

Terms and Conditions of Sale

These Terms and Conditions apply to all Orders placed with and Products supplied by Waterco Limited (ABN 62 002 070 733) ("**Company**", "**we**", "**us**" or "**our**").

Definitions and Interpretations

"**Account**" means an account within the meaning of the PPS Act;

"**Agreement**" means all the terms that govern the purchase of a Product or Service, and comprises the documents set out in clause 2.3;

"**Australian Consumer Law**" or "ACL" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

"**Authorised Online Marketers**" means those eligible Customers appointed by the Company in accordance with its Internet Sale Policy to sell Products online;

"**Business Day**" means a day other than a Saturday, Sunday and official public holiday in New South Wales, Australia;

"**Contract**" means an agreement between the Company and a Customer for the supply of Contract Materials;

"**Contract Materials**" means Products or Services specified in an Order as the subject of a Contract;

"**Corporations Act**" means the *Corporations Act 2001* (Cth);

"**Customer**" means a party that enters into a Contract with the Company for the supply of Contract Materials;

"**Dangerous Goods**" means goods classified under the Dangerous Goods Code, including gases (Class 2), flammable liquids (Class 3), flammable solids, self-reactive and sensitizer explosives (Division 4.1), substances liable to spontaneous combust (Division 4.2), substances dangerous if wet (Division 4.3), oxidizing substances (Division 5.1), organic peroxides (Division 5.2), toxic substances (Division 6.1), infectious substances (Division 6.2), corrosive substances (Class 8) and miscellaneous dangerous substances and articles and environmentally hazardous substances (Class 9);

"**Dangerous Goods Code**" means Australian Dangerous Goods Code, 2024, Edition 7.9, as amended from time to time. Customers can access the code using the link <https://www.ntc.gov.au/codes-and-guidelines/australian-dangerous-goods-code>;

"**Delivery**" has the meaning given in clause 6;

"**Due Date**" has the meaning given in clause 5.2;

"**Event of Insolvency**" means the occurrence of any of the following events in relation to any person:

- (a) the person becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable Law;

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- (b) the person is wound up, dissolved or declared bankrupt;
- (c) a liquidator, provisional liquidator, Controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the person's assets or undertaking;
- (d) the person enters into or becomes subject to:
 - (i) any arrangement (including any scheme of arrangement) or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
 - (ii) any reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (e) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (f) the person is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (g) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due; or

unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by the Seller or the Buyer (as applicable);

"Event of Termination" means any event specified in clause 18;

"Guarantee" means the Company's Repair or Replacement Guarantee, as provided with the Product installation and operating instructions, and as published on the Company's website (as amended from time to time);

"Internet Sale Policy" means the internet sale policy for each of Waterco and Davey branded Products, which is available upon request;

"Loss" means any damage, loss, liability, expense or cost whether direct or indirect;

"Non-Standard Products" means Products that are not part of the Company's standard catalogue, including but not limited to products manufactured or modified to the Customer's specifications, or products listed as "special order" or "Price on Application";

"Order" means an order placed by a Customer with the Company for the supply of Products or Services, including any specifications and terms attached to such Order;

"Personal Information" means 'personal information' (as defined in the Privacy Act 1988 (Cth)), including any information or opinion about an identified or reasonably identifiable individual whether the information or opinion is true or not and whether it is recorded in material form or not;

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"Pre & Post Sales Guidelines" means the guidelines contained in the document entitled "Pre & Post Sales Guidelines" and attached as Annexure A (as varied by the Company by time to time);

"PMSI" means a purchase money security interest as defined in PPS Act;

"PPS Act" means the Personal Property Securities Act 2009 (Cth);

"Price List" means the price list of the Company, as updated from time to time;

"Privacy Policy" means the Company's Privacy Policy as updated from time to time and made available on our website, which can be accessed here <https://www.waterco.com.au/customer-service/privacy-policy>;

"Proceeds" means "proceeds" as defined in section 31 of the PPS Act;

"Product Manual" means the official instructions and technical documentation, in physical or electronic form, provided by a supplier for the installation, operation, and maintenance of a product, as updated from time to time;

"Privacy Act" means the *Privacy Act 1988* (Cth);

"Product" means each product offered for sale by the Company which is supplied or is to be supplied by the Company to a Customer together with related Services (if any) from time to time, including each Waterco branded product and Davey branded product, and **Products** means all or any of such products;

"Quote" means the quote for specific Products or Services requested by the Customer and proposed to be provided by the Company, including a final price for the provision of the Products or Services;

"Security Agreement" means a security agreement within the meaning of the PPS Act;

"Security Interest" means a security interest within the meaning of the PPS Act;

"Secured Moneys" means all debts and monetary liabilities the Customer owes the Company on any account or under or in relation to any agreements between the parties for the sale of Products or the provision of the Services, in any capacity and irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by or on account of the Customer alone, or severally or jointly with any other person;
- (e) are owed to any other person as agent (whether disclosed or not) for or on behalf of the Company;

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- (f) are owed or incurred as principal, interests, fees, charges, taxes, damages, (whether for breach of contract or tort or incurred on any other ground) or other Loss or on any other account;
- (g) are owed or incurred for the account of the Company directly as a result of the assignment to the Company of any debt or liability of a Customer or any other dealing with any such debt or liability;
- (h) are owed to or incurred to the account of the Company before the date of these Terms and Conditions or before the date of any assignment of these Terms and Conditions to the Company by any other person or otherwise; or
- (i) comprise any combination of the above;

“Specialist Products” are Products that are technically complex and warrant significant point of sales assistance (including proper selection) or are determined by the Company (from time to time) to be Specialist Products.

