



**Procurement
Education
& Training**

11 October 2010

Mr Greg Ellis
Managing Director
Rinnai Australia Pty Ltd - Head Office
10-11 Walker Street
Braeside, VIC 3195

DOC10/136882

Dear Mr Ellis

The NSW Department of Education and Training (Department) and Rinnai Australia Pty Ltd (Rinnai) – Standing Order Arrangement for Rinnai heating products

This letter sets out the terms on which the Department can place orders for Rinnai heating products and Rinnai must fulfil those orders. **Annexure A (Initial Order details)** sets out the details of the Department's initial order (**Initial Order**). The heating products ordered under the Initial Order must be available for the Department's (or its authorised representative's) collection from Rinnai's warehouse in New South Wales before 30 November 2010. The Department agrees to place a formal purchase order for this Initial Order on Rinnai's signing of this letter.

Annexure B (Proposal variations) sets out terms that apply to this letter and any order. This is made up of the Rinnai Proposal and variations to that document.

Annexure C (Pricing) sets out the pricing for the Rinnai heating products that can be ordered under this arrangement. The pricing set out in this annexure varies the pricing set out in Section 5 'Pricing' of the Rinnai Proposal.

Attached – Rinnai Proposal

The terms set out in this letter will be incorporated into any order placed by the Department with Rinnai. A reference to a heating product or appliance includes a reference to heaters and flue parts and any other part that accompanies them.

Rinnai acknowledges this is a non-exclusive arrangement and the Department can procure heating products or any part of them from a third party at any time. Other than the Initial Order, the Department is not obligated or required to, and has not represented and does not represent that it will, order any particular or minimum quantity of heating products, from Rinnai. This applies even where the Department provides information reflecting the Department's then current intention to place additional orders of Rinnai heating products. The Department will not be committed to acquiring any heating products other than through a placed order.

Despite any other terms in this letter, the Rinnai heating products must at least comply with all Australian standards.

This standing order arrangement (including the prices set out in this letter) applies to orders placed by the Department before 30 June 2011, unless extended by agreement between the parties.

The terms of this letter are governed by the law of New South Wales, Australia. The parties submit to the exclusive jurisdiction of its courts.

To accept the terms of this arrangement and agree to fulfil the Initial Order according to the terms set out in this letter, please have Rinnai's authorised officer sign a copy of this letter (in the section below) and return it to the Department. On receipt of the letter signed for Rinnai, the Department will raise a formal purchase order for the Initial Order.

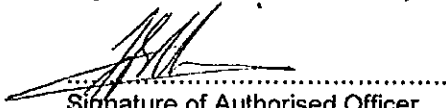
Yours sincerely



Paul Hopkins
Chief Procurement Officer
Procurement Directorate
11 October 2010

Cc: Mr Nathan Burling
Rinnai Australia Pty Ltd
65 Elizabeth Street
Wetherill Park NSW 2164

Rinnai's agreement: Rinnai agrees to the terms of this letter.
Signed for Rinnai Australia Pty Ltd by:



.....
Signature of Authorised Officer
Name/Title:
G. ELLIS MANAGING DIRECTOR

Date: *15/10/10.*

Annexure A – Initial Order details

PROGRAM

Small [REDACTED]
Medium [REDACTED]
Large [REDACTED]

Contact Details:
DET Project Director [REDACTED]
[REDACTED]

BER

Small [REDACTED]
Med [REDACTED]
Large [REDACTED]

Contact Details:
BER Project Officer – [REDACTED]
[REDACTED]
[REDACTED]

Annexure B - Rinnai Proposal and variations

Variations to Rinnai Proposal

1. **Section 2 'Scope':** This section is deleted.

2. **Section 4.3 'Delivery':**

(a) Bullet points 1, 2, 3, 4, 5, and 6 are deleted and replaced with the following:

"Rinnai will comply with the Department's supply requirements for ordered Rinnai heating products so

(i) all heaters are available for collection from Rinnai's warehouse in New South Wales no later than 3 months after the date those heaters are ordered, unless otherwise agreed; and

(ii) all flue parts are available for collection from Rinnai's warehouse in New South Wales no later than 14 days after the date those flue parts are ordered, unless otherwise agreed.

Risk and title do not pass to the Department until the ordered Rinnai heating product is collected and receipt signed by the Department or its authorised representative. Rinnai must obtain a receipt of the collection that contains the signature of a properly authorised representative of the Department."

(b) Bullet point 8 is deleted and replaced with the following:

"Force Majeure Event" means a circumstance beyond the reasonable control of Rinnai which occurs without the fault or negligence of Rinnai (including its subcontractors), and includes storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of a government, whether de jure or de facto, or of any official purporting to act under the authority of such a government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property.

