

TD Engineering & Water Limited T/A Think Water Manawatu

733 Tremain Avenue, Palmerston North

TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 “**CGA**” means the Consumer Guarantees Act 1993 (New Zealand) as amended, re-enacted or replaced, and includes any subordinate legislation, and in particular it includes the Consumer Guarantees Amendment Act 2013 and the Fair Trading Amendment Act 2013.
- 1.2 “**Consumer**” means a consumer as defined in the Consumer Guarantees Act 1993.
- 1.3 “**Customer**” shall mean the customer or any person acting on behalf of and with the authority of the customer. Where more than one customer has entered into this agreement, the customers shall be jointly and severally liable for all obligations.
- 1.4 “**Goods**” shall mean goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services).
- 1.5 “**GST**” shall mean and include goods and services tax levied under the Goods and Services Tax Act 1985 or any amendment, re-enactment or replacement Act, and includes any related subordinate legislation and any similar tax imposed subsequently.
- 1.6 “**Guarantor(s)**” means that person (or persons), or entity who agrees to be liable for the debts of the Customer (if a limited liability Customer) on a principal debtor basis as set out in this agreement.
- 1.7 “**PPS Register**” means the Personal Property Securities Register established under the PPSA.
- 1.8 “**PPSA**” means the Personal Property Securities Act 1999 (New Zealand) as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.9 “**Price**” shall mean the cost of the Goods as agreed between the Supplier and the Customer subject to clause 4 of these Terms and Conditions.
- 1.10 “**Services**” shall mean all services supplied by the Supplier to the Customer and includes any advice or recommendations provided to the Customer.
- 1.11 “**SGA**” shall mean the Sale of Goods Act 1908 of New Zealand as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.12 “**Supplier**” shall mean [*insert company name*] Ltd and its successors and assigns.

2. Acceptance

- 2.1 Any instructions received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Supplier shall constitute the Customer's continuing acceptance of these Terms and Conditions.
- 2.2 Upon acceptance of these Terms and Conditions by the Customer, the Terms and Conditions are irrevocable and can only be amended in accordance with these Terms and Conditions or with written consent of the manager of the Supplier.
- 2.3 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing, nor is the Supplier bound by any unauthorised statements.

3. Goods and Services

The Goods and/or Services are described on the invoice, quotation, work authorisation or any other work commencement forms as provided by the Supplier to the Customer.

4. Price and Payments

- 4.1 The Price shall be as indicated on the invoice provided by the Supplier to the Customer in respect of the Goods supplied.
- 4.2 At the Supplier's sole discretion a deposit may be required. The deposit amount or percentage of the Price shall be stipulated at the time of the order of Goods and shall become immediately due and payable.

- 4.3 Time for payment for the Goods shall be of the essence and shall be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4 At the Supplier's sole discretion, for certain approved Customers, payment shall be due thirty (30) days following the date of the invoice (or as otherwise agreed in writing by the Supplier).
- 4.5 Payment shall be made by cash, or by cheque, or by bank cheque, or by credit card (plus any charges that may be applicable), or by direct credit, or by any other method as agreed to between the Customer and the Supplier.
- 4.6 Unless otherwise stated, the Price is exclusive of freight delivery charges, insurance and other charges in relation to the transfer of the Goods from the Supplier's premises to the location designated by the Customer.
- 4.7 The Price shall be increased by the amount of GST and other taxes and duties which may be applicable, except to the extent that such tax is expressly included in any quotation given by the Supplier.

