

**Terms and Conditions of Sale General :**

Unless the context otherwise requires:

**Agreement** means the agreement between SX WATER and Customer for the supply of Goods by SX WATER to Customer and shall be constituted in its entirety by these Terms and Conditions of Sale and, if any, SX WATER's quotation and the Confidential Credit Application;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010*;

**Credit Application** means the Confidential Credit Application and Agreement of which these Terms and Conditions form part;

**Credit Arrangement** means any credit terms made available in writing to Customer pursuant to an application Customer for the provision of Goods on credit submitted to SX WATER using SX WATER's standard credit application form and accepted in writing by SX WATER (referred to as the Confidential Credit Application and Agreement);

**Customer** means the party to whom SX WATER has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by SX WATER and purchased by Customer pursuant to the Agreement;

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

**Guarantee** means the guarantee document provided by Customer or Customer's directors, shareholders or principals to SX WATER to guarantee the performance of the Agreement by Customer;

**SX WATER** means SOUTHERN CROSS WATER PTY LTD ABN: 18 630 205 702 of 8/17 Cairns St, Loganholme QLD 4129, PH: +61 7 3441 5600

**Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trademarks and copyright in such information and intellectual property;

**Purchase Order** means the written purchase order by Customer to SX WATER for the supply of the Goods.

**2. Quotations and purchase orders**

- (a) Subject to the clause immediately below, quotations from SX WATER are valid for a period of 30 days from the date of issue or as otherwise specified in the quotation. Prices given in any quotation by SX WATER are applicable to that quotation only, and will not apply in any other instances. A quotation from SX WATER is not an offer to sell.
- (b) In order to purchase the Goods, Customer must place with SX WATER a Purchase Order setting out an order number, SX WATER's quotation number (if applicable), full description of the Goods to be purchased, the delivery date and any other information required by SX WATER. The Purchase Order may be accepted or rejected by SX WATER at SX WATER's sole discretion.
- (c) A Agreement shall be formed by and upon SX WATER accepting from Customer a Purchase Order pursuant to the clause immediately above and each Agreement shall be governed by the Agreement.
- (d) The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- (e) Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind SX WATER, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.

**3. Payment of purchase price**

- (a) Unless otherwise agreed in writing, SX WATER accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on SX WATER's quotation or price list for those Goods current as at the date that SX WATER accepts the Purchase Order.
- (b) If applicable, a copy of SX WATER's publicly available price list for the Goods is available on request. All prices on SX WATER's price list are subject to alteration without notice.
- (c) The total purchase price, unless otherwise stated in the Purchase Order, excludes GST and does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to SX WATER, as SX WATER may elect.
- (d) Where SX WATER has not agreed to provide credit to the Customer, payment of the purchase price must be made in full prior to despatch of the relevant Goods. Where SX WATER has agreed to provide credit, payment of the purchase price must be made in full within 30 days after the end of the month in which our invoice is dated or otherwise in accordance with Customer's Credit Arrangement.
- (e) Customer must not set off any money owing or alleged to be owing by SX WATER against money due by Customer to SX WATER.
- (f) Customer acknowledges that SX WATER is entitled to exercise a right of set off to the extent Customer is indebted to SX WATER against any monies due by SX WATER to Customer on this or any other account.
- (g) To secure payment of all monies which may become payable by the Customer to SX WATER, the Customer hereby charges with the due payment of those

monies all of the Customer's interest in any land and all other real property both present and future and the Customer consents to SX WATER lodging a caveat or caveats noting its interests pursuant to such charge. The Customer also agrees, if requested by SX WATER, to execute any other documents in registrable form to better secure this equitable charge. The Customer hereby agrees to indemnify SX WATER for all legal costs and fees in respect to such charge and caveat.

- (h) If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, SX WATER may require Customer to pay on demand interest effective from time to time thereon 10% per annum calculated from the due date on daily balances of amounts unpaid.
- (i) In the event of any default in payment, the Customer is liable to SX WATER for all costs, expenses or losses incurred by SX WATER as a result of the Customer's failure to pay (including without limitation the costs of any legal action, debt collection costs, court costs, search costs and legal costs on a solicitor and own client basis). The Customer will immediately on demand pay to SX WATER all such amounts (on an indemnity basis).

**4. Cancellation of orders**

Customer may not alter or cancel a Purchase Order without SX WATER's prior written consent. If SX WATER agrees to alter or cancel the Purchase Order, Customer will indemnify SX WATER against any loss, damage and expense incurred by SX WATER in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by SX WATER in the execution or part execution of the Goods and including compensation payable to any of SX WATER's suppliers and loss of profit.

