

DEALER TERMS & CONDITIONS

*** PLEASE READ CAREFULLY ***

1. INTERPRETATION

- 1.1. These terms & conditions ("the Agreement") are between Escea International Limited (Hereinafter referred to as "ESCEA") and the wholesaler (Hereinafter referred to as "THE DEALER").
- 1.2. Any change to the contact details shall be notified in writing by one party to the other party.

2. APPOINTMENT OF DEALER

- 2.1. ESCEA appoints THE DEALER to:
- 2.2. Market and sell the Products, and any other items manufactured or sold by ESCEA that both parties agree in writing should be added to the Product list.
- 2.3. Use ESCEA's trade marks in connection with the marketing of the Products for distribution in the Territory.
- 2.4. The current ESCEA "Products" are listed in the Escea Dealer Catalogue.

3. BACKGROUND

- 3.1. The aim of this Agreement is to ensure that ESCEA and THE DEALER understand the trading terms and all parties are working to the same objectives. This Agreement incorporates ESCEA's standard terms of trade.
- 3.2. THE DEALER shall have the non-exclusive and non-transferable right to market & sell Escea products.
- 3.3. ESCEA engages THE DEALER as an independent dealer of the Products on the terms and conditions set out in this Agreement.
- 3.4. THE DEALER agrees to promote escea branded products for sale through their retail outlets. THE DEALER is free to maintain its own pricing structure. The Products will be branded escea.
- 3.5. THE DEALER shall comply with the following duties and obligations:

- 3.5.1. Where appropriate, display ESCEA Product in their showroom/s as per the terms of the ESCEA display model program;
- 3.5.2. Actively promote the Products to consumers and commercial clients through, but not limited to, advertising, open houses, field demonstrations and other applicable gatherings;
- 3.5.3. Where appropriate, display ESCEA Product in their showroom/s as per the terms of the ESCEA display model program;
- 3.5.4. Meet minimum input and output performance targets which shall be agreed to between the Parties;
- 3.5.5. Implement marketing and sales programs that are agreed upon by the Parties;
- 3.5.6. Follow ordering / service / warranty procedures as determined by ESCEA;
- 3.5.7. Provide sales reports to ESCEA if requested by ESCEA; among other information requested by ESCEA;
- 3.5.8. Properly staff and train sales, service & parts personnel with respect to the escea products;
- 3.5.9. Honor warranty commitments as per the stated Product warranty conditions and procedures outlined in this Agreement;
- 3.5.10. Cooperate with ESCEA in the prompt resolution of any customer service or warranty issues;
- 3.5.11. Extend to THE DEALER's customers, the ESCEA applicable standard printed warranty which is on effect at the time or retail sale. THE DEALER understands that no other warranty is expressed or implied;
- 3.5.12. Explain proper operating and safety instructions to THE DEALER's retail customers, together with delivery of applicable written operating & safety instructions.

- 3.6. ESCEA shall comply with the following:

- 3.6.1. Provide quality, innovative products to THE DEALER;
- 3.6.2. Provide initial training (with the support of the Escea Sales Rep) to THE DEALER's sales and technical staff;
- 3.6.3. Meet any obligations in terms of marketing and sales programs as per the mutually agreed sales/marketing programs that are agreed upon by the Parties;
- 3.6.4. Honor warranty commitments as per the stated Product warranty conditions and procedures as outlined in this Agreement.
- 3.6.5. Attain UL approval for the Products.
- 3.6.6. Cooperate with THE DEALER in the prompt resolution of any customer service or warranty issues.

- 3.7. The terms and conditions of this Agreement shall prevail over any conditions specified by THE DEALER under each order unless specifically modified by negotiation between the parties and accepted in writing by ESCEA & THE DEALER.

4. MINIMUM PERFORMANCE REQUIREMENTS

- 4.1. THE DEALER will be required to meet certain input and output targets during the term of the agreement.

- 4.2. The performance requirements will be measured by agreed inputs as well as measured outputs. ESCEA and THE DEALER will mutually agree on minimum additional input and output performance requirements on an annual basis.
- 4.3. At the end of Year one (1) either Party may terminate this Agreement, by giving the other Party notice in writing, which notice is received, one month prior to the end of Year one (1). In the event of termination in accordance with clause 5.2, the Parties shall have the following obligations:
- 4.4. If THE DEALER terminates the Agreement then THE DEALER shall have an obligation to:

- 4.4.1. Pay in full any outstanding accounts;
- 4.4.2. Return any marketing collateral that has been provided to THE DEALER by ESCEA;
- 4.4.3. THE DEALER would also continue to take responsibility for warranty costs of any ESCEA fire that was sold by THE DEALER during the Term and ESCEA will continue to honor its warranty obligations to THE DEALER as per the terms of this agreement, for the fires sold during that period.

