

1. Interpretation

- 1.1. In these terms & conditions of trade ('Conditions of Trade') **'Waterwerx Member'** means Waterwerx Pty Ltd (ABN 92 154 278 001), Waterwerx Rentals Pty Ltd (ABN 11 602 704 183) or Waterwerx Operations Pty Ltd (ABN 32 602 704 272), **'Waterwerx Group'** collectively means Waterwerx Pty Ltd (ABN 92 154 278 001), Waterwerx Rentals Pty Ltd (ABN 11 602 704 183) and Waterwerx Operations Pty Ltd (ABN 32 602 704 272), **'the Buyer'** means the party purchasing or renting the Goods, and/or entering into a maintenance contract with a Waterwerx Member, **'the Goods'** means the materials and/or services subject to a Contract, **'Consumer'** has the same meaning as prescribed under the Consumer Act, **'Consumer Act'** means the Competition and Consumer Act 2010 (Cth) incorporating the Australian Consumer Law, **'Contract'** means a sale, rental and/or maintenance contract between the Buyer and a Waterwerx Member, **'Credit Act'** means the National Consumer Credit Protection Act 2009, **'GST'** has the same meaning as prescribed in the GST Act, **'GST Act'** means the A New Tax System (Goods and Services Tax) Act 1999, **'PPSA'** means the Personal Property Securities Act 2009 (Cth), **'PMSI'** means a purchase money security interest, as defined in the PPSA, **'Proceeds'** has the meaning given to it in section 31 of the PPSA, and **'Proposal'** means a quotation or proposal submitted by a Waterwerx Member to the Buyer.
- 1.2. These Conditions of Trade may be updated by Waterwerx from time to time and shall apply as and from the date update and published at www.waterwerx.com.au.

2. General

- 2.1. Unless otherwise agreed in writing by a Waterwerx Member, each Proposal and Contract provided by that Waterwerx Member, and every request or order provided by the Buyer, shall be subject to these Conditions of Trade. In each such case, these Conditions of Trade are deemed to be agreed and accepted by the Buyer and override any terms and conditions stipulated, incorporated or referred to in any request or order provided by the Buyer.
- 2.2. To the extent that the Buyer is a Consumer, these Conditions of Trade operate in conjunction with the Consumer Act.
- 2.3. The Buyer acknowledges that any Contract between a Waterwerx Member and the Buyer is not a credit contract or a consumer lease under the Credit Act.
- 2.4. Without limiting clause 2.1, unless otherwise agreed in writing by a Waterwerx Member (or inconsistent with the following), these Conditions of Trade form part of and bind:
 - (a) any Contract between a Waterwerx Member and the Buyer - each person or entity party to that application; or
 - (b) any credit account application provided by a Waterwerx Member - each person or entity party to that application; or
 - (c) any order, invoice or other similar document issued by a Waterwerx Member - each person or entity to whom the order, invoice or other similar document is addressed, who is identified in the order, invoice or other similar document as the Buyer or to whom Goods are expressed to have been sold or rented in the order, invoice or other similar document; and
 - (d) in respect of each sale, rental or supply of Goods by a Waterwerx Member to a Buyer.
- 2.5. Except as otherwise expressly stated in these Conditions of Trade, these Conditions of Trade do not oblige a Waterwerx Member to sell, rent or supply any, or any particular, Goods to the Buyer.
- 2.6. The Waterwerx Group is entitled to publicly reproduce, use and make reference to images of the Goods and details of the application or intended purpose of those Goods by the Buyer, provided that such use does not breach obligations detailed in clause 21 or involve disclosure of information that the Waterwerx Group knew, or ought reasonably to have known, represents confidential information proprietary to the Buyer.

3. Price

- 3.1. Prices and terms are subject to alternation without notice and unless otherwise specified are exclusive of any GST.
- 3.2. A Waterwerx Member shall provide the Buyer with a tax Invoice including the ABN number and other details required in the GST Act.

- 3.3. The Buyer shall pay GST at the rate set by the GST Act and shown on the tax invoice.
- 3.4. Unless otherwise agreed in writing, the price is exclusive of packaging costs, freight charges, delivery costs, installation and de-installation costs, bank charges and such other charges as notified by a Waterwerx Member to the Buyer ('**Price Additions**'), all of which costs if incurred are payable by the Buyer.
- 3.5. If the cost to a Waterwerx Member of supplying the Goods not yet delivered is materially increased by any dispute or cause, and the parties concerned cannot agree on how much such increase shall be borne, a Waterwerx Member or the Buyer may cancel the Contract without liability in respect of such undelivered Goods. In such a case, any monies previously paid by the Buyer shall, unless otherwise agreed to by a Waterwerx Member, shall not be refundable to the Buyer.
- 3.6. Where delivery of the Goods is to be made by instalments, any failure, suspension or delay in any delivery or defect in the Goods delivered shall not vitiate the Contract.

