

TERMS & CONDITIONS OF PURCHASE

RINNAI AUSTRALIA PTY LTD (ACN 005 138 769) of 100 Atlantic Drive, Keysborough VIC (Rinnai)

AND

The Supplier

Terms & Conditions

1. Definitions and Interpretation

1.1 Words used in this Agreement have the following meanings:

- (a) **"Agreement"** means any agreement for the purchase of Equipment, Goods and/or Services by Rinnai from the Seller.
- (b) **"ACL"** means the *Australian Consumer Law Schedule of the Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended.
- (c) **"Change in Control"** means in relation to a party:
 - (i) the person or persons who control that party cease to do so: and "control" means the ability, whether direct or indirect, to direct the policies and decisions of the party; or
 - (ii) a change in ownership of 50% or more of the party (other than in Rinnai's case where such change of ownership occurs through the ordinary trading of its shares on the Australian Securities Exchange).
- (d) **"Client"** means Rinnai or any client of Rinnai.
- (e) **"Component Stock"** means any unique materials used by the Seller to produce the Equipment and/or Goods.
- (f) **"Confidential Information"** means information relating directly or indirectly to Rinnai, Rinnai Intellectual Property, assets, and the operation and affairs of including but not limited to performance of the Equipment and/or Goods and trade secrets, marketing information, member lists, financial information and business plans whether or not in some tangible form (and where recorded in some tangible form, whether the record is an original or a copy of or extract from the original or another copy or extract) and without limiting the generality of the foregoing includes all information, data, processes, and documentation relevant to Rinnai, the Equipment, Goods and/or the Services.
- (g) **"Delivery Date"** means the date that the Seller is required by Rinnai to deliver the Equipment, Goods and/or provide the Services, whether it is a single date or a delivery schedule provided or amended by Rinnai.
- (h) **"Equipment"** means all equipment ordered by Rinnai from the Seller.
- (i) **"Details"** means the page entitled "Details" to which these Terms form part.
- (j) **"Goods"** means all goods ordered by Rinnai from the Seller.
- (k) **"Rinnai Intellectual Property"** includes Equipment, Goods and/or process designs, concepts, specific dimensions, grades, finishes, compositions, dimensional and/or operating tolerances, component ratings or values, manufacturing processes or techniques, testing or qualification (initial and/or ongoing), component brands or other performance criteria.
- (l) **"Intellectual Property"** means all trade names, trade marks, patents, designs, Confidential Information or other intellectual property rights from time to time in any way associated with the Equipment, Goods and/or the Services, Rinnai's business or activities, or those of its related entities.
- (m) **"Intellectual Property Rights"** means Rinnai's rights in relation to the Intellectual Property.
- (n) **"Non-Cancellation Date"** means the date after which Rinnai is unable to cancel or amend an agreed monthly requirement quantity without the agreement of the Seller, which shall not be unreasonably withheld.
- (o) **"Order"** means an official written order for Equipment, Goods and/or Services sent by Rinnai to the Seller either by post, fax, email or other electronic means.
- (p) **"Rates"** means the charges for the Equipment, Goods and/or Services as indicated in the Schedules (as amended from time to time).
- (q) **"Rinnai"** means Rinnai Australia Pty Ltd.
- (r) **"Schedule"** means a schedule agreed to by the parties and annexed to this Agreement in the form of Schedule 1 (or such other form as Rinnai and the Seller agree) and which forms part of the Agreement.
- (s) **"Seller"** means the seller of the Equipment, Goods and/or Services or any person acting on behalf of or with the Seller's authority.
- (t) **"Services"** means any services ordered by Rinnai from the Seller.
- (u) **"Service Level KPIs"** means the service level key performance indicators set out in the relevant Schedule.
- (v) **"Terms"** means these terms and conditions of purchase.

1.2 Expressions used in the Details bear a corresponding meaning in these Terms unless the context requires otherwise.

2. Basis of Agreement

2.1 Unless otherwise agreed in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms or conditions.

2.2 All quotations and tenders received by Rinnai from the Seller will be deemed to be offers to sell the Equipment, Goods and/or Services to Rinnai on these Terms.

