

# THERMECO TERMS AND CONDITIONS

Definitions:

“**Australian Consumer Law**” means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State fair trading legislation;

“**Credit Application**” means any credit application between a Customer and Thermeco

“**Delivery**” or “**delivered**” means, as the case may be:

- (a) the time when the Products are sent by Thermeco to the Customer’s nominated address for delivery by whatever means; or
- (b) the time when the Product is collected by the Customer;

“**Intellectual Property Rights**” means all intellectual property rights (whether created before, on or after the date of this Agreement and whether registered or unregistered) in respect of copyright, any patents, trademarks, logos, designs, software, domain names, business or trade name, together with marketing concepts and designs, product knowledge, training systems and materials, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts, details of product development, and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise or any similar industrial property right or any right to, or application for registration of, any of them;

“**Thermeco**” means Thermeco Pty Ltd (ACN 666 565 288); and

“**Website**” means the website with the designated URL “[www.thermeco.com.au](http://www.thermeco.com.au)” and its associated services and/or functionality.

## 1. User agreement

- 1.1. All contracts, agreements, arrangements and dealings between Thermeco (and each of its subsidiaries, affiliates, associated companies, related entities, successors/parent company and assigns) and any person using the Website (“**Customer**” or “**You**”) or ordering any products (“**Products**”) provided and supplied by Thermeco to a Customer are subject to the terms and conditions of trade set out herein (“**Terms**”).
- 1.2. These Terms shall be deemed to be incorporated into all agreements for the supply of Products by Thermeco to the Customer. These Terms supersede all prior understandings, arrangements and agreements relating to such supply. In the event that there is any inconsistency between these Terms and any other communication from Thermeco, these Terms shall prevail unless specified otherwise in writing by Thermeco.
- 1.3. By visiting and/or using the Website or by ordering or purchasing any Products You agree to be bound by these Terms.
- 1.4. If You do not agree to any provisions of these Terms, You must not use the Website or make any order for Products.

Thermeco may amend these Terms at any time at its sole discretion. By continuing to use the Website or placing orders for Products, the Customer will be deemed to have accepted any revised terms published from time to time on the Website.

## 2. Registration

- 2.1. In order to access some features of the Website, You can elect to register as a customer of Thermeco.
- 2.2. Any information which You provide to Thermeco in registering as a customer will be stored in accordance with Thermeco's privacy policy which is published on the Website at [www.thermeco.com.au/footer-links/privacy/](http://www.thermeco.com.au/footer-links/privacy/) as amended from time to time at Thermeco's sole discretion.
- 2.3. You may not use another customer's account and may not cause or allow another person to use your account.
- 2.4. You are solely responsible for the activity that occurs on your account, and You must keep your account password secure. If You suspect or become aware of any unauthorised use of your account or that your password is no longer secure, You agree to notify Thermeco immediately.
- 2.5. Thermeco may in its sole discretion terminate a Customer's account or restrict a Customer's access to the Website. If this occurs in respect of your account, You may be prevented from accessing all or parts of the Website, including your account details or other content contained in your account. Thermeco will not be liable to You or any third party for terminating a Customer account or restricting Customer access to the Website.

### **3. Orders**

- 3.1. The advertising of any Product for sale by Thermeco is merely an invitation to treat and a Customer in ordering a Product is making an offer to Thermeco to purchase a Product from it. The agreement to sell a Product only comes into existence upon Thermeco's acceptance of a Customer's order, which occurs when Thermeco dispatches the Product ordered to the Customer.
- 3.2. By placing an order to purchase a Product, You acknowledge that You:
  - (a) are over eighteen (18) years of age;
  - (b) are making an offer to Thermeco to purchase a Product; and
  - (c) the offer does not constitute a binding contract with Thermeco.
- 3.3. An offer made by a Customer is open to acceptance by Thermeco. Acceptance by Thermeco of your offer to purchase a Product will occur at the time the Product the subject of the offer is dispatched. You may cancel your order only if Thermeco has not commenced processing it.
- 3.4. Thermeco reserves the right to accept or reject a Customer's order for any reason, including;
  - (a) an incomplete Customer order;
  - (b) the information contained in any advertisement of a Product being incorrect;  
or
  - (c) the unavailability of the Product.
- 3.5. In the event that Thermeco exercises its rights to reject a Customer's order, it will refund any amount paid by the Customer in respect of the cancelled order.