4. Acceptance and Risk

- 4.1. The Buyer accepts the Goods and the Goods are at the Buyer's risk immediately upon leaving a Waterwerx Member's premises, whether the Goods are delivered by a Waterwerx Member or by someone other than a Waterwerx Member. If the Buyer wishes to insure against loss or damage to the Goods after they have left a Waterwerx Member's premises, it shall be the Buyer's responsibility to do so.
- 4.2. All delivery or installation dates are estimates only and a Waterwerx Member shall not be liable in damages for any delay nor shall the Buyer be entitled to refuse or to accept delivery, except where delay or an unreasonable length has occurred due to circumstances within that Waterwerx Member's control. Without limiting the generality of the foregoing, the following circumstances shall be deemed NOT to be within a Waterwerx Member's control: Acts of God, war, riots, civil commotions, strikes, lock outs, trade disputes, fires, breakdowns, interruptions of transport, government action, and delay in delivery by a Waterwerx Member's suppliers. During any time after a period of not less than 90 days from the commencement of such delay, the Buyer, after giving reasonable prior written notice of his intention to do so, shall be at liberty to purchase or rent elsewhere such Goods only as shall be necessary for the Buyer's immediate requirements and to cancel a delivery from a Waterwerx Member of any corresponding quantities so purchased or rented.

5. Terms of Payment

- 5.1. The Buyer shall pay the price and the Price Additions ('**Total Price**') in the manner provided for under a Proposal or Contract between a Waterwerx Member and the Buyer. In the absence of same, the Total Price shall be payable within 14 days of the date of invoice from a Waterwerx Member. Unless otherwise stated on the invoice, this shall be deemed the 'Due Date'.
- 5.2. Unless the Buyer is a Consumer:
 - (a) if the Buyer does not pay the full amount of the Total Price on or before the Due Date, a Waterwerx Member may charge a monthly accounting fee equal to 1.5% of the overdue amount for each month or part of month that any amount is overdue; and
 - (b) all expenses incurred by a Waterwerx Member in collecting overdue payment from the Buyer, including debt collection agency, legal and court fees including indemnity costs, solicitor/client costs, party/party costs and costs of any and all dispute resolution processes, shall be payable by the Buyer as a debt due forthwith upon demand from a Waterwerx Member.
- 5.3. If the Buyer shall fail to make any payment on the Due Date or becomes bankrupt or enters into liquidation (other than for the purpose of amalgamation or reconstruction) or makes any composition arrangement with creditors or has a receiver appointed of its undertaking property or assets or any part thereof, a Waterwerx Member shall have the option to withhold or cancel further deliveries, provided that the failure on the part of a Waterwerx Member to exercise such option in respect to one or more deliveries shall not affect their right to exercise it in respect of other deliveries.
- 5.4. If the Buyer has been granted credit then the credit can be withdrawn at any time and any orders cancelled by a Waterwerx Member in its sole discretion.
- 5.5. Any agreement by a Waterwerx Member to extend the terms of credit or other indulgence granted to the Buyer shall not affect the Buyer's liability to account to that Waterwerx Member.

6. Default by Buyer

- 6.1. If:
- (a) the Buyer breaches any of these Conditions of Trade;
 - (b) any cheque or payment tendered by or on behalf of the Buyer is dishonoured for payment;
 - (c) the Buyer fails to comply with any demand for payment issued by a Waterwerx Member;
 - (d) any amount payable by the Buyer to a Waterwerx Member becomes overdue for payment or, in that Waterwerx Member's opinion, the Buyer will be unable to meet its payment obligations to that Waterwerx Member as they fall due;
 - (e) any of the following occurs in respect of the Buyer, if it is a company:
 - (i) a receiver, manager, administrator or controller becomes entitled to take possession of any of the Buyer's assets, any proceedings are instituted for the winding up of the Buyer, or the Buyer enters into a deed of company arrangement;
 - (ii) the Buyer becomes an externally-administered body corporate; or
 - (iii) the Buyer becomes insolvent; or
 - (iv) the Buyer (being an individual) commits an act of bankruptcy or is or becomes an insolvent under administration;

then, without prejudice to a Waterwerx Member's other remedies under these Conditions of Trade or at law:

- (f) A Waterwerx Member will be entitled to cancel all or any part of any of the Buyer's order which remains unfulfilled;
 - (g) all amounts owing to a Waterwerx Member by the Buyer will, whether or not due for payment, become immediately payable by the Buyer;
 - (h) the Buyer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Buyer under clause 10 will cease; and
 - (i) A Waterwerx Member will be entitled to enter any premises where the Goods in respect of which title has not passed to the Buyer under clause 10 are kept, and remove, repossess and re-sell all or any such Goods. The Waterwerx Group is not liable to the Buyer if a Waterwerx Member takes such action.
- 6.2. The Buyer indemnifies the Waterwerx Group in respect of any claims or actions against, and costs, expenses and other liabilities incurred by, a Waterwerx Member in relation to the removal, repossession, rental and sale of Goods pursuant to these Conditions of Trade, including without limitation, any claims brought by third parties.

- 6.3. If:
- (a) A Waterwerx Member retains possession or control of Goods;
 - (b) payment of the price of those Goods is due by the Buyer to a Waterwerx Member;
 - (c) A Waterwerx Member has made demand in writing to the Buyer for payment of the price of those Goods; and
 - (d) A Waterwerx Member has not received the price of those Goods,

then (without limiting any other provision of these Conditions of Trade), whether title in those Goods has passed to the Buyer or remains with a Waterwerx Member, that Waterwerx Member may dispose of those Goods and may claim from the Buyer any loss incurred by that Waterwerx Member on such disposal.

