

One Water Naturally Pty Ltd
ACN 103 949 499 (The Manufacturer/Seller)
STANDARD TERMS AND CONDITIONS OF TRADE
(MANUFACTURER / IMPORTER / DISTRIBUTOR TO CUSTOMER OR DEALER OR
SUB-DISTRIBUTOR)

1. Preliminary

These are One Water Naturally Pty Ltd (**the “Seller”**) Standard Terms and Conditions, which will apply to every contract whereby you as the Customer (**the “Customer”**) order and purchase the items of the Products (as set out in the Order) from the Seller.

2. The Contract

2.1. The Terms of the Contract between the Seller and the Customer for the sale and supply of items of the Products Ordered are contained collectively in all of the following:

- (a) the duly completed Order;
- (b) these Standard Terms and Conditions;
- (c) the Acceptance; and
- (d) the relevant parts of the Seller’s then Current Price List.

2.2. The Contract date is the date the Seller Communicates acceptance to the Customer. An Order once placed where Acceptance has been Communicated may only be cancelled by the Customer if the Seller agrees in writing to its cancellation. Cancellation may be conditional on the Customer paying the costs and expenses incurred by the Seller up to the date of cancellation. The Customer must provide its ABN number on the completed Order Form unless already provided.

2.3. Where the Products have to be made or adapted to the Customer’s particular specifications or requirements then the Customer must also pay for all work in progress up to the date of cancellation.

3. Defined Terms

In these Standard Terms and Conditions and any related documents, unless the context otherwise requires, the following words and phrases mean:

“ABN” means Australian Business Number.

“Acceptance” means the occurrence of any one of the following:

- (a) the signed Acceptance by the Seller of the Order; or
 - (b) the Acceptance by the Seller of a deposit for the Products in which event the Acceptance will be deemed Communicated without any further steps being required;
- or
- (c) the Delivery of the Products in which event the Acceptance will be deemed Communicated without any further steps being required.

“Communicates” means all tenses of the verb and any act of communication and includes written communications, electronic communications and facsimile communications but does not include oral communications unless confirmed in writing electronically or by facsimile.

“Contract” means this contract for the sale and purchase of the Ordered Products.

“Current Price List” means the price list published by the Seller from time to time as the current prices of the Products to its Customers, exclusive of GST.

“Delivery” means delivery at 1/25 Narabang way Belrose, New South Wales Australia, 2085 or such other place as the Seller and the Customer may in writing agree as the place of

delivery for the Products Ordered.

“GST” means Goods and Services Tax.

“GST Act” means *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*.

“Installation” means (where applicable) the installation of the Products at the site of installation as agreed in writing by the Seller and the Customer.

“Intellectual Property” means all copyright in all designs, plans and drawings of the Products, all Designs whether registered or unregistered, all trade marks and logos whether registered or unregistered, all patents granted and patents pending and all know-how and information pertaining to the manufacture of the Products.

“Order” means an Order placed by the Customer on an Order Form for the purchase of an item or items of the Products duly completed and signed by the Customer and Communicated to the Seller containing:

- (a) the Price of the items of Products Ordered;
- (b) the Customer’s full details; and
- (c) the full details of the Products Ordered.

“Order Form” means the Seller’s Order Form from time to time.

“Parties” means the Seller and the Customer.

“Person” means any individual, company or entity not being a Party and not being an employee of a Party.

“PPS Act” means the *Personal Property Security Act 2009 (Cth)* and its regulations and “security interest” has the same meaning as in section 12 of the PPS Act.

“Price” means the purchase price of the Products exclusive of GST determined by reference to the Seller’s Current Price List and as set out in the Order.

“Products Ordered” means the Products ordered by the Customer and indemnified on the Order as signed by the Customer.

“Specifications” means any Seller’s specifications applicable to an item of the Products and where applicable any specifications for Installation.

“Tax Invoice” means a tax invoice that complies with the GST Act.

4. Price

4.1. The Seller agrees to sell and the Customer agrees to buy the Products ordered by the Customer for the Price. The Price must be paid COD or at such other time as the Seller and the Customer may in writing agree.

4.2. The Seller will render a Tax Invoice to the Customer on or prior to Delivery. This may be emailed or faxed to the Customer at the Customer’s place of business. The Customer must provide the Seller with its ABN number at the time the Customer places its Order on the Order Form.

