

WEL NETWORKS LTD - TERMS OF SOLAR WATER HEATING AGREEMENT

These terms apply to any lease ("Lease") entered into between WEL Networks Ltd ("Us" or "Our") and any other person ("Lessee" or "You") regarding the lease of a solar hot water system.

1. MISCELLANEOUS

- 1.1 No:
- (a) indulgence granted to you by us shall in any way prejudice our rights under the Lease.
 - (b) provision, other than those which are mandatory, shall be implied by statute or at common law or otherwise into the Lease against us.
 - (c) representation or express condition or warranty shall be binding upon WEL unless it is in writing and executed by us.
- 1.2 You:
- (a) agree that you have inspected the System prior to the execution of this Lease and acknowledges that the System is in proper working order and condition;
 - (b) acknowledge that you have not been induced to enter into the Lease by any representation made by or on behalf of us, and that you rely solely on your own judgment in accepting the System on lease;
 - (c) will not make any comment to any media organisation; nor facilitate the publishing of, nor cause to be published, any comment about any part of this Agreement, without WEL's prior written consent in writing, which may be withheld by us in our sole opinion, without the need for any reason;
 - (d) You acknowledge that no option, proviso or representation express or implied, written or oral has been made by or on behalf of us to you that the System may be purchased from us by you or your nominee of at any time.
- 1.3 We provide no warranties or representations about the System and negate to the fullest extent legally possible all warranties and indemnities and guarantees available to you.
- 1.4 Neither party will be liable to the other for any breach or failure to perform any of its obligations under this Agreement, where such breach or failure is caused by national disaster, national emergency, act of God, government legislation or regulations, or any other cause or causes beyond the party's reasonable control. If either party is, or is likely to be, affected by such cause, it will immediately notify the other party of the occurrence of the relevant event and will use all reasonable endeavours to overcome or mitigate the effects. If the event or circumstances causing the breach or failure under this clause is of such magnitude, or will be of such duration, that it is either impracticable or unreasonable for either party to perform, comply with, or observe this Agreement, that party may, on giving not less than 14 days prior written notice, terminate this Agreement.
- 1.5 If any provision of this Agreement is, or becomes, or is declared invalid, unenforceable or illegal by the courts of the jurisdiction to which it is subject, such invalidity, unenforceability or illegality will not prejudice or affect the remaining provisions of this Agreement which will continue in full force and effect despite such invalidity, unenforceability or illegality. The Parties will review and negotiate a variation of this Agreement so far as it is possible so as to remove the invalidity, unenforceability or illegality while retaining the intention of the Parties in any provision which is, or becomes, or is declared invalid, unenforceable or illegal.
- 1.6 Any capitalised phrase in these terms, and not defined in these terms, will have the meaning given to it (if any) in the Lease.
- 1.7 We shall not be deemed to have waived or varied any provision of these terms and conditions or any right or remedy which we may have under these terms and conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by us. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.
- 1.8 Any notice or other document required to be in writing by virtue of these terms and conditions shall only be effective on our part if signed by us.
- 1.9 These terms and the relationship between the parties shall be governed by the laws of New Zealand.

2. INSURANCE

- 2.1 You will at your own cost, insure and keep the System insured on such terms, and with an insurer, accepted by WEL. If you do not do so, we may do so at your cost.
- 2.2 If:
- (a) any money is paid to you by the insurance company pursuant to a claim or otherwise you will immediately pay such money to us. If any such money is, in our opinion:
 - (i) adequate to replace or repair the System, we will apply the money for this purpose, and you will upon our demand and at your expense enter into further assurances in our favour with regard to the System.
 - (ii) not adequate to replace or repair the System, then we will notify you of our opinion and such notification shall terminate the Lease. We will be entitled to receive and apply the proceeds of any insurance claim towards payment of Rent and any other financial obligations payable by you to us pursuant to the Lease. Any surplus proceeds shall be paid by us to you.
- 2.3 You:
- (a) will tell us and your insurance company immediately if any insurable event occurs; and
 - (b) appoint us your attorney for the purposes of prosecuting or settling any claim for loss or damage under any insurance policy effected.

3. DEFAULT AND TERMINATION

- 3.1 You may request in writing, the early termination of this lease. We may, at our own discretion, agree to such early termination upon conditions determined by us, including payment of any Early Termination Fee, or other fee.

