



TERMS AND CONDITIONS OF SUPPLY – Gardner Family trust T/D as Think Water Whitsunday (ABN 86342431469)] (“SELLER”)

1. Unless otherwise agreed in writing by the Seller, the Buyer agrees that it will be bound by these terms and conditions if the Buyer places an order with the Seller and it is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Buyer.

Orders, Quotations and Price

2. Once an order has been accepted by the Seller, it cannot be cancelled by the Buyer. The supply of goods or services is subject to availability. The Seller reserves the right to suspend or discontinue the supply of goods or services to the Buyer. If the Seller is unable to supply all of the Buyer's order, these terms and conditions continue to apply to any part of the order supplied.
3. Where a written quotation has been given by the Seller, the selling price is the price specified in the quotation. In any other case, the Seller's selling price is the price specified in the price list as at the date of despatch. Unless otherwise stated, the selling price does not include GST. The Seller may at any time change its price list to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Buyer must accept any errors or omissions in invoicing and, where applicable, the Buyer must accept the amended pricing and pay the difference within the approved terms of trade.

Delivery

4. Unless otherwise agreed in writing by the Seller, delivery is at the Seller's premises. All freight from the Seller's premises to the Buyer is at the Buyer's expense. If the Seller arranges the carriage of the goods for delivery to the Buyer, the Seller will be deemed to contract as agent for the Buyer, and the Buyer will bear all risks with respect to the goods during carriage and will likewise be responsible for effecting any insurance of the goods during carriage. The Seller may charge a reasonable handling fee for all orders delivered to the Buyer. The Buyer indemnifies the Seller for the cost of all transport arranged by the Seller on the Buyer's behalf.
5. If a delivery date is specified, that date is an estimate only and the Seller is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Buyer must accept delivery and pay for the goods delivered, including transport costs if applicable, even if they are delivered after any specified delivery date.

Inspection, Acceptance and Returns

6. The Buyer must inspect the goods or services immediately following delivery or completion of these services (as the case may be). The Buyer may only return goods with the prior approval of the Seller and within 14 days of the date of delivery in resaleable condition and, where appropriate, in the original packaging. A reasonable restocking fee for any returned goods may be charged to the Buyer. Any claim that the goods or services are not in accordance with these terms and conditions (including if they are defective, damaged during delivery, are short delivered or services not as per contract) must be made at the time of delivery of the goods or provision of the services, or in writing to the Seller within 48 hours after delivery of the goods/completion of the services to the Buyer. If the Buyer fails to make a claim then, to the extent permitted by law, the goods or services are deemed to have been accepted by the Buyer and the Buyer must pay for the goods or services in accordance with these terms and conditions.

Payment

7. Unless otherwise agreed, if the Buyer has an approved credit account with the Seller, the Buyer must pay for goods or services ordered by the Buyer within 30 days from the end of the month of invoicing, or earlier if the approved credit limit is exceeded. Where the Buyer does not have a credit account with the Seller, all goods and services are to be paid for at the time of delivery. The Seller may charge an administration fee for any payments by credit card. Time is of the essence in respect of the Buyer's obligation to make payment for goods or services supplied by the Seller to the Buyer.
8. If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions, or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Seller, the Seller may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:
 - a) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the Australian & New Zealand Banking Group's reference rate for business loans, available to prime commercial customers, plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);
 - b) vary or withdraw any approved credit limit and/or terms of trade including cancelling any rebate, discount or allowance due or payable by the Seller as at the date of the event;

- c) cancel or suspend any unfilled orders or cease providing the services;
 - d) terminate any contracts between the Seller and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
 - e) enter (at any time) any premises in which the Seller's goods (including any merchandising materials) are stored, to enable the Seller to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever; or
 - f) institute any recovery process as the Seller in its discretion decides at the Buyer's cost and expense.
9. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Buyer has no right to set-off any claim against or debt owed by the Seller from moneys owing to the Seller.

Risk and Title

10. Goods supplied by the Seller to the Buyer are at the Buyer's risk immediately on the earlier of delivery to the Buyer or into the Buyer's custody, including its carrier or forwarder. The Buyer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.
11. Property in the goods supplied by the Seller to the Buyer does not pass to the Buyer until all goods have been paid for in full. In the meantime, the Buyer takes custody of the goods and retains them only as fiduciary agent and bailee of the Seller. Until all goods have been paid for in full:
- a) to the extent possible, the Buyer must store the goods in a manner that shows clearly they are the property of the Seller, maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
 - b) the Buyer may sell the goods, in the ordinary course of its business, but only as fiduciary agent of the Seller. The Buyer must not represent to any third party that the Buyer is acting in any capacity for or on behalf of the Seller and the Buyer has no authority to bind the Seller to any contract or otherwise assume any liability for or on behalf of the Seller. The Buyer receives all proceeds (including any proceeds from insurance claims) in trust for the Seller and must keep the proceeds in a separate bank account until all liability to the Seller is discharged;
 - c) if the Buyer uses the goods in some manufacturing or construction process of its own or of a third party, the Buyer must hold in trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds.
12. For the avoidance of doubt, the Seller's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009 (PPSA)*. The Buyer undertakes that it will not grant any security interest over the goods to any other person. The Buyer will, at the request of the Seller, execute documents and do such further acts as may be required for the Seller to register the security interest granted by the Buyer under the PPSA. The Buyer further agrees that where the Seller has rights in addition to those under part 4 of the PPSA, those rights will continue to apply. The Buyer irrevocably grants to the Seller the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if the Seller has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Buyer will indemnify the Seller from any claims made by any third party as a result of such exercise.

Designs, Drawings and Instructions

13. The Seller will retain ownership, copyright and all intellectual property rights in relation to all designs, drawings and specifications prepared by it for or on behalf of the Buyer, despite any payment made in accordance with these terms of supply.
14. The Seller is not responsible for the accuracy, performance or suitability for purpose of any designs, drawings, information, specification or instruction provided by the Buyer. The Buyer is responsible for the accuracy of any designs, drawings, information, specification or instruction provided for use by the Seller. Where the Seller has followed any designs, drawings, information or instruction furnished by or on behalf of the Buyer, the Buyer indemnifies and will keep the Seller indemnified against all claims, damages, losses, penalties, costs and expenses to which the Seller may become liable by reason of using or following the designs, drawings, information, specification or instruction, including any infringement of any patent, registered design, trademark, copyright or any other right of a third party, including moral rights.

Limitation of Liability



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15. To the extent permitted by law, these terms and conditions exclude all other conditions, guarantees, warranties, liabilities or representations in relation to the goods and/or services. Where legislation implies in these terms and conditions any condition or warranty that cannot be excluded or modified, to the extent permitted by law the liability of the Seller for a breach of any such condition or warranty is limited at the Seller's option to any one or more of the following:
- a) In the case of goods:
 - i. replacement of the goods or the supply of equivalent goods;
 - ii. payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion; or
 - iii. repayment of any part of the purchase price of the goods which has been paid by the Buyer, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion.
 - b) In the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.
16. Subject to clause 15, the Seller is not liable for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of goods and services, including (without limitation) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), arising out of or in connection with the supply of goods or services, even if due to the negligence of the Seller or any of its employees or agents.

Other Terms

17. This agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the goods of their operation. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) is excluded. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions remain in force. The laws of the State or Territory in which the Seller is based govern these terms and conditions and the Buyer submits to the exclusive jurisdiction of the courts of the State or Territory in which the Seller is based.
18. The Seller may amend or vary these terms and conditions by notifying the Buyer in writing of the amendment or variation.