

1. AGREEMENT

1.1 An agreement is made between Miele and the customer for the purchase of the product/s as specified in an order ("**agreement**") if and when Miele issue an order confirmation to the customer in respect of that order.

1.2 The agreement comprises the order, these terms and conditions and any additional terms as specified.

1.3 The customer agrees that it is purchasing the product/s under this agreement for the sole purpose of display and resupply to end consumers as part of a completed project (whether a home, apartment, commercial or other property being constructed or developed by the customer), unless otherwise agreed with Miele. The customer must not sell or transfer the product/s for any other purpose (including sale or transfer to a third party who acquires or takes possession of the product/s for the purpose of resupply to a fourth party) and must not sell or purport to sell the products on behalf of Miele or as a Miele Chartered Agent.

2. PRICE & ORDERS

2.1 The price payable by the customer to Miele for the product/s is the price specified in the order confirmation.

2.2 The customer acknowledges that Miele may require up to 12 weeks lead in time prior to delivery of the product/s and that the customer has taken this lead time into account when submitting any order for product/s and making commitments regarding completion of a development.

3. PAYMENT

Non-Account Customer

3.1 25% of the price is payable as a security payment upon submission of the order by the customer.

3.2 Full payment of the price and any incidental charges agreed to between the parties is required prior to the delivery of the product/s.

3.3 If the agreement relates to two or more product/s and they are delivered on different dates, that part of the price (or the balance of it) which relates to the product/s delivered on a particular date is payable on that date and by the time of delivery.

Account customer

3.4 The customer must pay Miele the applicable price for each product/s it acquires from Miele under its account.

3.5 Miele will issue a monthly statement to the customer for the product/s it acquires and any incidental charges (agreed to between the parties) relating to the sale of the product/s.

3.6 The customer must pay Miele each monthly statement issued under clause 3.5, 30 days from the end of the month following the issuing of the statement.

3.7 Miele may require that the customer provide security (such as a directors' or bank guarantee) or Miele may complete a credit reference check prior to executing a transaction on behalf of the customer.

4. DEFAULT IN PAYMENT

4.1 If the customer fails to make any payment when due, the customer must, without prejudice to any other right or remedy of Miele:

- pay interest on the amount outstanding calculated daily at a rate equal to The Reserve Bank of New Zealand's base rate plus 5%;
- reimburse Miele for all reasonable costs and expenses incurred in relation to the outstanding debt and chasing payment of it; and
- upon reasonable notice by Miele, return the product/s to Miele or permit a representative of Miele reasonable access to the location of the product/s to repossess the product/s.

5. DELIVERY

5.1 Subject to clause 5.2, Miele will deliver the product/s to the location specified in the order. Where no location is specified, Miele will deliver the product/s to the customer's address as set out in the order.

5.2 Miele is not required to deliver the product/s in accordance with clause 5.1 if the location to which the product/s are to be delivered is outside metropolitan Auckland, Wellington, Christchurch and Palmerston North. In those circumstances, Miele may notify the customer of the location at which the product/s are available for collection or at its sole discretion, elect to deliver the product/s to a location beyond those metropolitan regions.

5.3 Subject to clause 5.4, the delivery date(s) will be the date(s) specified in the order or, if no date(s) are specified, such alternative date(s) or delivery schedule as the customer and Miele later agree ("**delivery date(s)**").

5.4 Miele will use reasonable commercial endeavours to deliver the product/s on or about the delivery date(s). If Miele is unable to deliver the product/s (by reason of inventory shortage, transportation difficulties or otherwise), it will use reasonable commercial endeavours to do so within a reasonable period after the delivery date(s). Miele agrees to use reasonable endeavours to minimise the likelihood and effect of delays occurring by reason of a cause within Miele's control. If Miele does not deliver the product/s within 45 days of the delivery date(s), by reason of a cause within Miele's reasonable control, the customer may give 15 business days notice of termination of this agreement. If the product/s are not delivered in the notice period, this agreement is terminated on expiry of that period.

5.5 The customer agrees to use reasonable endeavours to minimise the likelihood and effect of delays occurring by reason of a cause within the customer's control. If Miele is delayed in delivery by reason of a cause within the customer's control, Miele agrees to extend the delivery date(s) by a reasonable period of time. If the customer causes a significant delay in delivery (being a delay of over 90 days from the delivery date(s)), Miele may seek reimbursement from the customer in respect of reasonable costs incurred by Miele in storing and safekeeping the goods for the period of the delay. If Miele is unable to deliver the product/s within 120 days of the delivery date(s), by reason of a cause within the customer's reasonable control, Miele may give 30 days notice of termination of this agreement. If the customer does not accept delivery in this notice period, this agreement is terminated on expiry of that period.