2.3 The receipt by the Seller of an official order from Rinnai will constitute the Seller's acceptance to supply the Equipment, Goods and/or Services to Rinnai on these Terms.

2.4 If an Order imposes additional terms on the Seller then, unless the Seller notifies Rinnai within 7 days of receipt of the Order rejecting the additional terms, the Seller is deemed to have accepted the Order in full.

2.5 In addition to these Terms, all implied conditions and warranties contained in the *Sales of Goods Acts* and *Fair Trading Acts* of the various States and Territories and the ACL will apply.

3. Equipment and Goods

- 3.1** Each Schedule shall be numbered and dated to facilitate identification and when executed by both parties shall form part of this Agreement.
- 3.2** Each Schedule must include:
- (a) the period for which the Schedule remains in effect;
 - (b) the description of the relevant Equipment, Goods and/or Services;
 - (c) the addresses to which or at which the Equipment, Goods and/or Services will be provided;
 - (d) the Rates for the Equipment, Goods and/or Services; and
 - (e) processes relating to consignment stock, Seller managed inventory or any other such programs implemented between Rinnai and the Seller.
- 3.3** The Seller must notify Rinnai in writing 90 days prior to the expiry of any Schedule.
- 3.4** If there is any inconsistency between the provisions of these Terms and the Schedule (apart from the term of any Schedule), the Terms shall prevail over the Schedule.
- 3.5** The Equipment, Goods and/or the Services will be provided as necessary to support Rinnai's business requirements, and in accordance with the provisions of each Schedule.
- 3.6** The Seller must, if specified in a Schedule, provide the service level set out in that Schedule.

4. Pricing

- 4.1** In consideration of the provision by the Seller of the Equipment, Goods and/or Services to Rinnai under this Agreement, Rinnai will, subject to this Agreement, make payments to the Seller in accordance with the applicable Rates.
- 4.2** The Seller will maintain a fixed value margin on cost as per the stated margin for the Equipment, Goods and/or the Services in the Rates in Attachment A of the Schedule(s) ("**Fixed Value Margin**"), for the term.
- 4.3** The Rates (or any component of the Rates except for the Fixed Value Margin) will be held firm and/or valid (and will not be subject to increases) for whichever is relevant and agreed between the Seller and Rinnai, for either:
- (a) the period shown in Schedule 1 (and amended from time to time as required) for each item of the Equipment and/or Services; or
 - (b) the total quantity for each MRQ of the Equipment and/or Services.
- 4.4** The Rates will not be varied by fluctuations in the rate or rates of exchange.

5. Invoicing and Payment

- 5.1** The Seller shall invoice Rinnai at the Rates for the Equipment, Goods and/or Services supplied, on a monthly basis or at such other frequency as the parties agree, subject to Order compliance and the Equipment, Goods and/or Services being delivered or completed on the Delivery Date.
- 5.2** Each invoice will constitute a valid tax invoice and contain such detail as is agreed between the parties to effect the timely processing by Rinnai.
- 5.3** Invoices rendered during a calendar month will be paid by Rinnai not later than the 30th day after the end of each month. Payment will be effected by electronic funds transfer into the Seller's nominated bank account.

- 5.4** The Seller is not entitled to interest on unpaid monies, or for any other costs associated with recovery from Rinnai for unpaid monies.
- 5.5** If the Seller makes partial delivery of the Equipment, Goods and/or Services, Rinnai is not required to pay for any of the Equipment, Goods and/or Services until supplied in full.
- 5.6** Rinnai may offset any sums due to it by the Seller.
- 5.7** Rinnai accepts no responsibility for payment of Equipment, Goods and/or Services other than against its Order and in accordance with these Terms.
- 5.8** Rinnai has no liability for payment for any Equipment, Goods and/or Services if the Seller cannot produce to Rinnai a delivery receipt, signed by the authorised Rinnai representative. The signing of any delivery receipt on behalf of Rinnai will not amount to an acceptance of the quality or quantity of the Equipment, Goods and/or Services supplied.
- 5.9** Unless otherwise stated, the Rates of the Equipment, Goods and/or Services as well as any other consideration, costs or fees set forth in the Schedules include:
- (a) all taxes, duties and imposts; and
 - (b) the cost of freight, delivery, and insurance, management and/or administration costs, set-up costs, and all Equipment, Goods and/or Services and operating costs.

