

BSH HOME APPLIANCES LTD

Conditions of Purchase

BSH Home Appliances Ltd (CN 1522320) herein referred to as the Company.

1. General

1.1 These Conditions of Purchase (**Conditions**) apply to the supply of goods or services to the Company by the supplier (**Supplier**).

1.2 Variations to these Conditions, or terms offered by the Supplier or contained in any invoice or order prepared or issued by the Supplier which differ from these Conditions, are incorporated into these Conditions only if accepted by the Company's authorised representative in writing. Acceptance of goods or services or payment for them by the Company will not be deemed acceptance of any such new or varied terms.

2. Quotations

All quotations and cost estimates provided by the Supplier are binding and may not be amended unless agreed in writing by the parties.

3. Ordering

3.1 Each order from the Company constitutes an offer by the Company to purchase goods or services from the Supplier subject to these Conditions. An order may be constituted by a formal purchase order or by a delivery schedule (in respect of the period which is specified by the Company to be binding) (**Order**). If there is any inconsistency between the terms of the Order and these Conditions, the terms of the Order prevail.

3.2 Without liability, the Company may vary or cancel all or any part of an Order by giving notice in writing to the Supplier at any time prior to delivery or supply. The Company will endeavour to minimise the extent of any cancellation (but without liability for any failure).

3.3 All Orders and variations to them must be in writing (which, where agreed, includes electronic data interchange (**EDI**)). EDI Orders (or variations) will conform to agreed EDI procedures.

3.4 The Supplier is deemed to accept an Order subject to these Conditions if the Supplier does not refuse or reject the Order in writing within 5 days of the date stipulated on the Order, or if the Supplier performs any part of the Order before that time.

3.5 The Supplier acknowledges and agrees that the Company has not made any representations or warranties that the Company will purchase a minimum amount of goods or services at any time from the Supplier or that the Company will exclusively purchase the goods or services from the Supplier.

4. Prices Applicable to Order

4.1 Unless otherwise agreed by the parties in writing (for example, pursuant to a scheduling agreement), prices are as stated on the Order.

4.2 Unless otherwise agreed by the parties in writing or otherwise stated on the Order, prices are "CIP" (as defined in Incoterms 2010) to the nominated place of delivery. The price includes all packaging costs, goods and services tax (**GST**) and any other applicable taxes, duties, levies, charges and costs.

5. Delivery and Delivery Requirements

5.1 The Supplier must deliver the goods or services at the time and in the quantities and manner specified in the Order.

5.2 If the Supplier anticipates being unable to comply with delivery dates or deadlines, or to supply quantities or quality of goods or services

due to circumstances beyond the Supplier's control, or for any other reason, the Supplier must immediately notify the Company's ordering department giving full details. The Company may, at its discretion, extend the delivery date or cancel the Order.

5.3 Notwithstanding clause 5.2, time is of the essence for all of the Supplier's obligations under these Conditions.

5.4 Without prejudice to the Company's rights under clause 5.2, if the Supplier fails to effect delivery of all or part of the goods or services the subject of the Order by the due date for delivery for any reason (other than due to an event of force majeure), the Company may, on giving written notice and without affecting the Company's other rights:

- (1) cancel the Order;
- (2) obtain replacement goods or services from a third party; and/or
- (3) claim reimbursement of additional costs arising from the Supplier's failure to comply with the delivery instructions and damages for breach of contract (including any loss, damage or cost incurred by the Company as a consequence of stoppage of any of the Company's factory operations or the factory operations of the Company's customers). The Supplier must ensure that the goods are packed, labelled, marked and loaded in accordance with the Order and the Company's instructions or otherwise must be suitably packed and comply with all requirements of the carrier to ensure no damage occurs to the goods whilst in transit.

5.5 The Company is not required to pay any packing costs unless it agrees to do so in writing. The Company is not obliged to return any packaging or packing materials for the goods.

5.6 The Supplier acknowledges and agrees that the delivery of goods or services by instalments is not permitted unless otherwise agreed by the Company's authorised representative in writing.

6. Inspection and Acceptance of Goods and Services

6.1 The Company will not be considered to have accepted goods and services prior to receiving them at the place specified by the Company for delivery and fully inspecting them for compliance with the Order and these Conditions. The Company may inspect the goods or services provided as soon as practicable in the normal course of business. If a more thorough inspection of goods or services is required on receipt as a result of unsatisfactory delivery (as determined by the Company acting reasonably), the cost of this is to be borne by the Supplier. Quantities, weights, dimensions, quality, conformity to specifications and fitness for purpose of the goods or services ascertained by the Company in the course of inspection will be final for the purposes of acceptance or rejection of the goods or services.