“Services” means all services offered by the Company which are supplied or to be supplied by the Company to a Customer (whether or not associated with the sale of Products) and includes:

- (a) installation, testing, commissioning or maintenance services;
- (b) any work required for or ancillary to the development of Non-Standard Products;
- (c) monitoring, remote operation or data tracking of or associated with Products including through use of an App.

“Terms and Conditions” means these terms and conditions of sale set out below and amended from time to time by the Company in accordance with clause 1; and

“Trading Account” means the Customer’s trading account with the Company, and which includes the Customer’s locations and contact details;

“Verification Statement” means a verification statement within the meaning of the PPS Act.

1. Terms and Conditions

- 1.1 These Terms and Conditions apply to all Orders placed with, and the supply and use of Products and Services supplied by, the Company and supersede all previous terms and conditions in respect of any previous Contract between the Company and the Customer. You agree to comply with, and be bound by, these Terms and Conditions as updated by us from time to time in accordance with these Terms and Conditions.
- 1.2 The Company reserves the right to amend these Terms and Conditions at any time. The amended Terms and Conditions will be effective from the date they are published on the Company’s website at <https://www.waterco.com.au> and applies to any Order that the Customer places after such time.

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2. Formation of Contract of Sales of Products

- 2.1 A Contract is made between the Company and the Customer if:
- (a) a Quote has been provided to the Customer for the Contract Materials;
 - (b) the Customer has placed an Order; and
 - (c) that Order has been accepted by the Company,
- noting that such Quote, Order and acceptance can be effected in writing (including online) or verbally (for example where a Quote and Order is discussed and accepted over the phone).
- 2.2 The Company reserves the right to refuse to accept an Order for any reason.
- 2.3 The Agreement is comprised of the following documents:
- (a) the Credit Application Form, if applicable;
 - (b) the Order;
 - (c) these Terms and Conditions;
 - (d) the Company's Internet Sales Policy;
 - (e) the Guarantee; and
 - (f) the Privacy Policy.
- 2.4 If there is any conflict between the above documents, the order of precedence is the order of documents set out above.
- 2.5 The Customer warrants that Products will be:
- (a) installed by the Customer or incorporated in systems installed by the Customer; or
 - (b) if the Products are re-sold separately, then such sale will only be to qualified trade buyers and retail end users in Australia.
- 2.6 All Contracts are subject to and conditional upon the Customer:
- (a) completing a Credit Application in a form and manner to the satisfaction of the Company, if required by the Company; and
 - (b) providing security for payment in a form and manner to the satisfaction of the Company, if required by the Company; and
- 2.7 If an Order is placed for a Product that is temporary unavailable or out-of-stock (Backorder), the Company will confirm the Order and inform the Customer that the Order is "Backordered" or "pending fulfilment" with the expected delivery date. The

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Backorder will be fulfilled on the expected delivery date, unless the Customer cancels the Order by notice in writing, at least 5 Business Days before the expected delivery date. Once delivery is confirmed and the invoice is issued, the Backorder cannot be cancelled.

- 2.8 Notwithstanding any qualifications, or purported qualifications, of these terms and conditions contained in any Order or other document of the Customer, these terms and conditions may only be varied by agreement in writing.

3. Prices and Quotations

- 3.1 The price payable for:
- (a) a Product, is:
 - (i) determined by applying the specific customer's discount matrix (as confirmed in the Customer's Trading Account) to the Company's then-current list price for the Product, being the price notified by the Company to the Customer from time to time (whether or not such price has been updated in the Company's published Price List as at the date the Order is confirmed); or
 - (ii) if a specific Quote has been provided in respect of the Product and the Customer has placed an Order based on that Quote, the price set out in the Quote provided by the Company;
 - (b) Services, is the amount set out in the Quote for such Services.
- 3.2 The Company reserves the right to alter the prices of Products and Services without prior notice. The new price will take effect for any Order placed after the price increase. Where an Order has been placed at a particular price and a subsequent Order is placed for additional Products or Services, such additional Products or Services will be priced in accordance with the Price List that applies at the date that the subsequent Order is placed.
- 3.3 A Quote is valid for a period of 30 calendar days from the date of issuance, unless a different validity period is specified on the Quote.
- 3.4 All prices quoted by the Company and featured in the Price List are expressed exclusive of GST.
- 3.5 All written Orders must clearly state the product number, quantity required and any other information reasonably required by the Company.
- 3.6 Any Customer requests for **Non-Standard Products** must be:
- (a) in writing accompanied by a detailed description of the required specifications and scope of work;
 - (b) include a reasonable time scale (given the additional time required to supply Non-Standard Products);

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- (c) include all information relevant to and which may impact on the required functionality, operating capacity and environment for the Non-Standard Product.
- 3.7 The specification and price for the supply of the Non-Standard Products must be agreed in writing and included in the Order. The supply of the Non-Standard Products is subject to clauses 14.1 to 14.5 inclusive and any limitations or conditions specified by the Company in the Order or associated quotation. The Company reserves the right to impose additional terms, limitations, or conditions on the supply of Non-Standard Products as specified in the Quote or Order.
- 3.8 The Company may provide general advice with regard to the functionality, compliance and capability of Products. However, the Customer must satisfy itself that its selection of Products is appropriate for its own purposes as well as for the purposes of its customers (where Products are on-sold). Accordingly, the Customer is responsible for seeking approvals and ongoing compliance with all legal requirements, including any relevant standards or specifications which may apply to the particular Product (and the Company is not responsible for the non-compliance of any Product with approvals or other legal requirements that apply to the Customer or to third parties (for example where the Products are on-sold)).
- 3.9 The Company will use reasonable endeavours to engage with and provide advice and assistance to the Customer in a timely manner, however any such advice:
 - (a) can only be relied upon by Customer if it is in writing;
 - (b) may need to be updated if not acted on immediately, including by obtaining updated water tests or assessments; and
 - (c) is a Service subject to clause 14.