**5. Return of Goods and credits**

- (a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.
- (b) Customer may reject any Goods that are wrongly supplied or oversupplied by notifying SX WATER of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. SX WATER may dispute any such claim.
- (c) Goods referred to in the clause immediately above may be returned to SX WATER for credit if all of the following is complied with:
- (d) the Goods are returned to SX WATER's premises by prior arrangement and with SX WATER's written approval within 7 days of delivery, at no cost to SX WATER, unless delivered as the result of an administrative error by SX WATER, in which case SX WATER will bear the cost of return;
- (e) the Goods are accompanied by a dispatch note stating SX WATER's original invoice number and reason for return and;
- (f) the Goods are returned in an unsoiled, undamaged and resalable condition in their original packing.
- (g) SX WATER may, from time to time and at its discretion, accept returns of standard product (ie. product which is not specialised or customised). Any such returns will be subject to SX WATER's standard restocking fee from time to time. If no other restocking fee has been notified to the Customer, the restocking fee will be 20%. The conditions of paragraphs (c) (i)-(iii) above must also be satisfied by Customer.

**6. Delivery, Storage and Use**

- (a) All quoted delivery or consignment dates are estimates only. SX WATER is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.
- (b) Unless a different Incoterm has been agreed, Incoterms 2010 FCA 'SX WATER's warehouse door' apply. Unless the applicable Incoterm requires otherwise, SX WATER is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at SX WATER's nominated premises (Delivery). Unless the applicable Incoterm requires otherwise, any unloading or loading shall be Customer's responsibility.
- (c) SX WATER may deliver the Goods by instalments (where, in SX WATER's opinion, this is reasonable) and issue interim invoices to Customer.
- (d) Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle SX WATER to withhold or delay delivery of any remaining Goods ordered.
- (e) If Customer is unable to collect the Goods at the nominated delivery point on the delivery day, SX WATER may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere, and Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.
- (f) The Customer must not install, store or in any way incorporate the Goods in any aircraft or in any vessel intended to fly or move in or through the atmosphere or space.
- (g) The Customer acknowledges that it has the sole responsibility to confirm the suitability of the Goods for their intended purpose and that SX WATER makes no representation or warranty in this regard.

**7. Title, risk & PPSA**

- (a) Title to the Goods shall remain with SX WATER until all monies owing by Customer to SX WATER for the Goods have been paid in full.
- (b) Until such time as Customer has paid SX WATER in full for the Goods, Customer shall:

- i. store the Goods separately and mark them so that they are clearly and easily identifiable as SX WATER's property and, if SX WATER requests, inform SX WATER of the location of the Goods;
  - ii. hold the Goods as bailee for SX WATER, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (Bailment);
  - iii. Indemnify SX WATER against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by SX WATER.
- (c) If:
- i. a payment is not made in accordance with the Agreement;
  - ii. Customer commits any other breach of the Agreement;
  - iii. Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent, then SX WATER may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:
  - iv. terminate the Agreement and the Bailment;
  - v. suspend some or all its obligations to Customer under the Agreement; and/or
  - vi. enter upon any premises owned or occupied by Customer where SX WATER reasonably believes the Goods may be stored and repossess the Goods (including uninstalling the Goods) without being liable for any damages caused, with reasonable notice to the Customer.
- (d) If Customer sells the Goods before payment in full to SX WATER, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for SX WATER in respect of those Goods, and must keep such proceeds in a separate account until the liability to SX WATER is discharged and must immediately pay that amount to SX WATER.
- (e) The risk in the Goods passes to Customer at the time of Delivery.
- (f) In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- (g) The Customer grants to SX Water a security interest in any Goods supplied under this Agreement.
- (h) The Customer acknowledges and agrees that SX Water may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration (unless agreed to otherwise by the parties).
- (i) SX Water can apply amounts it receives from the Customer towards amounts owing to it in such order as SX Water chooses.
- (j) If the Customer defaults in the performance of any obligation owed to SX Water under this Agreement or any other agreement for SX Water to supply Goods to the Customer, SX Water may enforce its security interest in any Goods by exercising all or any of its rights under this Agreement or the PPSA. To the maximum extent permitted by law, SX Water and the Customer agree that the following provisions of the PPSA do not apply to the enforcement by SX Water of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 (unless agreed to otherwise by the parties).
- (k) SX Water and the Customer agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- (l) The Customer must promptly do anything required by SX Water to ensure that SX Water's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- (m) SX WATER reserves the right to register a security interest for the purposes of the Personal Property Securities Act 2009, as amended. The Customer agrees to provide SX WATER with all such information that SX WATER requires in order to register a security interest at any time. The Customer will immediately advise SX WATER of any changes which may affect SX WATER's security interest.

## **8. Insurance**

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for SX WATER up to the amount it owes SX WATER in respect of those Goods, and must keep such proceeds in a separate account until the liability to SX WATER is discharged and must immediately pay that amount to SX WATER.

## **9. Warranty and limitation of liability for Goods**

- (a) Other than is provided for in this clause 9, SX WATER makes no warranties or representations to Customer. The warranty in this clause 9 is in addition to any other rights or remedies which may be available to Customer at law.
- (b) SX WATER warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from Delivery (**Warranty Period**). This warranty does not cover costs of claiming under this warranty or of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to comply with SX WATER's or the original manufacturer's instructions (including any installation, operating or maintenance instructions or manuals), failure to perform required preventative maintenance or normal wear and tear.
- (c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as SX WATER may elect) any such defective Goods at SX WATER's expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.

