS

### 1 DEFINITIONS

#### 1.1 In these Terms:

**Applicable Requirements** means all statutes, regulations, statutory instruments, delegated or subordinated legislation, codes of practice and standards (both general and industry specific), that are applicable to the Goods and/or Services;

**Broker** means Warm Fuzzies Limited (Company No. 6343350);

**Customer** means any company, firm or individual or their agent (e.g. a property manager) to whom the Installer provides the Services as stated in the Quotation;

**Goods** means all materials and products supplied by the Installer to the Customer (including but not limited all insulation products, heating appliances and ventilation appliances) in connection with the Installation Services;

**Installation Contract** means any agreement between the Installer and the Customer to carry out the Installation Services in accordance with the Quotation and these Terms;

**Installation Services** means the supply and install of materials (including insulation where applicable) and/or completion of other services in accordance with the Installation Contract;

**Installer** means the installer that the Customer chooses to carry out the Installation Services;

**Personnel** includes directors, employees, contractors and agents (but a reference to the Installer's personnel does not include the Broker);

**Price** means the price payable for the Installation Services as set out in the Quotation and any additional amounts charged in accordance with these Terms;

**Property** means the property or properties that the Customer owns, occupies or manages (as applicable) where the Installation Services are being completed including all buildings on that property or properties;

**Quotation** means a quotation for the Installation Services provided to the Customer by the Installer or the Broker on behalf of the Installer; and

**Terms** means these Terms and Conditions together with any special terms agreed in writing between the Installer and the Customer.

### 2 ACCEPTANCE

2.1 These Terms will apply to the Installation Services that the Installer carries out for the Customer.

2.2 Without limiting any other methods of acceptance, the Customer's request for the Installer to provide the Customer with the Installation Services will constitute the Customer's acceptance of these Terms.

2.3 Where there is more than one Customer, these Terms will bind those persons jointly and severally. For the avoidance of doubt, reference to Customer in these terms will include any agent (e.g. a property manager) acting on behalf of the owner of the Property and these terms will bind the agent and such owner jointly and severally. In such case the agent warrants that it has authority to act as agent on behalf of the owner of the Property and bind that owner to these Terms.

2.4 The Installer or Broker may vary these Terms from time to time by giving no less than 20 days written notice to the Customer. Any varied Terms will apply to the provision of all Services to the Customer after the notice period referred to above.

2.5 These Terms will continue until either party terminates these terms by giving the other no less than 20 days written notice. Termination of these terms will not affect either party's rights and obligations that accrued before termination including in relation to any Installation Services that are current as at the date of termination.

### 3 QUOTATIONS

3.1 All Quotations are given without commitment and if not accepted will automatically expire 30 days from the date of issue.



# warmfuzzies

streamlining **healthy homes**

3.2 An Installation Contract will only arise between the Installer and the Customer if the Installer has accepted the Customer's instructions to proceed with the Installation Services as set out in the Quotation.

3.3 The Customer agrees that if new information becomes available or any mistake in the variables that the Quotation is based upon is identified, the Quotation may be cancelled or varied by the Installer or the Broker provided that any variation (other than a variation under clause 4.2) will require the prior approval of the Customer.

## **4 PRICES AND PAYMENT**

4.1 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.2 The Customer will accept and pay any variation in the Price due to any changes in the quantities of the Goods supplied and installed but only up to 10% of the quoted price for any Goods.

4.3 If the Customer requires a professional cleaner to come through after the Installer has completed the Installation then the Customer agrees to pay for the costs of such cleaning in addition to the Price.

4.4 The Broker will issue an invoice to the Customer on behalf of the Installer after completion of the Installation Services. All invoices are due for payment within 7 days of the date of the invoice.

4.5 The Installer may charge default interest of up to 10% per annum compounding monthly on all amounts that are not paid on time. If any amount that is owed to by the Customer continues to remain unpaid, the Installer may also take action to recover that amount and charge the costs incurred in doing so.

## **5 ACCESS TO PROPERTY**

5.1 The Customer warrants that it has the legal right to provide the Installer and its Personnel with access to the Property to complete the Services.

5.2 The Installer will endeavour to give the Customer at least 24 hours notice before accessing the Property. The Customer will co-operate with the Installer and the Broker in arranging access to the Property.

5.3 If the Installation Services involves the supply and install of insulation, the Installer will only complete the Installation Services if, or to the extent that, the relevant areas are safe, unobstructed access is provided and the following minimum clearance is available unless otherwise approved by the Installer:

- a. Internal Ceiling Access: Access manhole 450mm x 400mm; crawl space vertical clearance 600mm from upper side of ceiling joist; height accessible from a ladder no higher than 3.6m;
- b. Sub floor: Access manhole 500mm x 400mm; crawl space vertical clearance; and
- c. Timber floor: 400mm (from underside of bearer) concrete floor 500mm.

