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New Zealand

Heat Ranger Limited
Terms and Conditions for the Supply of Goods and Services (New Zealand)

1. Terms and Conditions

1.1 These terms and conditions for the supply of Goods and Services ("the Terms and Conditions") shall apply to the provision of all Goods and Services by the Company to the Customer and are the terms and conditions referred to on the Company's form of Quotation, Invoice, Sales Order Confirmation and Application for Trade Credit ("the Documents").

The Company reserves the right to amend the Terms and Conditions by written notice to the Customer.

2. Definitions

2.1 Unless the context otherwise requires the following definitions shall apply to these Terms and Conditions:

"Contract" means the contract between the Company and the Customer for the provision of Goods and/or Services by the Company of which these Terms and Conditions form part.

"Company" means Heat Ranger Ltd and any subsidiary or associated company thereof supplying Goods and Services to the Customer.

"Customer" means the person to whom the Goods and Services are supplied.

"Price" means:

(i) where a quote has been given – the price for the Work recorded in that Quote; and

(ii) otherwise, the company's usual charges for completing the Work in New Zealand dollars unless otherwise provided plus any additional charges pursuant to these Terms and Conditions plus Goods and Services tax.

"Property" means the property, premises, site or location where the Goods are to be delivered and/or the Services are provided by the Company.

"Quote" means any quotation or estimate provided by or on behalf of the Company.

"Goods" means the goods supplied by the Company to the Customer in terms of the Contract together with any new goods as set out in clause 16.3 and any other goods or personal property owned by the Customer that have been installed or worked on by the Company or which are required for the completion of the Work.

"Services" means the services supplied by the Company to the Customer in terms of the Contract.

"Work" includes all Goods and Services supplied or required to be supplied by the Company in the course or performance of the Contract.

3. Acceptance of Terms and Conditions

3.1 Contracting the Company to carry out Work or acceptance of a Quote provided by the Company constitutes acceptance by the Customer of these Terms and Conditions.

4. Quotes and Prices

4.1 Unless otherwise stated in the Quote, any Quotation is open for acceptance for 30 days from the date of quotation but is subject to the Company's acceptance of the Customer's order in writing which forms the Contract between the Company and the Customer.

4.2 No conditions or stipulations in or attached to your form of acceptance of our Quotation and/or the Customer's form of order and/or any other written document relating thereto which are inconsistent with our Terms and Conditions or which purport to, add to or modify in any way shall have any effect unless expressly accepted by us.

4.3 The Quotations are provided strictly on the basis that Works proceed without difficulty or occurrence of unforeseen circumstance. If additional work is required as a result of difficulties or unforeseen circumstance, then the Company may at its option either cancel this Contract or charge for such additional work at the Company's then prevailing rate.

4.4 Irrespective of all Prices listed or quoted, all Goods and Services are supplied at the prices ruling at the date of invoice and the Company reserves the right to pass on to the Customer any change in Price after acceptance of the Customer's order.

4.5 The Company's prices are exclusive of all taxes, duties and other charges which are chargeable or payable by the Customer whether they are imposed or brought in to force before or after acceptance of the Customer's order.

5. Variations

5.1 Any requested variation to the Work covered by the Company's Quotation must be notified in writing by the Customer. If the Company agrees, the Customer's Quotation and the Price will be adjusted accordingly or alternatively, in the Company's sole discretion the variation will be charged at the Company's then prevailing rate.

5.2 Should the Customer request the Company to work overtime or extra shifts, the Company reserves the right to adjust the Price to reflect the increase in

cost caused thereby based upon the excess rates paid and working hours recorded.

5.3 The Price will be adjusted to reflect the extra cost or expense incurred by the Company because of any instructions received by the Customer or action or inaction on the part of the Customer.

6. Cancellation

6.1 No cancellation of any order or part thereof shall be effective unless or until accepted by the Company in writing.

6.2 In the event that such a cancellation is accepted the Customer shall pay in full to the Company any charges resulting from design, procurement of materials, Work carried out or Services rendered or for any other cost directly or indirectly incurred by the Company including but not limited to the allocation of labour and materials unable to be reallocated.

