

MIELE PROFESSIONAL - AUS
TERMS AND CONDITIONS OF SALES
MIELE AUSTRALIA Pty Ltd ABN 96 005 635 398
EFFECTIVE FROM DECEMBER 2019

1. AGREEMENT

1.1 An agreement is made between MIELE and the Customer for the purchase of the Professional 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, the order confirmation, these terms and conditions and any additional terms as specified.

2. QUOTATIONS

2.1 A quotation issued by MIELE is open for acceptance for a period of 30 days.

2.2 A quotation does not constitute an offer to sell, rather invitation only.

2.3 A contract for sale is formed upon acceptance by MIELE of the Customer's order.

2.4 The Customer acknowledges that MIELE may require up to 20 weeks' notice for Product/s availability.

3. PRICES

3.1 All prices quoted are exclusive of all taxes, duties and insurance.

3.2 The Customer is responsible for all costs associated with delivery, freight, transport, installation, conversions or alterations to products and commissioning.

3.3 The price payable by the Customer to MIELE for the Product/s is the price specified in the non-expired quotation or the MIELE price list available at the date of dispatch.

4. PAYMENT

4.1 Unless otherwise agreed in writing, payment shall be in accordance with the terms set out in the credit application or as notified below.

4.2 The Customer must pay MIELE the applicable price for each Product/s it acquires.

4.3 Subject to clause 4.1, Customers are required to pay 30% of the price as security deposit upon acceptance of the order.

4.4 Full payment of the price or balance thereof is required 48 hours prior to dispatch.

4.5 Credit cards are accepted but surcharges may apply.

5. CANCELLATION FEE

5.1 No cancellations are possible for Product/s which have been especially procured, custom ordered, imported, manufactured or made to order by MIELE or which were of a particular nature not normally stocked by MIELE.

5.2 Cancelled orders for stocked items will incur a 30% restocking fee.

6. DEFAULT IN PAYMENT

6.1 If the Customer fails to make any payment when due, the Customer must, without prejudice to any other right or remedy:

i. Pay interest on the amount outstanding calculated daily at a rate equal to The Reserve Bank of Australia's base rate plus 5%;

ii. Reimburse MIELE for all reasonable costs and expenses incurred in relation to the outstanding debt and chasing payment of it; and

iii. 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.

7. DELIVERY

7.1 At the cost of the Customer, MIELE may arrange for the delivery / transportation of the Product/s to a destination nominated.

7.2 MIELE will deliver the Product/s in accordance with provision of these terms and conditions. The risk of loss or damage to the Product/s passes to the Customer upon delivery. Notwithstanding this, MIELE will provide the Customer with 14 days' notice from delivery to instruct MIELE of any damage to the Product/s. Within this period, MIELE will remedy the damage provided that the Product/s have not been commissioned and/or installed.

7.3 Product/s deliveries are to the ground floor level, kerbside or loading dock area only unless a site to site specific delivery has been arranged and paid for accordingly. Where a crane/stairwell-jack is required, it is to be supplied by the Customer.

7.4 The Customer acknowledges that it is their responsibility to provide labour and equipment to unload and position the Product/s on site at their own expense unless a site to site specific delivery has been arranged and paid for accordingly.

7.5 The delivery date will be the date MIELE and the Customer agrees upon with consideration to the notice period / lead time specified within provision 2.4.

7.6 MIELE cannot guarantee to hold stock of pre-orders for a period of greater than two weeks. Should the delivery be delayed (for whatever reason), MIELE reserves the right to reallocate inventory.

7.7 MIELE will use reasonable endeavours to meet the requested delivery date.

7.8 In the event that the Customer fails to take delivery of the Product at the nominated delivery date / time, a failed delivery fee will be levied. This levy is payable by the Customer prior to MIELE re-delivering the Product/s at the new nominated delivery time/date.

7.9 All fees and charges associated with the delivery / transportation will be provided by MIELE and agreed with the Customer prior to any Delivery / Installation occurring.

7.10 During the period in-between Delivery and Installation, the Customer is liable for the storage and safe keeping of the appliance.

