

1. Agreement

1.1 An agreement is made between Miele and the Contractor for the supply of the Goods as specified in the Miele Project Proposal Quotation ("quotation").

2. Term

2.1 This agreement will commence on the date of execution and continue for 24 concurrent months ("term") unless terminated earlier in accordance with provision 25 and 26.

2.2 On expiry of the term or delivery and payment for the Goods (the earlier of the two), this agreement is thereby terminated.

3. Price

3.1 The price payable to Miele under this agreement will be calculated by reference to the quotation.

3.2 This Agreement is either a Lump Sum or Schedule of Rates Agreement, as specified in the quotation. Where this Agreement is a Lump Sum Agreement, the Price shall be as specified in the quotation. Where this Agreement is a Schedule of Rates Agreement, the Price shall be the sum ascertained by multiplying the quantity of the Goods to be supplied, by the corresponding rates in the quotation, and the Contractor shall pay the price for the Goods stated in the quotation or the price calculated in accordance with the quotation.

3.3 The price, unless otherwise expressly stated in writing, shall include all, duties, packing, protection and delivery to the nominated delivery point.

3.4 The conditions and obligations of this Agreement shall remain effective for the duration of the term. During this period, prices shall be firm and not subject to fluctuation by way of price indexing or any other cause whatsoever. The Contractor expressly acknowledges and agrees that all orders for Goods placed with Miele must be settled and delivered within the term (24 months of order placement date). All orders inclusive of those orders which have been partially delivered and/or settled may be cancelled at this time and Miele reserves the right to review and provide revised pricing in relation to the order in its sole discretion.

4. Goods

4.1 Miele represents and warrants to the Contractor that the Goods:

- (a) will be new, unless otherwise specified by the Contractor;
- (b) will comply with any description given; and,
- (c) will be fit for their intended purpose.

4.2 Miele warrants that the Goods will at the time of delivery and thereafter, correspond to the specifications and drawings under this Agreement, and to industry or authority standard. The Goods shall be manufactured and supplied in accordance with all applicable New Zealand Standards.

4.3 The Goods shall be fit for the purpose for which Goods of the same kind are commonly supplied, and for any other purpose made known to Miele, are of merchantable quality, and free from defects in material and workmanship.

4.4 Miele shall ensure that the Goods correspond with any sample and/or description made available. Where the Goods do not correspond with any such sample or description, the Goods will be deemed not to be in accordance with the Agreement.

4.5 Miele acknowledges that the residential development which comprises the Project will be sold upon completion of the Project to individual purchasers (hereinafter called "the Beneficiary" or "Beneficiaries") and the Goods will be installed to such units as inclusions in their sales. Miele acknowledges that such Beneficiaries shall, irrespective of their identities have the benefit of all warranties vested in the Goods in accordance with provision 16 of this agreement.

4.6 For the purposes of registering the Beneficiaries and the associated commencement dates of any warranty periods, the Contractor shall maintain a register recording for each unit/ residential development comprising:

- (a) the completion date of the sale contract;
- (b) identity of the Beneficiary; and,
- (c) identification of the Goods installed therein.

4.7 The Contractor will make this register available to Miele for the administration of warranties under this Supply Agreement. The Contractor shall ensure that any documents (such as warranty registrations) will be made available to the Beneficiaries for registration of their warranty entitlements.

5. Stock Availability

5.1 The Contractor must confirm with Miele the availability of stock prior to making a commitment to the beneficiary or Developer on behalf of Miele, as the case may be. The Contractor acknowledges and agrees that all orders will be submitted a minimum 15 weeks prior to the date of delivery.

5.2 Miele shall upon the receipt of an order or variation advise the Contractor of any order fulfilment concerns it may possess.

6. Product Supersession

6.1 If the model of the product is discontinued or superseded and not available for delivery on the delivery date(s), Miele will notify the Contractor 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 Contractor 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. if 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 in accordance with provision 26;
- ii. where there are no discontinued or superseded product(s):
 - c. 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
 - d. If there is no equivalent model available to fill the order and this agreement is therefore terminated in accordance with provision 26.

6.2 If the Contractor accepts Miele's offer in accordance with provision 6.1, the quotation and/or order and the price will be taken to be varied as per Miele's revised offer.

7. Sales commitment (New home Contractors only)

7.1 The Contractor agrees to achieve and/or exceed the minimum sales commitment. For the avoidance of doubt, the Contractor agrees to a minimum spend of \$60,000 (NZD) or greater in any given 12 month period. Compliance to such entitles the Contractor to a discount off the recommended retail price of the Goods as specified in the quotation.