6.2 The Company's right to inspect and reject goods or services and to enforce its rights under clauses 12.3 or 17 is not waived by the payment for the goods or services or by acceptance of delivery or supply prior to inspection. The acceptance of defective or overdue goods or services will not be deemed as a waiver of any of the Company's rights.

7. Risk and Title

7.1 Goods remain at the Supplier's risk until the Company's representative takes physical possession of the goods at the nominated place of delivery.

7.2 Subject to clause 14.1, title to goods or services passes on delivery

of goods or services in accordance with clause 5.

8. Conditions of Payment

8.1 A separate invoice must be sent to the Company at the address provided by the Company and must not be sent before the Company receives the goods or services.

8.2 Unless otherwise agreed or stated on the Order, payment of invoices will be made within 30 days of the end of the month in which the invoice is issued to the Company. Payment of invoices does not affect the Company's right to dispute invoices or to make claims against the Supplier in respect of goods or services. Payment for goods or services does not constitute acceptance of such goods or services. Payment is contingent upon the Supplier providing the Company with a valid tax invoice and an adjustment note if any adjustment event occurs.

8.3 If the Company disputes any amount shown on an invoice, it will notify the Supplier of such dispute and pay the undisputed amount in accordance with clause 8.2.

9. Refund of Overpayment of GST

If by reason of the occurrence of an adjustment event or for any other reason whatsoever, the amount of GST paid or payable by the Supplier on any taxable supply the Supplier makes to the Company is less than the amount of GST identified on any tax invoice for that supply or otherwise as may be determined by the Company acting reasonably (**GST Overpayment**) the Supplier must pay to the Company by way of refund the amount of the GST Overpayment on the first to occur of:

- (1) the Supplier becoming aware of the occurrence of a GST Overpayment; or
- (2) the receipt by the Supplier of any refund of GST paid by the Supplier.

10. GST Supply by the Company

To the extent that any supply made by the Company to the Supplier is a taxable supply, the Supplier agrees that the Company can require that the consideration for that Supply be increased by an amount equal to the consideration for the supply multiplied by the prevailing GST rate.

11. Set Off

The account between the Supplier and the Company is a running account. Where any amount is payable to the Supplier by the Company or a Related Company of the Company under any agreement, the Company may set such amount off against any amount owed by the Supplier or a Related Company of the Supplier to the Company or any Related Company of the Company, and continue to do so until such time as the amount outstanding from the Supplier has been paid in full.

12. Warranty

12.1 The Supplier warrants and represents that:

- (1) the Supplier has the right to sell the goods free from all encumbrances and that the Company will enjoy quiet possession of the goods or services;
- (2) the goods will be of merchantable quality and fit for any purpose which the Company makes known to the Supplier (whether expressly or impliedly) or for which the goods are commonly supplied or used;
- (3) the goods will be free from defects in design, material and workmanship;
- (4) the goods or services will comply and will be provided strictly in compliance with specifications (if any) provided by the Company

from time to time, the Order and these Conditions;

(5) the Supplier will provide adequate information relating to the goods or services and to the use of the goods or of the results of the services;

(6) where the goods or services are supplied by reference to a sample, the goods or services will correspond with the sample; AND

(7) the goods and services will comply with all applicable laws in New Zealand, and any applicable laws in the place of manufacture, including laws relating to:

- (a) their safety, manufacture, packaging, labelling, transportation and sale;
- (b) the nature, substance, quality, weight and measurement of the goods; and
- (c) the services;

(8) the operation of the Supplier's business complies with all applicable laws, including laws relating to employment, the environment and health and safety, bribery and corruption;

(9) the Supplier's actions or omissions will not cause the Company to breach any applicable laws;

(10) the services will be provided with due care and skill and in a timely, professional manner and in accordance with the Company's reasonable directions; and

(11) the goods or services will not infringe the intellectual property rights of any third party.

12.2 In the case of goods, the warranties in clauses 12.1(2), 12.1(3) and 12.1(4) will, unless otherwise agreed by the parties, apply for a period of 24 months, effective from the date of delivery to the final consumer of the final product into which the goods are incorporated. In addition, in terms of shelf life, the goods will meet the warranties in clauses 12.1(2), 12.1(3) and 12.1(4) for at least 12 months from the date of delivery to the Company (or such other period as may be specified in any applicable procedure of the Company and of which the Supplier has been notified in writing prior to placement of the Order).