5.6 If the model of the product/s is discontinued or superseded and not available for delivery on the delivery date(s), Miele will notify the customer as soon as possible prior to the delivery date(s) that:

- i. where there are some discontinued or superseded product/s available, Miele is prepared to offer the customer the remainder of discontinued or superseded product/s available and:
 - a. fill the balance of the order with a model of equivalent or superior standard (in which case, Miele will specify that model and any addition to the price for the model change); or
 - b. there is no equivalent model available to fill the balance of the order, and this agreement in respect of the balance of the order is therefore terminated with immediate effect;
- ii. where there are no discontinued or superseded product/s available,
 - a. Miele is prepared to offer to fill the order with a model of equivalent or superior standard, and specify that model and any addition to the price for the model change; or
 - b. There is no equivalent model available to fill the order and this agreement is therefore terminated with immediate effect.

5.7 If the customer accepts Miele's offer in accordance with clause 5.6, the product/s and the price will be taken to be varied as per Miele's offer. If the offer and variation is rejected, this agreement is thereby terminated with immediate effect.

5.8 Miele will deliver the product/s at a time arranged by Miele and the customer for such delivery ("**Delivery Time**"). In the event that the customer is not present to accept delivery at the nominated delivery time, the customer will be liable to pay Miele a fee to have the product/s re-delivered at a new delivery time/date, as arranged by Miele and the customer. This re-delivery fee is payable by the customer prior to Miele re-delivering the product/s at the new nominated delivery time/date.

5.9 Subject to clause 8 and applicable New Zealand consumer protection legislation, if the customer accepts delivery of the product/s (or collects the product/s in accordance with clause 5.1) and subsequently changes their mind about the product/s (including where the customer orders the incorrect product), Miele may, in its discretion, agree to:

- i. accept return of the relevant product/s from the customer; and provide replacement product/s to the customer. In these circumstances, the customer must pay:
 - a) any difference between the price of the product/s being returned and the replacement product/s selected; and
 - b) a re-stocking fee of 20% of the price of the product/s returned.

The customer acknowledges that this re-stocking fee represents the costs incurred by Miele in accepting and restocking the returned product/s. Miele will not impose the re-stocking fee where the customer is not at fault.

5.10 If the customer fails to accept delivery of the product/s or fails to collect the product/s in accordance with clause 5.1 or as defined by 5.5 within 120 days of being notified by Miele that they are available for collection. Miele may give the customer 30 business days notice of termination of this agreement. If the customer fails to collect or accept delivery within that notice period, this agreement is terminated on expiry of that period.

5.11 If Miele is unable to contact the customer after making reasonable attempts to arrange delivery or collection, Miele may give the customer 60 days notice of termination of this agreement. If the customer fails to make arrangement for delivery within the notice period, this agreement (including any order) is terminated upon expiry of that period.

6. PRODUCT INSTALLATION

6.1 Upon request by a customer, Miele may arrange for the installation of Miele washing machines, tumble dryers, dish washers, refrigerators and stacking kits delivered to the customer's premises within metropolitan areas of Auckland, Wellington, Christchurch and Palmerston North provided that the required services are available and no structural work is required. Fees and charges are applicable for such installation, details of which will be provided by Miele and agreed with the customer prior to any installation.

6.2 Miele recommends that the product/s be installed in accordance with the installation instructions that accompany each product. If a Miele product is not installed in accordance with the instruction manual, this may affect the Miele express warranty offered under clause 8. A Miele installation means that the products will be installed in accordance with the instruction manual. A request to verify or rectify the installation of a Miele product/s installed by a party other than Miele or a Miele Service Agent will incur a service fee.

6.3 Miele is not liable for any loss or damage to product/s which occurs through installation of the product/s by parties other than Miele or a Miele Service Agent.

6.4 The professional installation of your Miele products through a Miele installation ensures you'll receive all of the benefits listed below:
Performance - We ensure the maximum performance from your appliance by installing it right the first time.
Confidence - Our technicians are qualified and insured. We will install your Miele appliance/s according to all local codes and regulations.
Satisfaction - We guarantee our workmanship for a period of one year. If, during this time, you are not satisfied with any aspect of our workmanship, we will rectify it at no charge.