## **4. Australian & International Sales**

- 4.1. Thermeco will ship Products Australia-wide and to New Zealand. All shipping costs will be borne by the Customer.

## **5. Price**

- 5.1. The price for Products, delivery and other charges shown are in Australian dollars and includes GST where applicable and unless specified otherwise.
- 5.2. The price for Products are subject to change without notice at Thermeco's sole discretion.
- 5.3. Thermeco reserves the right to change the quoted Price in the event that the Customer's order is varied.

## **6. Payment**

- 6.1. At Thermeco's sole discretion, Thermeco may provide the Products to the Customer on credit under these Terms and/or a Credit Application.
- 6.2. At Thermeco's sole discretion, the Customer may be required to pay a deposit on the price of the Products.
- 6.3. The due date for payment of the price of the Products will be:
  - (a) the date specified in the invoice(s) or other form(s) provided by Thermeco to the Customer; or
  - (b) if no such date is specified, within the time frame prescribed by the Credit Application.
- 6.4. The Customer must pay all money due to Thermeco without deduction or set off and must not withhold any payment on the grounds of alleged non-performance by Thermeco of its obligations or for any other reason.

## **7. Delivery of product**

- 7.1. Subject to these Terms, upon acceptance of an offer Thermeco will supply to a Customer the Products specified in an order confirmation which will be delivered to the Customer and relate to an order which the Customer has placed with Thermeco.
- 7.2. Thermeco may provide an estimated time for dispatch and Delivery of the Products, however is not bound by the estimate provided. Thermeco will not be liable for any loss or damage suffered by the Customer due to a failure by Thermeco to meet the estimated Delivery time.
- 7.3. All Products will be Delivered to the Customer at the Delivery address provided by the Customer.

## **8. Risk and Title**

- 8.1. Thermeco retains ownership of the Products until payment is received in full from a Customer and the Product is dispatched to the Customer.

- 8.2. The Customer accepts upon Delivery all risk for loss or damage to the Products whether caused by the Customer or not, and the Customer indemnifies Thermeco against all claims, demands, suits and actions for loss or damage caused by or arising from the handling, transport, storage, display, installation, neglect or use of the Products after the Customer has taken possession of the Products. Risk in the Products will remain with the Customer at all times after Delivery.

## 9. Returns

- 9.1. Returns may be accepted in Thermeco's sole discretion subject to these Terms and any other conditions stipulated on the Website from time to time.
- 9.2. The Customer is responsible for return shipping costs.

## 10. Personal Property Securities Act 2009 (Cth) ('PPSA')

- 10.1. The Customer agrees that Thermeco will have a Purchase Money Security Interest (as defined in the PPSA) in any Products supplied to the Customer under these Terms or any related order or contract. Thermeco may register any security interest contemplated by these Terms and/or any related order or contract on the PPS Register (as defined in the PPSA). The Customer agrees to supply Thermeco with any information, provide Thermeco with all necessary assistance and take any steps Thermeco requires for the purposes of perfecting and enforcing such security interest.
- 10.2. The parties agree that where Thermeco has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply. The Customer contracts out of and waives its rights to receive notices under the following provisions of the PPSA: sections 95, 120, 121(4), 123, 125, 129, 130, 134 and 135(2). The Customer contracts out of and waives its rights as a grantor and/or a debtor to redeem the goods under section 142 of the PPSA or reinstate the collateral under section 143 of the PPSA, and to the extent permitted by law waives its right to receive a notice of any verification statement under section 157 of the PPSA.
- 10.3. The Customer(s) agree(s) to notify Thermeco in writing within seven (7) days of any change to:
- (a) its business or corporation structure; and
  - (b) the legal status of the account trading name.