6. Delivery, Acceptance and Risk

- 6.1** Property in and ownership of the Equipment and/or Goods will pass to Rinnai upon delivery of the Equipment and/or Goods.
- 6.2** Risk in the Equipment, Goods and/or Services and all insurance responsibility for theft, damage or otherwise remains with the Seller until the Equipment, Goods and/or Services are accepted by Rinnai.
- 6.3** The Seller may not claim or register any interest (including security interest) in the Equipment and/or Goods.
- 6.4** The Seller must deliver the Equipment, Goods and/or Services to Rinnai on the Delivery Date. Time is of the essence. If the Seller is unable to provide the Equipment, Goods and/or Services as reasonably requested by Rinnai, Rinnai may:
- (a) contract with any other seller to cover the shortfall; and
 - (b) where Rinnai is required to pay more than the Rates for such shortfall in supply, the Seller will reimburse Rinnai the difference between the Rates and the amount invoiced by the other seller.
- 6.5** Equipment and/or Goods must be accompanied by a delivery docket permitting Rinnai to identify the Equipment and/or Goods provided on each occasion which references Rinnai's correct Order, and where required by Rinnai, a certificate of conformance containing Rinnai specified performance, test or batch data for each delivery.
- 6.6** Where requested, the Seller must provide a valid proof of delivery for any delivery subject to audit or verification by Rinnai. The Seller will fully credit any amount charged for the Equipment and/or Goods where a valid proof of delivery cannot be provided to substantiate the receipt of the Equipment and/or Goods by Rinnai.
- 6.7** The Seller will be liable for any loss or damage (including consequential loss) suffered or incurred by Rinnai, either directly or indirectly, caused by the Seller's delay or failure to deliver the Equipment, Goods and/or Services.
- 6.8** The Seller must deliver Equipment, Goods and/or Services that are of the quantity, quality and description detailed in an Order

or as advised to the Seller at the time of the Order, and must comply with all applicable laws and regulations.

- 6.9** Rinnai is entitled to inspect all Equipment and/or Goods upon delivery. Rinnai may, within 21 days of delivery, reject any defective Equipment and/or Goods. Rinnai will not be deemed to have accepted the Equipment and/or Goods until they have been so inspected.
- 6.10** Rinnai will promptly notify the Seller of any defect found in the Equipment, Goods and/or Services delivered or any shortage in the quantity of the Equipment supplied.
- 6.11** Rinnai will not be required to hold any rejected Equipment and/or Goods beyond a period of 60 days from the date of the notification in clause 16.10. All goods held beyond that point will be at the Seller's risk.
- 6.12** The quantity of Equipment and/or Goods delivered must not exceed nor fall short of the amount specified in the Order.
- 6.13** If the quantity of the Equipment, Goods and/or Services delivered exceeds or falls short of the amount specified in the Order to an extent greater than 5%, Rinnai may, in its absolute discretion:
- (a) return excess quantities to the Seller at the Seller's risk;
 - (b) require the Seller to hold excess quantities until directed otherwise by Rinnai;
 - (c) offset the value of the shortfall in accordance with clause 5.6;
 - (d) obtain a refund from the Seller for the value of the shortfall;
 - (e) require the Seller to deliver the shortfall amount at the same cost as the Equipment and/or Goods delivered;
 - (f) cancel the Order; and/or
 - (g) obtain damages from the Seller for any loss incurred directly or indirectly as a result of the Seller's failure to deliver the Equipment and/or Goods in the quantity or amount specified in the Order.
- 6.14** Equipment, Goods and/or Services will not conform with an Order unless they:
- (a) are fit for the purposes for which Equipment, Goods or Services of the same description would ordinarily be used;
 - (b) are fit for a particular purpose expressly or impliedly made known to the Seller at the time of the Order;
 - (c) possess the qualities of Equipment, Goods or Services which the Seller has held out to Rinnai by way of sample or model;
 - (d) are supplied in accordance with and comply with the relevant specifications; and
 - (e) are supplied to the quantity specified in an Order or otherwise agreed in writing.
- 6.15** All Equipment, Goods and/or Services provided by the Seller must comply with the provisions of all:
- (a) mandatory and voluntary safety standards or regulations which apply to the Equipment, Goods and/or Services ("Standards");
 - (b) safety or other requirements specified in an Order; and
 - (c) any other applicable laws or regulations that may apply to the Equipment, Goods and/or Services.
- 6.16** Rejected non-conforming Equipment and/or Goods may be either returned to the Seller, destroyed at the Seller's risk and cost or otherwise dealt with as agreed between Rinnai and the Seller.