A Miele Installation Includes:

- Unpacking and preparing appliance(s) for installation (inclusive of the removal of protective film).
- Disposal of packaging materials.
- Inspection of appliance(s) for any existing damage or defect.
- Inspection of facilities before starting.
- Installation of Miele stacking kits.
- Connection of the appliance(s) to existing electric, and/or water service (Electrical and water inlet's must be within 1.5m of product).
- Insertion of appliance into cavity / niche.
- Leveling and securing your appliance.
- Testing your appliance to make sure it's performing accurately and provide a functional user demonstration.
- Disposal of existing appliances (excluding refrigeration) on request (additional fees / charges apply).

Dishwasher Installation

- Where integrated, fit the fascia and door panel.
- Secure dishwasher to adjacent cabinetry (model types U, I & VI).
- The water valve (tap) must be ¾ inch male thread.
- Provide an inlet/hole for the waterproof inlet connection.
- Fitting of the water proof system (only if access is available).

Laundry Appliances

- Remove the transit bars and level the appliances.
- Provide an inlet/hole for the waterproof inlet connection.
- The water valve (tap) must be ¾ inch male thread.

Refrigeration Installation

- Trim-kit installation (if applicable)
- Connections to mains water (if applicable) – this does not include any plumbing works. Installation can only occur if correct plumbing works have been completed.

A Miele Installation Does Not Include:

- Disconnection and reallocation of existing appliance(s).
- Completion of structural or flooring work including the removal of access doors, securing a plinth, trim or modify any cabinetry (excluding to provide an inlet for the water proof system), kick panel or door panel.
- Fitting of reducer valves nor completion of any plumbing, electrical or structural works.
- Tampering or modification of any Miele product including the water proof system.

6.5 Prior to the date of a Miele installation, the customer must ensure that all required plumbing and electrical works have been completed. Connections to the mains water supply must incorporate a mains stopcock with ¾ inch thread.

6.6 The facilities where the appliance(s) are to be installed should be inspected by the customer prior to installation to ensure that they are free from any defects or obstructions and existing appliances are removed from the niche / cavity.

6.7 The customer must advise Miele of any obstructions which may prevent or hinder the installation including, but not limited to:

- Access obstructions;
- Lack of power / distance to power inlet;
- Lack of water / distance to water inlet;
- Other works being completed at the premises;
- Hazardous materials / substances located at the premises; and
- Flooring deficiencies.

7. OWNERSHIP AND RISK

7.1 Miele remains the owner of the product/s until the price for each Product is paid in full to Miele and the product/s have been delivered to the customer.

7.2 The customer must not sell or otherwise deal with the product/s until the price is paid in full to Miele. If the customer purports to do so, the customer will be deemed to hold the proceeds of sale or other realisation (or the amount equal to the outstanding) on trust for Miele.

7.3 Notwithstanding clauses 7.1 and 7.2, the risk of loss of or damage to the product/s passes to the customer upon delivery. After delivery, the customer is responsible for storing the product/s prior to any installation and is liable for any loss or damage which occurs during such storage.

8. WARRANTY

8.1 German quality assurance means that Miele domestic products are engineered to last 20 years under normal household use. Miele domestic products are subjected to rigorous testing and assessment as to their quality and fitness.

8.2 Warranties and conditions as to the merchantability and fitness for purpose of Miele domestic products are implied under New Zealand consumer protection legislation. The warranty in this clause 8 is independent of, and does not exclude or limit, any non-excludable statutory warranties and conditions implied by such legislation.

8.3 Miele warrants that the product/s will be free from defects in materials and workmanship for a period of 24 months from:

- i. The date of delivery, or
- ii. Settlement of the project or development (evidentiary documentation required), or
- iii. Six months following the practical completion of any project or development.

A 12 month warranty is applicable if determined by Miele that the product was operating in a commercial environment. Subject to clause 8.2, Miele does not make any further representation or warranties as to the merchantability of its domestic product range.

8.4 To the extent permitted by law, Miele's liability for the product/s, any defect in materials or workmanship, any breach of this agreement or any negligence is limited to:

- i. repair or replacement of the product/s;
- ii. payment of the cost of repairing or replacing the product/s;
- iii. payment of the cost of acquiring equivalent product/s.

8.5 To the extent permitted by law, Miele's liability is limited in accordance with clause 8.4 and Miele is not liable for any indirect, special or consequential loss or damage arising in any way in relation to, any manufacturing defect or use of, the product/s.

8.6 Miele reserves the right to inspect and test the products for the purpose of determining the extent of any defect and the validity of any claim made under this warranty. All defective parts/products replaced by Miele under this warranty will be deemed to be the property of Miele.

8.7 This Miele warranty will not apply if the product/s is rendered faulty by a factor other than a defect in materials and workmanship.

