



TERMS AND CONDITIONS OF SALE

Plus Energy Living

(DVS Industries Pty Ltd Trading as Plus Energy Living ABN 27 160 772 305)

These conditions govern every contract for the sale of goods by Plus Energy Living to the Client, constitute all the Terms and Conditions agreed between them to the exclusion of all other Terms and Conditions. No modification to these Conditions shall bind Plus Energy Living, unless agreed to in writing.

1 DEFINITIONS

- 1.1 "Business day" means any day except Saturday or Sunday or a day that is a public or bank holiday in the state of New South Wales.
- 1.2 "Client" shall mean the purchaser of goods from Plus Energy Living.
- 1.3 "Contract of Sale" shall mean the binding contract between Plus Energy Living and the Client for the supply and payment of Goods as specified in the Quotation and/or contract.
- 1.4 "Deposit" means an amount payable by the Client to Plus Energy Living immediately upon acceptance of the Quotation and formation of the contract.
- 1.5 "Goods" means all goods sold and/or delivered by Plus Energy Living to the Client and are as described on the Quotation or the Contract of Sale.
- 1.6 "Plus Energy Living" shall mean DVS Industries Pty Ltd Trading as Plus Energy Living ABN 27 160 772 305
- 1.7 "Supply" refers to the supply only of the Goods by Plus Energy Living to the Client.
- 1.8 "Terms" means these terms and conditions of sale.
- 1.9 "Quotation" means the written quotation provided to the Client which specifies the goods. This may also include any design associated with the goods.

2 ACCEPTANCE

- 2.1 A written instruction received from Plus Energy Living from the Client, in the form of a signed Contract of Sale, an email stating acceptance, or verbal acceptance for the supply of Goods shall constitute acceptance of the Terms.
- 2.2 Goods are supplied by Plus Energy Living on the Terms herein to the exclusion of anything to the contrary.
- 2.3 The Client acknowledges that no employee, agent or reseller of Plus Energy Living has the right to make any representation, warranty or promise in relation to the Goods or the sale of Goods other than as contained in these Terms.

3 QUOTATIONS AND PRICES

- 3.1 Any quotation given by Plus Energy Living is a mere invitation to treat and does not constitute a contractual offer. All quotations hold for 30 (thirty) days after issue, however Plus Energy Living may withdraw a quotation at any time.
- 3.2 Prices included in the quotation are based on the specification, drawings and/or requests by the Client. Should the specification or Client's request change, Plus Energy Living reserves the right to vary the quotation price.
- 3.3 All quoted prices are exclusive of GST unless otherwise stated.
- 3.4 Quotations do not include shipping, unless expressly stated.

4 PAYMENT

- 4.1 A non-refundable deposit is required prior to the Goods being ordered, as specified on the Quotation upon the formation of the Contract.
- 4.2 The Client will pay Plus Energy Living the price by way of progress payments, calculated in accordance with clause 4.3.
- 4.3 Plus Energy Living shall submit to the customer written progress claims which may be in the form of a Tax Invoice and consist of:
 - 4.3.1 the amount payable for the proportion of the price payable where applicable and which have not previously been charged; and
 - 4.3.2 any other amounts then payable to Plus Energy Living
- 4.4 The Client must pay the progress claim within seven (7) business days of submission of the progress claim.
- 4.5 The balance of the price of the Goods is payable prior to the Goods being shipped.
- 4.6 Should the Client neglect or refuse to pay the amount of any progress claim by the due date, then DVS Industries may, at its option, with or without notice to the customer, suspend supply of the Goods until such payment has been received in full.
- 4.7 Failure to pay within agreed credit terms will automatically stop the supply of the Goods until payment is received for all amounts outstanding beyond agreed credit terms.
- 4.8 Without prejudice to any other remedy, Plus Energy Living reserves the right to charge a default charge on any overdue payments at an annual rate equal to the Commonwealth Bank's current overdraft rate at the time the payment fell due.