7. Exclusion of warranties and limitation of liability

- 7.1. The Waterwerx Group excludes all warranties and guarantees in connection with Goods (or advice regarding Goods) supplied to the Buyer other than those which may not be excluded under the Consumer Act or other relevant legislation. For the avoidance of doubt, this exclusion includes an exclusion of all

conditions and warranties implied by custom, the general law or statute, for damages suffered by the Buyer arising in any way out of the supply, delay in supplying or failure to supply Goods.

7.2. A Waterwerx Member's liability under any guarantee, condition or warranty implied or stipulated by the Consumer Act or similar legislative provision which may not be excluded but may be limited, is limited at that Waterwerx Member's option to:

- (a) the replacement of Goods or the supply of equivalent Goods;
- (b) the repair of Goods; or
- (c) the refund of the price paid by the Buyer for Goods.

7.3. A Waterwerx Member is not liable for indirect or consequential loss however described, except for any such liability which may not be excluded by the Consumer Act or similar legislative provision.

7.4. Without limiting the generality of any other provision of these Conditions of Trade, the Buyer must:

- (a) make persons to whom the Buyer intends to sell or supply Goods aware of any instructions for the care and cleaning of Goods, and of any instructions or limitations as to the use, nature or quality of Goods:
 - (i) as may appear on labels affixed to, or in or on the packaging of, Goods as supplied by Waterwerx; and
 - (ii) as may be notified by Waterwerx to the Buyer, or circulated by Waterwerx, from time to time including any such instructions or limitations which may appear in brochures or in other promotional material in relation to Goods provided by Waterwerx, or on Waterwerx's website; and
- (b) not make any representations or claims about the quality, longevity, performance or other aspect of the Goods which has not been expressly authorised by Waterwerx in writing.

8. Information supplied by a Waterwerx Member

8.1. All information contained within surveys, forecasts, recommendations, proposals or other material submitted by a Waterwerx Member to the Buyer are supplied and have been prepared by that Waterwerx Member in good faith and upon the basis of information, statements, assumptions and representations provided or made to that Waterwerx Member by or on behalf of the Buyer, or otherwise available to a Waterwerx Member. A Waterwerx Member does not warrant or represent that any such material is accurate, fully comprehensive in its field or suitable to the Buyer's purposes.

8.2. For the avoidance of doubt, no statement of fact, past, present or future, made by a Waterwerx Member is to be construed as a representation, undertaking or warranty.

9. Intellectual Property Rights

9.1. The Buyer shall retain ownership of any pre-existing intellectual property rights in materials and information provided by it to the Waterwerx Group.

9.2. Purchase or rental of Goods shall, in no way, provide the Buyer with any intellectual property rights with regard to those Goods unless otherwise stated.

9.3. The Waterwerx Group shall retain ownership of any pre-existing intellectual property rights in materials, information, processes and knowledge provided by a Waterwerx Member, including, without limitation, ideas, concepts, tools, methodologies and know-how, whether in writing or not, and any subsequent improvements and developments made to that know-how.

10. Returns

10.1. The Buyer may only return goods to a Waterwerx Member for credit if:

- (a) the prior written approval of that Waterwerx Member for the return has been obtained; and
- (b) the freight costs on the return have been paid by the Buyer.

10.2. If the Buyer returns the Goods otherwise than in accordance with clause 10.1:

- (a) A Waterwerx Member may at its sole discretion accept the return and grant a credit to the Buyer; or
- (b) if a Waterwerx Member does not accept the return, that Waterwerx Member may hold the Goods on the Buyer's behalf at the Buyer's expense until arrangements satisfactory to that Waterwerx Member are made by the Buyer for the disposal of the Goods.

10.3. Any credit given by a Waterwerx Member for Goods returned by the Buyer and accepted by that Waterwerx Member is subject to a re-stocking fee, to be reasonably determined and advised by Waterwerx, plus return freight expenses.

11. Rectification of non-performance

11.1. A Waterwerx Member may, without notice, redesign or modify the Goods, in the case where componentry comprising part or all of the Goods are no longer readily available or obsolete. In such a case, that Waterwerx Member shall not be liable for any loss or damage suffered by the Buyer as a result.

11.2. If a Waterwerx Member determines that performance of the Goods supplied is not being achieved, that Waterwerx Member reserves the right to revise, change or modify the design and componentry of the Goods supplied.

12. Cancellation

No order for Goods placed by the Buyer and accepted by a Waterwerx Member may be cancelled or deferred without prior consent in writing of that Waterwerx Member and in the case of custom made Goods ordered by the Buyer, no order for such Goods may be cancelled after:

- (a) A Waterwerx Member has scheduled manufacture of such Goods; or
- (b) A Waterwerx Member has purchased materials required for the manufacture of such Goods.