Such factors include but are not limited to:

- i. damage through misuse (including failure to maintain, service or use with proper care), neglect, accident or ordinary wear and tear (including deterioration parts and accessories and glass breakage);
- ii. use for a purpose for which the product was not sold or designed;
- iii. in the case of household appliances and vacuum cleaners, commercial use;
- iv. use or installation (where applicable) which is not in accordance with any specified instructions for use or installation;
- v. use or operation after a defect has occurred or been discovered;
- vi. damage through freight, transportation or handling in transit (other than when Miele is responsible);
- vii. damage through exposure to chemicals, dusts, residues, excessive voltage, heat, atmospheric conditions or other forces or environmental factors howsoever outside Miele's control;
- viii. repair, modification or tampering with by the purchaser or any person other than Miele or an authorised Miele Service Agent; or
- ix. use of parts, components or accessories which have not been supplied by or specifically approved by Miele (including use of a dust bag other than genuine high performance Miele dust bag).

This warranty does not apply to consumables such as batteries, filters or globes.

8.8 Customers must retain proof of purchase (receipt) in order to be eligible to make a warranty claim under this clause 8.

8.9 The Miele product warranty provided under this clause is a non transferable right and the warranty will be deemed void upon the transfer of ownership of the product/s.

9. SERVICE & SPARE PARTS

9.1 While Miele will use reasonable commercial endeavours to have all necessary spare parts available for the purpose of repair or service, Miele is not liable for delays due to sourcing of unusual parts which are required, or due to circumstances beyond the control of Miele.

9.2 All Miele appliances are designed and manufactured to the highest standards of quality and durability, however, should a repair become necessary, you will find that Miele original spare parts are available for many years following the end of series production. This will ensure that any problem you might have can be resolved.

9.3 Customer should note that product/s situated outside of Miele's service region may incur additional fees (such as travel and transportation) in respect of service or repair, details of which will be provided to the customer by Miele prior to any agreement being made in respect of any service or repair.

10. PRIVACY

10.1 Miele will collect and deal with the customer's personal information (including name, address, telephone contact or personal details) only in accordance with Miele's Privacy Charter and the Privacy Act 1993 (NZ). A copy of the Privacy Charter is available from Miele or www.miele.co.nz.

10.2 Miele may disclose personal information to its related companies and to organisations which provide services (including delivery services) to Miele or which assist Miele in providing services (including repair and warranty services) to its customers.

11. MARKETING AND ADVERTISING

11.1 Any advertising or marketing in relation to the product/s or other use of any of Miele's trademarks, logos or branding which the customer proposes to carry out must be submitted to Miele for prior approval (not to be unreasonably withheld).

11.2 Any advertising or marketing activities undertaken by the customer in relation to the product/s must be undertaken in good faith, in compliance with relevant laws and in a manner which cultivates and maintains good relations with users of the product/s.

12. TERMINATION

12.1 A party may terminate this agreement by giving the other party not less than 30 days' written notice.

12.2 Subject to 12.1 the customer and Miele must fulfil any orders for Products which have been accepted prior to the date of termination and the provisions of this agreement will continue to apply.

12.3 The right to terminate this agreement given by this clause is without prejudice to any other right or remedy of either party.

13. DISPUTE RESOLUTION

13.1 If a dispute arises out of this agreement (Dispute), a party must comply with this clause prior to commencing arbitration or court proceedings (except proceedings for interlocutory relief).

13.2 A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

13.3 During the 14 days after a notice is given (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if so requested by either party.

13.4 Each party to a Dispute must pay its own costs. The parties to the Dispute must equally pay the costs of any mediator

14. MISCELLANEOUS

14.1 The client must not assign or purport to assign any right given to the client under this agreement

14.2 This agreement does not create a relationship of employment or partnership.

14.3 Miele may alter the provisions of this agreement in writing and upon 30 days notice. Any such variation will not affect existing orders for products.

15. GOVERNING LAW

15.1 This agreement is subject to the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

16. DEFINITIONS

'Additional Terms' means any other terms and conditions as recorded in any order confirmation, project or commercial quotation issued by Miele.

'Customer' means the person or entity whose name and address appears on the order as the purchaser of the product/s.

'Miele' means Miele New Zealand Limited.

'Order' means the order provided by the customer to Miele for the purchase of the product/s and includes an order by way of acceptance by the customer or a tender, quotation or offer made by Miele.

'Order confirmation' means the written confirmation of the order by Miele.

'Price' means the price payable by the customer to Miele for the product/s as specified in the order confirmation.

'Product/s' means the Miele products referred to in the order.

'Security payment' means the amount paid by the customer to Miele with the order.