- 4.9 Unless otherwise provided in writing, the Client shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied.
- 5 ABILITY TO SUPPLY
- 5.1 Plus Energy Living may, in its absolute discretion, accept or reject any order whether on account of the Goods being no longer available or for any other reason whatsoever.
- 5.2 Reasonable efforts will be made to fulfil accepted orders placed with Plus Energy Living, but if Plus Energy Living's ability to do so is affected (directly or indirectly and whether by circumstances already existing or otherwise) by strikes, lockouts, Acts of God, or by any other cause whatsoever beyond the reasonable control of Plus Energy Living, it shall have the right:
- 5.2.1 to elect to extend the day for fulfilment of the order or compliance with any delivery dates;
- 5.2.2 to alter the specifications for the goods to allow the substitution of equivalent goods; or
- 5.2.3 terminate the order without liability for breach of Contract.
- 5.3 In any event, Plus Energy Living will be entitled to full payment for all goods which have been delivered. Plus Energy Living will not be liable for any loss, including consequential loss and loss of profits arising from any delay in performance of the Contract or the early termination of any order.
- 6 DELIVERY
- 6.1 The times quoted for delivery are estimates only. Plus Energy Living accepts no liability for failure or delay in delivery of Goods. The Client is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by installments at the discretion of Plus Energy Living.
- 6.2 Any claims to be made against Plus Energy Living for short delivery of Goods must be lodged with Plus Energy Living in writing within 7 (seven) days of the delivery date.
- 6.3 Risk in the Goods passes on delivery to the Client.
- 7 TITLE
- 7.1 Plus Energy Living and the Client agree that title to the Goods shall not pass until:
- 7.1.1 the Client has paid Plus Energy Living all amounts owing for the Goods as set out in the Contract; and
- 7.1.2 the Client has met all other obligations due by the Client to Plus Energy Living in respect of all contracts between Plus Energy Living and the Client.
- 7.2 Receipt by Plus Energy Living of any other form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. Until this time, Plus Energy Living's ownership or rights in respect of the Goods shall continue.
- 8 WARRANTY AND CLAIMS
- 8.1 Warranty claims do not include rectification of faults arising from installation errors, power failure, misuse of equipment, lack of routine maintenance or operator error.
- 8.2 The Client has 48 hours from the receipt of the Goods to inspect and make claims in relation to any missing parts. Plus Energy Living will use its discretion for any claims made after this time period has lapsed.
- 8.3 Warranty, for the purposes of this clause, is in relation to the Goods only.
- 8.4 Issues arising from the installation of the Goods is the sole responsibility of the Client and the installer. Plus Energy Living is not liable for any issues that occur as a result of the Goods not being installed correctly.
- 8.5 All costs of freight and travelling expenses associated with making a claim under this warranty are to be paid by the Client.
- 8.6 If the Customer wishes to make a claim under this warranty, it should contact Plus Energy Living.
- 8.7 Warranty on the Goods are subject to the manufacturer's warranty. However, where permissible by law, the Client must pay for all work undertaken in carrying out a repair if the manufacturer's assessment determines the claim does not fall within the manufacturer's warranty terms.
- 8.8 In respect of all claims, Plus Energy Living shall not be liable to compensate the Client for any delay in either assessing the Claim or remedying the warranty issue.
- 8.9 The conditions applicable to the warranty are rendered void and of no force or effect if the Goods are repaired or altered without Plus Energy Living's prior written consent.
- 9 INTELLECTUAL PROPERTY
- 9.1 Where Plus Energy Living has designed, drawn or written documents in relation to the Goods for the Client, the copyright in those designs, drawings and documents shall remain vested in Plus Energy Living, and shall only be used by the Client at Plus Energy Living's discretion.
- 10 LIMITED LIABILITY, INDEMNITY AND IMPLIED TERMS
- 10.1 It is hereby acknowledged by the Client that, under the Australian Consumer Law, certain conditions and warranties may be implied in the contract between Plus Energy Living and the Client and rights and remedies conferred upon the Client and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-Excludable Rights.

- 10.2 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Plus Energy Living makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Plus Energy Living's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.3 If the Client is a consumer within the meaning of the Competition and Consumer Act 2010 (CCA), Plus Energy Living's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.4 Accordingly, subject to clause 10.1, in no event shall Plus Energy Living be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Client howsoever arising including any loss or damage arising from or caused or contributed to by negligence of Plus Energy Living, its servants or agents, nor shall Plus Energy Living be liable for special, incidental, indirect or consequential loss or damage suffered by the Client as a result of a breach by Plus Energy Living of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.
- 10.5 Subject to Clause 10.1, the Client shall indemnify and keep indemnified and hold Plus Energy Living harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Plus Energy Living, and from and against all actions, proceedings, claims or demands made against Plus Energy Living, arising from one or more of the following:
 - 10.5.1 As a result of the Client's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
 - 10.5.2 As a result of any other negligence or other breach of duty by the Client; or
 - 10.5.3 As a result of any compliance or adherence by Plus Energy Living with any instructions of the Client in relation to the Goods.

11 GENERAL

- 11.1 These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- 11.2 These Terms and Conditions contain all the Terms and Conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 11.3 Any conditions found to be void, unenforceable or illegal may, to that extent may be severed from these Terms and Conditions.
- 11.4 No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Plus Energy Living will be considered to imply or constitute a further waiver by Plus Energy Living of the same or any other term, condition, right or remedy.