## 11. Statutory Conditions and Warranty

- 11.1. **Consumer Notice:** Thermeco Products and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded.
- 11.2. Where any law implies a warranty into this agreement which may not be lawfully excluded then to the extent allowed by law (**Warranty**), any liability imposed upon Thermeco in respect of a breach of warranty will at its option be limited to:
- (a) in the case of Products:
    - i. the replacement of the Products or the supply of equivalent Products;

- ii. the repair of the Products;
    - iii. the payment of the cost of replacing the Products or of acquiring equivalent Products;
    - iv. the payment of the cost of having the Products repaired; or;
    - v. refund of the price of the Products.
  - (b) in the case of services:
    - i. the resupply of services,
    - ii. the payment of the cost of resupply of the services; or
    - iii. the refund of the price paid for the services.
- 11.3. Warranties do not apply where the Products are acquired for rental, hire or other commercial purpose.
- 11.4. To the extent permitted by law, the following are not covered by Warranty unless otherwise specified in the particular warranty relevant to the Product purchased:
- (a) failure or defect resulting from improper care or use;
  - (b) normal wear and tear;
  - (c) Products purchased second hand or from an unauthorised distributor;
  - (d) faulty or incorrect assembly of the Products by the Customer;
  - (e) installation of a part or accessory not compatible with the Product and not manufactured by Thermeco; and
  - (f) any modification or alteration not conducted or authorised by Thermeco.
- 11.5. To the extent permitted by law, Thermeco shall not be liable for any indirect or consequential damage, losses or expenses suffered or incurred by the Customer, howsoever caused.
- 11.6. To issue a Warranty claim, the Customer will be required to:
- (a) contact Thermeco within 14 days of Delivery (**Notification Period**), by email to [windows@wthermeco.com.au](mailto:windows@wthermeco.com.au);
  - (b) return the Product to Thermeco;
  - (c) present the receipt as proof of purchase;
  - (d) identify the defect in the Product; and
  - (e) present Product for inspection on request.
- 11.7. The Notification Period may be extended by Thermeco at its sole discretion upon request by a Customer.
- 11.8. Except if and to the extent the law requires otherwise, replacement of Products or refund of purchase price and reimbursement of freight costs will not be made until the original Product to which the Warranty claim relates is received by Thermeco and your Warranty claim is verified. If a Warranty claim is verified, Thermeco will endeavour to make the refund or replacement within 28 days of the completion of such verification.

- 11.9. Thermeco will not refund or replace a Product where in its sole and reasonable opinion the Product has subsequent to Delivery become of unacceptable quality due to fair wear and tear, misuse, failure to use in accordance with manufacturer's instructions, using it in an abnormal way or failure to take reasonable care.
- 11.10. Thermeco may at its sole discretion meet the reasonable shipping expenses incurred by the Customer in making a successful Warranty claim. Customers are liable for any transportation costs if the Product is not found to be faulty.

