

WATER HEATER SERVICE STANDARD TERMS AND CONDITIONS

Applicability of Standard Terms and Conditions: These Standard Terms and Conditions constitute part of the Water Heater Service Contract on the other side hereof and together constitute "**the Agreement**" between Customer and Supplier. Terms used herein shall have the meanings provided herein and in the Water Heater Service Contract.

Change of Standard Terms and Conditions: Supplier may change these Standard Terms and Conditions at any time and from time to time, and the changes shall become effective upon posting of the changed Standard Terms and Conditions on Supplier's Website. Customer agrees that it shall be the responsibility of Customer to regularly visit the Website of Supplier to determine if there has been any changes to the Standard Terms and Conditions. Changes may include changes to the amount of the Monthly Service Charge, the Water Heater Removal charge and the other charges of Supplier in relation to the Water Heater Service.

Ownership of Water Heaters: Each Water Heater is, and shall remain at all times, the property of Supplier. A Water Heater shall not be or become a fixture and/or part of any premises in which it is installed. Customer shall not howsoever acquire any title to, or ownership of, any Water Heater. A Water Heater shall not form or be part of any security granted by Customer and may not, and shall not, be encumbered by Customer under any mortgage, charge, lien or other encumbrance whatsoever. No Water Heater shall be liable to seizure for arrears of rent or taxes by Customer or under any execution, bankruptcy or other legal proceeding against Customer.

Location and Access: Customer shall provide: **(i)** a convenient and safe place satisfactory to Supplier for the installation and operation of each Water Heater; **(ii)** an electrical source at the location of the Water Heater; **(iii)** an unobstructed and sufficient drain and drainway located and designed so as to collect any water that might escape from the Water Heater; and, **(iv)** the representatives of Supplier with prompt, free, unobstructed and safe access, at all reasonable times, to each Water Heater for the purposes of installation, maintenance, inspection, repair, replacement and/or removal thereof.

Care and Control by the Customer: Each Water Heater shall be in the safe care and control of Customer. Customer shall not alter, disconnect, adjust, modify, move, damage or otherwise tamper with any Water Heater. Customer shall not remove the Water Heater from the Location. Customer shall: **(i)** ensure that no combustible, hazardous or flammable materials are kept near the Water Heater; **(ii)** ensure that the Water Heater's vents and openings are kept clean and clear of any debris; and **(iii)** not permit anyone not authorized by Supplier to service, repair or remove the Water Heater.

Damage to Water Heater: If a Water Heater: **(i)** is destroyed or damaged while in the possession of Customer, including damage by fire, flood and accident; **(ii)** is not returned to Supplier; or, **(iii)** cannot be removed due to access not being provided by Customer, then Customer shall pay to Supplier the cost of repairing a damaged Water Heater or of replacing the Water Heater that is destroyed, not returned or cannot be removed, as the case may be.

Installation Date: Any date indicated howsoever for the installation of a Water Heater is an estimate only and, while Supplier will use commercially reasonable efforts to meet such date, Supplier shall not have any liability for failing to meet such date.

Installation, Maintenance & Replacement: The Water Heater will be installed at the Location, maintained, serviced, repaired and, at the end of its useful life as determined by Supplier, replaced at no charge to Customer for service or parts except where: **(i)** additional wiring, piping, venting or plumbing is required to meet the requirements of applicable legislation, regulation and codes or of Supplier's installation standards; **(ii)** the Water Heater is damaged; **(iii)** repairs are required due to use for which the Water Heater was not intended; **(iv)** the Water Heater requires flushing, de-liming or repair due to water conditions at the Location (the existence of hard water conditions shall be as determined by Supplier); or **(v)** where venting or piping needs cleaning, repair or replacement, and Supplier's charges as regards the foregoing shall be as posted on Supplier's Website. Upon request by Customer, Supplier will replace Water Heaters that are not yet at the end of their useful life and that are properly functioning at Customer's expense as posted on Supplier's Website at the time of replacement.