13. Rental Terms & Conditions

13.1. Interpretation

In this clause:

'Commencement Date' means the date detailed in the Rental Agreement, **'Premises'** means the Renter's premises identified in the Rental Agreement, **'Premises Lease'** means the lease or sublease of the Premises (if any) between a landlord or sub-landlord and the Renter, **'Rental Agreement'** means the rental agreement entered into by Waterwerx Rentals and the Renter, to which these Conditions of Trade form part of, **'Rental Period'** means the period commencing on the Commencement Date and identified in the Rental Agreement, **'Rental Fees'** means those payments and rental fees identified in the Rental Agreement, **'Rented Equipment'** means the Rented Equipment identified in the Rental Agreement and any replacement for those Rented Equipment that may be issued by Waterwerx Rentals from time to time, **'Renter'** means the person or entity identified in the Rental Agreement and, subject to a contrary intention as provided for this clause, means a Buyer as defined in clause 1.1, **'Waterwerx Rentals'** means Waterwerx Rentals Pty Ltd (ABN 11 602 704 183) and **'Waterwerx Standard Installation Requirements'** means the Waterwerx Group standard installation requirements as advised by Waterwerx Rentals to the Renter, or as otherwise displayed at www.waterwerx.com.au from time to time.

13.2. Rental

By signing the Rental Agreement, the Renter agrees to rent from Waterwerx Rentals the Rented Equipment for the Rental Period at the Rental Fees in accordance with the Rental Agreement.

13.3. Inconsistency between a Rental Agreement and the Conditions of Trade

Subject to the requirements detailed in clause 13.16(a), to the extent of any inconsistency between the terms of a Rental Agreement and these Conditions of Trade, the terms of the Rental Agreement shall apply to the extent of any such inconsistency.

13.4. Delivery and Installation of Rented Equipment & Ownership of Rented Equipment

- (a) Waterwerx Rentals will arrange to deliver the Rented Equipment to the Renter and install the Rented Equipment at the Premises.

- (b) Waterwerx Rentals shall only be required to install the Rented Equipment in accordance with the Waterwerx Standard Installation Requirements. The Renter shall undertake all modifications necessary to conform with the Waterwerx Standard Installation Requirements prior to installation of the Rented Equipment, at its own expense.
- (c) The Renter agrees to ensure it will do all things necessary to permit Waterwerx Rentals to be able to install the Rented Equipment in accordance with the Waterwerx Standard Installation Requirements.
- (d) Upon installation the Rented Equipment is deemed accepted by the Renter whereupon all risk passes to the Renter.
- (e) Waterwerx Rentals retains full title to the Rented Equipment notwithstanding:
 - (i) the delivery of the Rented Equipment to the Renter;
 - (ii) the possession and use of the Rented Equipment by the Renter; and
 - (iii) the payment of any Rental Fees by the Renter,
 subject only to the rights of the Renter as a bailee of the Rented Equipment with a right only to use them in accordance with and under the terms of the Rental Agreement.

13.5. Rental Fees

- (a) The Renter must pay the Rental Fees for the Rented Equipment promptly and on or before each due date. Payment may be made by direct debit arrangement in favour of Waterwerx Rentals (free of deductions) to the bank account or at any place or financial institution as Waterwerx Rentals from time to time specifies by notice in writing to the Renter. The Renter expressly authorises the entering into of a recognised direct debit arrangement with Waterwerx Rentals and shall sign all documentation necessary to facilitate payment in this manner.
- (b) Without limiting the ability for Waterwerx Rentals to recover all amounts payable under the Rental Agreement, the Renter authorises Waterwerx Rentals to charge any amounts owing by the Renter to any credit card or account details of which have been provided to Waterwerx Rentals.
- (c) The Rental Fees shall be payable during the Rental Period as provided for in the Rental Agreement, each such payment to be in the amount set out in the Rental Agreement.

13.6. Premises Lease is Binding

If there is a Premises Lease, the Renter warrants in favour of Waterwerx Rentals that the Premises Lease is valid and binding for the Rental Period and that all rental and other payments required to be made by the Renter pursuant to the Premises Lease have been and will be made on each due date for payment and that the Renter is not in default in compliance with any provisions of the Premises Lease.

13.7. Use and Maintenance of Rented Equipment

- (a) The Renter will ensure that the Rented Equipment will be used solely and exclusively by the Renter and the Rented Equipment shall not be removed from, or concealed within, the Premises. Without limiting the generality of this clause, the Renter must comply in all respects with the instructions and recommendations of Waterwerx Rentals relating to the Rented Equipment and their use and maintenance of the Rented Equipment.
- (b) Waterwerx Rentals shall, during the Rental Period, provide the scheduled maintenance services detailed in the Rental Agreement. Waterwerx Rentals shall, during the Rental Period, further provide repairs and replacement of parts to the Rented Equipment due to malfunction or scheduled maintenance on the Rented Equipment for the Rental Period.
- (c) The Renter acknowledges and agrees that repairs and replacement of parts outside of agreed scheduled maintenance intervals and scheduled maintenance services will be charged and payable separately at prevailing Waterwerx Rental's scheduled rates.
- (d) Scheduled maintenance services, additional service and repairs will only be carried out within normal business hours, Monday to Friday, unless otherwise agreed.

- (e) Damage to Rented Equipment caused by unauthorised service persons, abnormal water conditions, negligence or abuse, will not be covered by scheduled maintenance services and necessary repairs will be charged at prevailing Waterwerx Rentals scheduled rates.