- 3.2 We may at our sole option, terminate the Lease on such notice as we deem appropriate, and remove the System with the need for refund of any payment of RENT, PROVIDED THAT where we terminate the Lease without default or breach by you of the terms of the Lease, within the first 60 months of the Lease, then we will refund to your one half of any Rent payments made on or before the due date.
- 3.3 Upon the expiration or sooner termination of the Lease you will ensure the System is in good order and condition (reasonable wear and tear excepted), and pay to us any monies owing by you to us. You are not entitled to purchase the System
- 3.4 We and you agree that each of the following events amounts to default by you under the Lease:
- (a) if you fail to pay Rent or other money payable to us on the due dates for payment;
 - (b) if you breach any term of the Lease.
 - (c) if you have execution issued against your property under a judgment in any Court; or
 - (d) have distress levied against your property or if you become bankrupt or if you make an assignment to or composition with your creditors.
 - (e) if you have made any fake, inaccurate or misleading statement to us.
- 3.5 If an event of default occurs we may without giving any notice to you, enter upon any land or premises where the System may be situated and retake possession of the System, and terminate the Lease. This will not release you from any liability in respect of any breach or non-observance of any of the provisions in the Lease. This will not prejudice our right to retain all money paid to us pursuant to the Lease, and our right to claim damages.
- 3.6 If the Lease is terminated, pursuant to clause 3.1 or 3.5, then without prejudice to our other rights at law or in equity, we may demand immediate payment of:
- (a) all arrears of Rent and other money then due and payable by you under the Lease;
 - (b) the costs of repossession of the System;
 - (c) our losses on the Lease to be notified by us to you;
 - (d) all costs and expenses incurred by us in enforcing this agreement; and
 - (e) interest on all money payable under this provision from the date of termination to the date of payment at the rate of 3% above WEL's then current bank's unarranged overdraft rate.

4. DISPUTE RESOLUTION

- 4.1 If any dispute arises out of, or in connection with, this lease, neither party is to commence proceedings relating to the dispute unless that party has complied with the provisions of this clause.
- 4.2 The parties will use reasonable endeavours to settle any question or difference in connection with this contract or the subject matter thereof by bone fide discussion between them. If any question or difference (a "dispute") is not settled within 30 days of the receipt by one party of notice from the other of the dispute (the "Dispute Notice") then either party may give notice to the other requiring the dispute to be referred in the first instance to mediation. If the parties cannot agree upon a mediator, the mediator will be appointed by LEADR or the President (or his/her nominee) for the time being of the New Zealand Law Society. The mediator will determine the procedure and timetable for the mediation. The costs of the mediation will be shared equally by the parties. If within fourteen days following the mediation the dispute remains unresolved either party may, by notice in writing to the other party, refer the dispute to arbitration under the Arbitration Act 1996. If the parties cannot agree upon a sole arbitrator within 10 days of arbitration being invoked either party can request that the sole arbitrator be appointed by the President of the New Zealand Law Society or his/her nominee. The decision of the arbitrator will be final without appeal to the courts. While any matter between the parties has been, or is to be, referred to an arbitrator, the parties will continue to comply with, observe and perform their respective obligations and duties and may exercise their rights as if the matter had not arisen.
- 4.3 This clause will not preclude either Party from seeking urgent interlocutory relief from the courts. If such relief is sought by a Party, then that Party will, subject to the extent of the relief obtained from the courts and following the period required to dispose of the application for the interlocutory relief, submit the dispute to mediation in accordance with clause 4.2.
- 4.4 Despite the existence of a dispute each Party will continue to perform its respective obligations under the agreement without prejudice to its respective rights and remedies.

5. TITLE

- 5.1 We retain full title to the System despite:
- (a) the delivery of the System to you;
 - (b) the possession and use of the System by you; and/or
 - (c) any temporary attachment of the System, whether for a period of 10 years, or less, or more, to any land or premises, to facilitate the use of the System;
 - (d) but subject to, only to the rights of you as a mere bailee of the System with a right only to use the System in accordance with, and under, the Lease.

6. ADDITIONS AND AFFIXATION

- 6.1 Any additions or improvements which shall be effected to the System and any accessories which shall be affixed to the System shall become part of the System for the purposes of the Lease.
- 6.2 If you affix the System to the premises on the Property pursuant to the Lease, and all or any part of the premises or the Property are, or become, the subject of a mortgage or charge, you will, without any request from us, obtain the written acknowledgement of the mortgagee or chargeholder (as the case may be) that:
- (a) the System is not a fixture for the purposes of the mortgage or charge;
 - (b) that the mortgagee or chargeholder will not make any claim in relation to the System; and
 - (c) the mortgagee or chargeholder will permit us (whether or not there has been any default under the mortgage or charge) to enter upon the land or premises and to remove the System.

