

# **SMART WATER TECHNOLOGY LIMITED**

## ***TERMS AND CONDITIONS OF TRADE***

### **1. General**

- 1.1 In these terms and conditions (unless the context requires otherwise):
- (a) “Seller” means Smart Water Technology Limited in its own capacity and/or any other business acquired by Smart Water Technology Limited;
  - (b) “Buyer” means any person who enters into a contract with the Seller for the purchase of goods and includes:
    - (i) any successors or permitted assigns;
    - (ii) if the Buyer consists of more than one person, both of them jointly and each of them severally;
  - (c) “carrier” means a carrier nominated by the Seller to make delivery of the goods;
  - (d) “goods” means any goods or services supplied or to be supplied by the Seller as specified in an order accepted by the Seller.
  - (e) “order” means an order placed with the Seller for the supply of goods.
- 1.2 These terms and conditions apply to the sale of goods by the Seller and all offers made by the Seller in relation to the Seller’s goods, unless varied, amended or cancelled in writing signed by an officer or other duly authorised representative of the Seller.
- 1.3 The Buyer of goods from the Seller is deemed to have accepted the terms and conditions contained herein by placing an order with the Seller.
- 1.4 The Seller’s failure to insist upon strict performance of any of these terms or conditions or to object to any term or condition contained in any communication, whether written or oral, from the Buyer, shall not be deemed a waiver of these terms and conditions and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 1.5 These terms and conditions supersede all previous terms and conditions imposed by the Seller and override any terms and conditions of purchase used or submitted by the Buyer.

### **2. Quotes by the Seller**

- 2.1 Subject to sub-clause 4.2, all quotations made by the Seller are valid for the period specified in the quotation, or if no such period is specified, for a period of thirty (30) days from the date of the quotation. Following the expiration of this period, each quotation is subject to written confirmation by the Seller.
- 2.2 Any goods offered ex-stock by the Seller are subject to prior sale.

### **3. Orders**

- 3.1 The Seller may require the Buyer to place written orders for the Seller’s goods. All quotations given and orders accepted by the Seller are given or accepted by the Seller subject to these terms and conditions, and to the exclusion of all other terms and conditions. A contract will be made only upon the acceptance of an order in writing by the Seller, which may be by supply of all or part of the goods ordered.

- 3.2 The Buyer must purchase at least the minimum order value and the minimum order quantity per line item as notified to the Buyer from time to time.

#### **4. Prices**

- 4.1 Subject to sub-clause 4.2, and unless otherwise agreed, the purchase price for goods shall be the Seller's list prices as at the date of the Seller's acceptance of an order placed by the Buyer. In the event that any price quoted by the Seller is calculated on the basis of a per unit price or is based on minimum or specific quantities, the Seller may amend that price if there is any variation in the total quantity of goods ordered from that upon which the quotation was based.
- 4.2 All quoted prices of imported goods are based upon the FOB price of the Seller's supplier and the rates of exchange, freight, insurance and customs duty as at the date of quotation. The quoted prices may be varied by the same percentage amount by which the Seller's actual costs of satisfying an order vary as a result of any change in the said price or in any of these rates or duties. In the case of variations in rates of exchange, the Seller reserves the right to increase its quoted price in relation to goods supplied to the Buyer by the same percentage as the percentage devaluation (if any) of the New Zealand dollar against the currency in which payment for the relevant goods is required to be made by the Seller to its supplier, calculated from the date of quotation by the Seller to the date of invoice.
- 4.3 In addition to the prices specified above, the Seller will charge the Buyer for the cost of delivery of the goods ex Seller's store together with its standard packaging and handling charges from time to time. In addition, the Seller shall be entitled to charge separately for packing, which is not in accordance with the Seller's customary standard of packing.
- 4.4 All listed, published or quoted prices (unless otherwise expressly indicated) are exclusive of any applicable goods and services tax ("GST") or any other applicable taxes and duties and costs and charges associated with the delivery of goods, and all such taxes, duties and costs and charges shall be included as an additional item in the invoiced price. The Buyer will be required to pay the Seller the amount of the price for goods and services plus GST.

#### **5. Terms of Payment**

- 5.1 Subject to sub-clause 5.2, all invoices shall be paid in full in New Zealand currency or such other currency agreed at the time of quotation not later than thirty (30) days from the date of invoice, unless the Seller otherwise agrees in writing. Time shall be of the essence for payment.
- 5.2 The Seller shall be entitled to invoice for goods for those goods supplied to the Buyer upon delivery thereof irrespective of whether the entire order may have been filled.
- 5.3 In the event that the Buyer fails to make any payment to the Seller when payment falls due, the Seller shall have the right, without prejudice to any other right or remedy to which the Seller may be entitled, to charge interest on any overdue invoice at the rate of 15% per annum.