- 4.5. If ESCEA terminates the Agreement, then ESCEA shall have an obligation to:

- 4.5.1. ESCEA will continue to honor its warranty obligations to THE DEALER as per the terms of this agreement, for the fires sold during that period;

- 4.6. Either party may terminate this Agreement, with thirty (30) days written notice, in the event of a material uncured breach of this Agreement by the other, after providing written notice of the breach and a cure period not to exceed thirty (30) days.

5. MAINTENANCE OF STOCK & PARTS

5.1. DISPLAY STOCK

- 5.1.1. THE DEALER agrees that under the terms of this Agreement they will as a condition of appointment install, at least one working burn Display Model of each type of ESCEA Product in each of the retail outlets that they operate in the following way:
 - a. Permanently connected to gas or electricity – if required;
 - b. All escea Insert Fireplaces to be displayed in a "Lifestyle setting" in that they are installed into a wall that is clad and decorated to a high quality;
 - c. Any 'Point of Sale' material supplied by ESCEA or THE DEALER will be displayed close to the escea fireplace;
 - d. Regularly maintained and kept dust free and not have any other objects placed on or in front of;
 - e. Located in a part of the shop that is prominently seen by shoppers.

5.2. GENERAL STOCK & PARTS

- 5.2.1. ESCEA may from time to time offer incentives to THE DEALER to purchase Product, but THE DEALER is not obliged to purchase Product on this basis.
- 5.2.2. THE DEALER shall maintain an adequate level of stock and spare parts to service its customers in a timely manner.
- 5.2.3. The Parties agree that the following components may be sourced locally by THE DEALER and sold with ESCEA Product:
 - a. A Fireplace Outdoor Module [FOM] to house the EF5000 gas fireplace.
 - b. Venting components for Escea Indoor Gas Fireplaces.
- 5.2.4. The following accessories for ESCEA Product ("the Accessories") together with any other Accessories nominated in writing by ESCEA may ONLY be purchased by THE DEALER from or via ESCEA.
 - a. Alternative fuel bed effects for any ESCEA product.
 - b. Alternative fascia options for any ESCEA product.
 - c. NG to PG conversion kits (or vice versa) for ESCEA product.

6. ANTICIPATED FORWARD REQUIREMENTS

- 6.1. The Parties agree that the best way of ensuring ESCEA production forecasts match THE DEALER anticipated demand is for both Parties to communicate effectively and often. ESCEA sale reps will from time to time ask THE DEALER for predictions of future sales to help ESCEA with production forecasts. For the purposes of marketing strategy both Parties will work together to forecast demand.

7. ORDERING PROCEDURE

- 7.1. The Parties agree that the following order procedure shall apply in relation to THE DEALER ordering the Products from ESCEA.
- 7.2. THE DEALER will provide ESCEA with the following information for each Product Order

- 7.2.1. Purchase order number
- 7.2.2. Date
- 7.2.3. Product Codes (as per the Escea Catalogue)
- 7.2.4. Description of Products, including any options or accessories
- 7.2.5. Fascia color required

- 7.2.6. Fuel Bed choice required
- 7.2.7. Quantity
- 7.2.8. Shipping instructions
- 7.2.9. Date required by

enhancements with prior notice. The results of any such survey will be made known to THE DEALER.

15. RISK OF LOSS

15.1. SHORTAGES, DAMAGE OR LOSS IN TRANSIT

- 15.1.1. For the purposes of this Section 16, any reference to THE DEALER shall include the Dealer(s) receiving the Product ordered. It will not apply to customers and commercial clients.
- 15.1.2. Liability for shortages in the quantity of Products delivered by ESCEA is limited to making up the shortages. No claim for shortages will be allowed unless THE DEALER gives notification of the shortage in writing within 10 days of the date of delivery to THE DEALER or its Dealer(s) as the case may be and gives reasonable opportunity for ESCEA to fully investigate the claim.
- 15.1.3. The risk in each of the Products will pass to THE DEALER when THE DEALER takes delivery of the Product. THE DEALER will "take delivery" when THE DEALER or any person acting on THE DEALER's behalf (including but not limited to a freight company contracted by THE DEALER) receiving the Product.
- 15.1.4. Product leaving the ESCEA warehouse will be adequately packed. Freight claims for damage or loss in transit will be made against ESCEA's insurer in the manner prescribed below.
 - a. Prior to acknowledging delivery to the carrier, THE DEALER, their representative or the Dealer must ensure that the complete consignment as per the carrier's note and seller's delivery docket / packing slip has been received.
 - b. Should there be a shortage or visible damage the carrier's note must be endorsed accordingly.
 - c. If any damage is found THE DEALER must notify ESCEA within 10 days of receipt of consignment so that ESCEA can make a claim against their insurer.
 - d. Any damage claim submitted by THE DEALER must be supported in a written report format and photographic evidence.
 - e. No carriers will be used that are not acceptable to ESCEA and its insurers; otherwise all risk of loss falls upon the party selecting an unapproved carrier.
- 15.1.5. No claims may be made against ESCEA by THE DEALER later than ten (10) days after the receipt of the particular consignment by THE DEALER.