## **6 QUALITY**

6.1 The Goods shall meet the required standards to comply with Applicable Requirements as at the date of installation. The Customer acknowledges that the Customer is aware of product performance and limitations as specified in relevant manufacturer's literature for the Goods supplied.

## **7 DELIVERY OF GOODS**

7.1 Delivery of the Goods shall take place when the Goods are delivered and installed in the Property.

## **8 RISK AND TITLE**

8.1 All risk for the Goods passes to the Customer on delivery.

8.2 Ownership of the Goods shall not pass to the Customer until:

- a. the Customer has paid the Installer all amounts owing for the particular Goods; and
- b. the Customer has met all other obligations owed by the Customer to the Installer under the Installation Contract

8.3 The Customer warrants that the Property is insured for either replacement value or an appropriate sum insured amount against all normal risks (including fire cover).



# warmfuzzies

streamlining **healthy homes**

## **9 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- 9.1 The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and a security interest is taken in all Goods supplied by the Installer to the Customer until title in those Goods passes to the Customer in accordance with these Terms.
- 9.2 The Customer agrees, from time to time, to take any action and execute and deliver any document (including, without limitation, financing statements to be registered on the Personal Property Securities Register) reasonably requested by the Installer to transfer, create, perfect, preserve, protect and enforce its security interest.
- 9.3 The Installer and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Installer, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

## **10 DELAY AND CANCELLATION**

- 10.1 The Installer will not be liable for any delay in completing the Installation Services resulting from actions beyond the Installer's reasonable control. If any delay is a result of any act by the Customer, the Installer may, without prejudice to its other rights and remedies, require payment from the Customer for any part of the installation already undertaken and terminate the Installation Contract.
- 10.2 The Installer may in its sole discretion immediately cancel the Installation Contract at any time by giving written notice to the Customer. The Installer will not be liable for any loss or damage whatsoever arising from such cancellation but will repay to the Customer any sums paid in respect of the Price except where the cancellation is due to the breach by the Customer of its obligations under these Terms.
- 10.3 The Installer may, in its sole discretion, consider requests in writing by the Customer to vary or cancel any Installation Contract. If the Installer agrees to any such requests the Customer must pay any reasonable costs incurred by the Installer up to the point of the variation or cancellation. Reasonable costs may include, without limitation, labour, transport or material costs.

## **11 LIMITATION OF LIABILITY**

- 11.1 All warranties and representations (including those expressed or implied by law) in respect of the Installer's Goods and Services are excluded to the extent permitted by law.
- 11.2 The provisions in the Consumer Guarantees Act 1993 do not apply to the extent the Customer is acquiring Goods and Services from the Installer for the purposes of a business in terms of section 2 and 43 of that Act.
- 11.3 The Installer's liability to the Customer (whether in relation to contract, tort (including negligence) or otherwise) in respect of any Goods or Services provided to the Customer is limited to the value of the Price paid by the Customer under the applicable Installation Contract.
- 11.4 The Installer is not liable to the Customer for any special, indirect or consequential damage or loss of any kind under any cause of action arising under or in connection with the provision of the Goods or Services to the Customer.
- 11.5 The Customer indemnifies the Installer, the Broker and their respective Personnel against any loss or liability suffered or incurred at any time by the Installer or the Broker or their respective Personnel that is directly or indirectly caused by a breach of the Customer's obligations under the Installation Contract or these Terms.
- 11.6 Without limiting clause 12, if a court of New Zealand determines that the Broker is liable to the Customer in respect of any Goods or Services provided by the Installer to the Customer then the Broker's liability to the Customer (whether in relation to contract, tort (including negligence) or otherwise) is limited to the value of the relevant Price paid by the Customer for the applicable Goods or Services giving rise to the claim.

## **12 WARM FUZZIES ACTING AS BROKER**

- 12.1 For all Installation Services the Customer acknowledges and agrees that:



# warmfuzzies

streamlining **healthy homes**

- a. the Broker's role is to source quotes from participating third party contractors, and if acceptable to the Customer facilitate the creation and administration of an Installation Contract and act as a contact point between the Customer and the Installer for the completion of Installation Services;
- b. the Customer will rely on their own judgement when considering to engage any particular Installer and not in reliance on any recommendation or representation by the Broker; and
- c. the Installation Contract is between the Installer and the Customer. The Broker is not a party to the Installation Contract and neither the Broker nor its Personnel have any responsibility or liability to the Customer in connection with the Installation Contract.

