

## **BUSINESS TERMS AND CONDITIONS**

Outlined below are the Business standard terms and conditions relating to the provision of goods and/or services by Home Comfort Limited ('Home Comfort'). These terms and conditions apply to any Business customer of Home Comfort. Please read these terms and conditions carefully. It is a condition of Home Comfort providing its Services that the customer agrees to comply with these terms and conditions.

### **STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES**

- A. Home Comforts' address is PO Box 15041, Otaki Railway, Otaki 5543. Home Comforts' telephone number is 06 364 6574.
- B. The total amount payable by the Customer for the Services depends on the staffing plans it has selected. The plans will include a hourly rate and a multiplication formula for Public Holidays.
- C. When the Customer applies for the Services it agrees to pay for the Services in accordance with the plans selected under B above.
- D. The Customer may terminate our Services at the end of each billing period if it notifies Home Comfort in writing by mail, fax or email at least 14 days before the end of the current billing period.

#### **1. TERMS AND VARIATION**

- 1.1 These are the standard terms and conditions ('Terms') of Home Comfort (or 'us' or 'we'). Please read these Terms carefully as they set out the Customer's rights and obligations when using the Services offered by Home Comfort. By using a Service the Customer agrees to be bound by these Terms.
- 1.2 From time to time these Terms and/or the Services will be amended. The amendments may include adding, varying or withdrawing Services or changes to pricing, composition or operation. If Home Comfort amends these Terms or amends a Service to which you are a Customer it will notify you either by email, or by general notice on the Home Comfort Website. It is your responsibility to read email alerts and to check the Home Comforts' Website. Any use of the Service after the date of the email or publication will mean that you have accepted the changes.

1.3 Each of Home Comforts' Services has its own Service Terms and Conditions ('Service Terms'), which operate in addition to these Terms. The Service Terms relating to each Service are attached to the order form for the Service. Please read the Service Terms carefully as they set out your rights and obligations in respect of the Service you have requested that we provide to you. If there is a conflict between these Terms and the Service Terms, the Service Terms will prevail over these Terms.

## 2. PROVISION OF SERVICES

2.1 You may register for one or more of our Services by:

- (a) Completing [Home Comforts'](#) application form and mailing or faxing this to us. The application form is available from the [\[website\]](#) or you can call us on 06 364 6574 and we will send it to you by mail, fax or e-mail; or
- (b) Any other means offered by [Home Comfort](#) from time to time.

2.2 You warrant that all information you provide to [Home Comfort](#) is true and correct and you agree to notify [Home Comfort](#) of any changes to that information.

2.3 You, the Customer, are the only person authorised to request account information, make account changes.

2.4 You acknowledge that you are acquiring the Services for the purposes of business and the Consumer Guarantees Act 1993 does not apply. You warrant that you will not use the Services for residential/private purposes. The parties agree that these terms will be read subject to this warranty.

2.5

- (a) Services will be supplied to you through a network of Staff ('Staff') nominated by the Customer and employed by Home Comfort and you agree that we may change Staff at any time without reference to you.
- (b) Home Comfort does not warrant that it will be able to supply the Services and you acknowledge that Home Comfort will only be able to supply the Services to the extent and to the standard that Staff provide the Services to Home Comfort. Home Comfort will not be liable for any failure to supply you with all or any part of the Services and you acknowledge that if the agreement between Home Comfort and any Staff is terminated the supply of Services under this agreement may be terminated by Home Comfort.

2.6 Upon Home Comfort accepting the Customer's application form the Customer agrees that it will not obtain any staffing whether permanent or temporary from any other staffing provider. The Customer further agrees not to employ any staff directly

## 3. CONTACT AND NOTICES

3.1 If we need to contact you or send a notice to you, we will send an e-mail to the address you have provided to us.

3.2 If you need to contact us you can do so in any of the following ways:

- By email to [homecomfort@paradise.net.nz](mailto:homecomfort@paradise.net.nz)
- By mail to PO Box 15041, Otaki Railway, Otaki 5543
- By fax to 06 364 7497