Rinnai will be excused from delays in supplying the Rinnai heating products according to this Section 4.3 'Delivery' to the extent that delivery is delayed because of a Force Majeure Event, provided Rinnai:

(i) notifies the Department promptly of the event with reasonable details and the extent to which it is unable to perform its obligations and the likely delay; and

(ii) uses its best endeavours to overcome that event as quickly as possible.

If the Department believes that supply of any of the heating products according to this Section 4.3 'Delivery' will be delayed by more than 10 business days from the period in which those items must be available for collection according to Section 4.3 'Delivery', the parties will meet in good faith to attempt to achieve a mutually satisfactory resolution to the problem. If this is unable to be resolved to the Department's satisfaction, then the Department can terminate all or any part of the heating products under the order(s) affected by the Force Majeure Event by notice to Rinnai.

Rinnai will not be entitled to any increased prices, or damages, costs or expenses in connection with any delay."

3. **Section 4.5 'Forecasts'**: This section is deleted.
4. **Section 5 'Pricing'**: The variations to this section are set out in Annexure C.
5. **Section 7 'Delivery'**: This section is deleted and replaced with the following:
"Refer to Section 4.3 Delivery."
6. **Section 12 'Next Steps', Section 13 'Acceptance of Proposal'**: These sections are deleted.
7. **Appendix 1 'Technical Specification for the Supply of Flued Gas Convection Heaters'**: In the section 'Heater Emissions' delete the words, "(and any details to be further advised)".
8. **Appendix 4 'Rinnai Heating Products Warranty'**:
 - (a) In the section 'Warranty Conditions', paragraphs 6 and 8 are deleted. Paragraph 9 is deleted and replaced with the following:
 9. Rinnai reserve the right to have the product subject to warranty claim returned to Rinnai for inspection and repair at Rinnai's cost in accordance with these terms. Rinnai will provide and install a replacement appliance of the same specifications whilst inspection and repair are taking place in accordance with these terms.
 10. If a Rinnai heating product (or any part of it, including flue parts to a flued heater) is defective because of a defect arising from faulty materials and/or workmanship, or it does not comply with any manufacturer or agreed specifications, the parties will follow the process set out below:
 - (i) Department (or its authorised representative) leaves the appliance and services connected to the appliance (gas, electricity and flue system) in the "installed" condition;
 - (ii) Department (or its authorised representative) fills in a Rinnai Department of Education NSW Service Request form and email the form to the Rinnai National Customer Care Centre in Melbourne. (Rinnai will ensure the form contains fields specific for "Department of Education NSW" to enable the quickest and most efficient response from Rinnai.);
 - (iii) Rinnai Customer Care Service staff member phones the Department's representative to confirm receipt of the Service Request;
 - (iv) Rinnai Customer Care Centre staff members forwards the Service Request to the appropriate Rinnai Service Zone Manager (this is dependent on geographic location) and confirms receipt;
 - (v) The Rinnai Service Zone Manager contacts the Department's representative to arrange a mutually convenient time and date for the warranty service attendance by a Rinnai accredited service contractor; and
 - (vi) Rinnai's accredited service contractor will try to repair the appliance in the installed condition if this is possible and practical. If it is not possible or practical to do so, Rinnai's accredited service contractor will remove the defective appliance from its "installed" condition, and install the repaired appliance or replacement so the appliance is in the "installed" condition.
 11. Rinnai must ensure that parts or components used in repaired appliances are new or refurbished to be as good as new. Rinnai must ensure that any replacement appliance is new. Replacement appliances and parts or components used in repairing the defective Rinnai heating product become the

property of the Department on installation. Parts or components that have been replaced become the property of Rinnai.

12. Rinnai will ensure that it repairs or replaces any Rinnai heating product that is under warranty according to this letter within 2 Business Days (i.e. a day that is not a Saturday, Sunday or public holiday in NSW) from the time the Department (or its authorised representative) emails a Rinnai Department of Education NSW Service Request form to the Rinnai National Customer Care Centre in Melbourne according to step (ii) of paragraph 10.
13. If Rinnai does not repair or replace the defective Rinnai heating product that is under warranty according to this letter within 2 Business Days as set out in paragraph 12, the Department may, without limiting any other right or remedy that the Department may have against Rinnai for failing to comply with any warranties under this letter:
 - (i) perform or have performed the necessary rectification or replacement work; and
 - (ii) recover the reasonable costs incurred by the Department from Rinnai.
14. Rinnai will provide a mechanism reasonably acceptable to the Department for the electronic interchange of service records (including email), including to track the progress of any warranty claims.
15. Rinnai must ensure that its personnel (including its contractors):
 - (i) are skilled, qualified, experienced and trained in providing the services;
 - (ii) provide all services with due care, skill and diligence, in a proper, professional and timely manner;
 - (iii) perform the services in accordance with the manufacturer's installation instructions, current AS 3000, AS 3500 and AS 5601, relevant regulations or municipal building codes and are authorised by local regulations to install the appliance; and
 - (iv) when on any Department sites:
 - (A) comply with the requirements, policies, and directions of the Department (including any specific requirements in relation to individual sites) with regard to access, conduct, behaviour, safety and security;
 - (B) wear:
 - (I) an identification pass while on site as required by the Department or the individual site; and
 - (II) a form of identification so that these personnel are reasonably identifiable with Rinnai
 - (C) do not do anything that is, or can be, dangerous, annoying, or offensive, or that can interfere with the Department or other people using sites; and
 - (D) use the Department sites for the purpose of carrying out its obligations under this letter only.
16. Rinnai can be required to perform its work under this letter at Department sites alongside other contractors of the Department and will therefore coordinate its activities and cooperate with the other contractors as necessary to satisfy all