15.2. ERRORS AND OMISSIONS

- 15.2.1. Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements of invoices, will be subject to correction by ESCEA.

15.3. FORCE MAJEURE

- 15.3.1. ESCEA will make every effort to deliver Product by the estimated date or dates. Delay or failure to do so by reason of ESCEA's inability to obtain supplies of raw materials from usual sources or equipment or transport or by reason of labor trouble, inclement weather, war, riots, civil commotion, fire, act of God, or any other cause whatsoever beyond ESCEA's control shall not constitute a breach of this Agreement and THE DEALER shall have no claim against ESCEA as a result of failure to deliver Product by the estimated date or dates. In such cases the Agreement shall be deemed to be suspended at ESCEA's discretion, or may be terminated. THE DEALER's inability to deliver or transport or by reason of labor trouble, inclement weather, war, riots, civil commotion, fire, act of God, or any other cause whatsoever beyond THE DEALER's control shall not constitute a breach of this Agreement and ESCEA shall have no claim against THE DEALER as a result of failure to deliver Product by the estimated date or dates.

16. INSURANCE

- 16.1. THE DEALER must (at its cost) effect and maintain the following insurances during the term:
 - 16.1.1. product liability; and
 - 16.1.2. public (general) liability;in each case for an amount of not less than \$5,000,000 in the aggregate.

- 16.2. During the term, THE DEALER must (at its cost) effect and maintain workers compensation insurance in accordance with relevant laws.

17. PRODUCT WARRANTY

- 17.1. The following worded warranty will appear on the ESCEA user guide and installation & service manual:

Provided that the Product is installed as per ESCEA's Installation Manual and the step by step warranty procedure has been followed as per instructions issued by

- 7.3. All Orders must be submitted in writing by THE DEALER and submitted to ESCEA.
- 7.4. ESCEA will confirm by return fax / email acceptance of a purchase Order and note the expected delivery or dispatch date.
- 7.5. ESCEA reserves the right not to accept Orders if the THE DEALER trading account has an outstanding or overdue balance.
- 7.6. Supply by ESCEA of a quotation for Product shall not operate as an offer or obligation to supply or sell Product but shall be treated by THE DEALER as an invitation to submit an Order for consideration by ESCEA. Price lists will be issued by ESCEA and updated as required. It is the responsibility of THE DEALER to ensure that it is always working from the most up to date ESCEA Product price list.
- 7.7. ESCEA shall process invoices from the date Product leaves the North American warehouse for delivery to THE DEALER.

8. MODE OF SHIPMENT

- 8.1. The Parties agree that during the Term of this agreement, THE DEALER shall order Product and ESCEA shall supply Product to THE DEALER by way of domestic road transport. ESCEA shall be responsible for the cost freight from the nominated ESCEA USA based warehouse to the THE DEALER as long as for any single shipment consists of purchases over US\$2000 in wholesale value.
- 8.2. For individual shipments under US\$2000 then freight is charged to the DEALER.

9. PRICE OF THE PRODUCTS

- 9.1. The current price schedule for the Products is attached to the schedule C of this Agreement.
- 9.2. All prices listed or quoted for the Products are subject to alteration by ESCEA by giving THE DEALER a minimum of 2 months' notice in writing. Listed or quoted prices charged will be those current at the time of dispatch of goods.
- 9.3. Subject to clause 10.2 and 10.4, ESCEA reserves the right to review and modify the purchase price for the Products if the specifications or scope of the Products change.
- 9.4. Trading currency shall be in US Dollars unless stated otherwise.