- (d) For equipment forming part of the Goods, which equipment is not manufactured by SX WATER, the original manufacturer's warranty will apply. SX WATER's liability for such equipment shall not exceed the liability of the manufacturer.
- (e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of SX WATER for a breach of any condition or guarantee applied by law is limited
- (f) at SX WATER's option to the repair of the Goods, the supply of replacement Goods or payment of the cost of having the Goods supplied again.
- (g) SX WATER's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.
- (h) Under the Australian Consumer Law (ACL), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services. Nothing in this Contract will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.
- (i) To the extent permitted by law, if The Company fails to comply with a consumer guarantee which by law may not be excluded, then to the extent the law permits The Company to limit its liability in respect of such failure, The Company's liability is limited to:
  - i. in the case of goods;
  - ii. replacement or the cost of replacing the goods or supply of equivalent goods; or
  - iii. repair or the cost of repairing the goods; and
  - iv. in the case of services, supplying the services again or payment of the cost of having the services supplied again.
- (j) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to SX WATER by post Unit 8/17 Cairns Street, Loganholme QLD 4129 (attention Warranty Manager).
- (k) Customer acknowledges and agrees that, to the extent permitted by law, SX WATER has no liability in Agreement, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, Agreements, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- (l) Subject to clause 9(g), SX WATER's total liability under any Agreement and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each Agreement.

## **10. Proprietary Information**

- (a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by SX WATER and Customer shall gain no right, title or interest in the Proprietary Information whatsoever. Customer specifically acknowledges SX WATER's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.
- (b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or copy, modify or decompile any of SX WATER's documentation relating to the Goods.

## **11. Export/re-export/resale**

- (a) The Goods supplied are intended for use only in Australia, unless SX WATER otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.
- (b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on any US denied persons or entities list or by an end-user engaged in activities related to weapons of mass destruction, including but not limited to activities related to design, development, production or use of nuclear materials, nuclear facilities or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons.
- (c) If Customer resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or anything of value to any government official, entity or organisation, any political party, any candidate for public office, or their employees or relatives, or any other person or entity for the purpose of influencing purchasing decisions or for any other improper purpose.

## **12. Miscellaneous**

- (a) The fact that SX WATER fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. SX WATER must agree in writing to any waiver.
- (b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- (c) SX WATER shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability

to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond SX WATER's reasonable control and not as a consequence of SX WATER's negligence.

- (d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- (e) Governing Law: SX WATER and the Customer agree that this Agreement and any supplementary Agreement for the supply of goods and or services by SX WATER to the Customer is governed by and must be interpreted in accordance with the laws of the State of Queensland, Australia. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the Courts in Queensland and any Court hearing appeals from those Courts.
- (f) Where there is more than one Customer then the liability of each shall be joint and several.
- (g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to SX WATER.
- (h) Customer shall not assign this Agreement without SX WATER's prior written consent.
- (i) If the Customer is a trustee, then the Customer is bound by the Agreement both personally and in its capacity as a trustee.
- (j) Customer agrees that in performing any activities on behalf of or related to SX WATER, it will not, directly or indirectly, pay, offer, authorise or promise any monies or anything of value (such as gifts, contributions, travel, or entertainment) to any person or organisation, including any employee of a customer, or any government official (which includes any employee or official of any governmental authority, government owned or controlled entity, public international organisation, or political party or any candidate for political office) for the purpose of improperly influencing their acts or decisions or to improperly obtain any business benefit. Customer will take appropriate actions to ensure that any person representing or acting under its instruction or control also will comply with this paragraph.
- (k) Customer will not violate any anti-corruption laws in performing any activities on behalf of or related to SX WATER.
- (l) Customer agrees that SX WATER will not be required to take any action or make any payments that SX WATER believes, in good faith, would cause it or its affiliated companies to be in violation of any anti-corruption laws.
- (m) Except as disclosed in writing to SX WATER, Customer represents that it does not have any reason to believe that it has any potential conflict of interest regarding its relationship with SX WATER, such as family members who could potentially benefit from the relationship between Customer and SX WATER, and neither Customer nor its business representatives are or have any family members who are government officials in a position to influence Customer's relationship with SX WATER. Customer will notify SX WATER promptly if any conflicts of interest arise by sending notice to tanksales@sxwater.com.au or to such other location as SX WATER may designate.
- (n) Customer will maintain complete and accurate books and records in accordance with generally accepted accounting principles.
- (o) Customer will, as and when requested, provide SX WATER with a written certificate, in form and substance satisfactory to SX WATER, confirming that the Customer is in compliance with paragraphs (j) to (n) above, clause 11, and any other requirements that SX WATER deems necessary or desirable.
- (p) Notwithstanding anything to the contrary in any documentation (including any terms and conditions or any purchase order or works order provided by the Customer, including in respect of any liquidated damages (if applicable), by reason of any delays caused by any epidemic, pandemic, outbreak of infectious disease, quarantine or public health event (Health Event). If SX Water is delayed by any Health Event, it will be entitled to an extension of time for supplying the goods and / or carrying out the services as is necessary to overcome the delay.