occupational health and safety requirements and ensure the work performed by the other contractors and under this letter is performed as efficiently as possible.

17. Rinnai acknowledges that it is aware of the requirements of the *Commission for Children and Young People Act (NSW) 1998* and all related laws concerning child protection (**Child Protection Laws**).

Rinnai will ensure that all its personnel (including its contractors) comply with the requirements of the Child Protection Laws. All Rinnai's personnel (including contractors) engaged in providing the services to the Department must certify that they are not a prohibited person under any Child Protection Legislation and undergo any screening, such as the Working with Children Check, under Child Protection Law. Rinnai must provide evidence of Rinnai's compliance with this paragraph 17 on the Department's request. Any Rinnai personnel (including its contractors) that are prohibited persons under any Child Protection Legislation must not be engaged in providing the services to the Department.

18. Rinnai must have and maintain the following insurances with reputable insurers reasonably acceptable to the Department:

- (i) public liability insurance with a minimum cover of [REDACTED] million per claim;
- (ii) professional indemnity insurance with a minimum cover of [REDACTED] million per claim;
- (iii) product liability insurance with a minimum cover of \$[REDACTED] million per claim; and
- (iv) workers' compensation as required by law.

Rinnai must maintain the above insurance policies until at least the end of the warranty period for all Rinnai heating products ordered by the Department under this letter.

Rinnai must, on request by the Department, provide current relevant confirmation of insurance documentation including certificates of currency, certifying that it has insurance as required by this paragraph 18.

Rinnai must as soon as practicable notify the Department of any occurrence that can give rise to a claim under the public liability, professional indemnity or product liability insurance policies and afterwards keep the Department fully informed of developments concerning the claim.

The requirements of this paragraph 18 do not affect Rinnai's liabilities in connection with this letter or Rinnai heating products.

19. This warranty survives termination of this letter."

- (b) In the section 'Warranty Exclusions', delete point 3 and replace with the following:

- "3. Failure due to installations (other than installations performed by Rinnai, including its contractors) not performed in accordance with the manufacturer's installation instructions, current AS 3000, AS 3500 and AS 5601, relevant regulations or municipal building codes and failure due to installations by persons (other than Rinnai, including its contractors) not authorised by local regulations to do so."

- (c) In the section 'Warranty Exclusions', delete point 5 and replace with the following:

- "5. Where it is found that there is no fault with the appliance and the issue is related to the installation (that was not performed by Rinnai, including its contractors) or is due to the failure of electric or gas supplies.

- (d) In the section 'Warranty Exclusions', delete the words at point 6 and replace with the following:

"Subject to any statutory provisions to the contrary and the indemnity under the section 'Indemnity', Rinnai does not accept liability for:

- (i) where the appliance has not been installed in accordance with the installation instructions or installed such that normal service access is difficult: the costs of any work required to gain reasonable access to the appliance (for example, removal of cupboards, doors, walls, or the use of special equipment to move components to floor level, but not limited to these); and
 - (ii). consequential damage or expenses under this warranty."
- (e) At the end of the section 'Warranty Exclusions' insert a new section headed 'Indemnity' and the following under the new heading 'Indemnity':

"Rinnai indemnifies the Department (including its representatives, agents, employees, contractors, students and invitees) (referred to as **Department Parties**) from and against any claim, action, damage, loss, liability, cost, expense or outgoing including legal costs on a solicitor/client basis which the Department Parties have or may have, suffers, incurs or is liable for arising out of or in connection with:

- (i) any breach by Rinnai (including its representatives, agents, employees and contractors) of any laws, regulatory requirements, Australian standards, licenses or consents;
- (ii) personal injury (including sickness and death) caused by Rinnai (including its representatives, agents, employees and contractors) or Rinnai heating products; and
- (iii) loss of or damage to property caused by Rinnai (including its representatives, agents, employees and contractors) or Rinnai heating products.