Provision of Services & Maintenance: Supplier shall use commercially reasonable efforts to provide to the Customer: **(i)** the Water Heater Service identified in the Water Heater Service Contract; and, **(ii)** adequate maintenance and repair of each Water Heater, in each case subject to and in accordance with the terms and conditions of the Agreement, but Supplier does not give any guarantee or warranty with respect thereto. Further, Supplier does not make any representation or give any guarantee or warranty, whether express, implied or statutory, as to: **(1)** the uninterrupted operation of the Water Heater or the provision of Water Heater Service; **(2)** the description, quality, merchantability, completeness or fitness for any purpose of any Water Heater or the Water Heater Service; or, **(3)** any other matter, and all such representations, guarantees and warranties are, to the extent permitted by applicable law, excluded, disclaimed by Supplier and waived by the Customer.

Taxes: The Monthly Service Charge and other prices provided for in the Agreement do not include any taxes. Customer shall be responsible for the payment of Harmonized Sales Tax and other taxes of a similar nature applicable to, or arising from the price or value, purchase or sale or the provision or use of any Water Heater or of the Water Heater Service, regardless of who is actually taxed.

Interest: Customer shall pay Supplier interest on all amounts not paid by Customer to Supplier when due at a compounded interest rate of 1.5% per month (19.56% per annum), before and after judgement.

Invoices, Payment and Non-Payment: Supplier shall invoice Customer regularly, either in advance or in arrears, for the Water Heater Service to be provided under the Agreement. Invoices are due and payable as advised in the invoice. If Supplier is required to bring legal action to recover any amount due to Supplier by Customer under the Agreement or to recover any Water Heater, Customer agrees to pay to Supplier the amount of the reasonable legal fees and costs incurred by Supplier in such regards.

Termination of Agreement: In addition to all other rights and remedies at law and in equity, Supplier may: **(i)** by notice to Customer terminate the Agreement and the provision of Water Heater Services to Customer pursuant to the Agreement; and, **(ii)** remove the Water Heater(s) from the Location(s) where it (they are) located if: **(a)** an invoice is unpaid 30 days after its payment due date; **(b)** Customer vacates the premises where any Water Heater is located; **(c)** Customer fails to fulfill any of its obligations under the Agreement; **(d)** Customer becomes insolvent or bankrupt; or, **(e)** Customer assigns howsoever any interest in the Agreement or any Water Heater, or attempts to do so.

Terminal Payment: If: **(i)** Supplier terminates the Agreement for reasons allowed in the Agreement; or **(ii)** Customer wants a Water Heater removed, the Initial Term relating thereto has not expired **and** no substitute Water Heater is installed by Supplier replacing the Water Heater removed, then all payments under the Agreement not yet paid to Supplier by Customer for the balance of what would have been the Initial Term relating to the removed Water Heater shall become immediately due and payable by Customer to Supplier as liquidated damages, and not as a penalty.

Return of Water Heater and Other Equipment: Upon termination howsoever or expiry of the Agreement, Supplier shall have the right to remove, and Customer shall allow and facilitate the removal of, each Water Heater and Supplier's other equipment from Customer's property and premises. Customer authorizes Supplier to enter the premises where any Water Heater is located for the purposes of removing the Water Heater pursuant to the Agreement.

Charge for Removal of Water Heater and Other Equipment: Customer shall pay Supplier a fee in the amount posted on Supplier's Website, from time to time, for Supplier removing a Water Heater and Supplier's other equipment from Customer's property and premises and, in addition, Customer shall pay Supplier the amount of any reasonable cost incurred by Supplier due to any extraordinary circumstance encountered in the course of any such removal.

Removal of Third Party Water Heaters: It is the responsibility of Customer to remove from its premises any water heaters not owned by Supplier, provided that Supplier will remove and dispose of any such water heater if Customer: **(i)** requests; **(ii)** obtains all required approvals; and, **(iii)** agrees to pay Supplier's Removal Charge for such removal as posted on Supplier's Website at the time of removal.

Sale of Location: If Customer sells or vacates the Location and the new owner or occupant agrees with Supplier to assume the Agreement, then: **(i)** Customer agrees that the new owner or occupant has all of Customer's interest in the Agreement and Water Heater; **(ii)** Customer no longer has any interest in the Agreement or the Water Heater; **(iii)** Supplier releases Customer from all liability under the Agreement.

