

## TERMS AND CONDITIONS

### Payment terms

1. The terms of payment are strictly thirty (30) days from the end of month in which an invoice is issued (or such other period as nominated by the Supplier herein). Hygrade Water Australia Limited Partnership ABN 13 713 124 364 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, vary the terms and conditions of trade in accordance with the provisions of this agreement.
2. The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
3. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier and Applicant from time to time, after issuing a written demand to the Applicant demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
4. The Applicant acknowledges that the Supplier shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by the Supplier.

### Purpose of credit

5. The Applicant acknowledges and agrees that any credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

### Formation of contract

6. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Supplier, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 7.
7. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Applicant. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
8. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.
9. At the Supplier's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the goods and/or services and shall immediately become due and payable upon the formation of a contract in accordance with clause 7.

### Variations

10. Where the Applicant requests or directs that any goods and/or services be supplied that are not strictly in accordance with the quotation or purchase order, then such goods and/or services shall constitute a variation, unless otherwise agreed between the parties.
11. The Applicant understands and agrees that:
  - (a) all variations must be agreed between the parties in writing prior to the goods and/or services being supplied; and
  - (b) all variations shall be, at the Supplier's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with the Supplier's current prevailing rates (as amended from time to time).
12. Notwithstanding clauses 10 and 11, and subject to any rights the Applicant might have under any relevant legislation, the Supplier reserves the right to vary the quoted price if:
  - (a) there is any movement in the cost of supplying the goods and/or services specified in the Applicant's order;
  - (b) the goods and/or services specified in the Applicant's order are varied from the goods and/or services specified in the Supplier's quotation; or
  - (c) otherwise provided for in these terms and conditions.

### Cancellation of orders

13. Unless otherwise agreed in writing between the parties, the Applicant may not cancel an order (or any part of an order) unless the Applicant pays to the Supplier (in the Supplier's sole discretion) any and all costs incurred by the Supplier in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
14. Notwithstanding any other rights the Supplier may have under this agreement, the Supplier may cancel any order or delivery of any order, by providing written notice to the Applicant if the Applicant:
  - (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Applicant is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this agreement.
15. To the fullest extent permitted by law, the Supplier accepts no liability for any loss whatsoever incurred by the Applicant or any third party as a result of the Supplier exercising its rights under clause 14.

### Delivery

16. The Applicant shall be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
17. The Applicant acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods or non-delivery of the goods.
18. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).
19. Delivery is deemed to occur at the earlier of:
  - (a) the collection of goods from the Supplier by the Applicant or any third party on behalf of the Applicant;
  - (b) the time of loading of goods at the Supplier's premises for the purpose of delivery to the Applicant.
20. The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Applicant does not, or is unable to, accept delivery of the goods.

21. The Applicant accepts that the Supplier may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
22. The Applicant acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

### Returns

23. The Applicant must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to the Supplier with particulars, of any claim that the goods are not in accordance with this agreement. Further, the Applicant must, upon request from the Supplier, allow the Supplier to enter upon any premises occupied by the Applicant to inspect the goods that are subject of the claim. If the Applicant fails to give notice or refuses to allow the Supplier to inspect the goods, then to the extent permitted by law, the goods must be treated as having been accepted by the Applicant and the Applicant must pay for the goods in accordance with these terms and conditions.
24. The Applicant cannot return goods to the Supplier without the written agreement of the Supplier.
25. The Applicant acknowledges and agrees that any return, other than a return due to a default by the Supplier under this agreement or as otherwise permitted by law, will incur a handling and administration charge of twenty-five (25) percent of the purchase price of the returned goods.
26. Unless otherwise agreed in writing between the parties, the Applicant must pay all costs associated with the return of any goods (either to the Supplier or from the Supplier to the Applicant or any third party) including freight, insurance, handling and other charges. Goods to be returned to the Supplier must be packed and wrapped appropriately and must include all original packaging and documentation. The Supplier accepts no liability for any damage that occurs to any goods in return transit.

### Risk

27. Risk of damage to or loss of the goods passes to the Applicant on delivery and the Applicant must insure the goods on or before delivery.
28. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Applicant, the Supplier is entitled to receive all insurance proceeds payable for the goods to the extent of the indebtedness of the Applicant to the Supplier. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
29. If the Applicant requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for collection, the Applicant acknowledges that the Supplier will deliver the goods as requested at the Applicant's risk.

### Retention of title

30. Until such time as the Applicant has made payment in full for the goods and until such time as the Applicant has made payment in full of all other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever):
  - (a) title in the goods does not pass to the Applicant;
  - (b) the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold;
  - (c) the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods; and
  - (d) the Applicant will be entitled to sell the goods in the ordinary course of its business but will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
31. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 30(d) hereof unless and until the funds held on trust are remitted to the Supplier.
32. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
33. The Applicant will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 32 where the Applicant is otherwise in default of the terms of this agreement. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
34. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
35. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

### Cancellation of terms of credit

36. The Supplier reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
37. Notwithstanding clause 36, if the Applicant defaults in the payment of any amount due to the Supplier pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, the Supplier may terminate this agreement (to be effective immediately) upon notice to the Applicant.