4. Payments

- 4.1 Payment for the Orders shall be strictly Cash-Before-Delivery (CBD) unless credit arrangements have been approved in writing.
- 4.2 If the Customer does not make payment by the Due Date, all moneys payable by the Customer to the Company become immediately due and payable in full, without prejudice to the Company's other rights. The Customer shall be liable to pay interest at the rate of 1.5% per month on all overdue amounts from the due date for payment until the date of payment in full and any commission, legal and/or mercantile agent or collection agent costs or expenses incurred by the Company in collecting overdue moneys owed by the Customer.
- 4.3 The Company acknowledges that the Customer may dispute invoices in good faith. Where a genuine dispute exists regarding the amount payable, interest shall not accrue on the disputed portion while the dispute is being resolved in good faith, provided the Customer pays any undisputed portion by the Due Date.
- 4.4 The Company shall be entitled to apply or appropriate any payments to any account of the Customer. Should the Customer have a number of accounts, the Company may combine any accounts and offset any amount between accounts.

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- 4.5 Customers can seek to enter into credit arrangements with the Company for the payment of an Order. Any credit arrangements are governed by the terms and conditions attached to the Credit Application Form submitted to the Company.

5. Credit arrangements

- 5.1 To be approved for credit arrangements, the Customer must request credit arrangements prior to submitting a request for a Quote. The Company may, in its discretion, approve, decline or propose alternative credit arrangements to the Customer.
- 5.2 If credit is approved and included in an accepted Order, the Customer agrees to pay the price payable for Contract Material delivered by the Company, without deduction or set-off, by electronic bank transfer to the Company's nominated bank account or in such other manner as the Company may agree in writing, within thirty (30) days after the end of the month in which the invoice is issued (**Due Date**) (unless a different period and Due Date has been agreed in respect of the specific Order).
- 5.3 Any credit arrangement between the Company and the Customer will not change any of the Customer's obligations with respect to Security Interests required under clause 8 of these Terms and Conditions.
- 5.4 The Company reserves the right to impose a credit limit on a Customer's account at any time, which may be altered or withdrawn at the Company's discretion with effect from the date that the Company notifies the Customer of such change.
- 5.5 If at any time it deems the credit-worthiness of the Customer to be unsatisfactory, the Company may require security for payment and may suspend performance of its obligations under any Contract until the provision of sufficient security. All reasonable costs and expenses actually incurred by the Company as a result of such suspension and any recommencement of the performance of its services, shall be payable by the Customer upon demand.
- 5.6 If the Customer is a company or trust, each director or trustee who signs the Credit Application Form must also sign in their personal capacity as guarantor. In consideration of the Company agreeing to supply the Products and/or grant credit to the Customer, each such director or trustee who signs as a guarantor jointly and severally personally guarantees to the Company for the due and punctual payment of all monies now or hereafter owed by the Customer to the Company. Each guarantor indemnifies the Company against any loss, damage, or expense arising from non-payment by the Customer. The personal liability of any guarantor shall not exclude or limit the liability of the Customer under the agreement. The guarantors and the Customer shall be jointly and severally liable for all obligations and payments under the agreement. The guarantee is a continuing and irrevocable obligation and remains in full force until all debts owed to the Company are fully paid. The Company may enforce this guarantee against any guarantor without first proceeding against the Customer.

6. Delivery of Products

- 6.1 Delivery of Products (Delivery) occurs and risk in the Products will pass to the Customer on the earlier of:

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- (a) collection of Products by the Customer from the Company's premises (whether by the Customer or by a carrier arranged by the Customer);
 - (b) delivery of Products to the Customer, where delivery is undertaken by the Company or by a carrier arranged by the Company.
- 6.2 Delivery timeframes are estimates only subject to stock availability and location. The Company will use its reasonable endeavours to deliver Products in accordance with the terms of an Order but, to the extent permitted by law, will not be liable for any failure to deliver Products in accordance with any particular requirements of the Customer (including any delay in delivery) and such failure or delay will not entitle the Customer to terminate the Contract or to claim compensation of any nature beyond the remedies that are available by law.
- 6.3 The Company will not accept a Customer's Order for delivery to:
 - (a) any person other than the Customer; or
 - (b) a location or premises other than:
 - (i) (the Customer's location or premises (as listed in the Customer's Trading Account)); or
 - (ii) a location nominated by the Customer within a 25-kilometre radius of the Customer's listed business premises (noting that a Trading Account may list multiple branches in respect of a particular Customer, in which case the 25 kilometre radius applies to each of those branches).
- 6.4 If the Customer requests delivery outside of the locations set out above, delivery is at the relevant manager's discretion and on terms to be agreed with the Company's manager.
- 6.5 All prices quoted are Free-Into-Store above the minimum order value as stipulated in clause 6.6 of these Terms and Conditions in the metropolitan areas of Sydney, Melbourne, Brisbane, Gold Coast, Adelaide and Perth as defined by the Company. Deliveries to all other areas are on ex-Company's Warehouse basis. Where freight costs and charges are reversed to the Company by a freight forwarder for any reason, these costs and charges will be applied to the Trading Account of the Customer. Special items such as pipe, filter media, and salt require a separate freight quote. Commercial filters and commercial pumps are not Free-Into-Store. Customers are responsible for the cost of returnable containers, and must return the returnable containers to the Company in order to be refunded their relevant container deposit.
- 6.6 Orders with an invoice value of less than \$500.00 (ex GST and not including container deposit) will incur a delivery and handling fee of \$40.00 for Standard Freight upon delivery of Products. All orders with an invoice value of less than \$20.00 will be on cash sale basis only. Cash sales picked up will not incur any handling charges. The Company reserves the right to vary the amounts mentioned in this paragraph without prior notice, and this will take effect for all Orders made after the date of variation.