5. Delivery of Goods/Services

- 5.1 Delivery of the goods shall be made to the Customer's address or other location as provided by the Customer. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Supplier's address.
- 5.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for purposes of this agreement.
- 5.3 The Customer shall bear the costs of delivering the Goods from the Supplier's premises to the location specified by the Customer unless otherwise agreed.
- 5.4 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchase provided that:
 - 5.4.1 such discrepancy in quantity shall not exceed 5%; and
 - 5.4.2 the Price shall be adjusted pro rata regarding the discrepancy.
- 5.5 Any date or time specified by the Supplier for delivery of the Goods is intended as an estimate only and the failure of the Supplier to deliver shall not entitle the Customer to treat this agreement as repudiated.
- 5.6 The Supplier shall not be liable for any loss or damage whatever due to failure by Supplier to meet any estimates time for delivery or to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 Notwithstanding the Supplier may retain ownership and title to the Goods pursuant to clause 13 of these Terms and Conditions, all risk for the Goods shall pass to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to ownership and title to the Goods passing to the Customer as set out in Clause 13, the Supplier is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions, to receive all insurance proceeds in relation to the Goods. This entitlement applies whether or not the Price has become payable under these Terms and Conditions and this clause is evidence of the deemed assignment by the Customer of their interest or entitlement to the insurance proceeds in favour of the Supplier.

7. Defects/Returns

- 7.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following the delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 7.2 For defective Goods which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion):
 - (a) repairing or replacing the Goods with equivalent Goods; or
 - (b) paying or crediting the Customer the cost of acquiring equivalent Goods but not exceeding the Price provided that:
 - (i) the Customer has complied with the provisions of clause 7.1;
 - (ii) the Supplier shall not be liable for Goods which have been damaged or not been stored or used in a proper manner; and
 - (iii) the Goods are returned in the condition in which they were delivered and with all packaging material, brochure and instruction materials in as new condition as is reasonable possible in the circumstances.

- 7.3 Nothing in these Terms and Conditions or in the Supplier's returns liability shall limit or affect any rights that a Customer who is a consumer may have under the CGA.

8. Warranties

- 8.1 Where the CGA applies to the supply of the Goods under these Terms and Conditions the Customer may have additional rights under that Act.
- 8.2 Where Goods are subject to manufacturers' warranties the Supplier shall pass on the benefit of those warranties to the Customer, without being directly liable to the Customer under any warranty. The Customer shall be responsible for the cost of returning goods to the manufacturer or to the Supplier under any warranty, and the Customer may be responsible for additional costs including (but not limited to) freight. Where the Customer requires the Supplier to do anything related to a warranty claim, the Customer shall pay the Supplier's service and call-out charges. The Supplier may refuse to assist with warranties if any sum that the Customer owes the Supplier for any reason is overdue.
- 8.3 Any warranty may be voided by unreasonable use, damage or misuse of equipment, problems caused by the misuse after the Goods left the Supplier's possession, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the use of incorrect parts, hardware, software or consumables.
- 8.4 Where the Goods are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where the Customer acquires, or holds itself out as acquiring, the Goods or services for the purposes of a business, the provisions of the CGA and the conditions, warranties and guarantees set out in the SGA or implied by common law shall not apply and are excluded from these Terms and Conditions.

9. Customer's Disclaimer

Except as prohibited by the CGA in respect of a Customer who is the consumer, the Customer disclaims any right to rescind, or cancel this agreement or to sue for damage or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Supplier and the Customer acknowledges that it buys the Goods relying solely upon his own skill and judgment, and that the Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which shall be personal to the Customer and shall not be transferrable to any subsequent customer.

10. Customer Warranties

- 10.1 If the Customer acquires the Goods for re-supply as, use or incorporation in, any goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") the Customer warrants that:
- (a) If the Customer supplies the Consumer Products directly to an end user/consumer the Customer shall do so using terms and conditions of supply which exclude liability for any claims under the CGA;
 - (b) If the Customer's customer acquires any goods or services for re-supply, the Customer's customer and each person in the distribution chain shall exclude liability in its contract for supply for any claims under the CGA;
- but in each case only where the end user acquires the Consumer Products for business purposes.
- 10.2 The Customer agrees to indemnify the Supplier, its suppliers and the manufacturers of any Goods against any failure by the Customer, its customers or any person in the Customer's distribution chain to properly contract out of liability to business end users under the CGA.
- 10.3 The Customer confirms that all of the information supplied by the Customer to the Supplier is true and correct and does not breach sections 12A and 13 of the Fair Trading Act 1986 in any way.