## **13 PRIVACY ACT 2020**

- 13.1 Any personal information received by the Installer or the Broker will be used, processed, transmitted, and disclosed to the extent necessary to perform the Services and in accordance with the Installer's privacy policy (if any) and the Privacy Act 2020. The Customer agrees that the Installer and the Broker may:
  - a. collect, retain and use any personal information about the Customer and the Property, for the purpose of providing the Services to the Customer;
  - b. collect, retain and use:
    - any information about the Property; and
    - any personal information about the Customer but only on an anonymous and aggregated basis,in each case obtained by the Installer or Broker in the course of performing the Services and the Customer grants the Installer and the Broker a several, unrestricted, non-exclusive, perpetual, transferable and royalty free licence to copy, use and disclose that information to any third parties; and
  - c. disclose any necessary personal information about the Customer to any third parties or credit agencies for the purpose of carrying out credit enquiries about the Customer to assess the Customer's credit worthiness and to provide credit reporting services or to exercise any power of enforcement under these Terms.
- 13.2 Where the Customer is a natural person the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 2020.

## **14 HEALTH AND SAFETY**

- 14.1 The Installer and the Customer are each a (Person in Charge of a Business or Undertaking (PCBU) as defined in section 17 of the Health and Safety at Work Act 2015 and must comply at all times with that Act and its regulations (**HSWA**). Where each party has a duty in relation to the same matter imposed by or under the HSWA, then each party must, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other.
- 14.2 The Customer is required to inform the Installer if they are aware of, or aware of the likelihood of asbestos at the property.
- 14.3 The Customer confirms that: the property is safe to enter, by having an applicable Code of Compliance Certificate from the relevant Council body; and has not suffered any structural or cosmetic damage since the issue of the Code of Compliance Certificate that could cause harm; and all asbestos is appropriately removed or contained.

## **15 INTELLECTUAL PROPERTY**

- 15.1 The Installer retains all of its intellectual property rights and copyright in connection with the Goods and Services.

## **16 ASSIGNMENT AND SUBCONTRACTING**

- 16.1 The Installer may assign novate or transfer its rights and obligations under at any time without the consent of the Customer.
- 16.2 The Installer reserves the right to subcontract all or any part of the work to be performed under any Installation Contract.



# warmfuzzies

streamlining **healthy homes**

## **17 DISPUTE RESOLUTION**

17.1 If a party considers that there is a dispute in respect of any matters arising out of or in connection with these Terms, then unless other provisions of these Terms govern the manner in which that dispute is to be resolved, that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to try to resolve the dispute between themselves within 10 Business Days of receipt of the notice. Neither party will commence legal proceedings against the other before following the procedure above except that this clause does not affect any party's right to seek urgent interlocutory and/or injunctive relief.

## **18 GENERAL**

18.1 To waive a right under these Terms that waiver must be in writing and signed by the waiving party.

18.2 If there is any conflict between these Terms and any other agreement between the parties then the provisions of these Terms will prevail unless the Installer agrees otherwise in writing.

18.3 Any benefits expressly conferred on any third parties named or referred to in these Terms (including the Broker and the Installer's and the Broker's Personnel) are intended to be enforceable by those third parties for the purposes of section 12 of the Contract and Commercial Law Act 2017.

18.4 Any illegality, unenforceability or invalidity of a provision of these Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.

18.5 These Terms and any Installation Contract to which they apply are governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

## **19 PRICE EXCLUSIONS**

19.1 The Price excludes the cost of asbestos removal or containment required prior to or following the Installation Services. If remedial works are required following the Installation Services, the Installer are only liable for the remedial works and not the associated asbestos management costs. Asbestos management costs include, but not limited to, all costs associated with testing, cleaning, disposal, planning, removal or containment of asbestos (e.g. specialist asbestos consultant fees, asbestos removal plan, containment or removal).

19.2 The Price excludes the remedial cost for any movement in a ceiling, during the Installation Services, which causes cracking, nail popping or any other defect due to the ceiling structure notwithstanding serviceability requirements i.e. able to walk across ceiling joists without causing damage (SLS - AS/NZS 1170).

19.3 The Price excludes the remedial costs for damage caused to, or subsequently from, any building elements that are not built in accordance with the NZ Building Code.

19.4 The Price is for a single visit and if an additional visits are required, due to circumstances outside the control of the Installer or Warm Fuzzies, an additional cost of \$150+GST will be charged per each additional visit.