## 12. Limitation of Liability

- 12.1. Except as expressly set out in these Terms and the Australian Consumer Law, Thermeco makes no warranties or other representations in relation to the supply of Products to the Customer. Thermeco's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.
- 12.2. You acknowledge and agree that:
- (a) to the maximum extent permitted by law, Thermeco will not be liable to the Customer or any other person under any circumstances for any loss or damage suffered or incurred by the Customer or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by the Customer, whether such liability arises directly or indirectly as a result of:
    - (i) any negligent act or omission or willful misconduct Thermeco or its employees or agents;
    - (ii) the supply, performance or use of any Products; or
    - (iii) any breach by Thermeco of its obligations under these Terms.
  - (b) no other term, condition, agreement, warranty, representation or understanding (whether express or implied) in any way binding upon Thermeco, other than these Terms, is made or given by or on behalf of Thermeco.
  - (c) the Customer is solely responsible for making an assessment that any Product is reasonably fit for the Customer's intended purpose and required use, and such purpose or required use is in accordance with all applicable laws.
- 12.3. Thermeco will endeavour to provide Products and any services which it may provide to a Customer with due care and skill but does not warrant that any services will be provided without fault or disruption. To the extent allowed by law, Thermeco excludes all liability to a Customer or anyone else for loss or damage of any kind (however caused or arising) relating in any way to the Website including, but not limited to, loss or damage a Customer might suffer as a result of:
- (a) errors, mistakes or inaccuracies on the Website;
  - (b) a Customer acting, or failing to act, on any information contained on or referred to on the Website and/or any linked website;
  - (c) personal injury or property damage of any nature resulting from a Customer's access to, and use of, the Website;

- (d) any unauthorised access to or use of Thermeco's secure servers and information of any kind stored on those servers;
- (e) any interruption or cessation of transmission to or from the Website;
- (f) any computer bugs, viruses, Trojan horses or other harmful code or communications which may be transmitted to or through the Website by any third party; and
- (g) the merchantability or fitness for any purpose of any product or service of any website linked to or advertised on the Website. Thermeco does not warrant, endorse, guarantee or assume responsibility for any product or service advertised or offered by a third party through the Website or any linked website or any products or services featured in any banner or other advertising. Thermeco will not be a party to or in any way responsible for monitoring any transaction between a Customer and a third party provider of products and services.

### **13. Information on this Website**

- 13.1. You agree to make your own enquiries to verify information provided and to assess the suitability of Products before You place a purchase order with Thermeco. Thermeco is not responsible for any typographical, technical, or descriptive errors of products on the Website. If Thermeco becomes aware of the existence of such an error it will do all things reasonably necessary to rectify such an error. To the extent permitted by the Australian Consumer Law, Thermeco will not be liable to any Customer for any loss or damage arising out of a Customer's reliance upon any typographical, technical, or descriptive errors of products on the Website.

### **14. Links to third party websites**

- 14.1. The Website may include links to other websites, content or resources. These linked websites, content or resources may be operated by third parties and Thermeco may have no control over the operation of such websites. The existence of these links does not imply that Thermeco endorses the linked website, content or resource. You acknowledge that Thermeco has not reviewed any of these third party websites, content or resources and are not responsible for the material contained therein.

### **15. Intellectual Property**

- 15.1. The Customer's purchase of a Product does not confer on the Customer any assignment of any Intellectual Property Rights that subsists in any of the Products or any other materials supplied by Thermeco, and the Customer agrees that it will not assert any rights in, or challenge Thermeco's title to, those Intellectual Property Rights.
- 15.2. Thermeco makes no representation or warranty to the Customer of any kind, express or implied that the Products will not infringe any intellectual property rights of a third party.
- 15.3. The Customer acknowledges that Thermeco retains ownership of all rights, title, interest and goodwill in the Intellectual Property Rights that subsists in any of the Products or any other materials supplied by Thermeco (including user guides, instruction manuals and other documents).
- 15.4. Thermeco grants to the Customer, and the Customer accepts, a personal non- exclusive licence to use the Intellectual Property Rights that subsists in any of the Products or any

other materials supplied by Thermeco (including user guides, instruction manuals and other documents) for the purposes of these Terms.