#### 4. **SUSPENSION OF SERVICES**

4.1 Home Comfort may from time to time without notice suspend any Service:

- (a) Circumstances beyond control
  - (i) Suspension of Obligations – Neither party shall be liable for the failure to perform nor delay in performing this Agreement to the extent that the cause of such failure or delay is beyond that Party's reasonable control, providing notice claiming suspension of its obligations is given under clause 4.1 (a) (ii).
  - (ii) Notice Claiming Suspension – A Party claiming suspension of its obligations shall, within three working days after the Party becomes aware of the cause and its supervening effects in respect of which suspension of its obligations is claimed give notice of the cause, furnish all available information detailing the cause and give an estimate of the period of time required to remedy the cause (if such remedy is deemed practicable), to the other party.
  - (iii) Period of Suspension – Any suspension of the obligations of a Party shall be limited to the period during which the cause falling within clause 4.1 (a) (i) continues to exist.
- (b) In an emergency or for other security or safety reasons; or
- (c) If you fail to comply with any of these Terms (including failure to pay Charges due) until the breach (if capable of remedy) is remedied, or if you do or allow to be done, anything which in Home Comforts opinion may have the affect of jeopardising the operation of any Service.

4.2 Notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due throughout the period of suspension.

#### 5. **CHARGES AND PAYMENT**

5.1 You agree to pay all charges ('Charges') for the Services as stipulated by Home Comfort from time to time. In particular you agree to pay all:

- (a) Time charges; and,
- (b) Minimum charges; and,
- (c) Staff hourly charges; and,
- (d) Collection and administration charges; and,

- (e) Mileage where it has been agree to; and,
- (f) Public holiday surcharges and multiples.

5.2 Charges may also include:

- (a) Hardware or consumables purchased from us; and
- (b) On-site technical services that you ask us to perform.

5.3 You must pay for all Charges by credit card, direct credit or other methods as directed by Home Comfort from time to time.

5.4 Upon registration of a credit card account, you give Home Comfort authorisation or its billing agent until further notice, to automatically debit your credit card and all subsequent cards issued in renewal of that card for all charges, including after suspension or termination of your Services for any reason whatsoever.

5.5 Home Comforts billing period is on a calendar monthly cycle beginning on the 1<sup>st</sup> of the month ('Billing Period').

5.6 Billing of Charges for the Services will commence on registration.

5.7 Usage charges will be invoiced monthly in arrears unless provided otherwise.

5.8 Charges will continue automatically until the account is properly cancelled and all Charges are paid in full.

5.9 If your financial institution fails to honour a payment of Charges we will suspend your account. We may terminate your Services if Charges remain outstanding. We will make reasonable efforts to contact you to inform you that a payment has been declined.

5.10 Until we terminate your Services, we may continue attempting to charge your nominated credit card or debit account even though a previous attempt was declined. We may also impose a reasonable processing fee for declined payments.

5.11 If you make payment of a Charge while your Services are suspended, we will reinstate your Services as soon as possible. We are not liable to refund any Charges for the period of any suspension.

5.12 You must pay disputed Charges. A credit will be issued at a later date if Home Comfort decides that this is appropriate.

5.13 If you do not pay Charges via credit card you agree to pay for all Charges on or before the 20<sup>th</sup> of the month following invoice.

5.14 Except as required by relevant legislation or as specified in these Terms, no Charges will be refunded to you.

## 6. TAXES

- 6.1 All Charges are exclusive of GST unless otherwise stated.
- 6.2 Where a Service is or becomes subject to a GST or any other tax, duty or levy ('Tax'), and the Charges are not already inclusive of the Tax, you authorise Home Comfort to charge you for the Tax in addition to the Charges paid or payable in respect of the Service.
- 6.3 Where any existing or future Tax is increased after the commencement of the Service, you authorise Home Comfort to charge you for the increase in the Tax in addition to the Charges paid or payable in respect of the Service.
- 6.4 The Tax is payable at the same time the Charge for the Service is payable.