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- 6.7 Unless otherwise provided under this Terms and Conditions or agreed by the parties, the cost of delivery of Products to the Customer is the responsibility and for the account of the Customer.
- 6.8 Unloading of Products at point of delivery is the Customer's or the Customers agents' responsibility and the Customer shall at its expense be responsible for all costs associated with the unloading of Products.
- 6.9 The Products will be invoiced and delivery will be made within 30 days of the Company's notice to the Customer that the Products are ready for delivery; provided that:
- (a) subject to clause (b), if delivery cannot be made (including if the Customer is unable to unload the Products at the point of entry), the Customer will be liable for all costs incurred in respect of the return and storage of the Products, including a storage fee of 1% of the purchase value per month or part thereof until delivery is made that the Company may, at its discretion, charge; and
 - (b) clause 6.9(b) does not apply where the delivery cannot be made as a direct result of the Company's default, including where the Company has sent an incorrect or incomplete order, or the Products are damaged in transit by a carrier engaged by the Company.
- 6.10 Customers are required to comply with the requirements of the Dangerous Goods Code in respect of all Dangerous Goods (for example pool chemicals) acquired from the Company, including but not limited to obligations relating to transport, load restraint and segregation, and placarding. Customer's compliance with the obligations under the Dangerous Goods Code is a condition of the sale of Dangerous Goods to the Customer. The Customer indemnifies the Company and holds the Company harmless against any Loss suffered by the Company (including pursuant to a claim by a third party), as a direct or indirect result of the Customer's failure to comply with the requirements of the Dangerous Goods Code.

7. Acceptance of Products

- 7.1 The Customer will be deemed to have accepted any Products as being in accordance with an Order placed with the Company unless it notifies the Company to the contrary within 7 days of Delivery of the Products.
- 7.2 All deliveries should be inspected by the Customer for missing or damaged Products or discrepancies in the Products before signing the proof of delivery documentation.
- 7.3 If the Customer identifies any issues with the Products or any inconsistencies with the Order, the Customer must notify the Company in writing with a detailed description of the issues, including photos and relevant documentation or evidence to support the claim, before the deadline set in clause 7.1. Failure to notify the Company may result in the Company being unable to address the issue. Nothing in this clause affects any rights or remedies available under the Australian Consumer Law.
- 7.4 Proof of delivery may be available, as an exception document, up to 3 months after dispatch, without charge. Thereafter a fee of \$30.00 per proof of delivery will apply.

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8. Ownership and Retention of Title

- 8.1 Notwithstanding that the risk in Products passes pursuant to clause 6, property in and ownership of Products remains with the Company and does not pass to the Customer until such time as all amounts which from time to time are owed by the Customer to the Company have been paid in full and until such time, subject to clause 10.3, the Customer shall:
- (a) hold the Products for and on behalf of the Company as a fiduciary bailee and agent (to hold possession of the Products for and on behalf of the Company);
 - (b) store the Products separately and in such manner that they are clearly identified as the property of the Company;
 - (c) ensure the Products remain in its correct packaging complying with the Dangerous Goods Code, if the Products are Dangerous Goods;
 - (d) keep the Products safe and secure and in a good condition;
 - (e) keep the Products fully insured to their full replacement value against all risks; and
 - (f) not encumber the Products.
- 8.2 Before the Customer takes ownership of the Products, the Customer grants the Company and its agents an irrevocable license to enter any of the Customer's premises to repossess and remove the Products, if the Customer fails to hold the Products in accordance with clause 8.1. The Customer acknowledges that the Company will not be liable for any Loss suffered by the Customer as result of the Company taking such action and indemnifies the Company against such loss.
- 8.3 The Customer may, in the ordinary course of its business, sell and deliver the Products to a third party (and for that purpose the Company gives the Customer the right to pass the ownership of the Products to the third party). If the Customer resells the Products before payment is made, the Customer shall hold the proceeds of resale of the Products in trust for the Company and account to the Company for all moneys owed by the Customer to the Company. The Customer acknowledges that the Company has the right to trace the proceeds of resale. The Customer's ability to resell the Products shall automatically cease if a receiver is appointed over any of the assets or undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purposes of a solvent reconstruction or amalgamation approved by the Company) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of insolvency bankruptcy.
- 8.4 In addition to the Company's rights described above, as security for the due and punctual payment of the Secured Moneys, the Customer:
- (a) charges and grants a Security Interest to the Company in all of the Customer's present and future rights and interest in the Products and any Proceeds of the Products; and

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- (b) charges to the Company, and as an additional and separate Security Interest, all present and future Account, Chattel Paper (as defined in the PPS Act) and all other rights or chose in action which form part of or relate to the Products or any part of them at any time.