7. Design and Fitness for Purpose

7.1 Goods manufactured to the Customer's design are the responsibility of the Customer. Where the Company manufactures goods according to plans, designs or samples submitted by the Customer, the Customer shall indemnify the Company against any claim for damages or otherwise based on infringement of intellectual property of a third party and all costs and expenses occasioned by such claims (including solicitor/own client costs).

7.2 It is the responsibility of the Customer to ensure that the Goods and Services ordered and supplied are fit and suitable for the purposes for which they are required by the Customer and the Company is under no liability in respect thereof. 7.3 Except where there is agreement in writing to the contrary, all intellectual property and any design and/or drawing prepared by the Company and any copyright or patent (whether existing or not) used or arising therefrom shall be and remain the exclusive property of the Company.

7.4 Any performance data provided by the Company relating to the Goods and Services supplied is performance data collected or estimated by the Company. The Company shall not be under any liability to the Customer for any failure by the Goods and Services to meet such performance criteria. Any testing required by the Customer prior to delivery of the Goods and Services must be specified in the order for the Goods and Services and accepted by the Company. If agreed to be undertaken by the Company all at the Company's then prevailing rates.

8. Freight, Insurance, Packaging and Handling

8.1 Unless otherwise stated all Goods are supplied ex works Christchurch, New Zealand, and all freight, insurance, packaging and handling shall be charged in addition to the Price and shall be payable by the Customer.

9. Risk in Goods

9.1 Risk in the Goods supplied by the Company to the Customer shall pass to the Customer when the Company parts with possession of the Goods in accordance with the Contract.

10. Delivery

10.1 The Company will make every effort to compete the delivery on the date agreed. If delivery of the Goods is delayed for any reason whatsoever the Company shall not be responsible or liable in any way to the Customer or any other party for any loss or damages directly or indirectly caused thereby.

10.2 The Customer shall have no right to cancel any order due to late delivery.

10.3 The Company will not be liable for any loss or damage to Goods during transportation even though such loss or damage may be caused by the Company's negligence or other default.

10.4 The Company reserves the right to cancel delivery of the Goods or any instalment thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.

10.5 Where the Customer does not take delivery of the Goods by the delivery date specified or such later date as delivery is effected, the Customer shall pay the reasonable storage costs until such time as the Customer accepts the Goods at such cost to be determined by the Company.

10.6 Delivery by the Company to a carrier or other party acting on the Customer's behalf shall be deemed to be delivery to the Customer.

10.7 The Company is not liable for any failure in its obligations to the Customer and shall be entitled to cancel or suspend delivery of the Goods and Services in the event of any delay or non performance due directly or indirectly to Force Majeure. The Customer shall have no claim whatsoever against the Company in consequence of such failure, cancellation or suspension.

11. Warranty and Liability on Claims

11.1 Provided that the terms of payment are duly complied with and the Goods have been correctly installed, operated, maintained and serviced in accordance with the Company's instructions and except as otherwise set out in these Terms and Conditions, the Goods and Services supplied are warranted from the date of supply by the Company to the Customer or the Customer's agent against faulty materials and/or workmanship for the period and upon any terms stated in theDocuments.

11.2 All claims in respect in respect of the warranty set out in clause 11.1 above must be made to the Company within 28 days of the delivery of the Goods or Services and are subject to acceptance by the Company.

11.3 Faults in Goods and Services arising within the aforesaid warranty supplied pursuant to the Quotation will be repaired or replaced if returned to the Company at 27 Foremans Road, Hornby, Christchurch, New Zealand, or such other place as is specified by the Company within the warranty period, time being strictly of the essence.

11.4 This warranty is subject to satisfactory storage and proper use and maintenance of the Goods and

Services during the time the Goods and Services are in your possession or in the possession of any other person.

11.5 The warranty does not cover fair wear and tear and consumable components except where caused by faulty materials and/or workmanship.

11.6 Any Goods supplied or work done in remedying defects shall not extend the liability of the Company under this clause beyond the period stated in the Quotation. At the expiration of such period all liability on the part of the Company shall cease.

11.7 The Company reserves the right in its discretion to repair or replace the Goods or to refund or credit the portion of the Price applicable thereto in respect of claims accepted.

11.8 The Company will not be liable for any consequential, indirect or special damage or loss at any time nor is the Company liable for any damage or loss caused by the Customer's servants, agents, buyers or other persons whatsoever.