10. PAYMENT TERMS

- 10.1. THE DEALER agrees payment for all Product be made in full by the 20th of the month following the date of invoice issued by ESCEA – this being the date the goods have been confirmed as being shipped from the ESCEA warehouse. Payment will be by money transfer [MF] or check. THE DEALER will pay invoices in full on the due date.
- 10.2. Where payment is not made by the 20th of the month following the date of invoice, THE DEALER agrees to pay interest on any outstanding amount at the rate of 1.5% per month calculated from the date of invoice. THE DEALER further agrees to pay ESCEA any collection costs incurred in relation to any outstanding invoices, plus all costs and expenses incurred on a solicitor / client basis by ESCEA in recovering any overdue amounts

11. RETENTION OF OWNERSHIP OF GOODS

- 11.1. Until THE DEALER makes payment in cleared funds of all amounts due to ESCEA in respect of the Products and any other goods and services supplied by ESCEA to THE DEALER, ESCEA retains full ownership of and title to the Products, any goods supplied by ESCEA to THE DEALER, and any proceeds of the Products or goods supplied.

12. ADVERTISING & PROMOTION

- 12.1. Shared marketing initiatives: THE DEALER and ESCEA agree to work very closely together, on a case by case basis, on joint advertising and promotion initiatives. ESCEA Sales Reps will be available to assist THE DEALER in creating their ESCEA marketing plan each year.
- 12.2. ESCEA agrees to make available to THE DEALER in a suitable "North American format" any images or digital marketing materials that it has created.

13. PRODUCT TRAINING & TECHNICAL SUPPORT

- 13.1. ESCEA will provide resources to meet THE DEALER and trade requirements for reasonable technical support as may be mutually agreed from time to time.
- 13.2. ESCEA and THE DEALER will mutually agree to the level of resources and time-lines for Product training for THE DEALER.

14. PRODUCT ENHANCEMENTS

- 14.1. ESCEA reserves the right to make modifications or enhancements to the Products recognizing the need to meet CSA / UL requirements. Routine modifications and enhancements shall not affect the price of the Products.
- 14.2. ESCEA reserves the right to alter wholesale pricing, subject to Section 10, and will notify THE DEALER in writing by reissuing relevant pages of Product price list but only after giving THE DEALER a minimum of two (2) months' notice and with prior consultation with THE DEALER.
- 14.3. ESCEA may survey THE DEALER sales staff, Dealers and customers from time to time to assess the markets' feelings towards ESCEA products and their features. The results of any such survey may be incorporated into future Product Designs or

ESCEA, (documented in the Dealer Manual), and the product is operated and maintained in accordance with ESCEA operating and maintenance instructions, then for the first period of twelve (12) months from the date of purchase ESCEA will pay to the dealer who sold the appliance, a pre-determined sum to repair or replace any part of the Product that is deemed by ESCEA to be faulty. For the second period of twelve (12) months from the date of purchase ESCEA will supply replacement parts only, without charge.

17.2. Parts and Labor for the first twelve (12) months:

- 17.2.1. ESCEA, at its sole discretion and through its dealer, may modify, adjust, repair, or replace the faulty products. The warranty period on parts and labor shall be for twelve (12) months from the date of purchase.
- 17.2.2. Pre-determined labor costs will only be reimbursed when ESCEA specified procedure has been followed, and ESCEA has authorized service work before it was carried out.

17.3. Parts Only for the second twelve (12) months:

- 17.3.1. ESCEA, at its sole discretion, will provide replacement parts to its dealer for the benefit of an end user. Faulty parts MUST be returned to ESCEA. The parts only warranty period shall be for twelve (12) months and will commence twelve (12) months after the acceptance date of the Products by the ESCEA retailer.

17.4. General Terms and Exclusions:

- 17.4.1. All repairs made within the Limited Warranty period shall be covered by this Limited Warranty for a period of three (3) months from the date of completion of the repair, or for the remainder of the overall Limited Warranty period, whichever is the longer.
- 17.4.2. If the buyer or any other party modifies any part of the product within the Limited Warranty period without the prior written consent of ESCEA then the Limited Warranty shall be void.
- 17.4.3. ESCEA may, at its sole discretion, decide that the Limited Warranty is void in relation to any part of the product, which has been modified.
- 17.4.4. ESCEA must be notified of all claims under this Limited Warranty as soon as possible, but in any event not later than two (2) weeks of the claimant becoming aware of the circumstance giving rise to the claims.
- 17.4.5. No ESCEA Distributor, retailer, employee or other third party is authorized to make any modification, extension, or addition to this Limited Warranty, whether verbal or written.
- 17.4.6. ESCEA reserves the right to discontinue products or make substitutions, in such event, the buyer may receive a substitute product or a cash refund at ESCEA'S sole discretion, if a replacement for the product covered by this Limited Warranty is no longer available.
- 17.4.7. ESCEA is not responsible for damage arising from failure to follow instructions for the product's installation, maintenance and permitted and proper use. The Limited Warranty does not cover damage caused by use with non-ESCEA products or damage caused by accident, abuse, misuse, weather, fire, flood, earthquake or other external causes. Products where an ESCEA serial number has been removed or defaced or damage caused by incorrect fuel type or flueing are also not covered. Cosmetic damage, including but not limited to paint blemishes, scratches, nonstructural surface rust, water damage and normal fair wear and tear are not covered as well. Gas Fireplaces require annual service, problems caused by not having this service done such as (but not limited to) dust and debris build up, flat batteries, insects present in burners, incorrect gas pressure and worn thermocouples are also not covered under this warrantee.

