

TERMS AND CONDITIONS OF SALE

"Seller" means Watertek Pty Ltd ACN 107 711 606 or any Related Body Corporate as defined by the Corporations Act.

"Buyer" means the entity which orders Goods from the Seller or to which Goods are delivered by the Seller.

"Goods" means the goods purchased or ordered by the Buyer from the Seller.

"GST" means goods and services tax imposed in Australia by the GST law.

"GST Law" means a New Tax System (Goods and Services Tax) Act 1999.

"Order" means an order by the Buyer to the Seller requesting supply of Goods.

1. GENERAL

- (a) These terms and conditions, an Order and the Credit Application constitute the whole contract between the Seller and Buyer. No term or condition contained in Buyer's Order shall add to amend or delete these terms and conditions or any of them unless expressly agreed in writing by a duly authorised officer or Seller.
- (b) It is Buyer's responsibility when accepting this contract or ordering to ensure the Goods ordered conform to Buyer's requirements and are suitable and sufficient for Buyer's purpose.
- (c) To the extent permitted by law the Seller will not accept return of or give credit for any Goods supplied under this contract.
- (d) Any quotation by Seller is not and shall not be construed as an offer capable of acceptance or as creating an obligation to sell.
- (e) It is the Buyer's responsibility to obtain any approvals licence or permits necessary for the performance of this contract by the Buyer.
- (f) All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by Seller or contained in catalogues, price list or advertisement are by way of general description only of the Goods and shall not form part of this contract.
- (g) It is the Buyer's responsibility to provide all information necessary to enable performance of the contract and Buyer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

2. PRICE

- (a) Prices quoted are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.
- (b) Prices quoted are exclusive of GST and the Buyer is required to pay any GST payable by the Seller in respect to the supply of Goods at the same time that the price is required to be paid by the Buyer to the Seller.
- (c) Prices quoted and this contract are based on present rates and costs of material including , labour, freight, currency exchange rates insurance, customs agents and carriers' fees, government tariffs, duties and taxes and shall be subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring during the term of

this contract before delivery of the Goods to the Buyer. Otherwise prices quoted shall not be subject to change within 30 days from the date of quotation.

- (d) In the event of the suspension of manufacture or supply on the Buyer's instruction, or lack thereof, or due to the inability of Buyer to accept the Goods for any reason on or after the date on which they are ready for delivery, Buyer shall be liable for all extra costs and losses thereby incurred by Seller.

3. TERMS OF PAYMENT

- (a) The Seller may require a deposit on Order and any balance of the price owing must be paid either before or on delivery of the Goods to the Buyer unless the Seller has agreed to provide the Goods to the Buyer on credit terms.
- (b) Prices quoted are strictly net and payment in full shall be made in accordance with these terms and conditions of sale and within the times stated on either the quotation or the invoice with respect to the Goods sold by the Seller to the Buyer. If the times for payment are stated on both the quotation and the invoice, then the invoice shall prevail to the extent of any inconsistency.
- (c) Default interest shall be paid by Buyer on overdue accounts calculated on daily balances from the day following the day upon which payment should have been made, at the rate of eighteen (18%) per cent per annum and without any demand being necessary.

4. RETENTION OF TITLE, DELIVERY, RISK AND PROPERTY

- (a) Unless otherwise agreed in writing the Goods shall be delivered to Buyer ex the store or works of Seller.
- (b) Seller may at its discretion agree to act as agent for Buyer for delivery beyond store or works and all costs of carriage and insurance shall be paid by the Buyer. The Seller shall not be liable for any damages caused to the Goods whilst they are in transit. The Buyer shall at the Buyer's expense provide labour, cranes or forklift and reasonable access to point of delivery for offloading of Goods without delay.
- (c) Where the Seller agrees to deliver the Goods to the premises of the Buyer and where the Seller contracts with a carrier to do so, delivery of the Goods to the carrier in all circumstances constitutes delivery to the Buyer.
- (d) Delivery of Goods to Buyer or to the carrier at the point of delivery shall constitute delivery to Buyer and upon delivery to Buyer risk of loss shall pass to Buyer.
- (e) As long as the Buyer owes the Seller any part of the sale price for Goods supplied at any time the Seller shall retain the legal title in all Goods supplied and not yet used or resold. The Buyer shall keep such Goods stored separately during the time he has them in such a way that Goods remain identifiable and shall hold such Goods as bailee for the Seller.