11.9 The warranty offered applies only to that part of the Goods manufactured or Services rendered by the Company. The Company will use its best endeavours to enforce any guarantee or warranty given by the manufacturer of Goods.

11.10 The total liability of the Company where in contract, tort or otherwise or for any loss, damage or injury arising directly or indirectly from any defect in or non compliance of the Goods or Services or any breach by the Company of its obligations under this agreement will not in any circumstance exceed the Price of the Goods or Services.

11.11 The Customer shall indemnify the Company against any claim by the Customer's servants, agents, customers or other persons (whether similar to the aforegoing or not) in respect of any loss, damage or injury arising from any defect or non compliance of the Goods or Services.

11.12 The warranty of the Company shall not apply if any repair work, spare part or modification is effected to or carried out on the Goods or Services supplied by the Company by any person unless that repair work, spare part or modification is authorised, supervised and directed by the Company.

11.13 All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability of purpose or otherwise and all specific conditions even through such conditions may be known to the Customer are expressly excluded.

12. Payment

12.1 Unless otherwise stated payment shall be made in New Zealand dollars without deduction on the 20th of the month following the date of invoice or delivery of the Goods or Services whichever be the earlier.

12.2 Notwithstanding the provisions of clause 12.1 above the Company may invoice the Price, or any part thereof, by way of progress payment during the term of the Contract which shall be payable on the terms set out in clause 12.1.

12.3 The Customer will make payment of all amounts due to the Company whether by way of progress payment or otherwise without delay or deduction by way of set-off, counter-claim or otherwise.

12.4 If payment is not made by the Customer to the Company by the due date then:

12.4.1 The Customer shall be in default under these terms and conditions and the Company may exercise all or any of the rights and remedies contained therein and/or otherwise available at law;

12.4.2 There shall be due and payable by the Customer to the Company interest upon the moneys in default at the rate of 2.5% per month or such lower rate as the Company may determine payable upon a daily basis from the due date of payment provided that charging of such interest shall not extend the due date of payment or be deemed to do so;

12.4.3 The Customer shall be liable for all expenses (including solicitor/own client legal costs) incurred by the Company as a result of default; and 12.4.4 The Company may withhold the supply of further Goods and Services on credit.

13. Validity of Payment

13.1 The Customer acknowledges that:

13.1.1 All payments made to the account of the Customer with the Company are in the ordinary course of the Customer's business;

13.1.2 All payments received by the Company to the Customer's account are received by the Company on the reasonably held belief as to the validity of those payments unless otherwise advised by the Customer; and

13.1.3 In accepting such payments on or after the due date the Company has altered its position in reliance of the validity of such payments.

14. Consumer Guarantees Act 1993

14.1 Where the Company is supplying Goods or Services to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993 and pursuant to Section 43 thereof, the provisions of that Act shall have no effect.

14.2 Where the Company is supplying Goods to the Customer for other than business purposes, clauses 10.3, 11 and 16 shall have no effect and the provisions of the Consumer Guarantees Act 1993 hereof shall apply.

14.3 Where the Customer supplies Goods or Services to a person acquiring them for business purposes, it shall be a term of the Customer's contract with the Company thereof that the Consumer Guarantees Act 1993 does not apply in respect of the Goods or Services.

15. Personal Property Securities Act 1999 ("PPSA")

15.1 Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA.

15.2 As security for payment of the Price of the Goods and payment of any other amount owed by the Customer to the Company from time to time and as security for the performance by the Customer of the obligations set out in the Contract the Customer grants the Company a "security interest" in:
15.2.1 The Goods; and
15.2.2 Any new Goods in terms of clause
16.3; and
15.2.3 Any other Goods or personal property owned by the Customer that have been installed or worked on by the Company or which are required for the completion of the work.
("the Secured Goods")
15.3 The Company reserves the right at its discretion to register a "financing statement" in the Personal Property Securities Register to perfect its "security interest" in the Secured Goods.
15.4 The costs of registering a "financing statement" or a "financing change statement" shall be paid by the Customer and where applicable, debited by the Company against the Customer's account with the Company.
15.5 On the request by the Company the Customer shall promptly execute any documents and do anything else required by the Company to ensure that the "security interest" created under these Terms constitutes a "perfected securityinterest" over the Secured Goods.
15.6 The Customer shall not agree to allow any person to file a "financing statement" over any of the Secured Goods without the prior written consent of the Company and shall notify the Company immediately if it becomes aware of any person taking steps to file a "financing statement" against any of the Secured Goods which are subject to clause 10 of these Terms and Conditions and in respect of which credit has been extended by the Company to the Customer.
15.7 The Customer and Guarantor:
15.7.1 Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these Terms and Conditions; and
15.7.2 Waive(s) the Customer's right to do any of the following:
(a) object to the Company's proposal to retain any "personal property" under s121 of the PPSA;
(b) not have goods damaged when the Company removes an "accession" under s125 of the PPSA;
(c) receive notice of the removal of an "accession" under s129 of the PPSA;
(d) apply to the Court for an order concerning the removal of an "accession" under s131 of the PPSA;
(e) to receive a copy of the "verification
statement" confirming registration of a Financing statement" or a "financing change statement" relating to the "security interest" created by these Terms and Conditions.