8. RETURNS

8.1 Where the Customer accepts delivery of the Product/s and subsequently changes their mind about the Product/s (including where the Customer orders the incorrect Product/s), MIELE may, in its absolute discretion, agree to:

i. accept return of the relevant Product/s from the Customer; and
ii. provide replacement Product/s to the Customer. In these circumstances, the Customer must pay:

i. a re-stocking fee of 30% of the price of the Product/s returned; and

ii. any difference between the price of the Product/s being returned and the replacement Product/s selected.

The Customer acknowledges that MIELE is not under any obligation to accept return of the Product/s and any decision to accept return of the Product/s is its absolute discretion.

No returns can be made for Product/s which have been especially procured, custom ordered, imported, manufactured or made to order by MIELE or which were of a particular nature not normally stocked by MIELE.

MIELE Professional Products from the laboratory or chemical ranges will not be accepted for return where unpacked, opened and/or used.

9. INSTALLATION

9.1 MIELE may arrange for the installation provided that the required services are available and no structural work is required ("MIELE installation"). All fees and charges associated with the MIELE installation will be provided by MIELE and agreed with the Customer prior to any installation.

9.2 The Customer will immediately ensure that the site is cleared and free of obstruction and that adequate lighting, electricity and plumbing services are available for use by MIELE. The Customer will further ensure (unless otherwise agreed), that MIELE is able to carry out the installation works during normal working hours.

9.3 The Customer is to provide at no cost to MIELE, all labour and material handling equipment for unloading the Product/s, transporting them to the installation area and for cleaning the site.

9.4 It is the responsibility of the Customer to remove from the site any product packaging and debris resulting from the installation works.

9.5 MIELE is not liable for any loss or damage to Product/s which occurs through the Commissioning or Installation of the Product/s by parties other than MIELE or an authorised MIELE Service Agent.

9.6 The Customer must advise MIELE prior to the date of installation of any obstructions which may prevent or hinder the installation including, but not limited to:

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

9.7 In the instance where MIELE or an approved Service Agent attend a site to conduct the installation and it cannot be completed or undertaken for any reason including those stipulated within 9.6, there will be a re call-out fee charged according to most current price list at the time of re call-out.

9.8 A Miele Installation ensures that the Product/s is installed in accordance with the operating instructions that accompany each Product/s. If a Miele Product/s is not installed in accordance with these instructions, Miele may not be liable for any warranty claims or demands made.

10. OWNERSHIP AND RISK

10.1 MIELE remains the owner of the Product/s until the price is paid in full to MIELE and the Product/s have been delivered to the Customer.

10.2 Notwithstanding clauses 10.1, 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.

11. COMMISSIONING AND VALIDATION

11.1 Unless first agreed in writing, Product/s prices do not include Commissioning or Validation. All Product/s must be properly Commissioned and Validated strictly in accordance with the Product/s specifications as provided by MIELE.

11.2 If IQ and OQ of the Product/s are not carried out by MIELE or an Authorised Service Agent of MIELE, warranty claims may not apply. All Commissioning and Validation works must be carried out during normal working hours unless otherwise agreed in writing.

11.3 Where IQ and/or OQ of the Product/s is required, the Customer must give MIELE at least twenty (20) working days' notice of such request.

11.4 MIELE is not responsible for, and the Customer indemnifies MIELE against any loss or damage arising from:

- i. The running or connection of any data service into any third party system.
- ii. Any support for any third party operating system connected to the Product/s.

iii Any compatibility issues which may arise from the installation of software or chemical supply on to any third party system.

11.5 All fees and charges associated with the Commissioning / Validation will be provided by MIELE and agreed with the Customer prior to any works occurring.

11.6 Where Miele is engaged to complete the commissioning / validation, we will ensure that this is completed in accordance with the operating instructions that accompany the each Product/s. If a Miele Product/s is not Commissioned / Validated in accordance with these instructions, Miele may not be liable for any warranty claims or demands made.

12. WARRANTY

12.1 MIELE warrants that the Professional Product/s will be free from defects in materials and workmanship for a period of 12 months (24 months for Profiline dishwashers and Little Giants laundry products) from:

- i. the date of delivery, or
- ii. the date of Commissioning and/or Validation pursuant to provision 11 by MIELE or an approved a service agent, with no prior usage and not later than 6 months after the date of delivery. MIELE does not make any further representation or warranties as to the merchantability of its Professional Product/s range.