7.2 The Contractor agrees that within the first six (6) months of the initial agreement signing, they are not permitted to procure items for personal consumption unless otherwise agreed to with Miele.

8. Variations

8.1 The Contractor may request a variation and Miele will accept any reasonable instructions from the Contractor to vary the supply of the Goods, such variations will not invalidate this agreement.

8.2 The Contractor may at any time throughout the term request that Miele provide a price or quotation with respect to a proposed Variation. Miele will promptly address such requested within any reasonable time frames provided.

8.3 The agreed price of any variation shall be added to or deducted from the Price as the case may be.

8.4 The Contractor may instruct Miele to vary the supply of the Goods required under this agreement in following ways:

- (a) the quantity; and,
- (b) the time for delivery, pursuant to provision 10 and 11.

8.5 If the Contractor lessens the total quantity of the order, Miele reserves the right to revisit and amend the Price payable.

9. Display & Resupply

9.1 The Contractor agrees that it is purchasing the Good(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 Contractor), unless otherwise agreed. The Contractor must not sell or transfer the Good(s) for any other purpose (including sale or transfer to a third party who acquires or takes possession of the Good(s) for the purpose of resupply) and must not sell or purport to sell the Goods on behalf of Miele or as a Miele Chartered Agent.

10. General obligation

10.1 Both parties agree that they:

- (a) will act honestly and in good faith and comply with all applicable laws including consumer protection, occupational health and safety, employment and environmental and they will not violate any law, regulation or government order or decree or any consent, registration, approval, licence or permit referred to in any Agreement;
- (b) will use best endeavours to promote and market the Goods;
- (c) will cultivate and maintain good relations with customers and potential customers in accordance with sound commercial practices;
- (d) are not aware of any act, matter, thing or circumstance which may inhibit the party from performing its obligations under this Agreement; and,
- (e) will not engage in deceptive, misleading, illegal or unethical practices.

11. Delivery

11.1 Miele shall deliver the Goods, in complete and undamaged condition, to the place nominated in the order or quotation.

11.2 Miele shall deliver the Goods during normal business hours for the place of delivery on the date or dates shown, or as reasonably directed by the Contractor or its nominated Representative. Miele shall obtain a receipt for the Goods, signed by the Contractor's Representative. The Goods will, upon delivery, be accompanied by a delivery docket identifying all the Goods delivered, with proper and detailed particulars of those Goods.

11.3 A Miele delivery does not include:

- (a) Unpacking and preparing the Goods for installation;
- (b) Conveyance to multiple locations on site (one site discharge); and,
- (c) Disposal of packaging materials;

11.4 Miele is not required to deliver the Goods in accordance with this provision if the location to which the Goods are to be delivered is at a location other than the agreed address. In those circumstances, Miele may notify the Contractor of the location at which the Goods are available for collection or at its sole discretion, elect to deliver the Goods to a specific location.

11.5 In the event that the Contractor is not present to accept delivery at the nominated delivery time, the Contractor will be liable to pay Miele a fee to have the Goods re-delivered at a new delivery time/date, as arranged. This re-delivery fee is payable by the Contractor prior to Miele re-delivering the Goods at the new nominated delivery time/date.

12. Delivery Schedule

12.1 The Contractor must provide Miele with a firm delivery schedule at least one calendar month prior to the initial delivery which specifies the date(s) and quantities required for delivery.

13. Contractor to check deliveries

13.1 Each delivery will be accompanied by a delivery docket which lists the type and quantity of Goods included in that delivery.

13.2 At the time of each delivery, the Contractor must verify each delivery against the delivery docket, if accurate, the Contractors site / project manager or their delegate must endorse the docket. If an inaccuracy exists it will be recorded against the delivery docket and initialled by the delivering and receiving parties.

13.3 The Contractors site / project manager or their delegate must provide photographic identification at the time of Delivery, the details of which will be recorded on the delivery docket.

13.4 Following the execution of the delivery docket, the Contractor will be liable for the Goods listed.

14. Damages during delivery

14.1 If Goods are damaged during delivery to the Contractor, the Contractor must immediately (within 48 hours) notify Miele and promptly arrange for the return of the damaged Good(s) to Miele and Miele will promptly deliver replacement item(s).

15. Reasonable commercial endeavours

15.1 Miele will use reasonable commercial endeavors to deliver the Goods on or about the delivery date(s). If Miele is unable to deliver the Goods (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.

16. Product Warranty

16.1 Our Goods come with guarantees that cannot be excluded under the New Zealand Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

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

16.3 Miele warrants that the Goods(s) will be free from defects in materials and workmanship for a period of 24 months from:

- (a) the date of delivery, or
- (b) settlement of the project or development (evidentiary documentation required), or
- (c) six months following the practical completion of any project or development.

