



# TERMS AND CONDITIONS

By requesting any goods and/or services from WaterSmart NZ Limited, you acknowledge that you have read and understood these Terms of Trade ("this agreement") and agree to be bound by them. You acknowledge there may be terms in this agreement that apply specifically to this agreement.

## 1. DEFINITIONS

- 1.1 Approved Buyer means any Buyer who the Seller, at its sole discretion, has approved to have a credit account with the Seller.
- 1.2 Buyer means the person requesting for Goods or Services from the Seller and their representatives.
- 1.3 Goods means those goods supplied by the Seller to the Buyer as described on any quotation, work authorisation, invoice or other communication between the Buyer and Seller in connection with this agreement and, where the context permits, any supply of services as defined in this agreement.
- 1.4 Guarantor means the person who agrees to be liable for all money owed by the Buyer to the Seller now or in the future in respect of goods and/or services provided by the Seller pursuant to this agreement or any other liability of the Buyer to the Seller.
- 1.5 Order means orders for Goods and/or Services from the Seller by the Buyer and which have been approved by the Seller. Price means the cost of the goods or services as agreed between the Seller and the Buyer, unless expressed otherwise, and excludes the cost of delivery (unless indicated otherwise) and any variations as defined in this agreement.
- 1.6 Seller means WaterSmart NZ Limited and its representatives, its successors and assigns.
- 1.7 Services means all services supplied by the Seller to the Buyer, including any advice, recommendations or installation services as described on any quotation, work authorisation, invoice or other communication between the Buyer and Seller in connection with this agreement and, where the context permits, shall include any supply of goods as defined in this agreement.
- 1.8 Underground Mains and Services include but are not limited to stormwater pipes and connections, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

## 2. PRICE AND PAYMENT

- 2.1 The Price shall be the amount indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied or the Seller's quoted Price which shall be binding on the Seller provided the Buyer accepting in writing the Seller's quotation within thirty (30) days.
- 2.2 The Price is exclusive of any GST, taxes or duties unless expressed otherwise. If there are any Variations, the provisions in clause 3 shall apply.
- 2.3 Payment of any amounts outstanding by the Buyer shall be made in full and clear funds by direct credit to the Seller's nominated account, or by any other method as agreed to between the Buyer and the Seller.
- 2.4 Payment for the Goods and/or Services must be made as follows:
  - a) 100% payment of product prior to dispatch; and
  - b) Installation payment to be paid immediately following completion.

## 3. VARIATION

- 3.1 Any variation from the plan of scheduled works or specifications will be charged to the Buyer on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at the time of completion.
- 3.2 Where the Buyer is to supply the Seller with any design specifications (including, but not limited to CAD drawings) in accordance with this clause 3, the Buyer shall be responsible for providing accurate data. The Seller shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Buyer.
- 3.3 The Buyer acknowledges it will incur extra charges for any changes to the placed Goods Orders to re-design and reconfigure plans and pods and such changes may result in delays in delivery.

## 4. DELIVERY OF GOODS

- 4.1 Delivery of the Goods shall be made to the Buyer's address as stipulated on the Buyer's Goods Order.
- 4.2 The Buyer shall ensure that the Seller has clear and free access to the nominated site at the time of delivering Goods.
- 4.3 Delivery of the Goods is taken to occur at the time that:
  - a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
  - b) the Seller (or the Seller's nominated carrier) delivers

the Goods to the Buyer's nominated address notwithstanding the Buyer is not present at the address.

## **5 PROVISION OF SERVICES AND ACCESS**

- 5.1 Any time specified by the Seller for provision of the Services is an estimate only. The Seller will not be liable for any loss or damage incurred by the Buyer as a result of any delay. Notwithstanding, both parties agree they shall make every endeavour to enable the Services to be provided at the time and place as arranged between both parties. In the event the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Buyer, the Seller shall be entitled to charge a reasonable fee for re-providing the Services at a later time.
- 5.2 The Buyer shall ensure that the Seller has clear and free access to the nominated site at the time of providing the Services to enable them to do so. The Seller shall not be liable for any loss or damage to the site during and after the provision of the Services (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, and site equipment such as septic tanks), unless due to the negligence of the Seller. The Buyer acknowledges that any claim made to the Seller for damage to the site or site equipment must be lodged with the Seller within twelve (12) hours of completion of the Services, time being of the essence.
- 5.3 The Seller reserves the right to refuse to enter the nominated site to provide the Services in the event that the Seller believes the site to be unsafe. In this event, the Buyer agrees that it is their responsibility to ensure the site is made safe before the Seller will enter the site, and the Seller shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 5.4 The Buyer shall, prior to commencement of the Services, advise the Seller of the precise location of all known Underground Mains and Services, asbestos and any hazardous materials on site (which must be clearly marked). Whilst the Seller will take all care to avoid damage to any Underground Mains and Services, the Buyer agrees to indemnify the Seller for all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified by the Buyer.