9. On-sales and online marketing

- 9.1 The Customer warrants to the Company that, if the Customer on-sells any Products, the Customer will:
 - (a) protect the goodwill of the Company and the Products by providing pre-sales education and facilitating post-sales service, in accordance with the Pre & Post Sales Guidelines and such other requirements as notified by the Company to the Customer from time to time;
 - (b) provide its customers with the Dangerous Goods Notification prior to sale or delivery of the relevant Products; and
 - (c) ensure that it does not sell Products to any person or entity who the Customer knows or ought reasonably to know intends to re-sell Products online in contravention of the Internet Policy including via any third-party online website or digital media.
- 9.2 In acknowledgement that the Company Products are technically complex products and warrant significant point of sales assistance (including proper selection) and access to post-sales support, the Customer:
 - (a) acknowledges that only Authorised Online Marketers are permitted to sell the Products online; and
 - (b) agrees not to advertise or resell the Products online, except in accordance with the Internet Sale Policy, which:
 - (i) details restrictions on the online promotion and sale of Specialist Products, including website display standards;
 - (ii) applies to all products supplied by the Company, including but not limited to the Waterco, Davey, Baker Hydro, Aquapure, Aquahealth, and Aquachlor brands; and
 - (iii) forms part of these Terms and Conditions.
- 9.3 Compliance with the Pre- & Post Sales Guidelines and the Internet Sale Policy is a material condition of the supply of the Product, and a breach may result in suspension or termination of supply arrangements at the Company's sole discretion.
- 9.4 If the Customer on-sells Products that contains or includes Dangerous Goods, the Customer is responsible for providing appropriate instructions in respect of Dangerous Goods and ensuring compliance with the Dangerous Goods Code.

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- 9.5 The Customer indemnifies the Company and holds the Company harmless against any Loss suffered by the Company arising directly or indirectly from or in connection with:
- (a) a breach by the Customer of the provisions of this clause 9; or
 - (b) a claim by a third party (including but not limited to any person to whom the Customer marketed or sold the Products) in respect of or related to the Products.

10. Personal Property Securities Law

- 10.1 The Customer acknowledges that under this agreement the Customer grants a Security Interest to the Company including without limitations:
- (a) first, a retention of title in respect of the Products (in accordance with clause 8.1) and
 - (b) secondly, a charge over the Products and the Proceeds of the Products (in accordance with clause 8.4).
- 10.2 The Customer acknowledges that this agreement constitutes a Security Agreement.
- The Customer will do anything reasonably required by the Company to enable the Company to register its Security Interest with the priority the Company requires, and to maintain the registration. The Security Interest arising under these Terms and Conditions attaches to the Products when the Customer obtains possession of the Products and the parties confirm that they have not agreed that any Security Interest under these Terms and Conditions attaches at any later time.
- 10.3 The Customer acknowledges that the Company may perfect its Security Interest by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.
- 10.4 If:
- (a) A PPS law applies, or will at a future date apply to this agreement, or the Company determines that a PPS Law applies, or will at a future date apply, to this agreement, and
 - (b) If, in the Company's opinion (acting reasonably), the PPS Law:
 - (i) adversely affects or would adversely affect the Company's security position or its rights or obligations under or in connection with this agreement; or
 - (ii) enables or would enable the Company's security position to be improved without adversely affecting the Customer in a material respect,

then the Company may give notice to the Customer requiring the Customer to do anything that in the Company's opinion is reasonably necessary to

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ensure that, to the maximum possible extent, the Company's security position, and rights and obligations, are not adversely affected as contemplated by this clause (or that any such adverse effect is overcome), or that the Company's security position is improved as contemplated in this clause, and the Customer must comply with the requirements of that notice within the time stipulated in the notice.

- 10.5 In this clause 10, PPS Law means:
- (a) the PPS Act;
 - (b) any regulations made at any time under the PPS Act;
 - (c) any amendment to any of the above, made at any time; or
 - (d) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in clauses (a) to (c)).
- 10.6 All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these terms, except as excluded by clause 10.7.
- 10.7 The following provisions of the PPS Act will not apply to the enforcement of these terms: section 95, 118, 121(4), 130, 132(3), 132(4), 135, 142 and 143.

11. Cancellation

- 11.1 This clause applies when a Customer wishes to vary the nature of an Order or cancel an Order before the item arrives. This clause does not apply where a Customer wishes to return a product.
- 11.2 Except as required by law, all Orders placed by a Customer can only be varied or cancelled by agreement in writing between the parties. In agreeing to a variation, it will be reasonable for the Company to require that the Customer compensates the Company for any Loss suffered as a result of the varied or cancelled order.
- 11.3 A fee will be applied to any Order for any Non Standard Product that is cancelled before delivery to the Customer. This fee will be based on the costs the Company will incur as a direct result of the cancellation.
- 11.4 The Company will be entitled to cancel an Order by notifying the Customer in writing if fulfillment is impossible within a reasonable period of time because of an Event of Force Majeure or delayed or faulty delivery from a sub-supplier, and the Company shall not be liable for any Loss suffered by the Customer pursuant to a cancellation under this clause. For purposes of this clause, an Event of Force Majeure means any event which is beyond the reasonable control of the Company, including but not limited to war, strike, lockout, pandemic, political conditions, storm, flood and fire.
- 11.5 Orders for Non-Standard products are irrevocable once accepted by the Company and may not be cancelled, varied, or returned except with the Company's prior written consent and on terms that indemnify the Company for all costs, expenses, and losses incurred as a result of the cancellation or variation.