17.5. This limited warranty, and the remedies set forth above, are exclusive and in lieu of all other warranties, remedies and conditions, whether verbal or written, statutory, express or implied. Escea specifically disclaims any and all statutory or implied warranties and conditions, including, without limitation, warranties of merchantability, fitness for a particular purpose and warranties against latent defects. Except as provided herein, Escea is not responsible for direct, special, incidental or consequential loss or damages resulting from any breach of warranty or condition, or under any other legal theory, including but not limited to the loss of any of the following: use; revenue; actual or anticipated profits (including loss of profits on contracts); use of money; anticipated savings; business; opportunity; goodwill; reputation; any or indirect or consequential loss or damage howsoever caused including the replacement or equipment and property. Some states in Canada and in some States in the United States do not allow the exclusion of incidental or consequential damages, so the above limitation may not apply to buyer.

17.6. In the event of an end user experiencing operational problems with their escea gas fireplace during the warranty period, the dealer who sold the appliance must ensure that a suitably competent person goes through the ESCEA "Diagnostic Check Sheet" (either on site or over the phone). Each part of this sheet must be filled in during this process. If the resultant diagnostic pathway leads to the requirement of a replacement part then the procedure contained in Schedule A must be followed.

17.7. Costs that ESCEA will not be liable for in connection with warranty issues or returns include (but are not limited to)

- 17.7.1. Labor costs of THE DEALER to replace parts over and above the fixed sum allowed in Schedule A.
- 17.7.2. Travel costs to and from the location of the product.
- 17.7.3. Freight damage on shipments from ESCEA that was not reported to ESCEA within the term listed in clause 16.1.
- 17.7.4. Freight damage that occurs during domestic freighting of the goods.

17.7.5. Cosmetic damage such as (but not limited to) scratches, paint blemishes, nonstructural surface rust on on-cosmetic parts, dirt or water staining that occurs after the product has been shipped

17.7.6. Problems caused by not having annual product service work done such as (but not limited to) dust and debris build up, flat batteries, insects present in burners, incorrect gas pressure and worn out thermocouples.

17.8. ESCEA's liability for defective Products or loss caused by defective Products is limited to one of the following two (2) remedies at its sole discretion:

17.9. Replacing or repairing defective Products.

17.10. THE DEALER shall ensure that it shall not make any warranty representations, verbal or written, to customers which go beyond those given by ESCEA herein and in the Manufacturer's Limited Warranty document which accompanies each Product. THE DEALER acknowledges that in the event it makes any unauthorized or extended warranties it shall be solely liable to customers in respect of such warranties. All warranty claims shall be notified to ESCEA as soon as practicable but in any event not later than four (4) weeks of THE DEALER becoming aware of the circumstance giving rise to the claims.

17.11. Warranty claims will be processed upon receipt of a completed "diagnostic check sheet" And is subject to the return of the relevant (replaced) parts to ESCEA.

17.12. It is envisaged that these parts will be returned to ESCEA at the completion of the service work, the cost of freighting these parts back will be paid by ESCEA. Upon agreement by both parties, large sheet metal parts that are damaged beyond repair will be photographed in USA by THE DEALER and then destroyed.

17.13. Any cost of sending gas technicians or service people to repair or to replace parts on ESCEA products, over and above the fixed sum allowed in schedule A, will be covered by THE DEALER.

17.14. If THE DEALER, buyer or any other party modifies or misuses or improperly maintains or repairs any part of the Products within the warranty period without the express consent of ESCEA then the warranty shall be void in relation to that modified part of the Products. ESCEA may, at their sole discretion, decide that the warranty is void in relation to the part of the Products, which have not been modified.

18. LIMITATION OF REMEDIES

18.1. The sole and exclusive remedies for breach of any and all warranties and the sole remedies for ESCEA's liability of any kind (including liability for delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including failure to do something which should have been done or to prevent something from happening), faulty specifications and design, faulty materials, components, manufacture, compilation, or assembly of the products or otherwise with respect to the products and services covered by this agreement and all other performance by ESCEA under or pursuant to this agreement shall be limited to the remedies provided in section 18, product warranty.