- 15.5. The Customer shall not be permitted to assign, transfer or sub-licence any of the rights granted to it by Thermeco to any related party or any unrelated third party without the express consent in writing of Thermeco. Thermeco may withhold such consent in its absolute discretion or may grant consent on such terms as it considers fit.
- 15.6. The Customer shall not re-publish, transfer, copy, reproduce or post on the internet any of Thermeco's materials without Thermeco's prior written consent.
- 15.7. In addition to any other remedies available to Thermeco under these Terms or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Intellectual Property Rights will entitle Thermeco to any available statutory or equitable remedy against the Customer.
- 15.8. The copyright in the Website, copy, images, logos, indicia, text, content, and unique method of showcasing products is owned by Thermeco. The domain name [www.thermeco.com.au](http://www.thermeco.com.au) or any of the trademarks, logos or other material in which intellectual property rights subsist may not be used in advertising or publicity pertaining to distribution of this information without Thermeco's prior written consent.
- 15.9. Trade marks used on the Website which are owned by third parties are used with express permission and remain the intellectual property of the third party.
- 15.10. You may not modify or copy the layout or appearance of the Website nor any computer software or code contained in the Website. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover or access any source code related to the Website.
- 15.11. If You correspond or otherwise communicate with Thermeco, You grant to Thermeco an irrevocable, perpetual, non-exclusive, royalty-free, world-wide licence to use, copy, display and distribute the content of your correspondence or communication and to prepare derivative works of the content or incorporate the content into other works in order to publish and promote such content. This may include, but is not limited to, publishing testimonials on the Website and developing your ideas and suggestions for improved products or services Thermeco provides.

## **16. Colours & Images**

- 16.1. Thermeco has endeavoured to display as accurately as possible the colours of the Products shown on the Website. However, because the colours You see will depend on your monitor, Thermeco does not guarantee that your monitor's display of any colour will be accurate.
- 16.2. Images contained on the Website are for illustration purposes only.

## **17. Transfer and Assignment**

- 17.1. In the event that Thermeco merges, sells or otherwise undergoes a change control of its business or the Website to a third-party, it reserve the right, without giving notice or seeking consent, to transfer or assign the personal information, content and rights that it has collected from You and any agreements between You and Thermeco.



## 18. Privacy and personal information

- 18.1. Thermeco does not collect personal information if You only browse this Website.
- 18.2. Thermeco's computer server may record details about any computer which is used to access the Website (such as the IP address, operating system and browser type), the date and time of access, and details of the information downloaded.
- 18.3. When Thermeco does collect personal information for the purposes of considering a Credit Application or a Customer's order, its usual practice is to collect this information directly from the Customer. Such information will be collected via the placement of an order for a Product. Personal information may include a Customer's name, postal address, telephone number and email address.
- 18.4. A Customer's personal information will only be used for the purposes for which You provide it and for Thermeco internal management purposes. You agree to Thermeco using your email address to send You messages concerning your any orders You place and information about the Products. If You would prefer not to receive promotional or other material from us, please advise Thermeco accordingly.
- 18.5. In the event that a Customer wishes for Thermeco to approve a Credit Application,
  - (a) The Customer/ Guarantor(s) agree(s) that Thermeco may obtain from a credit report agency a credit report containing person credit information about the Customer/ Guarantor(s) with credit providers either named as trade referees by the Customer/ Guarantor(s) or named in a consumer credit report issued by a credit reporting agency provided by Thermeco.
  - (b) The Customer/ Guarantor(s) agrees that Thermeco may exchange information about the Customer/ Guarantor(s) with those credit providers either named as trade referees by the Customer/ Guarantor(s) or named in a consumer credit report issued by a credit reporting agency for the following purposes:
    - (i) to assess an application by the Customer/ Guarantor(s) and/or;
    - (ii) to notify other credit providers of a default by the Customer/ Guarantor(s) and/or;
    - (iii) to exchange information with other credit providers as to the status of this credit account, where the Customer/ Guarantor(s) is in default with other credit providers, and/ or;
    - (iv) to assess the credit worthiness of the Customer/ Guarantor(s).
  - (c) The Customer/ Guarantor(s) consents to Thermeco being given a consumer credit report to collect overdue payment on commercial credit.
  - (d) The Customer/ Guarantor(s) understands that their information exchanged can include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth) (**Privacy Act**).
  - (e) The Customer/ Guarantor(s) agrees that personal credit information provided may be used and retained by Thermeco for the following purposes and for other purposes as

shall be agreed between the Customer/ Guarantor(s) and Thermeco or required by law from time to time;