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12. Returns

- 12.1 Subject to the remainder of this clause 12, a Customer may return a Product if:
- (a) the Product:
 - (i) is faulty or defective;
 - (ii) is not fit for purpose;
 - (iii) does not match the description of the Product in the Product Manual;
 - (iv) is not of an acceptable quality; or
 - (v) is unsafe;

provided that the Customer gives written notice to the Company within 7 days of the date of delivery that it intends to return the Product, setting out the reason for the return; or
 - (b) the Company (entirely in its discretion) agrees to the return.
- 12.2 Subject to applicable consumer laws, the Company will at its discretion provide a credit, replacement or refund to the Customer in respect of any returned Products.
- 12.3 The Company may reject a returned Product if:
- (a) it is not returned in an unused condition and in its original packaging,
 - (b) it is soiled and damaged or
 - (c) where the Product is re-saleable, it is not returned in a re-saleable condition.
- 12.4 Where a Product is returned in accordance with:
- (a) clause 12.1(a), the Company will arrange for the Product to be collected; and
 - (b) clause 12.1(b), the Customer must arrange for the Product to be returned to the Company within 7 days from the date of the Company's approval, with freight and insurance prepaid by the Customer and accompanied by a Return Material Authorisation (**RMA**) Number provided by the Company prior to returning any Product. The Company will not accept a return Product without an RMA.
- 12.5 The value of credit, if any, will be limited to the amount originally invoiced for the Products, save that:
- (a) Products returned will attract a charge (the amount of which shall be at the discretion of the Company) to compensate the Company for its reasonable costs in respect of the delivery and return of the Products, and any damage

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suffered by the Products in the course of such delivery, return or possession by the Customer); and

(b) where Products were bought on the basis of a volume discount, the credit will take into account the volume of Products retained after the relevant return, to determine the pricing that should originally have been applied to the purchase (and the credit will be determined accordingly); and

(c) freight charges will not be refunded or credited.

12.6 Without limiting the above and to the fullest extent permitted by law, any returns, refunds or exchanges in circumstances other than those set out above are only available under clauses 11 and 12 of this Agreement. Nothing in this clause affects a consumer's rights available under the Australian Consumer Law.

12.7 Non-Standard Products, special order products, and products listed as "Price on Application" are ineligible for return or credit unless required by law and/or in accordance with clause 12.1.

13. Guarantee

13.1 The Guarantee is provided to the Customer only, and may not be transferred or assigned to a third party without the Company's prior written consent.

13.2 To the fullest extent permitted by law, and except where consumer guarantees imposed by the Australian Consumer Law are applicable or as set out in the terms of the Guarantee, no warranty, condition, undertaking or term (whether express or implied) as to the condition, quality, reliability, accuracy or completeness, performance, merchantability or fitness for purpose of the Products is given or assumed by the Company.

14. Limitations

14.1 Subject to the Australian Consumer Law and any other Act, statute, rule or regulation that implies in this Contract any term, condition, warranty, right or obligation that cannot be excluded, to the extent permitted by law, the Company's liability is limited to:

(a) in the case of the Products, at the Company's option, any one or more of the following:

(i) the replacement of the Products or the supply of an equivalent product;

(ii) the repair of the Products;

(iii) the payment of the cost of replacing the Products or of acquiring an equivalent product up to the price paid by the Customer; or

(iv) the payment of the cost of having the Products repaired; and

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- (b) In the case of Services only, to the re-supply of the services or reimbursing the Customer for paying someone else to supply the services.
- 14.2 To the fullest extent permitted by law or statute, the Company shall not be liable (in contract, tort, equity, negligence, statute or otherwise) for incidental or consequential damage or injury (Consequential Loss), or other commercial loss howsoever caused and whether or not the result of negligence. For purposes of this clause, Consequential Loss means any Loss, however arising, which does not flow directly, naturally or in the usual course of things from the breach of this agreement, whether or not that Loss was in the reasonable contemplation of the parties when this agreement was entered into (and, in any event, includes loss of revenue, profit, reputation, opportunity and crops, and loss associated with rental or substitute equipment.)
- 14.3 In any event the total liability of the Company for any breach of any term, condition or warranty, express or implied, which cannot lawfully be excluded is limited to the fullest extent permitted to one of the remedies in clause 14.1, at the Company's option.
- 14.4 The Customer indemnifies the Company and keeps the Company harmless against all losses suffered by the Company arising directly or indirectly from and in connection with any:
 - (a) unauthorised representations or any errors, mistakes and inaccuracies made by the Customer in relation to the Products (including the Services);
 - (b) breach or default under these Terms and Conditions by the Customer;
 - (c) negligent act or omission of the Customer.
- 14.5 This clause 14 will survive termination of this Contract.

15. Installation and Commissioning

- 15.1 The Customer must arrange installation of the Product by suitably trained and competent persons in accordance with the installation instructions in the Product Manual. If the Product is a Specialist Product that requires installation, it should only be installed by personnel authorised to do so by the Company. If the Product is installed by a person unqualified and unlicensed, the Customer cannot, to the fullest extent permissible by law, rely on the Guarantee or any warranties provided with respect to the Product. If the Product is a Dangerous Good, the person installing the Product must have received appropriate instruction and training to do so, in compliance with the Dangerous Goods Code.
- 15.2 The Customer must not represent that it has the authorisation to install Specialist Products without written approval by the Company. Additionally, Authorised Online Marketers must take reasonable steps to ensure that Specialist Products are installed by personnel authorised to do so by the Company.
- 15.3 The Company does not take responsibility for providing connections to services as part of any installation. All connections not provided by the Company, must be safe and provided at the required equipment flowrates, pressures, volumes, current and voltage. The Company is not liable for, and the Guarantee does not cover, issues with performance of the Products to the extent they are caused or contributed to by

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variations in water supply, unclean electrical supply or the failure of third parties to provide the required flowrates, pressures, volumes, current or voltage of services, or any fluctuation in these services.

- 15.4 Any commissioning is to be done after installation is complete, power and water is available, and the specified duty or performance can be achieved.
- 15.5 Commissioning test equipment (gauges, flow meters etc) is to be installed and operating by the Customer before commissioning.
- 15.6 Commissioning will determine the correct operation of the Products, but not the correct operation of the whole system (and the Company makes no representations in this regard).
- 15.7 The Company is not liable for damages resulting from incorrect or improper installation or commissioning undertaken by the Customer or any third party.