18.2. Consequential Damages.

18.3. IN NO EVENT SHALL ESCEA'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST SALES, LOST CUSTOMERS, LOST PROFITS, LOST REVENUE, LOST USE, LOST GOODWILL, LOST BENEFIT OF THE AGREEMENT, ATTORNEYS FEES, OR LIABILITIES TO THIRD PARTIES INCURRED BY THE DEALER, NO MATTER WHAT THE CAUSE THEREOF, INCLUDING NEGLIGENCE, EVEN IF ESCEA SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

18.4. Scope of Limitation.

18.5. For purposes of this Section 19, "ESCEA" also includes its shareholders, directors, officers, employees or agents and/or related corporate entities and their shareholders, directors, officers, employees or agents.

18.6. The maximum total liability of ESCEA to THE DEALER in respect of the products shall not exceed the purchase price of the particular product or products involved.

18.7. ESCEA shall not be responsible for damage to Products resulting from circumstances beyond their control as outlined in this Section.

19. CONFIDENTIAL INFORMATION & TRADE SECRETS

19.1. Information obtained by ESCEA or THE DEALER in confidence shall be confidential between the parties and no confidential information shall be disclosed to any third party without the express written permission of the other party.

19.2. THE DEALER shall keep confidential any information received from ESCEA that is not publicly available (or publicly available through unauthorized disclosure) related to the Product, ESCEA's business or this Agreement ("Confidential Information"). THE DEALER and its employees / contractors shall not use or disclose any Confidential Information except for the purposes of this agreement or as required by law and only to the extent so required.

19.3. THE DEALER shall make no more copies of any Confidential Information than is reasonably necessary for its use under this agreement. All Confidential information shall be handled with appropriate internal security procedures to protect it from unauthorized access or use. All Confidential information (including copies) shall be returned immediately to ESCEA on request.

19.4. Confidential information shall include ESCEA trade secrets such as THE DEALER commercial client and customer lists for ESCEA Products, ESCEA proprietary Product information, ESCEA marketing plans, and similar information which are defined as trade secrets under applicable laws. Upon the termination or expiration of this Agreement, all such information shall be promptly provided to ESCEA and

THE DEALER shall not make future use of such information in a manner which would injure ESCEA's business.

20. DISPUTE RESOLUTION

- 20.1.If either party has any dispute with the other in connection with this agreement:
- 20.1.1. That party will promptly give full written particulars of the dispute to the other.
 - 20.1.2. The parties will promptly communicate through conference calls or video conference or in-person meetings together and in good faith try and resolve the dispute. Arrangements and locations will be mutually agreed upon.
- 20.2.If the dispute is not resolved within seven (7) days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 20.3.A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.
- 20.4.The mediation will be conducted by a Leading Edge Alternative Dispute Resolver (LEADR) mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 20.5.If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator.
- 20.6.The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.
- 20.7.The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the New Zealand Arbitration Act 1996.
- 20.8.The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 20.9.The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 20.10. The parties must continue to comply with their obligations under this agreement during the dispute resolution process but disputed payments may be withheld to the extent of the dispute.\
- 20.11. This clause will not apply to:
- 20.12. A dispute arising in connection with any attempted re-negotiation of this agreement; or any application by either party for urgent interlocutory relief

21. TERMINATION OF AGREEMENT

- 21.1.This agreement shall continue until ended: or by agreement between the parties; or in accordance with Section 5 above or clause 22.2.
- 21.2.Either party can end this Agreement by notice in writing (the Termination Notice") if the other party commits an act of bankruptcy or makes any assignment or composition with its creditors; becomes liable to be placed in liquidation; cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with Section 287 the New Zealand Companies Act 1993 or U.S. bankruptcy law; or fails to maintain satisfactory insurance with respect to the products or suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them; has a liquidator appointed or its board or shareholders propose or pass a resolution to appoint a liquidator; has a receiver, manager or statutory manager appointed; has an application for it to be placed in liquidation presented or advertised;
- 21.3.passes or purports to pass a resolution for it to be placed in liquidation; transfers or disposes of a substantial part of its assets for inadequate consideration, or threatens to do so; has an order made against it for more than \$10,000.00 against its property or assets; has a final judgment for more than \$10,000.00 against it which remains unpaid for 14 days;
- 21.4.There is a change in the effective control of the THE DEALER without prior written notification to ESCEA.
- 21.5.Any termination of this Agreement will be without prejudice to the rights of either party arising prior to termination.
- 21.6.Nothing in this clause affects the operation of any clauses in this Agreement which are expressed or implied to have effect after its termination.
- 21.7.On termination of this Agreement: THE DEALER must return to ESCEA all technical, marketing and sales information and/or assets then in its possession or control as soon as this Agreement ends and must immediately stop using any such information and must also comply with Section 20 Confidential Information and Trade Secrets.