13.8. Alteration of Rented Equipment

The Renter will not conceal the Rented Equipment, move the Rented Equipment or part with possession or control of it, or of any elements of it, without Waterwerx Rental's prior written consent. The Renter will not alter the Rented Equipment or alter or deface any identifying number, name or mark upon the Rented Equipment. Waterwerx Rentals shall at all reasonable times have access to the Premises and to the Rented Equipment for the purpose of inspecting the Rented Equipment.

13.9. No Assignment by Renter

The Renter shall not sell, purport to sell, transfer, assign, mortgage, encumber, pledge, underlet, part with possession of, create any lien in respect of, or otherwise deal with or dispose of the Rented Equipment or any interest therein, unless authorised by Waterwerx Rentals or the terms of the Rental Agreement.

13.10. Insurance

- (a) The Renter shall insure the Rented Equipment, at an amount equal to Waterwerx Rental's prevailing recommended sale pricing for such Rented Equipment, on an all risks basis noting Waterwerx as an insured party.
- (b) The Renter shall provide to Waterwerx, immediately on request, evidence of the insurance policy detailed in clause (a).

13.11. Indemnity

- (a) The Renter will use and keep the Rented Equipment at the sole risk of the Renter in all respects and releases, to the full extent permitted by law, Waterwerx Rentals its employees, agents and contractors from all injuries, costs, claims, actions, proceedings, demands, expenses, judgments, damages or losses of any kind whatsoever resulting from or attributable to any accident, damage, loss, death or injury occurring in the vicinity of the Rented Equipment or attributable to the Rented Equipment except to the extent that the same is caused by the negligence on the part of Waterwerx Rentals, its employees, agents or contractors.
- (b) The Renter assumes liability for and will keep Waterwerx Rentals, its employees, agents and contractors indemnified against any and all injuries, costs, claims, actions, proceedings, demands, expenses, judgments, damages or losses of any kind whatsoever resulting from or attributable to any accident, damage, loss, death or injury occurring in the vicinity of the Rented Equipment or attributable to the Rented Equipment except to the extent that the same is caused by the negligence on the part of Waterwerx Rentals, its employees, agents or contractors. This indemnity will continue in force and effect notwithstanding termination or expiry of the Rental Agreement.

13.12. Default Provisions

Waterwerx Rentals, without prejudice to any other available remedy, shall be entitled to terminate the Rental Agreement immediately by written notice to the Renter upon the happening of any of the following:

- (a) the Renter failing to duly or punctually perform or observe any provision of the Rental Agreement or the Premises Lease, after the expiration of 7 days of written notice to the Renter to remedy the same;
- (b) the passing of a resolution for the winding up of the Renter or the filing with any court of competent jurisdiction of an application for the dissolution or winding up of the Renter;
- (c) the appointment of an official manager, administrator, trustee, receiver or receiver and manager or similar officer in respect of the Renter or of any of the Renter's assets;
- (d) any distress or execution being threatened or levied on or against the Rented Equipment, or the Rented Equipment being claimed or seized by any person having or claiming an interest in the Premises;
- (e) the Renter assigning or transferring its rights under the Premises Lease without Waterwerx Rental's prior written consent; or

- (f) the Renter sells its business or there is a material change in control within the Renter without the prior written consent of Waterwerx Rentals.

13.13. Delivery Up and Removal of Rented Equipment

- (a) On the expiration or termination of the Rental Agreement, whether on or prior to expiration of the Rental Period, unless Waterwerx Rentals has consented to an overholding as provided for in clause 13.15, the Renter shall permit Waterwerx Rentals to attend the Premises, or upon other premises on which Waterwerx Rentals reasonably suspects the Rented Equipment is kept, during normal business hours to permit Waterwerx Rentals to remove the Rented Equipment. The Rental Equipment shall be in good and substantial repair and condition.
- (b) If the Renter fails to permit Waterwerx Rentals to attend the Premises, or upon other premises on which Waterwerx Rentals and/or its employees, agents and contractors reasonably suspect the Rented Equipment is kept, for the purpose set out in clause (a), Waterwerx Rentals may take any act including, without limitation, breaking open any inside or outside gate, door or fastening and detaching or dismantling the Rented Equipment from any part of the Premises or other premises (as the case may be) without incurring any liability whatsoever to the Renter. The Renter grants Waterwerx Rentals an irrevocable authority to use the name of the Renter and to act on the Renter's behalf in exercising any rights or instituting, pursuing or enforcing any legal proceedings which Waterwerx Rentals may think desirable to protect its rights in the Rented Equipment or to recover possession thereof.
- (c) If Waterwerx Rentals re-takes possession of the Rented Equipment pursuant to clause (b), the Renter will pay to Waterwerx Rentals all expenses reasonably and properly incurred by Waterwerx Rentals in re-taking possession of the Rented Equipment, including without limitation:
 - (i) all legal expenses incurred in connection with any relevant Court proceedings;
 - (ii) fees to recover the Rented Equipment from the possession or control of any competent authority;
 - (iii) the cost of dismantling and removal and transporting to, and storage at, Waterwerx Rental's place of business or to any other place reasonably designated by Waterwerx Rentals; and
 - (iv) all and any other payments of a like nature reasonably incurred by Waterwerx Rentals in re-taking possession of the Rented Equipment;(together 'Recovery Costs').
- (d) Waterwerx Rentals is entitled, at its option, to retain the Rented Equipment re-taken pursuant to this clause and may sue the Renter for damages (including the Recovery Costs) for breach of the Rental Agreement.
- (e) The Renter shall not remove or attempt to uninstall the Rented Equipment at any time.