#### **6. Delivery of Goods**

- 6.1 Whilst the Seller will use its best endeavors to meet all quoted delivery or consignment dates the Seller shall in no event be liable to the Buyer by reason of delays in delivery caused by any reason whatsoever.
- 6.2 If the Buyer wishes to use its own carrier, delivery of the goods shall be ex-Seller's store and the Buyer shall pay all freight and insurance costs ex-Seller's store and shall indemnify the Seller against all actions, suits, proceedings, claims or demands and all losses, expenses and liabilities, howsoever arising, from the transportation of the Seller's goods delivered ex-Seller's store once delivery has been made by the Seller to the Buyer's carrier.
- 6.3 The delivery time made known to the Buyer are estimates only and the Seller will not be liable for late delivery or non-delivery and under no circumstances will the Seller be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery of the goods. The

Seller will use its reasonable endeavors to advise the Buyer in a timely manner of any delay in estimated delivery times.

**7. Storage of Goods**

In the event that the Buyer stores goods on the Seller's premises, whether supplied by the Seller or by a third party, the goods shall be at the sole risk of the Buyer and for the avoidance of doubt the Seller shall be under no obligation to maintain insurance cover for such goods and shall have no liability whatsoever for any loss or damage that may occur whilst such goods are on the Seller's premises.

**8. Risk and Supply**

- 8.1 All goods sold to the Buyer shall be at the Buyer's risk immediately upon delivery to or collection by the Buyer, the Buyer's nominee, the Buyer's carrier, except where goods are held for the Buyer in accordance with clause 7, in which case risk shall pass to the Buyer on the date being seven (7) days from the date of notification to the Buyer that the goods are ready for delivery.
- 8.2 The Seller reserves the right to: (1) withhold supply to the Buyer where: (i) the Seller has insufficient goods to fulfil the order, (ii) the goods and/or services ordered have been discontinued, (iii) the Buyer is in breach of any contract with the Seller, or (iv) the Seller otherwise considers it appropriate for any other reason; (2) supply by installments. The exercise of these rights by the Seller or delay in supply for any other reason does not entitle the Buyer to: (i) terminate any contract with the Seller; or (ii) claim any loss or damage.

**9. Title of Goods**

- 9.1 Title to and property in the goods supplied by the Seller shall not pass to the Buyer until the Seller has received payment in full of the price of all goods supplied by the Seller to the Buyer at any time and the Buyer has discharged all existing indebtedness to the Seller, whether for the price of the goods supplied or for any other amount which may be owing by the Buyer to the Seller on any other account (some of which may not necessarily be due for payment); provided however that the Buyer shall bear the risk of any loss or damage to or deterioration of the goods from whatever cause arising following delivery of the goods to the Buyer. If the Buyer fails to honour any of these terms and conditions of sale, the Seller, without notice, will have the right to take possession of the goods which are the subject of this reservation of title, or trace the proceeds of the sale thereof, as the case may be, and to recover the full amount owing to the Seller together with interest and costs, if any.
- 9.2 The Buyer acknowledges that until property and ownership in the goods passes to the Buyer in accordance with sub-clause 9.1, the Buyer is in possession of those goods for and on behalf of the Seller as a fiduciary bailee and agent and is only authorised to sell the goods (in the Buyer's own name and not as agent of the Seller) in the ordinary course of the Buyer's ordinary business.
- 9.3 The Buyer shall keep and safely store the goods on its premises separately and in such manner that the goods are readily identifiable as the property of the Seller and shall display such identification as may from time to time be requested by the Seller.
- 9.4 The Seller will have the right, at any time and without prejudice to any other remedies: (i) to repossess the goods and to enter into any premises upon which the goods are stored (forcibly if necessary), without notice, for this purpose and will not be liable for trespass or any resulting damage; and (ii) to require the Buyer not to resell or part with possession of, or otherwise dispose of, charge or otherwise encumber the goods until payment is made in full on any account.
- 9.5 Until such time as the Seller receives payment in full for any goods on any account, if the Buyer sells or receives any payment from a customer or insurer in respect of the goods, (1) the Buyer must: (a) deposit the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) into a separate and identifiable bank account which shall not be overdrawn; (b) not mix such proceeds with any other moneys; and (c) account to the Seller for such proceeds, and (2) the Seller will be entitled to trace all proceeds of sale of the goods received by the Buyer through the relevant account or any other account maintained by the Buyer.