22. NOT AN AGENCY

- 22.1.THE DEALER acknowledges it is not an agent or legal representative of ESCEA for any purpose nor that this Agreement creates a relationship of employment, agency, partnership or joint venture between the parties. This Agreement does not entitle THE DEALER to enter into any arrangement or obligation on behalf of ESCEA without ESCEA's prior written approval.

23. INTELLECTUAL PROPERTY

- 23.1.THE DEALER will at all times recognize the ownership by ESCEA of all intellectual property, including trade secrets, relating to the Products ("the Intellectual Property") and acknowledges the exclusive right and jurisdiction of ESCEA to take all measures it considers appropriate for the protection of the Intellectual Property. THE DEALER shall, at the expense of ESCEA, take all such steps as ESCEA may reasonably be required to assist ESCEA in maintaining and enforcing its Intellectual Property rights in relation to the Product during the term.

24. TRADEMARKS

- 24.1.THE DEALER acknowledges that it shall immediately stop using ESCEA's trade names and trademarks (including any words resembling the trade names or trademarks) if this Agreement is terminated or expires.
- 24.2.In the marketing of the Product, THE DEALER shall use the Trade Marks and other Intellectual Property of ESCEA in relation to the Product only as directed by ESCEA, and shall:
- 24.2.1. Not use any other trademarks or trade names except as expressly authorized by ESCEA in writing;
 - 24.2.2. Not alter, remove or tamper with any trademarks, numbers or other means of identification or other Intellectual Property on or in relation to the Product; and
 - 24.2.3. Not use any of the trademarks or other Intellectual Property in any way which might prejudice the distinctiveness or the goodwill of ESCEA.
- 24.3.THE DEALER agrees to co-operate with and assist ESCEA in the protection of its trademarks and trade name owned or licensed to ESCEA and agrees to inform ESCEA immediately of any infringement or other improper action with respect to ESCEA's trademarks and the trade names that THE DEALER is aware of and of any claim of which it becomes aware by any third party that the importation of the Products into the Territory or their sale therein infringes any rights of any person, and THE DEALER shall at the request and expense of ESCEA do all such things as ESCEA may reasonably require to assist in taking or resisting any proceedings in relation to any such infringement or claim.

25. APPLICABLE LAW

- 25.1.Except as provided herein, this Agreement shall be construed in accordance with the laws of New Zealand whose Courts shall have exclusive jurisdiction in all actions or matters touching on or concerning this Agreement. In the event a dispute should arise over the interpretation or enforcement of either Section 18 on Product Warranty or Section 19 on Limitation of Remedies, the parties agree that at the sole option of ESCEA, the laws New Zealand as defined in this agreement have exclusive jurisdiction. The parties further agree that the UN Convention on Contracts for the Sale of Goods does not apply.

26. PARTIAL INVALIDITY

- 26.1.The illegality, invalidity or unenforceability of a provision of this agreement under any law shall not affect the legality, validity or enforceability of that provision under any other law or the legality, validity or enforceability of any other provision in this agreement.

27. COMPLIANCE

- 27.1.The Product Dealer, commercial client or customer shall be solely responsible for obtaining any necessary permits under and for compliance with all local legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Products. The only exception to this is that ESCEA are responsible for ensuring that the Products meet all North American approval requirements.

28. ENTIRE AGREEMENT

- 28.1.This agreement including all of the schedules attached hereto and incorporated herein (see schedules attached) as an integral part of this agreement, constitutes the entire agreement of the parties with respect to the parties with respect to the subject matter hereof, and supersedes all previous agreements as well as proposals, oral or written, and all negotiations, conversations, or discussions heretofore had between the parties related to this agreement. THE DEALER acknowledges that it has not been induced to enter this agreement by any representations or statements, oral or written, not expressly contained herein.

29. AMENDMENT

- 29.1.This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived, in whole or in part, except by a written amendment signed by authorized officers of the parties hereto.

30. ASSIGNMENT

- 30.1.This Agreement, and THE DEALER'S rights and obligations hereunder, shall not be assigned by THE DEALER without the prior written consent of ESCEA.

SCHEDULE A: Warranty Policy and Process

Escea Luxury Fireplaces – North America

Section 1) The Process: Please see back page of the User Guide for full warranty details.