16. Ownership

16.1 Property in and ownership of the Goods remains in the Company until all money the Customer owes to the Company (whether under this contract or otherwise) has been paid in full or until property in the Goods has passed to a third party in accordance with this clause.
16.2 The Customer is a fiduciary for the Company and has a fiduciary duty to account to the Company for the Goods. If the Goods are sold the Customer receives the proceeds of sale as a trustee for the Company and will place the proceeds of the sale in a separate bank account for the benefit of the Company. The Customer has no right to assert against the Company that it owns the Goods or the proceeds of sale of the Goods or any part of them.
16.3 If the Company's Goods become mixed with or incorporated in any other goods, property or materials in such a way that they cease to exist as separate goods, the original ownership of the new Goods created by that mixing will vest immediately on creation in the Company as coowner of the new Goods with the owner of any other materials which become part of the new Goods. The co-ownership share will be calculated proportionally to the value of the various component materials but shall not at any time be less than the invoiced value. The Company's ownership of the new Goods is otherwise on the same terms as the ownership of the Goods originally supplied.
16.4 If the Customer is in default under these terms and conditions or if one of the events described in clause 17.1 occurs, the Customer will at the Company's request:
16.4.1 Re-deliver the Goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them; and 16.4.2 Instruct any third parties who owe money in respect of the goods to pay that money directly to the Company; and
16.4.3 Make any records available which may assist the Company to trace the proceeds of sale of the goods.
16.5 The Secured Goods will not become fixtures on any land while the Customer owes any money to the Company, regardless of the degree to which and purpose for which they are fixed to the land (subject to the prior rights of any mortgagee of the land).
16.6 If the Customer is in default under the Contract or if one of the events described in clause 17.1 occurs, then the Company will be entitled without notice to repossess the Secured Goods.
The customer authorises the Company or its representatives, servants, agents or employees to enter the property where the Secured Goods are situated for the purpose of repossession.
The Company will not be liable for any costs, expenses, damage, loss of any kind suffered by the Customer as a result of repossession.
16.7 If the Company takes possession of the Secured Goods or the proceeds and after deduction of all money the Customer owes to the Company (including

any interest due and including any expense occurred by the Company in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Company will pay that surplus to the Customer.

17. Default

17.1 In the event that the Customer defaults in the payment of any amount due or becomes insolvent, has a receiver appointed in respect of some or all of its assets, makes or is likely to make an arrangement with its creditors, commits an act of bankruptcy or dies or a liquidator (provisional or otherwise) is appointed or is placed under statutory or official management or is in the opinion of the Company likely to be unable to meet its payment and obligations to the Company, the Company may without prejudice to its other rights and remedies do any one or more of the following:

17.1.1 Treat all amounts due or to become due from the Customer whatsoever as immediately due and payable;

17.1.2 Cancel or suspend delivery of Goods and the provision of Services;

17.1.3 Withhold the further supply of Goods or services on credit; and

17.1.4 Enter into the Customer's premises with the authority of the Customer for the purposes of taking possession of the Goods without in any way being liable to the Customer or anyone claiming thereunder.

17.2 In the event of default under these Terms and Conditions the Customer shall at the Company's request:

17.2.1 Redeliver the Goods to the Company or do anything necessary to allow the Company to retake possession of the Goods;

17.2.2 Instruct any third parties who owe money in respect of the Goods to pay those moneys direct to the Company; and

17.2.3 Make any records available which may assist the Company to recover the proceeds of the Goods.

17.3 The Customer will be liable for and indemnifies the Company for all expenses (including solicitor/own client legal costs) and losses incurred or suffered by the Company as a result of any default under these Terms and Conditions or for any other clause.