- 9.6 If the Buyer incorporates or mixes goods supplied by the Seller (the property in which has not passed to the Buyer in accordance with this clause 9) with other goods not supplied by the Seller, the resulting product shall be the property of the Seller. The rights of the Seller in respect of the resulting product shall be the same as those provided for in this clause 9 in respect of goods the property in which has not passed to the Buyer, except that in exercising these rights the Seller shall account to the Buyer (on a pro rata basis) for that part of the realised value of the resulting products which is attributable to: (1) the goods not supplied by the Seller; and (2) the Buyer's cost of manufacture.
- 9.7 Nothing in sub-clauses 9.1 to 9.6 inclusive shall affect the Seller's rights as an unpaid Seller. This clause 9 is not intended to create a charge over the goods or over any book debts or proceeds of sale in respect of the sale of the goods. To the extent that any part of this clause is construed as creating a charge, the offending words shall be deleted.

## **10. Return of Goods and Cancellation of Orders**

- 10.1 The Buyer may within ten (10) days of receipt of any goods claim the right to reject any goods which are wrongly supplied or oversupplied, or which are not in accordance with any express or implied representations, warranties, terms or conditions of the contract of sale, without limiting the Seller's right to dispute any such claim. If the Buyer fails to notify the Seller in writing of its claim for rejection and reasons therefore within such period, the Buyer will, subject always to clause 15 of these terms and conditions, be deemed to have accepted such consignments.
- 10.2 Return of any of the goods cannot be made by the Buyer:-
- (a) without prior written authorisation of the Seller, and
  - (b) unless accompanied by the delivery docket showing the Seller's authorisation reference number.
- 10.3 In the event that the Buyer returns goods other than in accordance with sub-clause 10.2, subject always to clause 15 of these terms and conditions, the Seller shall re-consign those goods to the Buyer, freight collect.
- 10.4 The Buyer shall not cancel any order without the prior written consent of the Seller, which consent may or may not be granted in the Seller's sole discretion and on terms that will indemnify the Seller for all losses.
- 10.5 In the event that the Seller agrees to the cancellation of an order, the Seller may as a condition of such cancellation, require the payment by the Buyer of a cancellation fee of an amount determined by the Seller in its reasonable discretion to compensate it for the loss suffered by it arising out of the cancellation.
- 10.6 At the Seller's option, any order may be terminated by the Seller in the event of the insolvency of the Buyer or in the event of execution being levied against any of the property of the Buyer or in the event of the Buyer being placed in liquidation, whether voluntary or otherwise, or a receiver and manager or administrator being appointed in respect of the assets or undertaking of the Buyer or the Buyer entering into a deed of composition or arrangement with its creditors or any of them, or in the event that for any reason, in the Seller's reasonable opinion, the Buyer is unlikely to be able to make payment for the goods on the due date.

## **11. Specifications and Information**

Where the Seller is not the manufacturer, the Seller relies on the specifications and warranties supplied by the manufacturer.

## **12. Export and/or Re-export Limitation**

The Buyer must have regard to and take responsibility for all current statutory or other government regulations in force from time to time concerning export rules, regulations and restrictions in force from time to time and regardless of any disclosure made by the Buyer to the Seller of an ultimate destination for any goods or



products, the Buyer will not export or re-export directly any goods or other products without first obtaining all such written consents or authorisation's as may be required by any applicable government rules or regulations.

### **13. Intellectual Property**

- 13.1 The Buyer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the goods shall not pass to the Buyer. The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.
- 13.2 Subject to Clause 15, the Seller shall not be liable for any loss arising from the production of goods where the specification, method of construction or design has been provided to the Seller by the Buyer and the Seller has not materially deviated from those specifications when producing those goods. The Buyer acknowledges the Seller's right to vary the material or construction specification of the goods provided that their performance specification is not adversely affected.
- 13.3 The Buyer warrants to the Seller that the production and delivery of goods to the Seller will not infringe any patent, copyright, trade mark, design or other right of any third party and the Buyer agrees to notify the Seller in the event of such an infringement and further agrees to indemnify the Seller in respect of any loss suffered or incurred by the Seller for any claim, action or proceeding commenced by any person in connection with such infringement.
- 13.4 Unless otherwise agreed in writing, if the Seller is requested to provide services in respect of programming or other enhancements then the cost of such items shall be to the account of the Buyer and the Buyer agrees that the property in such items is to remain with the Seller.
- 13.5 Any preliminary work undertaken by the Seller at the Buyer's request in relation to design or construction of goods or products in respect of designs or programming shall be considered an order and the Seller may in its discretion charge the Buyer in respect to such work undertaken or services provided.