- 6.17** On return of any non-conforming Equipment and/or Goods or rejection of any non-conforming Services, the Seller must, at Rinnai's option, either:
- (a) allow Rinnai to offset payment in accordance with clause 5.6;
 - (b) refund the price paid for the Equipment, Goods and/or Services; or
 - (c) re-provide the Equipment, Goods and/or Services.
- 6.18** Subject to the limitations of clause 13.4, the provision of the Equipment, Goods and/or Services by the Seller may be varied, reduced or terminated by Rinnai with immediate effect for any of the following reasons without triggering a review or variation of the remaining Equipment and/or Goods or Rates:
- (a) market changes – where the requirements alter due to revisions to trading terms, operational methods, Equipment and/or Goods design, or other changes as a result of market and/or a Clients' demands, or legislative or regulatory requirements; or
 - (b) excess requirements – where Rinnai determines in its sole discretion that there is no longer a requirement for the provision of the Equipment and/or Goods by the Seller.

7. Late delivery

- 7.1** The Seller agrees to reimburse Rinnai for its reasonable costs incurred as a direct result of the Seller's failure to deliver the Equipment, Goods and/or Services by the Delivery Date.
- 7.2** The Seller will reimburse the costs under this clause where Rinnai has incurred the costs as a direct result of the Seller's failure to deliver the Equipment, Goods and/or Services by the Delivery Date, and Rinnai has taken all reasonable steps to mitigate its loss.

8. Warranties

- 8.1** The Seller represents and warrants to Rinnai that:
- (a) it has the necessary skills, ability and capacity to provide the Equipment and/or Goods and/or supply the Services;
 - (b) that Rinnai will have and enjoy quiet possession of the Equipment and/or Goods;
 - (c) that it can supply the Equipment, Goods and/or Services free from any encumbrance in favour of any third party;
 - (d) the quality of materials and workmanship of the Equipment, Goods and/or Services and that the Equipment, Goods and/or Services are free from defects;
 - (e) the conformity of the Equipment, Goods and/or Services to any Order;
 - (f) the Equipment and/or Goods will be provided with all due care and diligence; and
 - (g) Rinnai will be assigned and have full benefit of any manufacturer's warranties.
- 8.2** The Seller warrants to provide a full cash back guarantee including reimbursement for any damages or costs associated with the failure and re-supply of the Equipment, Goods and/or Services to Rinnai.
- 8.3** The Seller represents and warrants that in providing the Equipment, Goods and/or Services, it will comply with all statutory and regulatory obligations applicable to both the Seller and Rinnai.

9. Confidentiality

9.1 The Seller agrees to keep the Confidential Information of Rinnai secret and confidential, and to ensure and be responsible for ensuring that its employees or agents do not disclose and will not disclose such Confidential Information, except in the following circumstances:

- (a) with the prior written consent of Rinnai;
- (b) to the Seller's employees, officers and legal advisers but only to the extent they need to know such information for the purposes of this Agreement and they agree to keep the information confidential;
- (c) where the Confidential Information is in the public domain through no fault of the Seller; or
- (d) where the disclosure is required or permitted by law or the rules of any stock exchange to which Rinnai is subject.

