

TERMS AND CONDITIONS OF SALE, DELIVERY, REPAIR AND SERVICE

DEFINITIONS:

the "Seller"	means Comfort Living Solutions Pty Limited (ACN 122 894 562) trading as DEVI Heating Systems (ABN 39 898 434 262)
the "Buyer"	means the person contracting to buy Goods
the "Goods"	means the goods the Buyer contracts to buy, which may be specified in the order acknowledgement or other appropriate document and where the context so permits includes units, parts, accessories, repairs and service.

1. PRICES
All quotations are exclusive of GST which will be invoiced at the rate ruling at time of supply.
The Seller shall be entitled to adjust prices in the event that it allows the Buyer to vary the quantities or the times of delivery confirmed by the Seller and specifically agreed between the Buyer and the Seller.

2. DELIVERY
Delivery times and dates specified by the Seller are given and intended as an estimate only. They are also subject to force majeure. The Seller will supply the goods as soon as reasonably practicable. A freight charge will be added *unless* the buyer nominates their own carrier & account number.

3. TERMS OF DELIVERY
Delivery is ex works, Mona Vale, and shall be deemed effective when the Goods are declared available for despatch or collection.
The transport of the Goods is at the Buyer's risk.
The seller effects no insurance to cover against loss or damage caused to the Goods in transit.

A minimum order charge of \$50 is to apply to small value orders.
Unless otherwise agreed in writing, delivery of Goods made to order shall be subject to the following deviations:
up to 100 units +/-5 units; from 101 units +/-5%
goods supplied by the metre (e.g. heating cables) +/-10%

4. PAYMENT AND INTEREST
Unless otherwise specified in writing, terms of payment shall be by pro-forma invoice (i.e. payment before despatch), or at 30 days net from date of invoice if the Buyer has an approved credit account. Late payments shall be charged with interest at the rate of 2% each month from the date on which payment was due. Any counterclaim shall not entitle the Buyer to defer payment unless the Seller has accepted such counterclaim.
All the Goods remain the property of the Seller until they have been paid for in full. The Buyer licences the Seller to have access to the Buyer's premises to recover the Goods not paid for.

5. RETURNING OF GOODS
Provided that the Buyer has obtained the Seller's consent and has advised the Seller of the Date/No. of Invoice and that the Goods are unused, undamaged, returned within the month of delivery and free of charge in the original intact packing and are listed in the Sellers' current price list, the Seller agrees to credit the Buyer with the invoiced value of the Goods; in consideration of this the Seller shall be entitled to deduct 10% return charges. Return charges shall never be less than \$50.00.
Where the Goods are manufactured to the Buyer's specifications or where the Goods are modified altered processed or amended to meet the Buyer's requirements or where the Seller has purchased components from a third party, the returning of the Goods for credit will not be allowed. Goods are subject to inspection prior to acceptance. A signature on a delivery docket does not mean acceptance of any returned Goods.

6. CLAIMS
The Buyer agrees to inspect the Goods for shortage or any visible defect as soon as practicable after delivery. Any claims in respect of shortage or any visible defects or damage to the Goods shall be made in writing to the Seller within 8 days of delivery to the Buyer and to the carrier in accordance with the conditions of carriage. If this is not done the Seller shall be discharged from all liability in respect of such defects, damage or shortage.
If practicable the defective/damaged Goods are to be returned to the Seller. If not, the Seller must be given a reasonable opportunity to inspect them. The Buyer shall explain his claim in writing, identifying the item and providing a detailed description of any defect/damage, stating date of installation and/or operation on the claims form. A claims form shall be attached to each defective/damaged component in the event that more than one is returned claimed to be defective or damaged.
Any claim in respect of defective or damaged Goods, not visible upon delivery, must be made in writing to the Seller within 8 days of delivery. If this is not done the Seller shall be discharged from all liability in respect of such defects or damage.
If practicable the defective or damaged Goods shall be returned to the Seller at the Buyer's expense within the above mentioned period. If the Goods cannot be returned to the Seller, the Seller must be given a reasonable opportunity to inspect them.

6.(a) REMEDY
The Seller will make good the shortage and, where the defect or damage is its responsibility, will rectify or replace the Goods free of charge. Alternatively, at the Seller's sole discretion it may refund to the Buyer the price paid for the item.
If it is not reasonably practicable to return the Goods to the Seller, the Seller may arrange for repairs to be effected on site or for a replacement to be sent for installation on site.

6.(b) DESIGN
The Buyer must ensure the Goods are suitable for his particular purpose. In placing an order the Buyer acknowledges that it has not been induced by any representation by or on behalf of the Seller which has not been confirmed in writing to or by the Company.
Should the Buyer effect onward sale or supply to a third party, all products should be delivered in the original packaging, instructions and labelling.

6.(c) LIABILITY FOR INSTALLATION AND USE
The Seller shall not be liable for any defect or damage arising from overheating or corrosion other than where a design has been supplied by the Seller and installation/application instructions have been correctly implemented.
The Seller shall not be liable in the event that the Buyer's use of the Goods is contrary to any general standards or regulations in force from the time to time. Furthermore, the Seller shall not be liable for any defect or damage arising out of improper use or misuse arising from any application contrary to general acknowledged practices.

6.(d) SERVICE BEYOND OUR LIABILITY
The Buyer may request the Seller to service Goods supplied by the Seller. If the serviced Goods prove to be free from any defect warranted by the Seller, the Seller reserved the right to charge service fees from the Buyer and the Buyer agrees to pay such service fees to the Seller.
Charges for making repairs to Goods not included by the warranty shall be subject to the Seller's current service fees.

7. LIABILITY FOR DAMAGE CAUSED BY THE GOODS
The Seller shall have no further liability to the Buyer for shortages or defective or damaged Goods except for personal injury and death if it is proved that such injury or death was caused by negligence on the part of the Sellers or others for whom it is responsible.
The Seller shall not be liable for damage to real or movable property occurring whilst the equipment is in the possession of the Buyer. Nor shall the Seller be liable for damage to products manufactured by the Buyer, or the products of which the Buyer's products form a part.
The Seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential damaged and indirect loss.
To the extent that the Seller might incur product liability towards any third party, the Seller may pass on to the third party the Seller's liability in respect of the Goods set out in Section 6 above subject to the same conditions and limitations.
The above limitations in the Seller's liability shall not apply where, the Seller has been guilty of gross misconduct.
If a claim for damages as described in the Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof. The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the Court or Arbitration Tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Goods. The limitations of the Seller's liability shall not apply to the extent that they infringe product liability statutes which the parties cannot contract out of.

Each of these Terms and Conditions of Sale, Delivery, Repair and Services is a separate provision, the invalidity of which shall not affect the validity of the other provisions.

8. SPECIFICATIONS
Specifications, indications of performance and other descriptions in the Seller's catalogues, brochures, price lists and advertising material are based on test conditions. Actual performance depends on the power supply, the environment and installation conditions. **The Seller does not warrant performance to these specifications in each installation.** The Seller varies the specification and modifies Goods as part of regular product development in accordance with the applicable quality standards and provisions resulting in variations of performance specifications and other descriptions. Precise specification is not of the essence of the Contract.

9. RETENTION OF TITLE
Any design, drawing, description, model, sample and/or the like shall remain the absolute property of the Seller and the Buyer shall, if so requested by the Seller, return such design, drawing, description, model, sample and/or the like to the Seller.
The Buyer shall have no right to use or transfer or assign any drawing, description, model, sample, and/or the like to any third party without the prior written consent of the Seller.

10. LAW
The proper law applicable to all contracts between the Seller and the Buyer is that of Australia.