Rinnai's liability under this indemnity will be reduced to the extent that the claim, action, damage, loss, liability, cost, expense or outgoing was caused or contributed to by the wilful or negligent act or omission of the Department (including its representatives, agents, employees, contractors, students and invitees) including:

- (i) a negligent act or omission in the installation of Rinnai heating products (other than installations performed by Rinnai, including its contractors); and
- (ii) misuse or abuse of Rinnai heating products.

This indemnity survives the termination of this letter."

Annexure C – Pricing

(a) The following is added directly below the heading '5. Pricing':

"Rinnai will provide to the person nominated in the Department's purchase order a correctly rendered invoice for Rinnai heating products set out in the purchase order and supplied according to the terms of the letter. Rinnai will invoice the Department for Rinnai heating products after they are collected by the Department (or its authorised representative) according to this letter."

(b) The table and notes under the heading 'Direct Flue Installation' is deleted and replaced with the following tables and notes:

Model: 309FT Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
309FT	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESWFG	Flue Guard	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

Model: 556FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
556FDT3T	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESWFG	Flue Guard	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

Model: 1004FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
1004FDT3T	Heater	1					
ESDFK	Direct Flue	1					
ESWFG	Flue Guard	1					
Total							

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

(c) The table and notes under the heading 'Vertical Flue Installation (A)' is deleted and replaced with the following tables and notes:

Model: 309FT Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
309FT	Heater	1					
ESDFK	Direct Flue Kit	1					
ESPIPE900	900mm Flue	3					
ESBEND	90° Bend	1					
ESCONDK	Condensate	1					
ESROOFCOW	Roof Cowl	1					
Total							

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at (ex GST)

Model: 556FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
556FDT3T	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESPIPE900	900mm Flue	3			[REDACTED]	[REDACTED]	[REDACTED]
ESBEND	90° Bend	1			[REDACTED]	[REDACTED]	[REDACTED]
ESCONDK	Condensate	1			[REDACTED]	[REDACTED]	[REDACTED]
ESROOFCOW	Roof Cowl	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at [REDACTED] (ex GST)

Model: 1004FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
1004FDT3T	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESPIPE900	900mm Flue	3			[REDACTED]	[REDACTED]	[REDACTED]
ESBEND	90° Bend	1			[REDACTED]	[REDACTED]	[REDACTED]
ESCONDK	Condensate	1			[REDACTED]	[REDACTED]	[REDACTED]
ESROOFCOW	Roof Cowl	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at [REDACTED] (ex GST)

(d) The table and notes under the heading 'Vertical Flue Installation (B)' is deleted and replaced with the following tables and notes:

Model: 309FT Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
309FT	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESPIPE900	900mm Flue Pipe	2			[REDACTED]	[REDACTED]	[REDACTED]
ESBEND	90° Bend	2			[REDACTED]	[REDACTED]	[REDACTED]
ESCONDK	Condensate Trap	1			[REDACTED]	[REDACTED]	[REDACTED]
ESWTKIT	Wall Terminal Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at [REDACTED] (ex GST)

Model: 556FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
556FDT3T	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESPIPE900	900mm Flue Pipe	2			[REDACTED]	[REDACTED]	[REDACTED]
ESBEND	90° Bend	2			[REDACTED]	[REDACTED]	[REDACTED]
ESCONDK	Condensate Trap	1			[REDACTED]	[REDACTED]	[REDACTED]
ESWTKIT	Wall Terminal Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at \$ [REDACTED] (ex GST)

Model: 1004FDT3T Energysaver

Part Code	Part Description	Qty			SRP Per Unit (Inc GST)	Invoice Price Per Unit (Ex GST)	Invoice Price Per Unit (Inc GST)
1004FDT3T	Heater	1			[REDACTED]	[REDACTED]	[REDACTED]
ESDFK	Direct Flue Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
ESPIPE900	900mm Flue Pipe	2			[REDACTED]	[REDACTED]	[REDACTED]
ESBEND	90° Bend	2			[REDACTED]	[REDACTED]	[REDACTED]
ESCONDK	Condensate Trap	1			[REDACTED]	[REDACTED]	[REDACTED]
ESWTKIT	Wall Terminal Kit	1			[REDACTED]	[REDACTED]	[REDACTED]
Total						[REDACTED]	[REDACTED]

****Note: the SRP Per Unit (Inc GST) is for information only. The applicable price for the Department is the Invoice Price Per Unit.

****Note: For added lengths of ESPIPE900 these will be charged at [REDACTED] (ex GST)