13.14. Amounts due on early Termination

Upon early termination of the Rental Agreement, for any reason, Waterwerx Rentals:

- (a) will be entitled to retain all Rental Fees and other money previously paid by the Renter to Waterwerx Rentals under the Rental Agreement; and
- (b) may recover from the Renter the balance of Rental Fees due for the Rental Period as an amount immediately due and payable and any and all additional damages and expenses sustained by Waterwerx Rentals by reason of such early termination or by reason of the breach of any provision contained or implied in the Rental Agreement.

13.15. Overholding beyond expiry of Rental Period

In the event that the Renter remains in possession of the Rental Equipment beyond the expiry of the Rental Period with the consent of Waterwerx Rentals, the terms of the Rental Agreement will continue to apply albeit on a periodic basis equal to the instalment period detailed in the Rental Agreement ('Additional Rental Period') and will be continued to be extended by each Additional Rental Period until either Waterwerx Rentals uninstalls the Rented Equipment or the Renter notifies Waterwerx Rentals to uninstall the Rented Equipment by not less than 30 days' written notice. The Renter shall be obliged to continue to pay the Rental Fees for the Additional Rental Periods.

13.16. Other Terms

- (a) The following terms of these Conditions of Trade shall not apply to, or comprise part of, any Rental Agreement entered into by a Waterwerx Member and the Buyer: clauses 3.5, 6.1(h), 7.2(c), 7.4 and 10;
- (b) The Renter agrees to keep and maintain all Rented Equipment free of any charge, lien, or security interest, except as created under the Rental Agreement, and not otherwise to deal with Rented Equipment in a way that will, or may, prejudice the rights of Waterwerx Rentals under the Rental Agreement or the PPSA; and
- (c) The Renter irrevocably grants to Waterwerx Rentals the right to enter the premises of the Renter, and without being in any way liable to the Renter or any other person, if Waterwerx Rentals has cause to exercise any of its rights under the Rental Agreement or under the PPSA and the Renter agrees to indemnify Waterwerx Rentals against any such liability.

14. Property

Goods purchased by the Buyer

- 14.1. Property in and title to each unit of the Goods supplied shall not pass to the Buyer until payment has been received by a Waterwerx Member in full (each unit being considered as a whole).
- 14.2. Until property in the Goods passes to the Buyer hereunder the Buyer shall, unless otherwise agreed by a Waterwerx Member in writing, store the Goods so that they are clearly identifiable as the property of that Waterwerx Member.
- 14.3. If the Buyer fails to make payment in accordance with these Conditions of Trade or a Waterwerx Member reasonably believes the Buyer is unable to make payment for the Goods within prescribed terms, the servants or agents of a Waterwerx Member shall be entitled to exercise any of its rights specified in clause 6 hereof.

Goods rented by the Buyer

- 14.4. Waterwerx Rentals retains full title to Goods rented to the Buyer notwithstanding:
 - (a) the delivery of the Goods to the Buyer;
 - (b) the possession and use of the Goods by the Buyer; and
 - (c) the payment of any rental fees by the Buyer.

15. Personal Property Securities Act

- 15.1. The Buyer agrees that these Conditions of Trade and in particular the provisions of clause 13 create a security interest (including, where applicable, a PMSI) in Goods (and their Proceeds) supplied by a Waterwerx Member to the Buyer from time to time.
- 15.2. The Buyer agrees to do all things necessary and execute all documents reasonably required by a Waterwerx Member to register the PMSI granted by the Buyer under these Conditions of Trade, and ensure that that Waterwerx Member acquires a perfected security interest in the Goods under the PPSA.
- 15.3. The PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these Conditions of Trade or any purchase money obligations of the Buyer.
- 15.4. Until title to Goods passes to the Buyer under clause 10, the Buyer waives its rights under sections, 95, 118, 120, 121(4), 129, 130, 132(3)(d), 132(4), 135, 142, 143, 157(1) and 157(3) of the PPSA, to the extent that is permitted by law. A Waterwerx Member may also contract out of any other provisions of the PPSA not specified in this clause 11 as determined by that Waterwerx Member from time to time, provided that is also permitted under the PPSA.
- 15.5. Where a Waterwerx Member has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.
- 15.6. The Buyer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Buyer to a Waterwerx Member as is equivalent to that Waterwerx Member's estimation of the market value of the Goods as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the Buyer has in the Goods.