12.3 If goods or services are, in the Company's reasonable opinion, defective or not in accordance with the Order or these Conditions, the Company may, without affecting the Company's other rights, require from the Supplier, at the Company's option and the Supplier's cost:

- (1) replacement or re-supply of the goods or services and return of any defective goods;
- (2) supply of equivalent goods or services and return of any defective goods;
- (3) repair of the goods or payment of the cost of repairing the goods;
- (4) payment of the cost incurred by the Company replacing or acquiring equivalent goods or services;
- (5) a reduction of the purchase price; or
- (6) recall of the goods and a refund of any part of the purchase price paid.

12.4 If the Company has incorporated the goods into other goods or assemblies (Other Goods) which require repair or replacement as a result of the goods being defective the Company may, in addition to its rights above, require the Supplier to pay for the replacement or repair of the Other Goods.

12.5 Where, in the Company's reasonable opinion, it is necessary to avoid imminent danger or excessive loss or damage, the Company

may rectify deficiencies ascertained by it in the course of inspection of goods in accordance with clause 6 at the Supplier's expense.

13. Performance of Services on Site

Persons, who perform services at the Company's sites pursuant to these Conditions, must comply with the Company's policies (as advised to the Supplier) and instructions given by the Company or its representatives. The Company's liability to the Supplier or the Supplier's employees, subcontractors or agents for injury or death suffered in the course of performance of the services is limited to the extent they are directly caused by the Company's negligent act or omission. Subject to clause 19, the Supplier indemnifies the Company for any losses, costs or damages incurred by the Company in relation to any adverse environmental event caused on site resulting from the Supplier's acts or omissions, including those of the Supplier's personnel, in the performance of services.

14. Provision of Materials, Equipment and Data

14.1 Materials, components, containers and special packaging provided by the Company to the Supplier (**Materials**) remain the Company's property (unless the Company agrees to sell the Materials to the Supplier separately, in which case this clause 14.1 will not apply), and may only be used in accordance with their intended purpose of supply to the Company in accordance with these Conditions. Any surplus or scrap Materials must be returned to the Company without delay. Materials must not be incorporated into any goods manufactured by the Supplier or any third party unless the Company agrees in writing. The Supplier agrees that the Company owns a proportion of the products manufactured using its Materials equivalent to the ratio of the replacement value of the Materials to the replacement value of the complete packaged goods, to which extent the Supplier holds the goods or the proceeds of their sale on trust for the Company.

14.2 All tools, gauges, jigs and other equipment provided by the Company to the Supplier (**Equipment**), drawings, models, samples, blueprints, specifications and other data provided by the Company to the Supplier (**Data**) remain the Company's property and must be returned to the Company (together with all copies) upon completion or cancellation of the Order in respect of which they have been provided to the Supplier or at any time as otherwise requested by the Company. The Supplier must not provide any Materials, Equipment or Data (or copies of Materials, Equipment or Data) or any products comprising the Materials or Equipment and Data to a third party without the Company's prior written consent.

14.3 All Materials and Equipment and Data must be kept secure, maintained and kept in good working order and condition. The Supplier agrees to replace any Materials and Equipment and Data that are damaged, lost, rendered unusable or destroyed without cost to the Company.

14.4 The Supplier will arrange insurance cover at full replacement value in respect of loss or damage to the Materials, Equipment or Data provided to the Supplier to the extent that insurance cover can be obtained.

14.5 The Supplier must ensure that the Supplier and its agents, employees and subcontractors do not copy, reverse engineer, destroy, encumber, misuse, part with possession of or modify any Materials, Equipment or Data.

14.6 The Company may at any time inspect the goods or components of the goods and the processes of manufacture and packing, labelling

or storage of such goods or to recover any goods that are the Company's property. For this purpose, the Company may enter any premises where the goods may be found. The Supplier will provide all reasonable assistance to the Company in such inspections.

15. Confidentiality

15.1 The Supplier must ensure that the Supplier and its employees, subcontractors and agents do not disclose any information provided by the Company to the Supplier or these Conditions (**Confidential Information**) unless:

- (1) the information is in the public domain (other than by reason of a breach of these Conditions);
- (2) the disclosure is approved by the Company in writing; or
- (3) the disclosure is required by law.

15.2 Confidential Information may only be disclosed to and used by the Supplier's employees, subcontractors and agents who have a need to know (and only to the extent that each has the need to know) for the purpose of the Supplier fulfilling the Supplier's obligations under these Conditions. The Supplier agrees to maintain adequate security measures to safeguard any Confidential Information from access or use by any unauthorised person. The Supplier must, on becoming aware of any breach of confidentiality, immediately inform the Company, investigate the breach and report to the Company as to the outcome of the investigation.