11. Intellectual Property

- 11.1 Where the Supplier has designed or drawn Goods for the Customer, then the copyright and other intellectual property rights in those designs and drawings shall remain vested in the Supplier, and shall not be used by the Customer without the prior written consent of the Supplier.
- 11.2 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Supplier then the Customer warrants that the use of those designs or specifications for the manufacture, proceeding, assembly or supply of the Goods shall not infringe the rights of any third party.
- 11.3 The Customer shall indemnify the Supplier against any action, losses, costs or claims arising from an infringement of any third party intellectual property rights from the use of any designs or specifications provided by the Customer.

12. Default and Consequences of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgment.
- 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from any and against all the Supplier's costs and disbursements (on a full indemnity basis) and in addition all of the Supplier's agents costs of collection.
- 12.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms and Conditions. The Supplier shall not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercises its rights under this clause.
- 12.4 In the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer shall be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any assets of the Customer, then without prejudice to the Supplier's other remedies at law:
 - (i) the Supplier shall be entitled to cancel any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to Supplier shall, whether or not due for payment, immediately become payable.

13. Title

- 13.1 Notwithstanding delivery of the Goods, the Customer acknowledges and agrees that ownership and title to the Goods shall not pass to the Customer until:
- (a) the Customer has paid all amounts owing for the particular Goods, and
 - (b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all agreements between the Supplier and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Supplier shall have received payment for the Goods and all other obligations of the Customer are met.
- 13.2 It is further agreed by the parties that:
- (a) until such time as ownership of the Goods shall pass from the Supplier to the Customer, the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - (b) If the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into the land and premises owned, occupied or used by the Customer, or any other premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

14. Security and Charge

- 14.1 The Customer shall charge in favour of the Supplier all of its estate and interest in any real or personal property that the Customer owns at present and in the future with the amount of its indebtedness under this agreement until discharged.
- 14.2 The Customer shall appoint the Supplier as its duly constituted attorney from time to time to execute in the Customer's name and as the Customer's act and deed all relevant documents the Supplier may choose to lodge against any property owned by the Customer to give effect to this clause 14, even though the Customer may not have defaulted in carrying out its obligations under this agreement.

15. Personal Property Securities

- 15.1 In this clause 'financing statement', 'financing charge statement', 'security agreement' and 'security interest' have the meanings given to those terms by the PPSA.
- 15.2 The Customer acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
 - (b) create a security interest in:

- (i) all Goods previously supplied by the Supplier to the Customer (if any);
- (ii) all Goods that shall be supplied in the future by the Supplier to the Customer;
- (iii) the proceeds of sale of all Goods previously supplied or to be supplied; and
- (iv) all present and after acquired personal property of the Customer,

to secure payment of all monies (including but not limited to the Price and any interest) owing by the Customer to the Supplier from time to time under these terms and conditions and under any other agreement or arrangement between the Customer and the Supplier.

15.3 The Customer undertakes to:

- (a) promptly 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 Supplier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the PPS Register and otherwise do all things necessary and required by the Supplier to ensure that any security interest registered by the Supplier is a perfected security interest under the PPSA;
 - (ii) register any document on any register reasonably necessary to secure the Supplier's interest under these terms and conditions;
 - (iii) register any other document required to be registered under the PPSA; or
 - (iv) correct a defect in a statement referred to in clauses 15.3(a)(i), (ii) or (iii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or releasing any Goods that are the subject of a security interest;
- (c) not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of the Supplier; and
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
- (e) immediately advise the Supplier of any change in the name of the Customer and material change in its business practices of selling the Goods which may result in a change in the use of the Goods by the Customer or in the nature of proceeds derived from the sale of the Goods.

15.4 The Supplier and the Customer agree that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the security interest created by these terms and conditions.

15.5 The Customer waives its rights to receive notices, information or statements (as the case may be) under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

15.6 Where title is retained by the Supplier pursuant to clause 13 the Customer waives its right to receive Notice under section 120 and to object under section 121 of the PPSA.

15.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.8 The Customer unconditionally ratifies any actions taken by the Supplier under clauses 15.3 to 15.7.