The Seller has:-

- (i) the right to re-entry and inspection to support repossession of the property by the Seller;
- and
- (ii) the power to repossess when payment is overdue.

- (f) If the Buyer resells the Goods aforesaid before all moneys payable by the Buyer to the Seller have been paid, the Buyer agrees that it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or received, such proceeds to be kept in a separate account.
- (g) Seller may at its discretion deliver the Goods ordered by instalments (in which case each instalment is considered a separate agreement for sale) without any liability whatsoever.
- (h) If after fourteen (14) days from the date on which the Goods are ready for despatch, delivery is delayed for any reason beyond Seller's reasonable control, Seller may store the Goods at its premises or elsewhere and the cost of storage, handling and insurance shall be payable by Buyer on demand by Seller.
- (i) No delivery may be deferred except with the written consent of Seller.

5. INSPECTION AND ACCEPTANCE

Upon delivery of Goods Buyer shall inspect Goods at their expense and give written notice to Seller within seven (7) days of delivery of a non-conformity to description or the terms and conditions of this contract. Failure to give such notice shall constitute an irrevocable acceptance of the Goods by the Buyer.

6. FORCE MAJEURE

Seller shall not be liable for failure or delay to supply the Goods due in any substantial part to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier of Seller, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority. No such failure or delay shall entitle Buyer to terminate this contract and Seller's obligations to Buyer shall be suspended without liability on the part of Seller while such cause exists.

7. INTELLECTUAL PROPERTY

Seller shall not be liable to Buyer or otherwise for any infringement or unauthorised use of any patent, trademark, design, copyright or any other industrial property right arising out of performance of this contract. In case any dispute or claim is made in respect thereof Seller may terminate this contract by notice in writing to the Buyer without any liability on the part of the Seller.

8. DEFAULT

Upon the happening of any of the following events:

- (i) The commission by Buyer of any act of bankruptcy or Buyer going into liquidation or a petition being presented for the sequestration of Buyer's estate or for the winding up of Buyer; or
- (ii) Buyer being a company is deregistered; or
- (iii) Buyer assigning its property for the benefit of creditors or having receiver or official manager appointed to any of its assets; or

- (iv) Buyer failing to make any payment to Seller on the due date; or
- (v) Buyer being in breach of any of these terms and conditions.

then in any such event Seller shall without prejudice to any other remedies have the right to:

- (i) cease production of the Goods; and/or
- (ii) decline to deliver the Goods or any balance of the Goods still due under this contract; and / or
- (iii) stop any Goods in transit; and / or
- (iv) otherwise cease to perform any of its obligations to Buyer; and / or
- (v) terminate the contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by Buyer and / or damages; and / or
- (vi) enter into any premises and repossess any Goods already delivered and whether or not property in such Goods has passed to Buyer in respect of which entry Buyer shall indemnify and keep indemnified Seller for all damages for which Seller may be responsible; and / or
- (vii) recover from Buyer the contract price together with default interest in accordance with Clause 3(c) of all Goods delivered and for freight storage handling and any other expenses incurred by the Seller; and / or
- (viii) to sell elsewhere and charge Buyer with any resultant loss.

9. WARRANTY AND LIABILITY OF SUPPLIER

- (a) If the Goods are not of a kind ordinarily acquired for personal, domestic or household use the liability of Seller for breach of any conditions or warranty implied by the Trade Practices Act, 1974 (other than by Section 69) and / or the Sales of Goods Act 1896 (as amended) shall be limited to one of the following at the Seller's option:

- (i) the replacement of the Goods or the supply of equivalent Goods; or
- (ii) the repair of the Goods; or
- (iii) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
- (iv) the payment of the cost of having the Goods repaired.