16. Intellectual Property

16.1 Where the Supplier accepts an offer or Order from the Company for the development by the Supplier of goods or of other work product through the performance of services, the Supplier agrees to and hereby assigns to the Company, or agrees to procure the assignment to the Company, all rights to or interests in any intellectual property developed by the Supplier, the Supplier's employees, subcontractors and agents in the course of developing the goods or providing the services, effective on creation. If requested by the Company, the Supplier will do all things reasonably necessary to assist the Company, at the Company's cost, to obtain the relevant patent, copyright or other intellectual property rights in the Company's name, anywhere in the world.

16.2 Any intellectual property existing in or in relation to any Equipment and Data remains the Company's sole property.

16.3 The Supplier acknowledges that the Company owns or licenses a number of registered trade marks and other marks, brands and logos (**Trade Marks**). Goods bearing the Company's Trade Marks or produced pursuant to or with designs owned by or licensed to the Company or the Company's Materials, Equipment or Data must only be sold to the Company. Where goods have been rejected or not taken up by the Company, the Supplier must obtain the Company's written consent to sell such goods to a third party. If such consent is given, the Supplier must remove all references to the Company's Trade Marks from those goods before they are offered for sale.

16.4 The Supplier will not use any Trade Mark or any other promotional material of the Company or its Related Companies without the Company's prior written consent.

16.5 The Supplier must comply with the Company's directions and policies in relation to the Trade Marks.

16.6 The Supplier will not use, or apply to register, a trade mark, business name, company name or domain name which incorporates any Trade Marks, or any substantially identical or misleadingly similar words.

- 16.7 The Supplier will not, and will ensure that the Supplier's employees, subcontractors or agents do not:
- (1) disparage the Company or any of the Company's Trade Marks, products or services; or
 - (2) do anything likely to damage the Company's reputation or any of the Company's Trade Marks, products or services.
- 17. Cancellation**
- 17.1 Without limitation to the Company's rights under clause 3.2, the Company may terminate, cancel or suspend an Order (with or without prior notice as the Company may determine in the Company's sole discretion) if:
- (1) the Supplier breaches or repudiates these Conditions or the (or any other) Order including any warranty or representation;
 - (2) the Supplier materially fails to meet quality requirements so as to endanger the timely and proper performance of any Order;
 - (3) in the Company's sole discretion, the Supplier's financial or other condition or progress in relation to an Order may endanger the timely and proper performance of any Order;
 - (4) the Supplier makes an assignment for the benefit of its creditors, suspends payment or if proceedings are commenced (whether voluntary or involuntary), in bankruptcy or insolvency or winding up or for the appointment of a liquidator, administrator or receiver, in relation to the Supplier's business or if the Supplier is unable to pay its debts as and when they fall due;
 - (5) if the Supplier or any of the Supplier's employees, subcontractors or agents:
 - (a) are charged with any criminal offence in relation to bribery or corruption; or
 - (b) act in a manner which in the Company's reasonable opinion, brings the Company into disrepute; or
 - (c) act dishonestly, fraudulently or illegally.
- 17.2 Upon termination or cancellation of any Order, the Supplier agrees to:
- (1) immediately cease all work on the Order. If the Company requests that the Supplier transfers to the Company title and deliver to the Company all or any finished, unfinished goods or materials purchased by the Supplier to complete the Order which cannot be used for other customers, the Company agrees to pay the Supplier solely for such materials and goods delivered to the Company that comply with the Order; and
 - (2) if requested by the Company, fully co-operate in the transition of supply to a new supplier and promptly provide all Materials, Equipment and Data and other information reasonably requested by the Company.
- 18. Force Majeure**
- Neither party is liable to the other for any failure to deliver or accept goods or services as a result of any acts of God, war, embargo, fire, flood or other natural disasters, industry or state wide industrial disputes, public disturbances, actions or inactions of public authorities or other circumstances provided that in any case that event is not a party's fault and is outside its reasonable control (Force Majeure Event). The Company may partially or completely withdraw the Order in accordance with clause 3.2 before delivery or make alternative arrangements for the supply of goods or services from a third party without liability to the Supplier.