9.2 The Seller agrees:

- (a) that the Confidential Information of Rinnai remains the property of Rinnai;
- (b) to keep the terms of this Agreement confidential;
- (c) that all information supplied to it by Rinnai is supplied in strict confidence and is to be used solely by the Seller for the purpose of carrying out its obligations under this Agreement;
- (d) that before any disclosure or grant of access to Rinnai's Confidential Information is given to the Seller's employees, officers and advisers:
 - (i) those persons are informed of the confidentiality of Rinnai's Confidential Information; and
 - (ii) if required by Rinnai, the Seller will procure each of those persons to sign such confidentiality undertakings in a form required by Rinnai.

9.3 The Seller will uninstall and/or return any and all Confidential Information to Rinnai on request of Rinnai or upon the termination of this Agreement.

9.4 It is agreed and understood that in the event of a breach of this clause, damages may not be an adequate remedy and Rinnai shall be entitled to injunctive relief to restrain any such breach, threatened or actual.

10. Specification, Compliance and Intellectual Property

10.1 Where applicable, Rinnai will provide specifications and/or drawings for the Equipment, Goods and/or Services or pay the Seller for the preparation of the same.

10.2 The Seller assigns to Rinnai all rights, title and interest to all trademarks, copyright, designs and patents in any material or works created by the Seller in relation to any Order.

10.3 The Seller will have no claim or rights to any Rinnai Intellectual Property in the Equipment and/or Goods. Third party intellectual property will remain with such third parties, and unless otherwise agreed between the parties in writing, Rinnai appoints the Seller as agent to procure any use of third party intellectual property in relation to the Equipment and/or Goods.

10.4 The Seller warrants that the supply of the Equipment, Goods and/or Services does not and will not infringe any intellectual property rights of third parties. The Seller indemnifies Rinnai against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged

infringement, of any intellectual property whether in Australia or overseas, relating to the Equipment, Goods and/or Services.

10.5 To the extent that the Seller needs to use the Rinnai Intellectual Property to supply the Equipment and/or Goods and/or provide the Services, Rinnai grants the Seller a royalty free, limited, non-exclusive and non-transferable licence for the Rinnai Intellectual Property for the Term, solely for the purpose of providing the Equipment and/or Goods and/or Services.

10.6 The Seller must, at its own cost, do all things and execute all documents reasonably necessary or convenient to vest the Rinnai Intellectual Property in Rinnai.

10.7 Where Equipment and/or Goods are ordered to be manufactured by the Seller to Rinnai's design specifications and Rinnai does not specify any tolerance or materials, the Seller must manufacture the Equipment and/or Goods to the highest quality using only first grade materials and workmanship and in accordance with best industry practice in Australia.

10.8 The Seller must ensure that prices quoted (except for alternate Equipment and/or Goods where this option is made available to the Seller by Rinnai) for any Equipment and/or Goods are based on the inclusion of any and all specifications listed by Rinnai.

10.9 Failure to comply with clause 10.7 will not entitle the Seller to resubmit pricing as a result of any errors or omissions discovered following submission of the Seller's pricing to Rinnai.

11. Termination

11.1 Rinnai may immediately terminate this Agreement without any liability or penalty by written notice to the Seller, if:

- (a) the Seller is in breach of this Agreement and fails to remedy the breach within 30 days of receiving a written notice of the breach from Rinnai requiring the breach to be remedied;
- (b) the Seller is in breach of any provision of this Agreement which is not capable of being remedied;
- (c) an application is presented, an order made, an effective resolution passed, or a meeting summoned or convened for the purposes of considering a resolution for the winding up of the Seller;
- (d) the Seller becomes bankrupt or insolvent or enters into a scheme of arrangement with its creditors or has a liquidator or similar functionary appointed in respect of its assets;
- (e) in Rinnai's reasonable view, the Seller fails to make progress so as to endanger timely and proper supply of the Equipment, Goods and/or Services;
- (f) the Seller enters into any form of external administration;
- (g) there is a Change in Control of the Seller.