### **14. Software**

- 14.1 Where the goods include software and the Buyer has been furnished with the developer's software licence, the Buyer shall sign and return it to the Seller within seven (7) days or as otherwise specified in the licence, and if the Buyer fails to sign and return the licence:-
- (a) the Seller reserves the right to withhold release of the software; and
  - (b) the Seller shall nevertheless be entitled to payment in full for the software.
- 14.2 In the absence of the developer's software licence being furnished, the Buyer shall accept a non-exclusive, non-transferable licence to use the software as provided in these terms and conditions and subject to the further provisions of sub-clauses 14.3 and 14.4.
- 14.3 The Buyer shall not copy (other than for normal equipment operation), reproduce, translate, adapt, vary or modify the software or communicate any part of it to a third party without the prior written consent of the Seller.
- 14.4 The licence granted by sub-clause 14.2 shall continue until or unless:-
- (a) either party gives to the other one month's prior written notice of termination, on or before the expiry of which the Buyer shall return or destroy the software as the Seller shall direct, which notice may only be given by the Seller if the continued use or possession of the software by the Buyer infringes the developer's third party rights or if the Seller is required to give notice by law; or
  - (b) the Seller terminates the licence immediately if the Buyer fails, or has failed, to comply with any term or condition of the contract including (without limitation) breach of copyright, patent or confidentiality.

**15. Warranty and Exclusion of Liability**

15.1 The Seller warrants to the Buyer that, under proper use in accordance with the Seller's specifications and instructions (if any) the goods will be free from defects solely due to faulty workmanship and materials, during a period of twelve (12) months from delivery, to the extent that upon authorised return to the Seller, freight pre-paid, during that period, of any part of the goods covered by this warranty, the Seller shall, if it finds such a part to be so defective in its sole opinion, at its option repair such part or supply (but not fit) a replacement part, provided that:-

- (a) the goods or any part thereof are not, and have not been, without the Seller's consent, altered, repaired or subjected to any technical attention by any person other than the Seller's authorised representatives;
- (b) the provision of this sub-clause 15.1 may, at the Seller's option, be varied or replaced by specific warranty conditions issued in respect of particular products; and
- (c) this warranty does not cover damage due to normal wear and tear, improper installation, use of any of the Seller's goods in life support products, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum values in the applicable specification.

15.2 **To the extent permitted by law, the Seller shall not be liable, nor shall there be any remedy against the Seller in respect of any claim for any loss, damage, costs or expenses by the Buyer or any other person in relation to or arising out of use of the goods or in relation to or arising out of services supplied by the Seller in relation to the goods, including.**

15.3 The Seller's liability (if any) shall be limited, at its option, to:-

- (a) in the case of goods:-
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired,
- (b) in the case of services:-
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

**16. Infringement of Intellectual and Industrial Property Rights**

If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the goods infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of third parties, the Buyer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action, suit, proceedings, claim or demand except with the prior written consent of the Seller.

**17. Governing Law**

These terms and conditions shall be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

**18. Use of Goods**

The Buyer will not use the goods for any purpose other than that for which the goods were sold to it and will use the goods strictly in accordance with any instructions or supporting documentation supplied with the goods, or as directed by the Seller.

**19. Specifications**

19.1 The Seller's policy is one of continuous development and the Seller therefore reserves the right to improve, alter or discontinue specifications without prior notice. All illustrations or samples are intended as approximate representations only and are not binding in detail with regard to finishes, colour and specifications. The Seller accepts no liability whatsoever for any loss or damage (including, without limitation, consequential loss or damage) directly or indirectly arising out of or in connection with same.

19.2 In the event the Buyer provides the Seller with specifications for the manufacture of goods by the Seller for the Buyer, the Buyer warrants to the Seller that the specifications and any goods manufactured by the Seller based on the said specifications will not infringe the copyright, patent, design or other intellectual property rights of any third party, and the Buyer will indemnify and keep indemnified the Seller from and against any and all claims, liabilities, obligations, expenses or damages the Seller may suffer or incur as a result of the use by the Seller of the specifications.

**20. Termination**

20.1 The Seller will be entitled to terminate any order with the Buyer or revoke any credit terms granted if the Buyer fails to punctually pay monies due to the Seller, has any security enforced against it, has a receiver or liquidator appointed under the Companies Act, commits an act of bankruptcy or, being a company passes a resolution for winding up (except for the purposes of reconstruction) or an application is made for the winding up the Buyer.

20.2 Upon the occurrence of termination event referred to in Clause 20.1, the Seller reserves the right to cancel an order with the Buyer (to the extent that the order remains unperformed) in whole or in part without any liability attaching the Seller, any goods in transit and dispose of the goods produced for the Buyer to a third party and all monies owing to the Seller in respect of any order will be immediately payable.

20.3 Termination by the Seller is without prejudice to any other right or obligation, which may have accrued prior to termination.

**21. Force Majeure**

21.1 The Seller will not liable for any loss incurred as a result of delay or failure to meet an accepted order or to observe any of these terms and conditions (other than an obligation to pay money) due to an event of force majeure, being any cause or circumstance beyond the Seller's control, including but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any Government or any semi-Government authorities or embargos.

21.2 During the continuance of an event of force majeure affecting the Seller, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

**22. Severability**

If any of these terms and conditions infringes any law in New Zealand it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.