



TERMS AND CONDITIONS

This agreement sets out the terms and conditions that apply between the Customer and Espresso Repairs (NZ) Limited.

1. Definitions

1.1 In these terms and conditions unless the context otherwise requires:

- (a) **“ERL”** means Espresso Repairs (NZ) Limited, its successors, assigns and/or any person acting on behalf of and with the authority of ERL;
- (b) **“Customer”** means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation and/or other document (including electronic versions of the aforementioned) as provided by ERL to the Customer;
- (c) **“Goods”** means all the goods supplied by ERL to the Customer and includes all parts, components and materials described on any invoice, quotation and/or any other document (including electronic versions of the aforementioned) as provided by ERL to the Customer;
- (d) **“Services”** means all coffee machine repair and/or installation services supplied to the Customer by ERL and includes any advice or recommendations; and
- (e) **“Price”** means the price payable for the Goods and Services.

2. Quotes

- 2.1 All quotes supplied by ERL to the Customer are subject to these Terms and Conditions.
- 2.2 All quotes will be open for acceptance by the Customer for twenty (20) calendar days from the date of quote (unless otherwise expressly agreed in writing by ERL). Any quote given by ERL to the Customer may be withdrawn by ERL at any time prior to acceptance by the Customer.
- 2.3 ERL reserves the right to amend the quote both in detail and price should the supply of Goods and/or Services differ from the Customer's initial instructions upon which the original quote was based.
- 2.4 The parties agree that the quote will be deemed invalid if the Goods and/or Services are not provided to the Customer by ERL within ninety (90) calendar days of the date of the quote.

3. Acceptance of these Terms and Conditions

- 3.1 The Customer is deemed to have accepted these Terms and Condition by giving ERL any instructions (verbal or written (including instructions by email)) in relation to the supply of Goods and/or Services. These Terms and Conditions supersede all prior agreements, representations and warranties.
- 3.2 Any variation to these Terms and Conditions will only apply where that variation has been expressly agreed in writing by ERL.
- 3.3 The Customer acknowledges and accepts that a minimum one hour labour charge and a travel fee (where applicable) will be applied to all invoices for jobs undertaken within normal working hours (7.30am – 4pm). If an urgent service is requested, the Customer accepts that a priority fee of 20% of the invoice will be payable by the Customer. If a service or repair is requested out of working hours, a minimum fee of two hours will apply.

4. Credit Enquiries

- 4.1 Where the Customer applies for credit with ERL, the Customer authorises ERL to make such enquiries from third parties as to the credit worthiness of the Customer as may be required by ERL. The Customer authorises ERL to collect, retain and use any information about the Customer, and divulge it to third parties for debt collection and trade references. ERL agrees not to on sell the information to third parties for marketing purposes.
- 4.2 ERL will comply with the Privacy Act 1993. ERL will not use your information unless it has reasonably ensured it is accurate, complete, relevant and not misleading. You may access any of your information and ask us to correct any mistakes.

5. Deposit and Payment

- 5.1 ERL reserves the right to require the Customer to pay a deposit of 50% of the applicable quote. Any such deposit will be deducted from the final payment due.
- 5.2 Payment for all Goods and/or Services supplied by ERL to the Customer must be made in full on completion of the job unless otherwise agreed in writing as per the applicable quote.
- 5.3 Where ERL agrees in writing to provide the Goods and/or Services on credit the following terms and conditions shall apply:
- (a) ERL shall submit invoices at the end of each job and the Customer shall make payment in full (without any deduction, retention, set-off or counterclaim) within seven (7) calendar days of the date of the invoice unless prior arrangement in writing;
 - (b) any Goods supplied by ERL to the Customer shall remain the property of ERL until the Customer has paid ERL in full for the particular Goods and that these Terms and Conditions constitute a security agreement for the purposes of the Personal Property Act 1999. In the event that ERL wishes to register a financing statement on the Personal Property Securities Register the Customer hereby agrees to the specific terms which are set out below.
 - (c) Where ERL agrees in writing to provide the Goods and/or Services on credit the following terms and conditions shall apply in relation the Personal Protection Securities Act 1999:
 - (i) any Goods supplied by ERL to the Customer shall remain the property of ERL until the Customer has paid ERL in full for the particular Goods and that these Terms and Conditions constitute a security agreement for the purposes of the Personal Property Act 1999.
 - (ii) The Customer undertakes to:
 - a. sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ERL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - b. indemnify, and upon demand reimburse, ERL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - c. not register a financing change statement or a change demand without the prior written consent of ERL; and
 - d. immediately advise ERL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - (iii) ERL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - (iv) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - (v) Unless otherwise agreed to in writing by ERL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