15.9 The Customer irrevocably appoints the Supplier to be its attorney to do such acts and execute such documents as the Customer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Supplier (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Supplier by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.

15.10 The provisions of this clause 15 shall survive termination of these terms and conditions or any other agreement between the Supplier and the Customer for the sale of Goods, for whatever reason.

15.11 If the Credit (Repossession) Act 1997 applies to any transaction between the Customer and Supplier, the Customer has the rights provided in that Act despite anything contained in these Terms and Conditions.

16. Cancellation

The Supplier may terminate this agreement or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.

17. Privacy Act 1993 and Credit Reporting Privacy Code 2004

17.1 The Customer and the Guarantor authorise the Supplier to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and the Guarantor in relation to credit provided by the Supplier.

- 17.2 The Customer and the Guarantor authorise the Supplier to exchange information about the Customer and Guarantor with credit providers named in this credit application and credit providers that may be named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) to assess this credit application by the Customer;
 - (b) to notify other credit providers of a default by the Customer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
 - (d) to assess the credit worthiness of the Customer and the Guarantor.
- 17.3 The Supplier may give personal or commercial information about the Customer to a credit reporting agency for the following purpose:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

18. Lien and Stoppage in Transit

Where the Supplier has received or been tendered the whole of the Price and the payment has been dishonored, the Supplier shall have:

- (a) a lien on the Goods;
- (b) the right to retain the Goods while the Supplier is in possession of them;
- (c) a right to stop the Goods in transit whether or not delivery has been made or ownership has passed to the Customer; and
- (d) a right of resale or disposal, provided that the lien of the Supplier shall continue despite commencement or proceeding or judgment for the Price having been obtained.

19. Corporation

If the Customer is a corporation (with the exception of a publicly listed company) it must advise the Supplier of any alterations to its corporate structure (for example, by changing directors, shareholders or its constitution), and in the case of a change of directors or shareholders, the Supplier may require new guarantors to sign the guarantee and indemnity to this agreement.

20. Trust

If the Customer is a trustee of a trust, the Customer warrants that it enters into this agreement in both its capacity as trustee and in its personal capacity, it has the power to execute this agreement on behalf of the trust and it shall not retire as trustee, or appoint a new or additional trustee without advising the Supplier in writing (in which case the Supplier may require new guarantors to sign the guarantee and indemnity to this agreement).

21. Partnership

If the Customer is a partnership, the Customer warrants that the partner(s) signing this agreement have the authority to enter into the agreement and the partnership agrees that it must not alter its structure without advising the Supplier in writing of the change (in which case the Supplier may require new guarantors to sign the guarantee and indemnity to this agreement).

22. Legislation

If, as a result of:

- 22.1 any legislation becoming applicable to the subject matter of this agreement; or
- 22.2 any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer,

then the Customer must pay the Supplier these additional amounts on demand.

23. General

- 23.1 This agreement constitutes the entire agreement between the parties relating in any way to the subject matter. All previous negotiations, understandings, representations, warranties or commitments about the subject matter are merged in this agreement and are of no further effect.
- 23.2 If any provisions of this agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 Failure by the Supplier to enforce any of the Terms and Conditions shall not be construed as a waiver of any of the Supplier's rights or a waiver of continuing breach.
- 23.4 All Goods and Services supplied by the Supplier are subject to, and these Terms and Conditions shall be governed by, the laws of New Zealand and the Customer submits to the jurisdiction of the New Zealand courts.

- 23.5 The Supplier shall be under no liability to the Customer for any indirect loss or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these Terms and Conditions.
- 23.6 In the event of any breach of this agreement by the Supplier, the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price in relation to the Goods.
- 23.7 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 23.8 All payments required to be made by the Customer under this agreement must be made free of any set-off or counterclaim and without deduction or withholding whatsoever.
- 23.9 The credit facilities provided by the Supplier are not transferable by the Customer without the prior written consent of the Supplier. The Supplier may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.10 The Supplier reserves the right to review these Terms and Conditions at any time from time to time. If, following any such review, there is to be any change, it shall take effect from the date on which the Supplier notifies the Customer of such change.