17. Right to test & inspect

17.1 Miele reserves the right to inspect and test the Goods for the purpose of determining the extent of any defect and the validity of any claim made under warranty.

17.2 All defective parts/products replaced by Miele under warranty will be deemed to be the property of Miele.

18. Unauthorised activities

18.1 The Miele warranty will not apply if the Goods are rendered faulty by a factor other than a defect in materials and workmanship. Such factors include but are not limited to:

- (a) 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);
- (b) use for a purpose for which the product was not sold or designed;
- (c) in the case of household appliances and vacuum cleaners, commercial use;
- (d) use or installation which is not in accordance with any specified instructions for use or installation;
- (e) use or operation after a defect has occurred or been discovered;
- (f) damage through freight, transportation or handling in transit (other than when Miele is responsible);
- (g) damage through exposure to chemicals, dusts, residues, excessive voltage, heat, atmospheric conditions or other forces or environmental factors howsoever outside Miele's control;
- (h) repair, modification or tampering with by the Contractor or Beneficiary or any person other than Miele or an authorised Miele Service Agent; or
- (i) use of parts, components or accessories which have not been supplied by or specifically approved by Miele (including use of dust bags other than Miele dust bag).

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

19. Progress claims & payments

19.1 Subject to any alternative arrangements agreed to in writing by Miele and subject to the performance by Miele of its obligations under this agreement, the Contractor must:

- (a) pay Miele the applicable price for each Product it acquires from Miele under this agreement in accordance with provision 3 of this agreement:
 - i. payment in full is required no later than 48 hours prior to the scheduled delivery of the Goods, for the avoidance of doubt payment in full refers to cleared funds / monies being in Miele's custody. A longer lead time may be required for cheque payment(s).

Or where the purchase is subject to an account:

- ii. pay Miele each invoice or progress payment issued, 30 days from the end of the month following issuance of the statement issued by Miele.
- (b) If requested by Miele provide security (such as directors' or bank guarantee) and agree to credit reference checks.

Please note that Miele is in sole discretion may provide Contractors with a credit account for the purchase of the Goods. Credit accounts are subject to mercantile assessment, due diligence measures, annual credit limit review and prescribed Miele selection criterion. Miele may in its sole discretion may vary, amend or remove any credit limits afforded to the Contractor.

19.2 Miele warrants that following delivery and payment for the Goods, the Contractor will receive clear, unencumbered and absolute title to the Goods.

20. Cancellation Fee

20.1 If your order is cancelled, all monies received will be returned excluding the applicable cancellation fee. A cancellation fee up to 10% of the order value will apply to all cancelled orders

21. Payment Default

21.1 If the Contractor fails to make any payment to Miele when due, without prejudice to any other right or remedy available to Miele at law, in equity or by statute:

- (a) the Contractor must pay interest on the amount outstanding calculated on a daily basis and compounded monthly at five per centum (5%) above the rate of interest charged at that time by the Reserve Bank of New Zealand;
- (b) the Contractor must reimburse Miele for all reasonable costs and expenses incurred by Miele in relation to the outstanding debt and chasing payment of it.

22. Security retention

22.1 The Contractor will not be entitled to retain any monetary amount, fee or levy from any progress payment request made as security retention or applicable stipulation.

23. Risk & Title

23.1 Miele remains the owner of the Goods until the Price is paid in full.

23.2 The Contractor must not sell or otherwise deal with the Goods until the Price is paid in full to Miele. If the Contractor purports to do so, the Contractor will be deemed to hold the proceeds of sale or other realisation (or the amount equal to the outstanding) on trust for Miele.

23.3 Notwithstanding, the risk of loss of or damage to the Goods passes to the Contractor upon delivery. Prior to delivery Miele shall, at its cost, insure the Goods for all loss or damage until delivery. After delivery, the Contractor is responsible for storing the Goods prior to any installation and is liable for any loss or damage which occurs.

23.4 Miele shall if requested by the Contractor, produce evidence of the currency of its insurance policies.

24. Guarantees and Indemnity

24.1 The Contractor indemnifies Miele against all Damages (whether incurred by or awarded) that Miele sustains or incurs (directly or indirectly) because of:

- (a) a breach of a term of this Agreement by the Contractor;
- (b) a claim by a third party arising from any act or omission of the Contractor or any of its Personnel in connection with this Agreement, whether negligent or not;
- (c) any negligent, wilful, reckless or unlawful act or omission of the Contractor or its Personnel in connection with this Agreement;
- (d) any injury, illness or death to Miele's Personnel arising out of or in connection with this Agreement; and,
- (e) loss or damage to physical property caused by an act or omission of the Contractor or its Personnel negligent or not.