16. Drawings & documentation

- 16.1 Descriptions necessary for proper and safe installation, starting, operation and maintenance of the supplied Products will be made available either on-line or with manuals provided to the Customer upon delivery of the Products. Intellectual property rights in all Product drawings and descriptions remain the property of the Company and may not be copied or reproduced, without the express written permission of the Company.
- 16.2 Unless otherwise agreed upon by the Company in writing, the Company's standard documentation will be provided in all cases. A variation to standard documentation requires prior written approval and may be subject to additional costs. To the fullest extent permitted by law, the Company is not liable for any delays as a result of non-compliance with non-standard documentation requests.

17. Intellectual Property Rights

- 17.1 The Customer acknowledges that the Company is at all times and remains the owner of all copyright, designs, patents, trade marks and other intellectual property rights subsisting in, used on or in relation to the Products, drawings and descriptions, and advertising or supplementary material supplied in connection with such Products and that these Terms and Conditions do not grant or transfer to you or any other third party any intellectual property rights in any of these materials.
- 17.2 The Customer must not reproduce, transmit, communicate, adapt, distribute, sell, modify or publish, create derivative works, or otherwise use any of the content or material on the Service, including audio and video excerpts, except with the Company's prior written consent.
- 17.3 Subject to the following clause 17.4, the Customer agrees not to use the 'Waterco' or "Davey" name in its trading, corporate or domain name or any other trade marks or other intellectual property of the Company, unless permitted by the Company in writing, and will immediately cease use of any of the Company's intellectual property when requested by the Company.

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- 17.4 In order for Authorised Online Marketers to market and advertise the Products, the Company provides to the Customer a non-exclusive, revocable, royalty free license to use the 'Waterco' and 'Davey' name and trade marks as applied to that Product (but only insofar as the marks are used in accordance with the Company's Internet Sale Policy and Waterco's and/or Davey's brand style guidelines and in any other manner specified by the Company to ensure the value and integrity of the Company's brands and trade marks).

18. Termination and suspension

- 18.1 It is an event of termination (**Event of Termination**) if:
- (a) the Customer breaches or fails to observe any of these Terms or Conditions, including the guidelines and policies set out in the Annexure A, and such breach is not capable of remedy or (where the breach is capable of remedy) it is not remedied within five Business Days of written notice from the Company;
 - (b) the Customer trades outside the terms and conditions of the Customer's credit facilities (if any) or the supply of Product to the Customer will result in the Customer trading outside the terms and conditions of the Customer's credit facilities and, in particular, the credit limit in force from time to time;
 - (c) the Customer refuses or fails to comply with a request pursuant to clause 4 and 5 (in particular clauses 4.1 and 5.2) within seven days of receipt of the request;
 - (d) the Customer suffers an Event of Insolvency;
 - (e) any guarantor of the Customer's indebtedness to the Company ceases or revokes a guarantee;
 - (f) if the Company, its solicitor or agent delivers, to the Customer, a written demand for payment or notifies the Customer in writing the security provided to the Company for payment is not satisfactory and the Customer fails to fully comply with the payment request or remedy the provision of security within seven days of receipt of this request;
 - (g) the Customer misrepresents the Company or its products to members of the public or prospective purchasers;
 - (h) the Customer supplies the Products to a person who has been terminated as a Customer, because of having misrepresented the Company or its products to members of the public or prospective purchasers, where the Company has requested the Customer to desist because of concern that there will be further misrepresentation; or
 - (i) there occurs or will occur directly or indirectly a material change in ownership or control of the Customer.
- 18.2 If an Event of Termination occurs:

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- (a) the Company will be entitled (without prejudice to any other right or remedy provided) at its option to immediately do any one or more of the following:
 - (i) refuse to accept or to complete any Order, or any portion of an Order which is unfulfilled at the time of the notification of the Event of Termination; provided that where the Company elects to fulfil an order these Terms and Conditions will apply to that Order;
 - (ii) cease to supply Products to the Customer or any part or division of the Customer;
 - (iii) suspend or cancel any credit facility provided to the Customer;
 - (iv) modify, suspend or withdraw all or any part of the Services, temporarily or permanently;
 - (v) demand immediate payment of all Secured Moneys (whether due or not) in respect of any Order (including, for the avoidance of doubt, any amount payable for products ordered by the Company and services supplied by the Company prior to the time that the Company receives notice of the Event of Termination including all work in progress); or
 - (vi) terminate any Contract;
- (b) the Customer will not be entitled to any compensation in respect of such action or termination, except as required by law; and
- (c) the Customer must immediately return to the Company all price lists and other material provided by the Company to the Customer.

18.3 If the Company does not fulfil or cancels an Order, it will provide a refund for any amount paid by the Customer minus the Company's reasonable expenses incurred by reason of the Order.

19. Product recall

19.1 If a Product is recalled by the Company or by a manufacturer or supplier of the Product, then the Company may require the Customer to return any recalled Product(s) in its possession, against issuance of a trade credit to the Customer.

20. Personal Information and Privacy Policy

20.1 We will collect, use, store, disclose and handle any Personal Information that is provided to us in the course of our activities in accordance with our Privacy Policy.

20.2 You warrant that you are authorised to provide us with any Personal Information you have made available to us and that you have made all necessary disclosures and obtained all consents necessary to allow us to deal with the Personal Information lawfully in accordance with our Privacy Policy.