38. Upon the withdrawal of credit in accordance with clause 36, or upon termination of this agreement in accordance with clause 37, all liabilities incurred by the Applicant become immediately due and payable to the Supplier.
39. For the avoidance of doubt, termination of this agreement will not affect:
  - (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

#### **Indemnity**

40. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and services supplied under this agreement to the extent that such a claim is a consequence of a default by the Applicant under the terms of this agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

#### **Provision of further information**

41. The Applicant undertakes to comply with any reasonable written requests by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
42. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for its directors to sign a guarantee and indemnity.

#### **Corporations**

43. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

#### **Trustee capacity**

44. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be reasonably indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to sign this agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.
45. The Applicant must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

46. If the Applicant enters into this agreement in its capacity as a partnership, the Applicant warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
47. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Insolvency**

48. If the Applicant becomes insolvent, to the extent permitted by law, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

#### **Waiver**

49. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
50. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and the Applicant):
  - (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - (e) under section 130 to receive a notice to dispose of goods;
  - (f) under section 132(1) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each six (6) month period;
  - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - (j) under section 142 to redeem the goods;
  - (k) under section 143 to reinstate the security agreement; and
  - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

#### **Security/charges**

51. The Applicant charges in favour of the Supplier all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
52. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or as capacity as

trustee, the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.

53. As security for the payment of the amount of its indebtedness to the Supplier from time to time, the Applicant irrevocably appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Applicant (in the event that there is no default by the Applicant in carrying out its obligations hereunder).
54. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

#### **Costs**

55. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant under this agreement. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
56. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis.
57. Subject to clauses 58 and 59, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows:
  - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 33 and 56.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 62.
  - (c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by the Supplier in its absolute discretion.
58. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 57 herein.
59. Payments allocated (and/or reallocated) under clause 57 and/or 58 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

#### **Taxes and duty**

60. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
61. If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) 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 Applicant, then the Applicant must pay the Supplier these additional amounts on 48 hours' written demand.

#### **Interest rates**

62. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

#### **Set-off**

63. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Applicant in writing or as required by law.
64. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

#### **Applicant's acknowledgements**

65. The Applicant agrees that:
  - (a) it will comply with the Supplier's minimum invoice policy, as notified by the Supplier in writing from time to time;
  - (b) the dealings between the Applicant and Supplier are not a sale by sample;
  - (c) in making an order for goods and/or services from the Supplier, the Applicant has relied upon its own knowledge and expertise in selecting goods for any purpose and any advice or assistance provided by or on behalf of the Supplier is accepted by the Applicant at its own risk;
  - (d) the Supplier will not be held to have provided advice as an expert or adviser, nor have been relied upon;
  - (e) the goods supplied are subject to any relevant manufacturer terms, conditions and warranties;
  - (f) the Supplier shall not be liable to the extent that any manufacturer is liable under a manufacturer's warranty unless otherwise required at law;
  - (g) the Supplier shall not be liable for any failure to comply with any requirements of the Applicant or any other person (whether relating to manufacturer, design, fabrication, installation and/or any other particular intended use of any goods or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at the Supplier prior to the entry by the Supplier into any relevant agreement.

**Limitation of liability**

66. In relation to the supply of goods, to the extent permitted by law, the Supplier's liability is limited to:
- (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
67. In relation to the supply of services, to the extent permitted by law, the Supplier's liability is limited to:
- (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
68. The Supplier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services supplied under this agreement.

**Miscellaneous**

69. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, acts of God or any other activity beyond the Supplier's control.
70. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register pursuant to the PPSA the security interest granted by the Applicant under the PPSA.
71. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
72. The Applicant further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
73. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, with notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Applicant shall reasonably indemnify the Supplier from any claims made by any third party as a result of such exercise.
74. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

**Severance**

75. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
76. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

**Variation of agreement**

77. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant. Subject to clause 78, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Applicant.

78. If the Applicant does not agree with the variation(s) proposed by the Supplier, it must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Supplier without notification.
79. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
80. Variations requested by the Applicant will only be binding upon the Supplier if they are in writing signed by an authorised officer of the Supplier.

**Consent to register**

81. The Applicant hereby consents to the Supplier recording the details of this agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
82. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

**Jurisdiction**

83. The Applicant acknowledges and agrees that this agreement will be governed by the laws of the state in which the goods and/or services are supplied to the Applicant, and the laws of the Commonwealth of Australia which are in force in that state.
84. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
85. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of the state in which the goods and/or services are supplied to the Applicant, and the relevant federal courts and courts competent to hear appeals from those courts.

**Entire agreement**

86. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Applicant in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
87. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
88. For the avoidance of doubt, the Applicant understands and agrees that these terms will prevail over, and the Supplier will not be bound by, any conditions (express or implied) added or provided by the Applicant, whether in an order or otherwise, unless otherwise agreed in writing by the Supplier.