12.2 MIELE reserves the right to inspect and test the Product/s for the purpose of determining the extent of any defect and the validity of any claim made under this Warranty. All defective parts and Product/s replaced by MIELE under this warranty will be deemed to be the property of MIELE.

12.3 Should the Product's fail within the Warranty period, MIELE will absorb the costs associated with parts and labour required for repair.

12.4 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.
- ii. Use for a purpose for which the Product/s was not sold or designed.
- iii. Use or installation (where applicable) which is not in accordance with any specified instructions for use or installation.
- iv. Use or operation after a defect has occurred or been discovered.
- v. Damage through freight, transportation or handling in transit (other than when MIELE is responsible).
- vi. Damage through exposure to chemicals, dusts, residues, excessive voltage, heat, hard water, atmospheric conditions or other forces or environmental factors outside MIELE's control inclusive of elements caused by lime scale.
- vii. Repair, modification or tampering with by the Customer or any person other than MIELE or an authorised MIELE Service Agent; or
- viii. Use of parts, components or accessories which have not been supplied by or specifically approved by MIELE.

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

12.5 Additional labour costs will apply for service outside standard business hours of 8.30am to 5.00pm, Monday to Friday and on public holidays.

12.6 The Customer must retain proof of purchase (receipt) in order to be eligible to make a Warranty claim under this clause 12.

12.7 The MIELE Warranty provided under this clause is a transferable right.

12.8 Warranty may be affected where Product/s have not been Commissioned, Validated and installed by, or in strict accordance with instructions from, MIELE and/or approved MIELE service agent.

12.9 Miele Professional products are subjected to rigorous testing and assessment as to their quality and fitness. Our goods come with guarantees that cannot be excluded under the Australian 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.

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

Note: Persons who independently import Miele products have no right, claim or demand against Miele Australia or New Zealand relating to post purchase support or service including the any voluntarily, express or implied product warranty.

13. REPRESENTATION

13.1 MIELE represents and warrants that the Product/s:

- i. will be new, unless otherwise specified;
 - ii. will comply with the specifications and any description given;
- and
- iii. will be fit for their intended purpose.

13.2 The Customer acknowledges, agrees, represents and warrants that:

- i. As the use of the Product/s is outside the control of MIELE, the Customer is satisfied that the Product/s when supplied will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those Product/s, even if that purpose is made known to MIELE at any time;
- ii. The Customer has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the Product/s and any Product/s that is produced from them will be without defect and suitable or fit for any purpose required for them; and
- iii. The Customer releases and indemnifies MIELE and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Customer and whether at common law, in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Customer.

14. SERVICE & SPARE PARTS

14.1 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.

14.2 MIELE has a policy of assuring the availability of spare parts and service for all MIELE Product/s for a period of not less than five (5) years following the cessation of production of the applicable Product/s. After this period, availability of spare parts and service will depend upon the particular MIELE Product/s. Please contact MIELE for more details in relation to availability of spare parts and service.

14.3 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.

15. SUB-CONTRACT

15.1 MIELE reserves the right to sub-contract the performance of any Contract, other than the supply of MIELE machines or part thereof to any other party or person or corporation it may determine.

16. INDEMNITY

16.1 The Customer shall keep MIELE indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Customer or which the Customer may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Product/s unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, MIELE or its duly authorised employee or agent.

17. PRIVACY

17.1 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 1988 (Cth). A copy of the Privacy Charter is available from MIELE or www.MIELE.com.au.

17.2 MIELE may disclose personal information to its related companies and to organisations which provide services (including delivery services and repair / warranty services) to MIELE or its Customers.

18. GOVERNING LAW

18.1 This agreement is subject to the laws of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the Courts of that State.

19. DEFINITIONS

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

'IQ' means installation qualification

'MIELE' means MIELE Australia Pty Ltd. ACN 005 635 398
ABN 96 005 635 398 of 1 Gilbert Park Drive Knoxfield VIC 3180.

'MIELE Professional' means the MIELE Product/s suitable for use and operation in commercial environments.

'OQ' means operation qualification

'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 Professional Product/s referred to in the order.