- 15.7. Until title to Goods passes to the Buyer under clause 13, the Buyer must not give to a Waterwerx Member a written demand, or allow any other person to give to a Waterwerx Member a written demand, requiring that Waterwerx Member to register a financing change statement under the PPSA in respect of the Buyer, the Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of the Goods.
- 15.8. The Buyer will be responsible for payment of any fees (and any other costs) that a Waterwerx Member incurs in relation to investigating, perfecting or registering its security interest in the Goods, and those fees and costs may be added as a charge on invoices issued by a Waterwerx Member to the Buyer.
- 15.9. Money that a Waterwerx Member receives from or on account of the Buyer may be applied by that Waterwerx Member in the following order, or in any other order that the Waterwerx Member may determine in its absolute discretion:
- (a) **(non-secured obligations)** first, to satisfy any obligation owed by the Buyer to a Waterwerx Member that is not secured by a security interest in Goods;
 - (b) **(secured obligations but not PMSIs)** then, to satisfy any obligation owed by the Buyer to a Waterwerx Member that is secured by a security interest in Goods, but not by a PMSI;
 - (c) **(PMSIs satisfied using related proceeds)** then, to satisfy any obligation owed by the Buyer to a Waterwerx Member that is secured by a PMSI in Goods for that obligation and using proceeds from the sale of the Goods secured by that PMSI; and
 - (d) **(PMSIs satisfied using other sources)** then, to satisfy any obligation owed by the Buyer to a Waterwerx Member that is secured by a PMSI in Goods using funds or proceeds from any source.
 - (e) The Buyer must not assign or factor its right and interest in any debt owed by a customer of the Buyer to the Buyer on account of the proceeds of sale of any Goods by the Buyer on credit or deferred payment terms without a Waterwerx Member's prior written consent.

16. Guarantee & Indemnity

- 16.1. If a Guarantor is specified in a Contract between a Waterwerx Member and the Buyer, in consideration of a Waterwerx Member entering into same, the Guarantor (and if more than one, each Guarantor) unconditionally and irrevocably:
- (a) guarantees to that Waterwerx Member the due and punctual performance and observance by the Buyer of all of the obligations contained in or implied under or in relation to the Contract that must be performed and observed by the Buyer ('Guaranteed Obligations');
 - (b) as a separate and independent obligation, irrevocably indemnifies the Waterwerx Member against all claims, losses, damages, liabilities, costs and expenses which that Waterwerx Member may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Buyer of a Guaranteed Obligation.
- 16.2. This clause is a continuing guarantee and indemnity and the Guarantor's obligations under this guarantee are absolute, unconditional and irrevocable and are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:
- (a) the death, bankruptcy or winding up of or insolvency of the Buyer;
 - (b) any indulgence of time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Buyer or a Guarantor of an obligation;
 - (c) any change to the terms of the Contract, these Conditions of Trade, or terms upon which any Goods or Rented Equipment is supplied to, or paid for by, the Renter;
 - (d) if the Guarantor is a director or officer of the Buyer upon the signing of the Contract, the resignation or termination of the Guarantor as a director or officer of the Renter;
 - (e) a rule of law or equity to the contrary;
 - (f) any omission or time delay on behalf of a Waterwerx Member or anything else that could be classified as prejudicial, or limit that Waterwerx Member's obligations under the terms of a Contract; and

- (g) any other act, omission, matter or thing whatsoever that might otherwise release, discharge or affect the obligations of the Guarantor under the terms of the Contract.
- 16.3. The Guarantor agrees that in the event that a Waterwerx Member is unable to recover from the Guarantor in relation to the whole or part of the Guarantee by reason of legal disability, limitation, incapacity, failure or fact of circumstance, then the obligations detailed in this clause shall be construed as an indemnity and the Guarantor shall nevertheless as Guarantor hold that Waterwerx Member fully indemnified in respect of every failure by the Renter to punctually perform or observe the Guaranteed Obligations.
- 16.4. A Waterwerx Member may enforce the obligations detailed in this clause against a Guarantor without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.
- 16.5. The obligations detailed in this clause are:
- (a) principal obligations and are not to be treated as ancillary or collateral to another right or obligation; and
 - (b) independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which a Waterwerx Member or another person may hold concerning the Guaranteed Obligations.
- 16.6. The Guarantor waives any right of subrogation until the Guaranteed Obligations are discharged in full.
- 16.7. The Guarantor must not exercise any right of set-off that reduces or extinguishes the obligations of the Buyer or the Guarantor to perform the Guaranteed Obligations.
- 16.8. If the Buyer becomes insolvent, the Guarantor must co-operate with a Waterwerx Member and comply with all directions of that Waterwerx Member in regards to any distribution, payments or proof or claim by the administrator, liquidator or trustee of the Buyer. The Guarantor must not prove or claim in the insolvency for any distribution or payment without the Waterwerx Member's consent in writing.
- 16.9. No conduct of a Waterwerx Member (including a failure to exercise, a partial exercise or delay in exercising, a right, power or remedy) operates as a waiver of the right, power or remedy or otherwise prevents the exercise of the right, power or remedy. A Waterwerx Member may only waive a right, power or remedy in writing signed by an authorised officer of that Waterwerx Member.

17. Severance

Any provision detailed in these Conditions of Trade which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down, then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions detailed in this clause or affecting the validity or enforceability of that provision in any other jurisdiction.

18. Buyer's Statutory Rights

These Conditions of Trade shall not exclude, limit or modify the rights, entitlements and remedies conferred upon the Buyer, or the liabilities imposed upon a Waterwerx Member under Commonwealth or State legislation, but are subject thereto all excludable conditions and warnings which are hereby excluded where the Buyer is not a Consumer.