5. Price and Partial Delivery

5.1. Where there is partial Delivery of the Products, then the Seller will be entitled to be paid by the Customer that proportion or percentage of the Price that relates to those Products delivered on that partial Delivery.

6. Warranties

6.1. The Seller warrants to the Customer that:

- 6.1.1. the Products will be manufactured by the Seller using good and suitable materials and components;

6.1.2. the Products Ordered as manufactured will be fit and merchantable having regard to the purposes (if any) Communicated by the Customer to the Seller at or simultaneously with the placement of the Order. If no purposes have been Communicated, the Products will be fit and merchantable for their general purposes having regard to the nature of the Products Ordered;

6.1.3. the Products Ordered will conform in all material respects with any Specifications;

6.1.4. the Seller will replace or remedy any faulty part or component of any item of the Products Ordered that the Customer Communicates to the Seller as faulty or requiring replacement within three (3) months of Delivery;

6.1.5. the Products Ordered will be manufactured so that they are safe if properly used for their intended purpose;

6.1.6. where the Products Ordered are to be Installed by the Customer, that those Products will be suitable and capable of being so installed in accordance with the Specifications.

6.2. The Seller will not be responsible for any damage to the Products which occurs at any time after Delivery unless the Customer can provide reasonable evidence that the damage was a direct result of any fault or defect:

6.2.1. in the manufacture of the Products Ordered;

6.2.2. in the materials or components used in the manufacture of the Products Ordered;

6.2.3. in the packing of the Products Ordered;

6.2.4. in the products ordered which the Customer can show was caused prior to Delivery.

6.3. The Seller will not be liable to the Customer for any damage or destruction of the Products caused by:

6.3.1. any failure by the Customer to properly or safely store the Products;

6.3.2. any failure by the Customer to properly move the Products after Delivery;

6.3.3. any failure by the Customer to properly install the Products;

6.3.4. any failure by the Customer to use the Products for their purpose;

6.3.5. any use by the Customer or any other Person of the Products contrary to their specifications;

6.3.6. any act or omission by the Customer or any Person after Delivery;

6.3.7. any failure to properly repair or maintain the Products.

6.4. Subject to the express terms of this Contract and to any statute or regulations (State or Federal) which cannot be excluded contractually, the Parties expressly agree that:

6.4.1. the Seller does not accept any liability whatsoever in respect of any loss or damage (including injury, death, loss of profits or repudiation, economic loss and consequential loss or other damage) however caused (including the Seller's negligence) which may be suffered or incurred or which may arise either directly or indirectly in respect of any use of the Products;

6.4.2. all Warranties implied by any Statute that can be excluded are hereby expressly excluded.

6.5. Where any Person suffers loss, damage or injury (including personal injury) as a direct or indirect result of any failure referred to in Clause 6.3 above or as a direct or indirect result of any misuse of the Products then the Customer hereby indemnifies the Seller against any liability (including costs) of the Seller to that Person.

7. Delivery of the Products

7.1. The Seller will Deliver the Products safely and securely packed.

7.2. The Customer or the Customer's representative must be present on Delivery to inspect the Products Ordered and sign for acceptance of the Products on Delivery.

8. Payment

8.1. Unless otherwise agreed in writing, payment for the Products Ordered must be made COD on Delivery.

8.2. Where payment is made with a credit card facility, the merchant fee is at the Customer's cost.

8.3. The Seller always reserves the right at any time to require whole or partial payment of the Price by the Customer at any time before delivery.

8.4. Where the whole or partial payment of the Price is required by the Seller before Delivery, any failure by the Customer to make such payment when required by the Seller entitles the Seller to:

8.4.1. suspend manufacture of the Products Ordered; and/or

8.4.2. after seven (7) days' prior written notice to the Customer, terminate this Contract and claim any damages. Damages will include the actual cost of work in progress up to termination plus the Seller's loss of gross profit on the Products Ordered.

9. Variations

9.1. The Seller does not agree to any variations to this Contract. This Contract does not oblige the Seller to accept any variation in the Products to be supplied.

9.2. The Seller will however (without obligation) consider any variations sought by the Customer.

9.3. The terms of any variation will not be binding unless and until they are agreed in writing and signed by the Seller and the Customer. They will then and only then constitute a variation to this Contract.