24.2 The Contractor indemnifies Miele and its employees and agents, against any claim made by any third party arising by reason of the use of the Goods, or in any way connected with the Goods or their supply under this Agreement, or otherwise arising due to any act or omission on behalf of the Contractor, with respect to its obligations as set out by this Agreement. Such claims may include, without any limitation whatsoever, any claims based on statute, common law, unjust enrichment or equity and all claims for actual or alleged infringement of any patent, trademarks, copyright, design, confidential information or similar protection whether granted by New Zealand or the common law.

25. Exception

25.1 The indemnity in provision 23 does not apply to the extent that the Damages are caused by:

- (a) any negligent, wilful, reckless or unlawful act or omission of Miele; or
- (b) a breach of a term of this Agreement by Miele.

But only to the extent that the act, omission or breach directly results in the Damages being suffered.

26. Termination

26.1 If Miele fails to deliver the Goods in accordance with the terms of this Agreement then, the Contractor may cancel this Agreement. In that event, the Contractor shall have no claim against Miele for loss or damage, including consequential loss.

26.2 The Contractor may cancel this Agreement, if the Contractor's contract for the work or project, for which the Goods are required, is terminated. In that event, the Contractor's liability shall be limited to a reasonable amount, calculated by reference to the price stated in the quotation, for Goods already delivered, and for Goods for which an irrevocable order has already been placed, which will be paid for upon delivery of the Goods to the Site, always provided that the Goods comply with all requirements of this Agreement.

26.3 The Contractor may terminate this agreement at any time before delivery of the Goods, by giving notice in writing to Miele. In such event Miele shall be entitled only to reimbursement of Goods already delivered, an amount for the value of materials reasonably ordered by Miele which the Contractor is liable to accept (but only if the material(s) become the property of the Contractor upon payment) and at the discretion of the Miele, Goods for which an irrevocable order has already been placed, which will be paid for upon delivery of the Goods to the Site, always provided that the Goods comply with all the requirements of this Agreement.

26.4 Termination requires no less than 30 days' written notice.

27. Immediate termination

27.1 Either party may immediately terminate this Agreement by written notice to the other if the other party breaches any of the provisions of this Agreement and, in the case of a breach which can be remedied, fails to remedy the breach within 30 days of receiving a written notice giving particulars of the breach and requiring it to be remedied, and/or if a party suffers an Insolvency Event.

28. No prejudice

28.1 The right to terminate this Agreement given by this provision is without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

29. Accrued rights and remedies

29.1 Termination of this Agreement under provision 26 and 26 does not affect any accrued rights or remedies of either party.

30. Dispute Resolution

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

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

30.3 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.

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

31. Force Majeure

31.1 Where the Contractor is unable, wholly or in part, by reason of a Force Majeure event, to carry out its obligation under this Agreement, and:

- (a) gives Miele immediate Notice of the Force Majeure event; and
- (b) specifies the nature, particulars and expected duration of its inability or delay; and
- (c) uses all reasonable diligence to remove the Force Majeure event as quickly as possible and uses commercially reasonable efforts to recommence performance or observance to whatever extent possible.

Then provided such inability could not have been reasonably prevented by the Contractor, that obligation is suspended so far as it is affected by the Force Majeure event during its continuance.

32. Assignment

32.1 The Contractor must not assign or purport to assign any right given to the Contractor under this Agreement.

33. Relationship of parties

33.1 This Agreement does not create a relationship of employment or partnership.

34. Alteration

34.1 This Agreement may be altered in writing signed by each party.

35. Waiver

35.1 Waiver of any provision of, or right under, this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and,
- (b) is effective only to the extent set out in any written waiver.

36. Survival

36.1 The obligations of the parties under this agreement survive the termination of this Agreement.

37. Entire Agreement

37.1 Without limiting the foregoing, the Contractor acknowledges that no other terms on any document of the Contractor, shall be of any effect whatever and acknowledges that no employee or agent of Miele, other than the Sales Manager or such other employee or agent of Miele expressly authorised for such purpose by the Sales Manager, has any authority to agree to any amendment or waiver of these terms.

38. Severability

38.1 Part or all of any provision of this Agreement that are illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

39. Counterparts

39.1 This Agreement may be executed in counterparts. All executed counterparts constitute one document.

40. Governing law

40.1 This Agreement is governed by the laws of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.