19. Buyer as Trustee

Where the Buyer enters into a Contract with a Waterwerx Member in its capacity as trustee of a trust, whether or not disclosed to a Waterwerx Member and whether or not so expressed in the Contract, the Buyer warrants that:

- (a) it is the sole trustee of the trust and has the power and authority to enter into the Contract;
- (b) it does so with the consent of, and for the benefit of, all beneficiaries of the trust;
- (c) it does so both in its personal capacity and in the capacity of trustee
- (d) it is a right of indemnity from the trust's assets for all obligations incurred by it; and
- (e) it will not remove or resign as trustee without that Waterwerx Member's express written consent.

20. Governing law and jurisdiction

These Conditions of Trade shall be subject to the laws of the State of Victoria. The jurisdiction of the hearing of any dispute arising out of these Conditions of Trade shall be the State of Victoria.

21. Use of personal information

The Buyer acknowledges and consents to the use by the Waterwerx Group of the Buyer's personal information and that of its employees, officers and agents for the purpose of supply of Goods to the Buyer hereunder or for general marketing purposes and otherwise in accordance with the Waterwerx Group's privacy policy, as published from time to time. Other than in the circumstances allowed under Privacy laws or the Waterwerx Group's privacy policy, the Waterwerx Group does not disclose such personal information to other parties. The Buyer may contact the Waterwerx Group's identified privacy officer at any time to access or change any personal information provided to the Waterwerx Group.

22. Variation of these Conditions of Trade

22.1. These Conditions of Trade may be varied, replaced or deleted from time to time by the Waterwerx Group and those items so altered shall form part of the Contract between a Waterwerx Member and the Buyer in relation to orders and requests for Goods made or placed by the Buyer with a Waterwerx Member after notice of the altered terms have been forwarded to the Buyer by a Waterwerx Member.

22.2. Failure by a Waterwerx Member to insist upon strict performance of any term of any Contract between a Waterwerx Member and the Buyer or any of these Conditions of Trade shall not constitute a waiver of similar or subsequent breach and the rights of a Waterwerx Member to enforce these Conditions of Trade and those in any Contract shall remain valid and subsisting.

23. Assignment

23.1. The Buyer must not assign any rights or benefits under these Conditions of Trade unless the Buyer has obtained a Waterwerx Member's prior written consent. Any change in any ownership interest in the Buyer will be treated as an assignment for the purposes of this clause 23.1. Any assignment by the Buyer without a Waterwerx Member's written consent will release that Waterwerx Member (at its discretion) from its obligations under these Conditions of Trade, and clause 6.1 will apply.

23.2. A Waterwerx Member may assign, sub-contract or license any of its rights, benefits or obligations under these Conditions of Trade without the Buyer's consent.

24. Time of Essence and No Waiver

Time is the essence of these Conditions of Trade and any Contract between a Waterwerx Member and the Buyer regarding Goods. Neither failure nor delay by a Waterwerx Member to exercise any power, right or remedy will operate as a waiver by that Waterwerx Member of that power, right or remedy.

25. Other Terms and Conditions

25.1. Prices quoted in any Proposal shall remain valid for a period as stipulated in that Proposal, failing same for a period of 30 days.

25.2. Proposed output of Goods in any Proposal is expressed is not a guarantee of output. Output can vary according to changes in operating conditions, such as changing feed water chemistry, quality and temperature.

25.3. The Waterwerx Group will not be responsible for any effect to Goods supplied or to the Buyer's business through any detrimental changes to operating conditions, such as changing feed water chemistry, quality and temperature, which may affect the operation of the Goods.

26. Interpretation

26.1. In these Conditions of Trade unless the context otherwise requires:

- (a) The singular includes the plural and vice versa and a gender includes any gender.
- (b) References to clauses, paragraphs, recitals, schedules, annexures and exhibits are references to clauses, paragraphs, recitals, schedules, annexures and exhibits in these Conditions of Trade.
- (c) Headings are for convenience only and must be ignored when construing these Conditions of Trade.

- (d) A reference to a party includes that party's successors, permitted assigns or substitutes, executors and administrators.
- (e) A reference to a person includes any company, firm, partnership, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
- (f) A reference to any agreement or document is also a reference to that agreement or document as amended, notated, supplemented or replaced from time to time.
- (g) A reference to a law includes regulations and other instruments under it and amendments or replacements of any of them whether now or in the future.
- (h) Any reference to "writing" includes an electronic communication and "written" is to be interpreted accordingly.
- (i) Terms defined in the Consumer Act, the Credit Act, the GST Act, the PPSA and the Corporations Act 2001 (Cth) have the same meaning in these Conditions of Trade unless provided otherwise.
- (j) "Including" and any other similar words are not words of limitation.
- (k) An agreement, deed, covenant, representation or warranty on the part of 2 or more persons is for the benefit of them jointly and severally.
- (l) Any indemnity is an irrevocable, continuing and unconditional indemnity and remains enforceable despite any variation to the obligations of the Buyer.
- (m) General words following words describing a particular class or category are not restricted to that class or category.