Should the premises be sold: Customer shall: **(i)** inform Supplier of the sale of the premises in which a Water Heater is located (the "Premises") and of the name and contact information of the purchaser; and **(ii)** inform any purchaser of the Premises that the Water Heater is rented from Supplier. Customer may assign the Agreement to a bona fide purchaser of the Premises provided the purchaser enters into an agreement with Supplier assuming all of Customer's responsibilities under the Agreement in the form of the Water Heater Contract Assumption Agreement posted on Supplier's Website at the time.

Liability of Supplier: Supplier assumes no risk and shall not be responsible or liable to Customer or to anyone else for any damages, cost (including lawyers and court costs) or cause of action whatsoever resulting howsoever from or relating to: **(i)** the presence or operation of a Water Heater in Customer's premises; **(ii)** water or other liquids spilled in the course of installation, repair or removal of a Water Heater; **(iii)** the escape of water from a Water Heater; **(iv)** the interruption or quality of the Water Heater Service howsoever caused, **(v)** the maintenance, or lack thereof, of any Water Heater; **(vi)** damage to or soiling of Customer's premises or its contents in the course of installation, operation, repair or removal of a Water Heater; or **(vii)** damage to tangible property or for bodily damage or death howsoever caused. In no event shall Supplier be liable for: **(1)** any indirect, special, incidental, consequential, punitive or exemplary damages howsoever caused; or **(2)** damages for loss of profit or revenues, business interruption loss, loss of contract or goodwill or other business or economic loss whatsoever howsoever caused, even if Supplier has been advised of, or could foresee, the possibility.

Force Majeure: Supplier shall not be liable to Customer or to anyone else for failure to provide or perform or delay in provision or performance due to anything beyond the reasonable control of Supplier including, without restricting the foregoing, any natural disaster or other act of God, labour difficulty, the act or negligence of Customer or unavailability of equipment or materials.

Indemnity by Customer: Customer shall indemnify and hold harmless Supplier and its representatives against any and all loss, cost (including lawyers and court costs), damage, injury, liability, claim, penalty, fine, interest or cause of action whatsoever resulting howsoever from the breach of the Agreement by or from any act or omission whatsoever of Customer or Customer's representatives.

Time / Waiver: Time is of the essence in respect of the Agreement and performance of the Agreement. Any waiver with respect to one event is without prejudice and shall not constitute a waiver of any similar or other event. Failure to insist upon or enforce strict performance of any provision of the Agreement shall not be construed as a waiver of any such provision or right.

Consent to User of information: Customer hereby consents to the collection, use, disclosure and verification, from time to time, of any credit, personal and other information about Customer from, to or with any credit bureau, reporting agency, Supplier, Supplier's affiliates and or any other person and Customer hereby authorizes such parties to give such information to Supplier and consents to the use of such information in relation to this Agreement. Customer understands and agrees that such information may be collected, used and disclosed by Supplier and its affiliates, agents and service providers in order to: **(i)** assess Customer's creditworthiness; **(ii)** establish, service and collect Customer's account; and **(iii)** provide Customer with information and offers regarding other products and services provided by Supplier and its affiliates.

Entire Agreement and Previous Agreements: The Agreement: **(i)** constitutes the entire understanding and agreement between Customer and Supplier with respect to the provision of the Water Heater Service by Supplier to Customer and the meaning of the Agreement shall not be affected by prior dealings, usage of trade or course of conduct; **(ii)** supersedes all prior agreements, quotations, correspondence and communications, whether written or oral, between Supplier and Customer; **(iii)** may not be assigned or transferred by Customer without the prior written consent of Supplier, **(iv)** may be assigned or transferred by Supplier without the consent of Customer; and, **(v)** may only be amended by a written agreement signed by the authorized representatives of Customer and Supplier or by Supplier posting changed Standard Terms and Conditions on Supplier's Website. Notwithstanding any contrary language in any purchase order or similar document issued by Customer to Supplier with respect to a Water Heater or the Water Heater Service, any such purchase order or similar document shall be deemed for Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the provisions of the Agreement.