## **6. INTELLECTUAL PROPERTY**

- 6.1 The Buyer acknowledges that all Intellectual Property in any and all Goods supplied to the Buyer by the Seller is exclusively owned by the Seller. Nothing in this agreement transfers ownership in any intellectual property rights to the Buyer. The Buyer agrees not to use the intellectual property of the Seller in any way without the prior written approval of the Seller.
- 6.2 Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller, the Buyer warrants that the use of

those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

- 6.3 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 6.4 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 6.5 The Buyer agrees that the Seller may (at no cost) use, for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

## **7 INSPECTION AND RETURN OF GOODS**

- 7.1 The Buyer shall inspect the Goods on delivery and, within 48 hours of delivery, notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If no notice has been given to the Seller within the specified time, the Buyer is deemed to have accepted the Goods.
- 7.2 The Seller will, within a reasonable time following receipt of the Buyer's notice, inspect the Goods and notify in writing to the Buyer Goods which the Seller considers to be faulty. The Seller has the sole discretion to determine whether the Goods inspected by the Seller are faulty.
- 7.3 For Goods which the Seller has agreed in writing is faulty in accordance with clause 7.2, subject to clause 7.4, at the Seller's sole discretion, the Seller may either replace the Goods, repair the Goods or accept the Goods for credit. The Seller's liability for the faulty Goods is limited to the costs of replacing or repairing the Goods or limited to the Price as applicable. If the Seller accepts the Goods for credit, a handling fee of up to 15% of the value of the returned Goods plus any freight may be incurred.
- 7.4 Clause 7.3 is subject to the following:
- a) the Buyer must have complied with the provisions of clause 9.1;
  - b) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
  - c) the Goods have been returned at the Buyer's cost within seven (7) days of the delivery date; and
  - d) the Goods have been returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

## **8. RISK AND TITLE**

- 8.1 All risk in the Goods pass to the Buyer upon completion of delivery, notwithstanding:
- a) situations where the Seller has retained possession or control of the Goods; or

- b) where the Buyer has requested the Seller to leave the Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location.
- 8.2 Title in the Goods shall not pass until the Buyer has paid all amounts owing for the Goods and met all other obligations due by the Buyer to the Seller in respect of all contracts between the Buyer and Seller.
- 8.3 The Goods, or proceeds of the sale of the Goods, shall be kept separate until clause 8.2 has been complied with.
- 8.4 The Buyer further agrees to the following:
- a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease;
  - b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's Agent may enter upon or into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused;
  - c) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue;
  - d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller;
  - e) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer;
  - f) Until such time the Buyer has the Seller's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Seller will be the owner of the end products.
- 9. SELLER'S RIGHT TO DISPOSE OF GOODS**
- 9.1 In the event the following occurs, the Seller reserves the right to dispose of the Goods and claim from the Buyer the loss to the Seller on such disposal:
- a) the Seller retains possession or control of the Goods; and
  - b) payment of the Price is due to the Seller; and
  - c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
  - d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller.
- 10. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 10.1 The Buyer acknowledges and agrees that: these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- a) a security interest is taken in all Goods and/or collateral (account) being a monetary obligation of the Buyer to the Seller for Goods or Services that have previously been supplied and that will be supplied in the future by the Seller to the Buyer.
- 10.2 The Buyer undertakes to:
- a) within 5 days of being requested by the Seller, sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - b) indemnify the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities;
  - c) Register or releasing any Goods charged thereby; not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
  - d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11. DEFAULT AND TERMINATION**
- 11.1 The Buyer will be in default of this agreement if any money payable to the Seller becomes overdue.
- 12. INDEMNITY**
- 12.1 The Buyer will indemnify the Seller for all costs and losses incurred by the Seller as a result of the Buyer's default or breach of this agreement, including any expenses, losses or legal fees incurred in enforcing the provisions of this agreement.
- 13. WARRANTIES**
- 13.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the Seller of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the Seller's warranties applicable to the various products and available on the Sellers website.
- 14. LIMITATION OF LIABILITY**
- 14.1 The Buyer disclaims any right to rescind or cancel the contract, to sue for damages or to claim restitution arising out of any misrepresentation made to him by the Seller or its representatives.
- 14.2 The Buyer acknowledges that it has purchased the Goods relying solely upon its own skill and judgment and not on any representation or warranty unless provided for in clause 17.
- 14.3 In the event of any breach of this agreement by the Seller, the remedies of the Buyer are limited to damages. In any event, the liability of the Seller shall not exceed the Price of the Goods.
- 14.4 The Seller shall not be liable to the Buyer for any

indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this agreement.

## **15. PRIVACY ACT**

- 15.1 The Buyer authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers credit worthiness or marketing any Goods and Services provided by the Seller to any other party.
- 15.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in this clause 15.
- 15.3 Where the Buyer is a natural person the authorities under this clause 18 are authorities or consents for the purposes of the Privacy Act 1993.

## **16. TERMINATION**

- 16.1 The Seller reserves the right to terminate this agreement, the delivery of Goods or provision of Services at any time before the Goods are delivered or the Services are provided by giving 24 hours prior written notice to the Buyer. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

## **17. INTERPRETATION AND GENERAL**

- 17.1 The following provisions will apply in the construction and interpretation of this agreement, except to the extent that the context requires modification:
  - a) references to the background, clauses, schedules and appendices are to this agreement;
  - b) the headings are for convenience purposes only and will not affect the interpretation of this agreement;
  - c) words importing the singular include the plural and vice versa, and the masculine gender includes the feminine gender and vice versa;
  - d) the word person includes any individual, company, corporation, sole trader, trust, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity or any other association of persons either corporate or unincorporated;
  - e) references to any statute or regulation are to New Zealand statutes and regulations unless the context otherwise requires and will, with all necessary modifications, apply to any modifications or re-enactments;
  - f) references to written and in writing include any means of visible representation, including communication by email; and
  - g) references to any document include all modifications and replacement documents from time to time.

- 17.2 To the extent permissible by law, the parties to the agreement contract out of the provisions of the Consumer Guarantees Act 1993.
- 17.3 The invalidity of any part of this agreement shall not affect the enforceability of the rest of the agreement.
- 17.4 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.
- 17.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 17.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 17.7 The Seller reserves the right to review this agreement at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.