(vi) The Customer shall unconditionally ratify any actions taken by ERL under these terms.

(d) ERL reserves the right to charge the Customer compound interest on any monies unpaid for twenty-one (21) calendar days after the due date at the rate of 5% per month or part thereof.

5.4 The Customer shall be liable for all the costs of enforcement including all expenses and legal costs (as between solicitor and client) incurred by ERL in recovery or attempted recovery of any monies owed by the Customer to ERL.

5.5 If any account remains overdue after sixty (60) calendar days then an amount of twenty-five dollars (\$25.00) shall be levied for administration fees which sum shall become immediately due and payable.

6. Provision of the Goods and Services

6.1 ERL will endeavour to provide the Goods and/or Services on the date and time agreed between the Customer and ERL. ERL shall not in any circumstances be liable for any loss of any nature, including consequential loss, resulting from any delay in the provision of the Goods and/or Services.

6.2 Where the Customer requires ERL to provide the Goods and/or Services at its place of business, the Customer shall ensure that:

(a) ERL has unimpeded access to the place of business to enable ERL to provide the Goods and/or Services to the Customer. ERL shall not be liable for any loss or damage to the place of business unless due to the negligence of ERL;

(b) The Customer takes all practical steps, or shall contractually require that the person or entity controlling the site to take all practicable steps, to ensure the safety of ERL's employee(s) and contractors(s) onsite and comply with the **Health and Safety at Work Act 2016** and applicable regulations, codes and standards.

7. Guarantee of ERL's Services

7.1 If an issue arises relating to ERL's services, ERL will rectify the issue at no added cost provided that:

(a) The Customer notifies ERL within three (3) months of the date of completion of ERL's Services;

(b) The issue was not caused or partly caused by:

(i) failure on the part of the Customer to properly maintain any Goods;

(ii) failure to use the Goods in accordance with the manufacturer's instructions;

(iii) failure on the part of the Customer to follow any instructions or guidelines provided by ERL;

(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

7.2 The guarantee shall cease and ERL shall not be liable in any circumstances if the workmanship is repaired, altered or overhauled without ERL's consent.

7.3 ERL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

8. Warranties of Goods

8.1 If an issue arises relating to Goods is covered by a manufacturer's warranty, ERL will use its best endeavours to arrange to pass on the benefit of the warranty, however the Customer may be responsible for the price of ERL's Services for rectification.

8.2 For the avoidance of doubt, any warranty shall be the current warranty provided by the manufacturer of the Goods. ERL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

9. Consumer Guarantees Act 1993

9.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by ERL to the Customer.

10. Default & Consequences of Default

10.1 Without prejudice to any other remedies ERL may have, if the Customer is in breach of any obligation (including those relating to payment) ERL may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. ERL will not be liable to the Customer for any loss or damage the Customer suffers because ERL has exercised its rights under this clause.

10.2 Without prejudice to ERL's other remedies at law ERL shall be entitled to cancel all or any part of any job which remains unfulfilled and all amounts owing to ERL shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to ERL becomes overdue, or in ERL's opinion the Customer will be unable to meet its payments as they fall due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

11. General

11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

11.2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

11.3 ERL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ERL of these terms and conditions.

11.4 In the event of any breach of this contract by ERL the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.

11.5 ERL may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

11.6 ERL reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ERL notifies the Customer of such change.

11.7 The failure by ERL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ERL's right to subsequently enforce that provision.