

## PRICING

- (a) The amount payable for goods and services will be the price on the Supplier's invoice. The price is exclusive of any freight charges, packing charges, customs duty and GST or similar taxes, which the Customer will pay in addition to the price at the same time and in the same manner as the price.
- (b) The Customer must not assert any right of set off against the Supplier and will pay all amounts owing to the Supplier without deduction.

## PAYMENT TERMS

- (a) The Supplier will issue a tax invoice to the Customer for the goods and services. All goods and services must be paid for:
- (i) on a cash before delivery or performance basis; or
- (ii) if a credit facility has been granted, within 30 days of the end of the month in which the goods and services were supplied to the Customer or in accordance with any written credit agreement between the parties, whichever is later.
- (b) All payments must be made in Australian dollars.
- (c) If the Customer does not pay the Supplier by the due date, the Customer will pay interest on monies due, charged on a daily basis at the Interest Rate from the due date for payment until the actual date of payment.

## DELIVERY

- (a) Any times quoted for delivery are estimates only and the Supplier will not be liable to the Customer for any failure to deliver or for delay in delivery of goods or performance of services occasioned by any other cause whatsoever whether or not beyond the control of the Supplier.
- (b) The Customer will not be relieved of any obligation to accept or pay for goods or services by reason of any delay in delivery or performance.
- (c) Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer. If no such address is nominated then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- (d) The Customer will pay to the Supplier packing (other than the standard packing of the Supplier), crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate then the Supplier may charge a reasonable amount to the Customer. The Supplier may charge a reasonable amount for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- (e) The Customer authorises the Supplier to deliver goods to the place nominated by the Customer and to leave the goods at such place whether or not any person is present to accept delivery. The Supplier will not be liable on any basis whatsoever for loss suffered by the Customer after delivery.
- (f) The Supplier will not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgment will be conclusive evidence of the Customer's acceptance of the goods delivered.
- (g) The Supplier reserves the right to deliver goods by installments and each installment will be deemed to be sold under a separate Contract. Failure to deliver any installment or deliver any installment on time will not entitle the Customer to repudiate the Contract in whole or in part.
- (h) Where a Customer proposes to delay delivery of goods beyond the estimated delivery date, the Customer must immediately notify the Supplier. The Supplier is under no obligation to agree to any extension of the estimated delivery date. The Supplier may, as a condition of its approval to the new delivery date, vary the prices specified on the Supplier's quotation or invoice (as relevant) to include any additional costs to the Supplier including to reflect the Supplier's current prices and charges as at the new delivery date and any temporary storage fees.

## RETURN OF GOODS-CONSUMERS

If the Customer is a Consumer, the provisions of this clause apply.

- (a) Unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier and recoverable from the Customer.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) The goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the Australian Consumer Law. The Customer is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer is entitled to have services re-supplied or be paid for the cost of having the services re-supplied if the services do not comply with the guarantees.
- (d) The guarantees under the Australian Consumer Law are given by the Supplier.
- (e) If the Customer believes the goods or services do not comply with the statutory guarantees, they must contact the Supplier and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods or services do not comply with the statutory guarantee the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
- (f) Subject to clause (d), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless agreed by the Supplier in writing. The Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law.

## RETURN OF GOODS- NON CONSUMERS

If the Customer is not a Consumer, the provisions of this clause Return of goods – consumers apply.

- (a) Unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier, and debited to the credit account of the Customer.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) All claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days (time being of the essence) from the date of delivery of goods or the performance of services. If the Customer fails to provide such notice then the Customer will be deemed to have accepted the goods and services.
- (d) All terms, representations, warranties and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless the Supplier agrees in writing. The Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law. (e) The Supplier's liability for failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise, or for any other breach of the Contract or of a nonexcludable condition or warranty, is in all cases limited at the Supplier's option to any one of the following:
  - (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 providing replacement goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired; or
  - (v) in the case of services, the re-supply of the services or paying for the cost of re-supplying the services.

(f) Subject to clause Return of goods – non consumer(e) and to the extent permitted by Law, if the Contract is not a Consumer Contract or a Small Business Contract, the Supplier will not be liable to the Customer or any other person for any loss, cost, damage or expense whatsoever arising directly or indirectly as a result of or in connection with any Contract, including but not limited to loss, costs, damages or expenses arising directly or indirectly from the supply of the goods or services by the Supplier, the use or performance of the goods, a breach of any Contract (including any implied warranty, representation, term or condition in relation to the goods), any failure to install the goods in accordance with their applicable installation instructions and manuals provided with the goods or to operate the goods in accordance with their operation instructions and manuals provided with the goods or the negligence or willful act of the Supplier (including its employees or agents), the Customer or any third party, including in relation to the installation of the goods.

(g) Despite any clause to the contrary in the Contract, neither the Customer or Supplier are liable to the other for:

(i) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer; and

(ii) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property.

### **FITNESS FOR PURPOSE**

If:

(a) the Customer is not a Consumer; and

(b) the Contract is not a Consumer Contract or a Small Business Contract, then the Customer agrees that:

(c) it does not rely on the skill or judgment of the Supplier in relation to the suitability of any goods for a particular purpose; and

(d) any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever. If:

(a) the Customer is a Consumer; or

(b) the Contract is a Consumer Contract or a Small Business Contract, then the Customer acknowledges and agrees that:

(c) it must install the goods in accordance with their applicable installation instructions and manuals provided with the goods or to operate the goods in accordance with their applicable operation instructions and manuals provided with the goods; and

(d) any advice, recommendation, information or assistance provided by the Supplier is provided in good faith, relying upon the accuracy and completeness of information provided by Customer to Supplier.