- 19. Indemnity**
- 19.1 Without limitation to any other right the Company may have under these Conditions, the Supplier agrees to indemnify the Company against all claims, suits, actions, demands, loss, costs, liabilities, expenses (including legal expenses on a full indemnity basis), judgments and awards made against or incurred by the Company in relation to:
- (1) breach of a warranty, representation or a term of these Conditions;
 - (2) actual or alleged defects or faults in the goods or services supplied by the Supplier, including transport, carriage, labour costs, assembly and disassembly costs, costs of material or costs of incoming goods control exceeding the normal costs of such control;
 - (3) infringement of any intellectual property rights of another person; and/or
 - (4) liability under any applicable law in New Zealand arising from the Supplier's supply of the goods or services, the Company's use or re-sale of them or incorporation of them into goods or services and their on-supply or consumption.
- This indemnity is a continuing indemnity and is in addition to any statutory rights or remedies the Company may have or exercise against the Supplier.
- 20. Recall**
- 20.1 Without limitation to any other right the Company may have under these Conditions, if any goods supplied by the Supplier fail to comply with the warranties in clause 12.1 and this necessitates a recall of any product incorporating the defective goods, whether such recall be made by the Company or any other party, the Supplier will indemnify the Company, the Company's customers and the users of its products against all actions, demands, expenses, costs and liabilities incurred or arising directly or indirectly as a consequence of any such recall.
- 20.2 For the purpose of clause 20.1, costs and expenses incurred by the Company indirectly as a result of or in connection with any recall will include any costs, damages or other monies paid or payable by the Company to any other party as a result of or in connection with such recall.
- 21. Insurance**
- 21.1 The Supplier must take out and maintain an annual products liability policy of insurance (containing no unusual exclusions and covering all warranties in respect of the goods under these Conditions) and fully indemnifying the Company against liability for and as a result of property damage, personal injury or death arising directly or indirectly out of goods manufactured, distributed and sold by the Supplier with an annual cover of not less than NZD\$20 million per occurrence and in the aggregate, unless a lower indemnity value has been agreed in writing by the Company.
- 21.2 The Supplier must take out and maintain an annual public liability policy of insurance (containing no unusual exclusions) and fully indemnifying the Company against liability for personal injury or death and property damage for not less than NZD\$20 million per occurrence.
- 21.3 Where the Supplier is not the manufacturer of the goods, the Supplier must also ensure that the manufacturer of the goods has the insurance cover set out in clause 21.1.
- 21.4 In the case of provision of professional advice or professional services, where required by the Company, the Supplier will take out and maintain professional indemnity insurance of no less than NZD\$5 million in the aggregate.

- 21.5 The Supplier is responsible for insuring goods against loss or damage until property in them has passed to the Company.
- 21.6 The Supplier must produce within 30 days from the date of request and on an annual basis a certificate of insurance to the Company confirming the insurances referred to above are in force.

22. Financial Information

If the Supplier defaults or suspends payments or, in the reasonable view of the Company, has payment and liquidity problems, the Supplier agrees to promptly provide such reasonable financial information in relation to its business and operations as may be reasonably requested by the Company. The Company will keep confidential any non-public information provided to the Company pursuant to this clause and only use such information for the purpose of assessing the Supplier's ongoing ability to comply with these Conditions or to enforce an Order.

23. Export Control and Customs

- 23.1 The Supplier will comply with all applicable export control, customs and foreign trade regulations (**Foreign Trade Regulations**). The Supplier will advise the Company in writing within two weeks of receipt of the Order - and in case of any changes without delay - of any information and data required by the Company to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation, all applicable export list numbers, and details of country of origin of the goods and of the components thereof, including technology and software.
- 23.2 The Company's obligation to fulfil this agreement is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

24. Place of Jurisdiction, Applicable Law

- 24.1 These Conditions are subject to the laws of New Zealand and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand (and any court which may hear appeals from those courts).
- 24.2 Application of the Hague Convention Relating to a Uniform Law on the International Sale of Goods, the UN Convention on Contracts for the International Sale of Goods or other conventions relating to the laws applicable to the sale of goods are excluded.

25. General

- 25.1 Any provision of these Conditions will be read down to the extent necessary to prevent that provision or these Conditions being invalid, voidable or unenforceable in the circumstances.
- 25.2 The Company does not waive its rights, powers and discretions under these Conditions by failing to exercise its rights, only exercising part of its rights or delaying in the exercise of its rights.
- 25.3 The Supplier must not assign or sub-contract all or any of its rights or obligations under these Conditions in whole or in part without the Company's prior written consent.
- 25.4 The Company is not liable for any indirect, punitive or consequential expense, loss or damage, penalties, interest, loss of profits, revenue, savings, expectation or opportunity, lost production, product development and engineering costs, tooling, administrative costs or similar losses in connection with these Conditions or an Order or claims for similar losses by the Supplier's subcontractors.

26. Interpretation

In these Conditions, headings are inserted for ease of reference and do not affect interpretation; the singular includes the plural and vice

versa and forms of words (including defined terms) include any other form of those words. Related Company means related body corporate as that term is defined in the Companies Act 1993.