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- 20.3 When we make changes to the Privacy Policy, we will provide the revised Privacy Policy on our website and update the date of last update to reflect any changes. You should review the Privacy Policy from time to time. Your continued use of the Service or purchase of Products after we make a change indicates that you have accepted that change.
- 20.4 Where the Customer is provided with Personal Information, the Customer must:
- (a) comply with any and all applicable privacy laws, and in any case treat any Personal Information it collects in the same manner as if the recipient was bound by the Privacy Act;
 - (b) use the Personal Information only for the purposes of fulfilling its obligations under this Agreement; and
 - (c) indemnify the Company for any breaches of the Privacy Act caused by the Customer while dealing with Personal Information provided by the Company.

21. 19. Miscellaneous

- 21.1 If any of these Terms and Conditions infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be severable. Nothing in this agreement affects any rights a consumer may have under the Australian Consumer Law.
- 21.2 The Customer must not assign any Contract without the prior written consent of the Company.
- 21.3 All notices to be given by a party under these Terms and Conditions must be in writing and may be given to the other party by hand delivery, prepaid post or facsimile addressed to the other party at its last known address or facsimile numbers as specified by the other party. Any notice will be deemed to have been received by the person to whom it was sent, in the case of:
- (a) hand delivery, upon delivery;
 - (b) prepaid post, three days after dispatch;
 - (c) facsimile, upon completion of the transmission; or
 - (d) email, when the email enters the information system of the addressee.
- 21.4 The Company does not need to give the Customer any notice under the PPS Act unless the notice is required by the PPS Act and that requirement cannot be excluded.
- 21.5 The parties agree that neither party will disclose to an “interested person” (as defined in section 275 of the PPS Act) or any other person, any information of the kind described in section 275 of the PPS Act. The Customer will not authorize the disclosure of any information of the kind described in section 275 of the PPS Act.

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- 21.6 Each party agrees to keep all information of the other party that is of a confidential nature (including pricing lists and specific pricing offered to the Customer) which is disclosed arising out of or in connection with these Terms and Conditions (apart from information in the public domain or independently developed by the other party) in strict confidence. A party must only use the other party's confidential information for purposes necessary to comply with, or enjoy a benefit conferred by, these Terms and Conditions.
- 21.7 Waiver of any right by the Company arising from a breach of these Terms of Conditions or upon the occurrence of an Event of Termination must be in writing and executed by the Company. A failure or delay in the exercise of a right arising from a breach of these Terms and Conditions or the occurrence of an Event of Termination by Davey does not result in a waiver of that right.
- 21.8 To the extent permitted by law, under no circumstances is the Company liable for failing to make the Products available for collection or for delivery of the Products on any date stipulated by the Customer in the Purchase Order.

22. Applicable law

- 22.1 These Terms and Conditions and any Contracts are governed by and must be construed in accordance with the laws of Australia and the Customer agrees to submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

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ANNEXURE A – Pre & Post Sale Guidelines

The Company relies on its distribution network to ensure that expertise and guidance is applied to product selection, installation, and use, and after-sales support and service is provided promptly and courteously.

It is important that end users and qualified trade buyers of the Company Products have the option of visiting a retailer's store and speaking directly with a trained and knowledgeable distributor. This is an important factor to mitigate the risks of selecting the wrong product, or improper use or maintenance. It also means that queries can be readily addressed, and there is a point of contact for after-sales service, increasing customer satisfaction.

1. Pre-sale Education

- 1.1 All Customers who re-sell Waterco Products must ensure that the qualified trade buyer or end user is recommended the correct model for their specific application. Immediately prior to the collection or delivery of each Product to its customer, the Customer must educate, fully inform and advise them of:
- (a) the correct operating procedure for that Product;
 - (b) the features and other advantages of that Product;
 - (c) the routine maintenance required with respect to the operation of that Product;
 - (d) the necessity to read and understand the Installation & Operating instructions accompanying that product;
 - (e) the details of the current warranty in respect of that Product and that their first point of contact during the warranty period is the Customer;
 - (f) any requirements in terms of the handling, delivering and usage of the Products that are Dangerous Goods; and
 - (g) such other matters as the Company may reasonably require from time to time.
- 1.2 The Customer must also inspect and check the condition of each Product and ensure it is fully and correctly assembled and in working and proper order before delivery and hand-over to a customer and be accompanied by the appropriate operating manuals.
- 1.3 For Authorised Online marketers, these obligations also apply to online internet sales in accordance with the conditions set out in the Internet Sale Policy.

2. Post-Sale Service

- 2.1 All Authorised Online marketers must be the Company authorised service agents and as such are required to provide and maintain full in-house service facilities to a high standard as specified by the Company. This includes having and maintaining suitable and sufficient workshop premises, facilities, and equipment, including a minimum

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range of specified workshop tools as specified by the Company, to maintain, repair and service the Products.

- 2.2 All customers who are trade buyers, must ensure that an end user has access to water testing and specialist advice to assist in the proper maintenance of the Company's products and provide a safe swimming environment. The Customer must be, and must ensure that all its personnel are, conversant with all technical information supplied by the Company to the Customer, or made available on the Company's website, from time to time concerning Products. The Customers shall manage product enquires and Warranty claims promptly and courteously in accordance with the protocols set out in the Terms & Conditions of Sale and as directed by the Company.
- 2.3 Non-compliance with this guideline constitutes a material breach of the Terms and Conditions of Sale. The Company will contact any Customers which it becomes aware are infringing this guideline and, if required, will take further action as set out in the Company's Terms and Conditions of Sale.
- 2.4 This guideline takes effect from [] and supersedes all previous versions. This guideline may be periodically amended at the Company's discretion.