9.4. If no agreement is reached as to a sought variation, then the Products will be made and supplied in accordance with the terms of the Contract and the Customer will accept the Products as so made and ordered.

9.5. Where the Customer has requested a variation to the Products and such variation delays Delivery, the Seller reserves the right to invoice the Customer and receive payment on the agreed date of Delivery.

10. Time of Delivery and Delay

10.1. The Seller will take all reasonable commercial endeavours to ensure that the Products Ordered are Delivered on the agreed date for Delivery set out in the Order.

10.2. Where there is a schedule of times for Delivery referred to in the Order then the Seller will take all reasonable commercial endeavours to ensure that the Products are Delivered on the agreed scheduled dates for Delivery.

10.3. If the Seller is unable to Deliver the Products to the Customer by the date or dates of Delivery set out in the Order, then the Seller must promptly notify the Customer in writing to that effect with estimates of the revised time for the Delivery of the Products Ordered.

10.4. Provided the Seller has used all reasonable commercial endeavours to Deliver the

Products to the Customer in accordance with the date or dates for Delivery in the Order, the Seller will not be liable to the Customer for any delay in Delivery of the Products or any part thereof.

10.5. The Customer acknowledges that the Seller may be dependent upon various supplies of materials and components from third parties in order to be able to Deliver the Products to the Customer by the agreed date or dates for Delivery. Any delay in the manufacture of the Products Ordered caused by any shortage or unavailability of materials or components may give rise to a delay in Delivery and the Customer acknowledges and agrees that in such circumstances the Seller will not thereby be in breach of its Delivery obligations.

10.6. The Seller reserves the right to invoice the Customer and receive payment for the Products even though Delivery has not occurred through the Customer's failure to take Delivery of the Products Ordered.

10.7. If the Customer fails to pay for the Products Ordered then the Seller may sue the Customer for the Price as a debt immediately due and owing to the Seller by the Customer, even though Delivery has been suspended because of the Customer's failure to pay the Price when due.

11. Title

11.1. Unless otherwise agreed in writing by the Seller and the Customer, title in the Products Ordered will not pass to the Customer until the Products are fully paid for by the Customer. Where the Products have been Delivered to the Customer prior to having been fully paid for, the Customer will hold the Products until full payment has been made as a bailee at will for the Seller.

11.2. Where the Products are to be Installed by the Customer, the Customer acknowledges and agrees that in the event that payment is not made in accordance with this Contract then no Installation will take place without the Seller's prior written consent until the Products have been fully paid for.

11.3. The Parties agree that the full risk of damage, loss or destruction to the Products will pass to the Customer on Delivery of the Products even if title has not passed to the Customer at the time of such damage, loss or destruction. In the event that the Products are damaged, lost or destroyed after Delivery but before title has passed, the Customer will continue to be liable to the Seller to pay any balance of the Price.

11.4. Where the seller holds any security interest in the goods, the Purchaser agrees to implement, maintain and comply in all material respects with procedures for the perfection of those security interests as provided by the PPS Act.

11.5. The Purchaser must take all steps under the PPS Act to continuously perfect any such security interest, including all steps necessary for the seller to obtain the highest ranking priority possible in respect of those security interests and to reduce as far as possible the risk of a third party acquiring an interest free of sellers security interests.

11.5.1. Everything which the Purchaser is required to do under this clause is to be done at the expense of the Purchaser and the Purchaser agrees to reimburse the seller for any costs in relation to anything the Purchaser is required to do under this clause

12. Suspension of Delivery

12.1. The Seller may suspend Delivery of the Products without being in breach of this Contract if:

12.1.1. where the Customer must make a pre-payment or instalment and fails to pay any pre-payment or installment of the Price for Products Ordered until such payment is made;

12.1.2. the Customer fails to inspect the Products Ordered promptly upon being required by the Seller to do so but only until such inspection occurs;

12.1.3. whilst any dispute between The Customer and the Seller remains unresolved;

12.1.4. the Customer owes any money to the Seller on any account whatsoever;

12.1.5. in the reasonable opinion of the Seller, the Customer will be unable to pay the Price or balance of the Price to the Seller.

12.2. The Seller must give 7 days' prior written notice to the Customer of its intention to suspend Delivery and the reasons for such suspension.