- (i) the provision of Products and/or;
  - (ii) the marketing of goods by Thermeco, its agents or distributors and/or;
  - (iii) analysing, verifying and/or checking the Customer/ Guarantor(s)'s credit, payment and/or status in relation to the provision of Products and/or;
  - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer/Guarantor(s) and/or;
  - (v) enabling the daily operation of the Customer/Guarantor(s)'s account and/or the collection of amounts outstanding in the Customer/Guarantor(s)'s account in relation to the Products.
- (f) Thermeco may give information about the Customer/Guarantor(s) to a credit reporting agency for the following purposes:
- (i) to obtain a consumer credit report about the Customer/Guarantor(s);
  - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer/Guarantor(s).
- (g) The information given to the credit reporting agency may include:
- (i) personal particulars, the Customer/Guarantor(s) name, address, previous addresses, date of birth, names of employer, driver's licence number;
  - (ii) details concerning the Customer/Guarantor(s) application for credit or commercial credit and the amount requested;
  - (iii) advice that Thermeco is a current credit provider to the Customer/Guarantor(s);
  - (iv) 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 commenced;
  - (v) that the Customer/Guarantor(s) overdue accounts, loan repayment and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (vi) information that, in the opinion of Thermeco, the Customer/Guarantor(s) has committed a serious credit infringement, fraudulently or shown intention not to comply with the Customer/Guarantor(s) credit obligations;
  - (vii) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more have been dishonoured more than once; and
  - (viii) that credit provided to the Customer/Guarantor(s) by Thermeco has been paid or otherwise disregarded.

- 18.6. Thermeco will not provide any Customer information to government agencies, organisations or anyone else unless:
- (a) you have consented to Thermeco providing such information;
  - (b) Thermeco has notified You that it will be providing your information;
  - (c) the provision of your information is required or authorised by law;
  - (d) the provision of your information will prevent or obviate a serious and imminent threat to a person's life or health; or
  - (e) the disclosure is reasonably necessary for law enforcement.
- 18.7. You may request that Thermeco remove your personal information from its database by emailing Thermeco or using the contact form on the Website.
- 18.8. Pursuant to the Privacy Act You have a right to request access to your personal information held by Thermeco. You may do this by sending an email to [windows@wthermeco.com.au](mailto:windows@wthermeco.com.au);

## **19. Indemnity**

- 19.1. You will at all times indemnify, and agree to keep indemnified, Thermeco and its directors, officers, employees and agents from and against any loss (including reasonable legal costs and expenses on a full indemnity basis) or liability incurred or suffered by You or by Thermeco arising from any claim, demand, suit, action or proceeding by any person against You or against Thermeco where such loss or liability arose out of, in connection with or in respect of your conduct, or breach of these Terms, including any costs of enforcement.

## **20. Waiver**

- 20.1. If Thermeco does not exercise or enforce any right or provision under this agreement, it will not constitute a waiver of such right or provision. Any waiver of any provision under this agreement will only be effective if it is in writing and signed by Thermeco.

## **21. Force majeure**

- 21.1. If the performance of Thermeco's obligations under these Terms is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Thermeco, Thermeco will not be liable for any loss or damage suffered by the Customer or any other person and Thermeco will endeavour to give the Customer written notice if the force majeure event has continued unabated for thirty (30) days.

## **22. Applicable law**

- 22.1. These Terms and any agreement between Thermeco and a Customer will be governed by and interpreted in accordance with the laws of Victoria, Australia. You irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia.
- 22.2. If any part of this agreement is found to be void, unlawful or unenforceable then that part will be deemed to be severable from the balance of these Terms or any agreement between Thermeco and its Customers the severed part will not affect the validity and enforceability of any remaining provisions.