## 7. TERMINATION

- 7.1 Subject any designated term associated with a particular Service, the Service may be terminated by you or Home Comfort at any time by providing notice in writing which notice will take effect at the end of the Billing Period in which the notice is provided. Subject to and in accordance with D.
- 7.2 Home Comfort may immediately terminate the provision of any or all Services if:
  - (a) You breach any of these Terms and the breach continues for more than 5 days after we have given you notice of the breach;
  - (b) You have provided false, misleading or incomplete information to us;
  - (c) Your nominated payment method is refused or dishonoured;
  - (d) (If you are an individual) you become bankrupt or insolvent;
  - (e) (If you are a company) you become insolvent or an administrator, receiver or liquidator is appointed;
  - (f) Home Comfort for whatever reason ceases to provide the Service.
  - (g) All outstanding Charges become immediately payable on giving of such notice and in no circumstances will you be entitled to any refund of payments made under this Agreement.

## 8. AFTER TERMINATION

- 8.1 After Termination the Customer agrees that it will not:
  - (a) Approach, offer or try to employ any Staff of Home Comfort's without written approval of Home Comfort for six calendar months after the Termination of this agreement.

- (b) Engage members of Home Comforts staff as their own employees, whether permanently or for a limited period within one year following the last assignment through Home Comfort Ltd. If the Customer wishes to engage a staff member they hereby agree to pay a placement fee of \$3,000.00 + GST per staff member to Home Comfort.

## 9. LIABILITY OF HOME COMFORT

- 9.1 Home Comfort will not be liable for any cost loss or damage that you or any person using your account may suffer from using its Services.
- 9.2 Except for any conditions or warranties Home Comfort is required by law to give, Home Comfort makes no statement, warranty or promise about the quality or suitability of the Service.
- 9.3 Home Comfort acknowledges that certain legislation may imply into these Terms certain warranties and conditions that cannot be excluded, modified or restricted. However, Home Comfort's liability for any breach of such implied term or warranty will be limited at Home Comfort's option in any way permitted by the legislation including where so permitted and at Home Comfort's election:
  - (a) The supplying of the goods or Service again;
  - (b) Or the payment of the costs of having those goods repaired or the Service supplied again.
- 9.4 Except to the extent set out in Clause 9.3
  - (a) Home Comfort excludes all liability to you or any other person using your account for any costs, loss, liability or damage (whether direct or consequential including any loss of profits, business or anticipated savings) arising out of these Terms or the supply of the Services either in tort, breach of contract, breach of warranty or for any other reason or cause whatsoever including as a result of any act, omission or negligence by Home Comfort or its representatives.
  - (b) You acknowledge that in choosing to use the Services you are aware that it is not continuous or fault free in nature and that you have made your own assessment that the Services are 'as is' is sufficient to meet your requirements..

## 10. INDEMNITY

- 10.1 You indemnify Home Comfort from and against any actions, claims, suits, demands, costs, loss, or liability (whether direct or consequential) arising out of or in any way connected to the use of the Services by you or any other person using your account.

## 11. GENERAL

- 11.1 Failure by Home Comfort to act immediately on any right or remedy under these Terms does not constitute a waiver of such right or remedy.
- 11.2 This Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand.
- 11.3 From time to time we may assign any of our rights under these terms without your consent. We may also sub-contract any or all of our obligations under these terms without your consent provided that we are ultimately responsible to you for carrying out those obligations.

## 12. THE CUSTOMER WILL PROVIDE

- 12.1 The Customer will provide the following to all Staff provided to them by Home Comfort:
- (a) A safe working environment
  - (b) Respect
  - (c) A suitable orientation of the workplace
  - (d) A suitable orientation of all procedures and duties to be performed
  - (e) A working environment free from harassment or discrimination.
  - (f) Sign off of all accurate timesheets for all Staff members.
- 12.2 The Customer will make available to all Home Comfort Staff the following:
- (a) A copy of an Occupational Health and Safety procedures and protocols
  - (b) A copy of all emergency response procedures
  - (c) Clarification on any request by the Customer.
  - (d) Any additional information that the Staff member may require to safely and effectively execute their duties.
- 12.3 The Customer will hold suitable insurances, for Public Liability and Negligence.
- 12.4 The Customer will keep current all licenses and of permits that allow it to operate its business.
- 12.5 The Customer will make all documents available for inspection by Home Comfort on written request within 3 working days. The Customer will also inform Home Comfort as to any changes in any of these documents.

## DEFINITIONS

To be added