- (b) To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negated.

- (c) Buyer shall assume all risk and liability resulting from the use of the Goods either alone or in conjunction with other Goods or materials even if Seller had or should

have had prior knowledge of use to which the Goods would be put.

(d) To the extent permitted by law, the Seller is not liable to the Buyer for:

(i) any loss, damage or expense sustained by the Buyer or any third party arising out of the supply of the Goods, any breach by the Seller of any contract incorporating these terms and conditions; or the negligence of the Seller; or

(ii) any indirect or consequential losses, loss of profits or use, any rectification costs or third party claims in connection with providing the Goods.

(e) All goods supplied are covered by such warranty as is specified by the manufacturer.

(f) Unless expressly agreed to the contrary, the provisions and warranties contained in the standard specification to which the goods are manufactured by the Seller or its suppliers will apply to all orders accepted.

(g) The Buyer warrants to the Seller that if their water supply is associated with the use of the goods by the Buyer, such water shall be clean and free of impurities and the Buyer agrees to indemnify and keep indemnified the Seller against loss, expense suffered and incurred by the Seller arising out of use of the goods in water that is not clean or free of impurities.

10. MISCELLANEOUS

(a) This contract shall be governed and construed in accordance with the law of the State in which the Goods are delivered.

(b) All notices to be served upon Buyer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Buyer. Buyer shall be deemed to have received any notice two (2) days after posting.

(c) Buyers shall not assign any rights or obligations under this contract without the prior written consent of Seller.

(d) No conduct by the Seller with respect to any default of Buyer in the performance of any obligation or condition of this contract shall be deemed to be a waiver of that or any other obligations or condition.

(e) The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one Buyer Buyers shall be bound to Seller jointly and severally.

(f) If a provision of this agreement or a right or remedy of a party under this agreement is invalid or unenforceable in a particular jurisdiction:

(i) it is to be read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and

(ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

This clause is not limited by any other provision of this agreement in relation to severability, prohibition or enforceability.

11. CREDIT ASSESSMENT

(a) If any Goods are supplied to the Buyer on credit, Seller may need to disclose to a credit reporting agency certain information referred to in (c) below about the Buyer when assessing the Buyer's application for credit and managing the Buyer's account with Seller. The Buyer authorises Seller to disclose such information to a credit reporting agency for these purposes.

(b) Subject to Seller's obligations under the Privacy Act 1988 (Cth), Privacy Amendment (Private Sector) Act 2000 and other applicable laws, Seller may give the information referred to in (c) below to a credit reporting agency to obtain a consumer credit report about the Buyer or to allow the credit reporting agency to create or maintain a credit information file about the Buyer. The Buyer agrees that Seller may disclose a credit report about it to any credit provider, debt collecting agency or Seller's insurers for the purposes of assessing the Buyer's creditworthiness or to collect any overdue payments (as the case may be).

(c) Seller may disclose the following information relating to the Buyer in accordance with clause a and b above.

(i) The Buyer's name and address and the name and address of the Buyer's Directors and Managers;

(ii) Credit limits on the Buyer's accounts;

(iii) The amount of any payments which are overdue for at least 60 days;

(iv) Where an overdue payment has been previously reported, advice that the payment is no longer overdue;

(v) Where an overdue payment has been previously reported, advice that the payment is no longer overdue;

(vi) Cheques or credit card payments which have been dishonoured;

(vii) Information that Seller has ceased to supply Goods to the Buyer.

(d) The Buyer agrees that Seller may obtain information about the Buyer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Buyer's application to purchase the Goods on credit and collecting any overdue amounts.

(e) Seller may refuse to supply the Goods to the Buyer on credit on the basis of Seller's credit assessment of the Buyer.