18. Commissioning on Site

18.1 Unless otherwise specified Work to commission or install goods on site shall be charged in addition to the price of the Goods. The additional cost of Work performed outside of normal working hours and other reasonable expenses associated therewith shall be charged to the Customer by the Company.

19. Information and Privacy

19.1 For the purpose of facilitating the efficient running of the Company's business, the Customer authorises the Company:

19.1.1 To collect all information it may require from any third parties and authorises those third parties to release that information to the Company; and

19.1.2 To hold all information given by the Customer or any third parties to the Company; and

19.1.3 To use that information, including giving information to any other person to facilitate collection of debts from the Customer.

19.2 The information will be collected, held and used on the condition that:

19.2.1 It will be held securely at the Company's registered office; and

19.2.2 It will be accessible to any of the Company's employees and agents who need access to it for the efficient running of the Company's business; and

19.2.3 The Customer may request access to and correction of it at any time.

20. Waiver and Forbearance

20.1 All the rights, powers, exemptions and remedies of the Company shall remain in full force not withstanding any neglect forbearance or delay in enforcement thereof and the Company shall not be deemed to have waived any condition unless such waiver is in writing and signed by a duly authorised officer of the Company. Any such waiver shall apply to operate only in the particular transaction dealing or matter in respect of which it was.

21. Assignment

21.1 The Company is entitled at any time to assign its rights under the Contract. Any assignee shall be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or any part thereof assigned.

21.2 The Customer may not assign its rights and obligations under this Contract.

22. Contract

22.1 The Company and the Customer agree these terms express the complete agreement between the parties and that there has been no representations made by either party to the other except as are expressly set forth in these presents and Quotation, order and credit application made by the Customer and there is no inconsistency with any order that may be lodged with the Customer and if there is any consistency then such order shall be of no effect. The contract shall not be subject to change or modification except with the prior written consent of both the Company and the Customer.

23. Non merger

23.1 The agreements and obligations of the parties and the agreement evidencing them will not merge upon cancellation or termination of this agreement.

24. Credit Contracts and Consumer Finance Act 2003 ("CCFA")

24.1 For the avoidance of doubt, pursuant to section 15(1)(a) of the CCFA, these terms and conditions are not a Consumer Credit Contract and the CCCFA does not apply.

25. Governing Law

25.1 The law of New Zealand shall govern all contacts and agreements and the Customer hereby submits to any exclusive jurisdiction of the New Zealand courts.

26. Errors and Omissions

26.1 Clerical errors or omissions whether in computation or otherwise and any quotations or acknowledgements, invoice or documents shall be subject to correction by the Company.

27. Force Majeure

27.1 The Company shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with failure to perform any term of its obligation where such delay or failure is caused directly or indirectly by any act of God, fire, armed conflict, labour, dispute, civil commotion, intervention of a Government, inability to obtain labour, materials, facilities, accidents, interruptions of or delay in transportation or any other cause beyond the Company's control.

28. Amendments

28.1 The Company may amend these terms and conditions by giving the Customer at the last known address notice in writing of such amendments.

29. Disputes

29.1 If any dispute or difference arises under the Contract ("Dispute") either party may serve a notice of Dispute on the other ("Dispute Notice") specifying the nature of the dispute and the provisions of this clause 29.2 shall apply.

29.2 Any Dispute shall be referred to mediation to be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within five days of reference to mediation as set out above, the mediator will be selected and his/her fee determined by the President for the time being of LEADR New Zealand Inc. (or any suitable replacement organisation),

29.3 If the Dispute remains unresolved after mediation or no Dispute Notice is served then the Parties are free to pursue the legal remedies available to them as they see fit.

29.4 Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.

30. Liability

Heat Ranger is a positive way of providing heat for a range of uses. Each site and crop is unique and specific with potentially large differences in climate and best practice use will develop over time with good records and experience.

Climate fluctuations and personal use are out the control of Heat Ranger Ltd, so the Company cannot be held responsible for any consequential damage, or public liability issues, losses or damages that may occur.