

Terms & Conditions for Hot Water:

1. Form of Agreement

These terms and conditions and the Quote/Proposal/Sales Order once signed by you, constitute our agreement.

2. Definition of Terms in this Agreement

In this agreement, unless the context expressly requires otherwise, the following terms have the following meaning:

“Goods” means the water heater agreed to be purchased by you as set out in the Quote/Proposal/Sales Order provided to you;

“Our, us and we” refers to the trading entity Smarter Hot Water operating under Chromagen Australia Pty Ltd ABN 12 604 330 289 and includes its employees, agents and subcontractors;

“Standard Installation” means:

- your home is within 50km from one of Australia’s capital cities; and
- the premise is a single dwelling;
- the installation vehicle, equipment and installation team must have clear and unhindered access to your premises and to the roof or location where the products are to be installed / mounted;
- there is an existing completed home (i.e. home is not under construction/ renovation);
- the premises wiring/power supply complies with current electrical standards and must be connected to a safety switch;
- the existing hot water system is an electric storage hot water storage system (and not a heat pump) located outside your home;
- the Goods will be located in the same location as your existing hot water system.

3. Overall Exclusions

- 3.1. We will not install the Goods in your home if there is asbestos.
- 3.2. If your existing hot water system has an asbestos flu, we will not remove or encapsulate that flu or handle the asbestos in any way.
- 3.3. If required, you undertake to procure your own contractor to remove or encapsulate any asbestos in your home prior to us carrying out any works.
- 3.4. The cost of transport to any island is not provided for in the cost of the Goods and will be charged for separately.
- 3.5. If your existing hot water system is located in the ceiling or in a cupboard, we will not remove it. We will drain and isolate it. In all other cases, we may, at our option, remove your existing hot water system.

4. Payment

- 4.1. Prior to the date of installation of the Goods you must pay to us or at our direction the balance owing as quoted in the Quote less any deposit already paid (subject to any adjustment pursuant to clause 7).
- 4.2. On the installation date you must sign all government rebate and incentive scheme forms that are capable of being assigned to us or at our direction.
- 4.3. All amounts payable by you under this agreement will only be accepted as having been made when the funds are cleared in our bank account which is required a minimum of one business day prior to the date of installation.

5. Right to refuse to carry out installation

- 5.1. We reserve the right to refuse to carry out an installation of the Goods if:
 - a. you have not complied with clause 4.1;
 - b. the installation conditions prove to be unsatisfactory or are different to what has been recorded on the Quote; or
 - c. your electrical wiring does not comply with current electrical codes and you refuse to pay for the cost of any upgrade in order to make it comply with those codes.

6. Rebates and Incentives

- 6.1. You irrevocably agree to assign to us or to our accredited partners (at our direction) the benefit of all and any government rebate and incentive scheme payments that are capable of being assigned to us or at our direction and that may be claimed in relation to the Goods. The assignment of the rebates will constitute (partial) payment for the Goods.
- 6.2. You must do all things necessary and complete and sign all documents required to be completed and signed in order to give effect to clause 6.1 and return all of those documents to us.
- 6.3. If:
 - a. you do not assign to us or at our direction the rights to any government rebate or incentive scheme referred to in clause 6.1 and return to us all the completed and signed documents required to be completed and signed; or
 - b. where any rebate or incentive scheme referred to in clause 6.1 may only be paid directly to you, you must on or prior to the installation date of the Goods, pay us the full cash value of those relevant rebates and incentive payments (as unilaterally determined by us) in consideration for which we will provide you with all documents necessary to enable you to claim and/or retain any relevant rebate or incentive payment from the relevant government authority.
- 6.4. **If after installation of the Goods, the regulator of the relevant government rebate or incentive scheme rejects the documentation relating to the Goods installed in your home for any reason, we reserve the right to charge back to you the full cash value of those rebates or incentives and this amount will be payable by you to us immediately upon demand.**