11.2 Rinnai may terminate the Agreement immediately if the Seller does not meet the Service Level KPIs for any 3 discrete or 2 consecutive months.

11.3 Rinnai may cancel an Order, or part of it, at any time before the delivery of the Equipment, Goods and/or Services, and upon such termination, its total liability is limited to payment to the Seller for:

- (a) any Equipment, Goods and/or Services already delivered; and
- (b) work in progress, subject to the work in progress being related to the Equipment, Goods and/or Services already ordered by Rinnai.

11.4 Cancellation of an Order will not prejudice any claim Rinnai may have resulting from the Seller's failure.

11.5 Rinnai immediately terminates this Agreement by written notice to the Seller, if the Seller:

- (a) fails to meet the safety requirements applicable to the site(s) at which the Equipment and/or Goods are provided;
- (b) fails to meet any environmental, quality, government or regulatory requirements;
- (c) breaches a warranty under clause 8;
- (d) ceases to provide the Equipment and/or Goods;
- (e) commits any act involving fraud, deceit, dishonesty, or refuses or fails to comply with any lawful request, made by any person authorised by Rinnai.

11.6 Despite any other provision of this Agreement, Rinnai may terminate this Agreement by giving 30 days' written notice to the Seller.

12. Insurance

12.1 Before providing any Equipment, Goods and/or Services, the Seller must have appropriate, current and adequate insurance cover, including but not limited to public and product liability insurance.

12.2 The Seller will be liable for any insurance premium excess payments caused by the Seller and claimed by Rinnai against its insurance policy.

13. Rights and Obligations on Termination

13.1 Upon termination of this Agreement and/or any Schedule, the Seller shall:

- (a) provide to Rinnai the Equipment and/or Goods ordered and paid for by Rinnai prior to termination;
- (b) deliver to Rinnai all property, documentation or information belonging to Rinnai supplied to the Seller in connection with this Agreement or the relevant Schedule.

13.2 To the extent that any rights or powers of any party under this Agreement or any Schedule are terminated pursuant to clause 11 then:

- (a) accrued rights and remedies of the parties will not be affected;
- (b) each party must pay the other party all amounts owed by it in connection with this Agreement or any Schedule, including under any indemnities; and
- (c) the clauses of this Agreement relating to confidentiality, insurance, indemnities, exclusion of liabilities, dispute resolution and this clause 13 will continue to be of effect.

13.3 In the event of termination, a joint stock take will be conducted, and:

- (a) the Seller will issue an invoice for all consumed consignment stock; and
- (b) at Rinnai's election, the Seller may at its own cost retrieve all remaining consignment stock or issue an invoice for the agreed balance of consignment stock held at Rinnai's site.

13.4 In the event of termination, Rinnai will be liable for the following only:

(a) any Equipment and/or Goods which are shown on the most recently produced MRQ report at the Rates shown on the report;

(b) any Component Stock which is shown on the most recent MRQ report, and for which the Non-Cancellation Date had passed and, at Rinnai's sole election, will be either:

- (i) partly or fully converted by the Seller into the agreed Equipment and/or Goods and supplied and delivered to Rinnai;
- (ii) purchased by Rinnai at a fair and reasonable rate (taking into account the actual direct costs of the Component Stock) agreed between the Seller and Rinnai, and supplied and delivered to Rinnai,

on the basis that the Seller will do all things reasonable to minimise the liability of Rinnai resulting from clauses 13.4(a) and 13.4(b).