In the event of an end user experiencing operational problems with their escea gas fireplace during the warranty period, the dealer who sold the appliance must ensure that a suitably competent person goes through the attached "Diagnostic Check Sheet" (either on site or over the phone). Each part of this sheet must be filled in during this process. If the checks performed whilst filling in this form do not solve the problem then the process contained below must be followed;

- a) The completed "Diagnostic check sheet" form (attached) must be faxed to our USA fax number or a scanned copy emailed to: technical@escea.com, by THE DEALER who sold the appliance.
- b) ESCEA will then, at it's discretion, send a replacement part to THE DEALER from our stock held within USA and included with this will be a pre-paid pre-addressed courier bag for them to return the faulty part to us (please include a copy of the Diagnostic check sheet that you originally sent to us so that we can reference these parts to a customer and a fireplace). We may also contact the dealer or the customer directly to ask more questions if the Diagnostic check sheet does not give us sufficient data to diagnose the fault.
- c) ESCEA will then credit THE DEALER with a fixed price labour allowance (as per section 2 of this document) to cover the average time it would take for any standard spare part in an Escea gas fire to be changed and the time it took to do the initial diagnostics.
- d) Upon receipt of the faulty parts Escea will test the part and report back to the dealer what their finding was. In the event of repetitive occurrences, by any single dealer, of parts being returned to Escea that where found to be in no way faulty, escea reserves the right to claim back any labour allowance paid on that particular service call. Parts not returned to Escea may be charged to that dealer.

Section 2) Escea Warranty Policy:

2.1) Freight/Shipping Damage:

Freight damage is not considered "warranty" and is therefore dealt with outside of the warranty claim system.

It is the responsibility of the dealer to inspect and view all incoming shipments for freight damage prior to signing the bill of loading. This should include inspecting the packaging for signs of damage and also lifting the outer sleeve of fireplace boxes to check for concealed damage. Fascia boxes should also be opened so that fascias can be inspected for dints or scratches.

If you find damage it is best to refuse rather than accept the shipment from the carrier, this puts the responsibility back on escea to file a claim where possible with the freight company. If a dealer accepts damaged products then it becomes their responsibility to claim damage where possible back from the freight company.

In all cases we will attempt to work with the dealer and send replacement parts where possible for the dealer to replace on the damaged product. Credits will only be issued for replacement parts when photo's of the damage are sent to escea at the beginning of that process.

2.2) Problems during initial installation:

If the installer finds a fault with an Escea appliance during initial installation they should use the fault finding guide in the service manual to try and identify and rectify the fault. If the fault can be rectified by them, then any time spent doing this is not claimable as warranty as it is considered part of the installation process. If the fault can not be rectified by the installer then the attached Diagnostic Check Sheet should be completed and sent to Escea.

2.3) Problems that arise after installation and within the warranty period:

As per the process listed above, the only party who can claim replacement parts and fixed rate labor allowance to fit those parts is the dealer who sold the escea appliance. It is that dealer's responsibility to gather answers to the questions on the Diagnostic Check Sheet and send this form to Escea. The time taken to collect these answers and fill in the form (even if this involves a visit to site) is not claimable but is considered part of being a gas appliance dealer. Please note that labor allowance is only paid for claims made within 12 months of the date that the appliance was sold from the retailer/dealer. For the 2nd 12 months after the date of sale, the same completed Diagnostic Check Sheet is required before replacement parts will be issued under warranty.

Under no circumstances should a complete fireplace be removed for a warranty issue without authorization of Escea.

2.4) The Second Owner:

Escea's product warranty is only valid for the first owner, i.e. the householder or company that purchased the appliance off the dealer. If a dealer sells a burn model display unit then it must be sold as a "second-owner" fireplace and the customer must be explained that because of this the warranty will not extend to them.

2.5) Fixed labor allowance:

Upon receipt of a completed Diagnostic Check Sheet, Escea may request that a Dealer send a service person to do further checks or to fit a replacement part. Escea will then issue a credit for **\$150.00 USD** as a contribution to the labor required to carry out this service work. This fixed cost is also structured to cover travel costs. No additional travel or labor costs will be reimbursed. If the product is located a great distance from the dealer's physical location then it is the responsibility of the dealer to use these funds to subcontract a service person located closer to the installation to change the required parts, any shortfall to be made up by the dealer. On-sending parts to another service person are at the cost of the dealer. The fixed labor fee will only be paid in the form of a credit on that dealer's account. Only one fixed fee will be payable for any one incident or request by Escea, for parts to be fitted.

SCHEDULE B: Replacement Parts (subject to change as new Products are added to the Escea Catalogue)

See the latest Escea price list for more information.

SCHEDULE C: Price List

PRICE LIST attached to this schedule (subject to change as new Products are added to the Escea Catalogue)

SCHEDULE D: Escea Manuals & User Guides

ESCEA user, installation and service manuals are attached to this schedule (subject to change) – for the latest copy of these manuals are shown on the ESCEA website www.escea.com.