7. Right to terminate or vary the price

- 7.1. If you fail to comply with clause 4.1 we may terminate this agreement and apply any deposit that you have paid to defray our costs incurred to date.
- 7.2. The price quoted on the Quote / Proposal is based on the value of government rebates and incentives payable in respect of the Goods as at the date of the Quote / Proposal. If on or about the day of the proposed installation of the Goods, the value of those government rebates and incentives has reduced compared to the value of those rebates and incentives on the date of the Quote / Proposal then we will advise you of that change and the difference in value of the government rebates and incentives payable in respect of the Goods. Subject to you agreeing to pay the increased price for the Goods (reflective of the reduced value of the government rebates and incentives payable in respect of the Goods) we will:
 - charge you the difference in the value of the government rebates and incentives payable in respect of the Goods on the date of the Quote / Proposal compared to the value of the government rebates and incentives on the date of installation of the Goods and you agree to pay us that difference prior to the day of installation of the Goods;
 - or alternatively cancel the sale and refund to you any deposit that you may have paid for the Goods

8. Installation

- 8.1. You agree that you will be present at your premises at the time of the installation of the Goods, to:
 - a. grant access to your premises for either our employees, agents or contractors to install the relevant system for you; and
 - b. complete and sign and return to us all documents required to be signed to give effect to clause 6.1.
- 8.2. If on the installation date we are not able to install the Goods for reasons within your control and the installation needs to be rebooked, we reserve the right to charge a rebooking fee to you.
- 8.3. Whilst we try and ensure that the Goods will be installed by competent and insured installers, we take no responsibility for any loss, cost, damages or expenses incurred by you as a consequence of any act or omission of the installer of the Goods purchased by you.
- 8.4. Whilst we will use our reasonable endeavours to install the Goods on the agreed installation date, there may be circumstances that prevent the installation of the Goods on that date, which circumstances may include but are not limited to rain and high winds. We take no responsibility for any damage, costs, losses or expenses incurred by you as a consequence of any delayed installation of the Goods.

9. Limitation of Liability

- 9.1. Subject to any restrictions at law, our liability to you however arising, whether by breach of any condition or warranty implied by statute or this agreement is at our absolute discretion limited to either:
 - a. the repair of the Goods;
 - b. the replacement of the Goods; or
 - c. payment of the cost of the repair or replacement of the Goods, subject to you advising us of any faults with the system purchased from us within the warranty period for the Goods.
- 9.2. The warranty provided by us to you under clause 9.1 will not apply if the system supplied by us to you has been subjected to:
- 9.3. repair, repositioning or modification (other than by a party approved by us in writing to you);
- 9.4. misuse or abuse; or
- 9.5. flood, fire, lightning or other events outside of our control.

10. Unsolicited sales; cooling off rights & our obligations

You have a right to cancel the agreement within 10 business days from and including the day after you signed or received an agreement. Details about your additional rights to cancel the agreement are set out in the information found at the below address <https://www.accc.gov.au/publications/sales-practices-a-guide-for-businesses-and-legal-practitioners>

11. Title to the goods

- 11.1. Title to the Goods does not pass until payment in full has been made for all amounts owed in connection with the Goods and we expressly reserve the right to take possession of the goods supplied by us to you at any time until full payment has been received for the Goods supplied to you. Payment includes the assignment of all relevant government rebate and incentive scheme payments capable of being assigned to us.
- 11.2. You expressly and irrevocably grant permission to us, our employees or agents to enter your premises where the Goods supplied by us are situated in order to retake the Goods supplied by us which have yet to be paid for in full by you and you acknowledge and agree that we may do so with such force as is reasonably necessary.

12. General Provisions

- 12.1. If any provision of this agreement or the application of any term is invalid or unenforceable to any extent, then the remainder of the term shall not be affected and the balance of the agreement shall be valid and enforceable to the extent permitted by law.
- 12.2. No delay or indulgence by any party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.
- 12.3. Any modification to any term of this agreement must be in writing and signed by all parties.
- 12.4. Termination of this agreement will not end those provisions that are capable of surviving the termination of this agreement.
- 12.5. This agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to be the one agreement.
- 12.6. This agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 12.7. This agreement represents the entire agreement reached between the parties and no terms or representations not expressly included in this agreement will be deemed to apply.
- 12.8. The parties agree that they must do all things necessary (including the execution of any further documentation) in order to give effect to the parties rights and obligations pursuant to the operation of this agreement.
- 12.9. Unless expressed to the contrary, time is to be of the essence in relation to any matter or thing required to be done or provided for by any party to this agreement.
- 12.10. The law governing this agreement is the law in Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of any of its competent courts and appellate courts or to the Federal Court of Australia sitting in Victoria.