### **INDEMNITY**

The Customer indemnifies the Supplier for any loss, cost, damage or expense suffered by the Supplier arising from any failure to install the goods in accordance with current installation codes and standards or to operate the goods in accordance with their applicable operation instructions and manuals provided with the goods, or in connection with the negligence of the Customer including in relation to the installation or operation of the goods.

### **PRIVACY**

(a) The Customer acknowledges and agrees that the Supplier may collect personal information and credit information about the Customer and its directors, officers, partners and the guarantors (each a Relevant Party).

(b) The Supplier's Privacy Policy, available on its website or upon request to the Supplier, forms part of each Contract.

(c) In accordance with the Privacy Policy, the Customer agrees that the Supplier may use or disclose information to Viper Water Solutions and to third parties for the purpose of providing the goods and services, providing information about goods and services

(d) The Customer warrants to the Supplier that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their personal information and credit information by the Supplier in accordance with this clause and the Privacy Policy.

### **GST**

(a) In the Conditions, the expressions "GST", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System, (Goods and Services Tax) Act 1999. (b) With the exception of any amount payable under this clause, unless otherwise expressly stated, all amounts stated to be payable by the Customer under any Contract are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice.

### **CHARGE**

If the Contract is not a Consumer Contract or a Small Business Contract, the Customer hereby charges all of the Customer's right, title and interest in present and after acquired property, both in its own right and as trustee of any trust, to the Supplier to secure the payment of any monies that may be owing at any time to the Supplier under any Contract or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a mortgage or caveat over any real property owned by the Customer at any time or to register this charge. The costs and stamp duty payable on the mortgage or caveat or to register this charge are payable by the Customer.

### **TRUST AND TRUSTEES**

Where the Customer is a trustee:

(a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier; and

(b) the Customer warrants that it has full power and authority to enter into each Contract on behalf of the trust and that it will be bound by each Contract both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

### **LAWS TO GOVERN PROVISIONS OF AGREEMENT**

Each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of the courts of Queensland.

### **NOTICE**

(a) Notice to be given by the Customer to the Supplier may be delivered personally or sent by electronic transmission to the credit manager of the Supplier at the Supplier's address and unless the contrary is proved will be taken as delivered on the second business day following posting.

(b) Notice to be given to the Customer by the Supplier may be delivered personally or sent to the last address supplied by the Customer and unless the contrary is proved will be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

### **SEVERANCE**

In the event that the whole or any part or parts of any provisions in any Contract should be held to be void or unenforceable in whole or in part such provision or part thereof will to that extent be severed from that Contract but the validity and enforceability of the remainder of that Contract will not be affected.

## **SUB CONTRACTING**

The Supplier reserves the right to sub-contract the manufacture and/or supply of the goods or services or any part thereof to a third party.

## **CERTIFICATE**

If the Contract is not a Consumer Contract or a Small Business Contract, a statement in writing signed by the Supplier's credit manager stating monies payable by the Customer to the Supplier will be prima facie evidence of the amounts so payable and binding on the parties in the absence of manifest error.

## **TOOLING**

Where tooling is manufactured for use by the Supplier (notwithstanding that the Customer may have contributed to the cost of development or manufacture of such tooling), the tooling will, unless otherwise agreed, be and remain the property of the Supplier (including all intellectual property rights in the tooling) and the Supplier will be entitled to deal with such tooling as it so determines.

## **PACKING**

(a) The Supplier retains the right of possession of any Supplier owned boxes, pallets or skips used for delivery of the goods. The Customer agrees to be responsible for the cost of replacing any boxes, pallets or skips not returned in good condition (subject to fair wear and tear) to the Supplier within 14 days of delivery of the goods.

(b) If packing is charged for and is returnable an allowance will only be made for the return of such packing when it has been received by the Supplier in good condition.

## **GENERAL**

(a) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.

(b) The Supplier may waive any term of a Contract at any time and will notify the Customer in writing of any waiver.

(c) The failure of the Supplier to exercise a right or remedy, or any delay by the Supplier in exercising a right or remedy, or the exercise by the Supplier of only part of a right or remedy, or the granting of any indulgency by the Supplier in favour of the customer does not:

(i) affect the Supplier's rights against the Customer;

(ii) constitute a waiver of any term or condition; or

(iii) prohibit the Supplier from exercising that right or remedy in relation to that breach or any other breach.

(d) A waiver of a breach of a term or condition does not constitute a waiver or another breach of the same term or any other term.

(e) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

## **ANTI-CORRUPTION**

(a) The Customer agrees to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause it or the Supplier to breach, or commit an offence under, any Anti-Corruption Laws.

(b) The Customer warrants and represents that it has not been convicted of any offence, and has not been the subject of an investigation or enforcement proceedings by an governmental, administrative or regulatory body regarding any offence or alleged offence, under AntiCorruption Laws.

(c) The Customer must, to the extent permitted by Law, promptly notify the Supplier in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause General(b) are, or might reasonably be expected to be, no longer correct.