14. Indemnity

The Seller will indemnify Rinnai, along with its servants, invitees, licensees, and keep them indemnified, against all loss, liability damage, costs, actions, demands and suits of whatsoever kind arising out of:

- (a) any claim for loss or damage (including legal expenses) made in connection with this Agreement for breach of contract, tort (including negligence), under statute, in equity or otherwise;
- (b) loss of or damage to Rinnai's property; and
- (c) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the Seller's performance of the contract,
- (d) any claim with respect to the Equipment and/or Goods arising out of a latent or inherent defect(s) in any of the Equipment and/or Goods;
- (e) any claim in respect to the Seller's failure to comply with the Standards or any safety specifications in the Order; or
- (f) any litigation or arbitration from any claim referred to above.

15. Liability

15.1 The Seller is liable for any direct, indirect or consequential losses or expenses suffered by Rinnai or any third party arising out of the Agreement or the use of the Equipment, Goods and/or Services howsoever caused, including, but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

15.2 The Seller is liable for any loss or damage suffered by the Rinnai or any third party where the Seller has failed to meet any Delivery Date, or cancels or suspends the supply of the Equipment, Goods and/or Services. This includes, but is not limited to:

- (a) the costs of freighting the Equipment and/or Goods by air to avoid a breach by Rinnai of its obligations under a contract with a customer;
- (b) liquidated damages claims;
- (c) loss of turnover, profits, business or goodwill; and
- (d) any liability to any other party.

16. General

16.1 No Sub-Contracting

- (a) No party may assign its interest in this Agreement without the consent of the other party, except that Rinnai may assign or novate its interest in this Agreement to any Rinnai company within the Rinnai group of companies.
- (b) The Seller may only sub-contract its manufacturing obligations under this Agreement with the prior written consent of Rinnai.
- (c) The Seller must ensure that any sub-contractor approved by Rinnai observes all the provisions of this Agreement as if the sub-contractor were a party to this Agreement. The Seller indemnifies Rinnai for the acts, defaults and omissions of its sub-contractors as if they were those of the Seller. Approval to sub-contract shall not relieve the Seller from any liability or obligation under this Agreement.

16.2 Force Majeure

- (a) Neither party will be liable to the other for any failure to comply with this Agreement where the failure is due to circumstances which are not directly within the party's control, including acts of terrorism, natural disaster, industrial action, or a failure of a Seller, public utility or common carrier ("**Force Majeure Event**").
- (b) Where a Force Majeure Event arises the parties covenant that they shall:
 - (i) take and use all reasonable endeavours where possible to alleviate the relevant cause of the Force Majeure Event; and
 - (ii) diligently commence and continue their obligations under this Agreement promptly upon the removal of such Force Majeure Event.
- (c) Where the Force Majeure Event continues for a period of 2 months despite actions taken by the parties pursuant to clause 16.2(b), Rinnai may terminate this Agreement.

16.3 Entire Agreement

This Agreement and each Schedule constitutes the full and complete understanding between the parties with respect to its subject matter.

16.4 Further Assurances

Each party must promptly sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

16.5 Costs

Each party will pay its own costs, including legal costs, of and incidental to the preparation and negotiation of this Agreement.

16.6 Waiver

A right created under this Agreement may not be waived except in writing, signed by the party granting the waiver.

16.7 Notices

All notices and other communications provided for or permitted under this Agreement or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to the parties' respective contact details as set out in the Details.

16.8 Dispute Resolution

- (a) If any dispute, controversy or claim arises out of or in respect of this Agreement, the parties shall endeavour to resolve the matter by negotiation, and failing negotiation, the parties shall refer the same to mediation administered by such person or organisation as the parties may determine by agreement or, failing agreement by the Australian Commercial Disputes Centre.
- (b) The mediation of any dispute, controversy or claim referred to in clause 16.8(a) shall be conducted at Sydney or at such other place as the parties may agree.
- (c) The mediation shall be held in accordance with the rules laid down by the mediator.
- (d) During the dispute resolution period, normal supply and payment for Equipment, Goods and/or Services will continue, except that Rinnai is not obliged to pay for Equipment, Goods and/or Services which is the subject of dispute.

16.9 Governing Law

This Agreement is governed by and construed in accordance with the laws of Victoria, Australia.

16.10 Variation

This Agreement can only be varied by agreement in writing signed by Rinnai and the Seller.