- 6.3 If you do not own the Property, then you will obtain the written acknowledgement of the owner of the Property, being the registered proprietor as recorded on the title identifier in the Land Registry, for the Property, ("Owner") that:
- (a) the System is permitted on the Property, affixed to any building or premises on the Property; and
 - (b) the System is not a fixture;
 - (c) the Owner will not make any claim in relation to the System;
 - (d) the Owner will obtain the consent of any mortgagee or charge holder of the Property, pursuant to clauses 6.26.2(a), 6.26.2(b), and 6.26.2(c), as if reference in that clause to "you" was to "Owner".

7. YOUR OBLIGATIONS AND LIMITATIONS

7.1 You will:

- (a) comply with and shall ensure every user of the System complies with, the provisions of all statutes and all rules or regulations in force in relation to the System or its use and (where applicable) the premises upon which the System is situated or the occupation and use of those premises.
- (b) not at any time permit any person who has not previously been authorised in writing by us, to access, operate, alter, repair, maintain, upgrade or otherwise deal with, the System.
- (c) at all times ensure that the System is used solely for the purposes intended by its manufacturer and in accordance with the manufacturer's instructions and (where applicable) in accordance with its rated capacity which shall not be exceeded.
- (d) be liable at all times for any repair required due for reasons other than fair wear and tear reasonably expected.
- (e) ensure the System is not removed, or moved from its installed location.
- (f) if the System requires repairs, immediately
 - (i) notify us and permit us to arrange the repairs and to do so at our expense. We will be entitled to possession of the System and access to the Property, for the purpose of effecting repairs. If the System requires extensive repairs or replacement, we may, at its option elect to undertake such repair or replacement, or terminate the Lease.
 - (ii) upon demand by us pay to us all costs and expenses incurred by us for repairs which we believe were required due to EITHER a breach of the Lease by you, OR by reasons other than normal wear and tear.

7.2 You are not authorised under the Lease to pledge our credit for repairs to the System or to create a lien over the System in respect of any repairs.

7.3 You will not, without our prior written consent:

- (a) agree, attempt, offer, or purport to sell, assign, sublet, lend, pledge, mortgage, bail, let on hire or otherwise part with or attempt to part with personal possession of the System or otherwise deal with the System.
- (b) suffer any encumbrance, charge or lien of any kind to arise or remain on the System or any part of the System.

8. PERSONAL PROPERTY SECURITIES ACT 1999

8.1 You acknowledge that these terms and conditions create a security interest in the goods as security for all your obligations under this contract pursuant to the Personal Property Securities Act 1999 ("the PPSA") and that WEL may register a financing statement to perfect its security interest in the goods delivered or to be delivered to you in accordance with the provisions of the PPSA.

8.2 You must, upon request, provide all information, execute or arrange for execution of all documents and do all other things that WEL may require to ensure that WEL has a perfected first ranking security interest in the goods under the PPSA.

8.3 You waive your rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of WEL under the PPSA and agrees that as between WEL and you will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where WEL has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.

8.4 You shall immediately upon request by WEL, procure from any person considered by WEL to be relevant to its security position such agreements and waivers as WEL may at any time require.

8.5 You shall immediately notify WEL of any change in your name, address details and any other information provided to WEL to enable WEL to register a financing change statement if required.

9. ACCESS

9.1 You must provide us with access to the Property to deliver the goods and services including to inspect, test, maintain, replace and install equipment, or to prevent electrical hazards, or to enable us to enforce the Lease or comply with relevant laws. Access will generally only be required during business hours, however you agree to permit us to access the Property immediately and without notice in the event of an emergency. We may charge you extra to recover costs we incur from any delay in obtaining access to the Property. You must notify us of any work on the Property which may affect the System.

10. PRIVACY

10.1 We will collect and hold personal information about you in the course of providing services to you. This information may be used for credit, marketing and administration purposes. We will comply with our legal requirements relating to the privacy of information which we hold about you, including giving you the rights to access and correct personal information conferred by the Privacy Act 1993. We may disclose personal information about you to our agents and to any debt collection agency which we may use.

10.2 The Privacy Act may not apply to you if you are a firm, company or partnership, and not an individual