13. Installation

13.1. Unless otherwise agreed in writing, Installation of the Products Ordered is not part of this Contract. Installation of the Products Ordered is the Customer's exclusive responsibility and the Seller will not be responsible for any damage done to the Products Ordered during, or as a consequence of, their Installation or during or as a consequence of the Customer taking Delivery of the Products Ordered at the site of Installation and attempting to Install them.

14. Ownership of Intellectual Property

14.1. Nothing in the Contract between the Parties gives the Customer any interest or right to the Intellectual Property in the Products Ordered which Intellectual Property the Customer acknowledges is exclusively owned by the Seller.

14.2. All copyright in all manuals, diagrams, drawings, plans and specifications that are provided to the Customer with the Products Ordered remains the sole and exclusive property of the Seller and such items are not to be reproduced without prior written permission of the Seller.

15. Inspection of the Products

15.1. It is the Customer's obligation to inspect the Products Ordered at such reasonable dates, times and places as the Seller notifies in writing to the Customer.

15.2. If the Customer fails to inspect the Products Ordered within seven (7) days of written notification from the Seller that the Products Ordered are ready to be inspected, then the Customer will be deemed to have accepted the Products, waived all rights of inspection and consequent to inspection to have waived all rights in respect to all visible defects and to have those defects rectified.

15.3. If on inspection the Customer does not accept the Products Ordered as being in accordance with the Contract, then the Customer shall within two (2) days of such inspection, send to the Seller by facsimile, email or letter full details of all rectifications the Customer requires in respect to those defects. If the Customer fails to do this within the said two (2) days of inspection, then notwithstanding that the Customer has orally or informally failed notified the Seller of the defects, the Customer will be deemed to have

accepted the Products pursuant to the inspection and to have waived the Customer's rights to have such defects rectified.

15.4. Where the Customer provides to the Seller the full details of rectification work consequent upon inspection within the time provided, the Seller will, if it accepts that such defects exist and require rectification, promptly at its own cost carry out all those requirements so as to cure the defects in the Products Ordered. Where the Products Ordered do not, because of such defects, comply with any Specifications, the Seller must rectify the Products Ordered so that they comply with the terms of the Specifications.

15.5. If in the reasonable opinion of the Seller the details of rectification sought by the Customer are outside the Specifications, the Seller shall within two working days of receiving full details of rectification inform the Customer in writing or by facsimile or email of those parts of the details of rectification which the Seller says are not required in order for the Products Ordered to comply with the Specifications.

15.6. If The Customer and the Seller cannot agree on the details of rectification then either Party may require the Products to be returned to the Seller and the cost of such return and the risk involved will be borne by the Customer.

16. Waiver

16.1. The failure by either the Customer or the Seller to exercise or enforce any rights conferred hereunder shall not, except where there is an express term to the contrary, be construed or deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or other times thereafter.

16.2. A waiver of any right must be in writing signed by the Party waiving that right.

17. Termination

17.1. If the Customer:

17.1.1. enters into a deed of arrangement or commits an act for bankruptcy or compounds with its creditors or becomes insolvent, or has a trustee appointed to any of its assets or has a summons for its winding up filed, goes into liquidation or has a receiver appointed to the whole or any part of its assets or if an Administrator is appointed under Section 436A of the *Corporations Act 2001*; or

17.1.2. is in breach of any of the terms and/or conditions of this Contract then, the Seller may immediately stop manufacture of any of the Products, stop any of the Products in transit, suspend Delivery and any further performance of this Contract and/or any other agreement with the Customer without prejudice to any of the Seller's other rights and remedies and without being in breach of any of the Seller's obligations under this Contract.

17.2. The Seller may also upon the happening of any event or circumstance in Clause 17.1 by notice in writing to the Customer terminate this contract. Such termination will be in addition to and will not affect or modify in any way the Seller's legal rights to seek damages or other relief.

18. Notice

18.1. Any notice required to be served must be in writing and may be served personally by facsimile or by email addressed to the recipient. A notice served by pre-paid post shall be deemed served two days after posting (whether received or not) to the recipient's registered office or place of business.

18.2. A notice served by email or by facsimile must be addressed to the Party concerned at its facsimile or email address and shall be deemed received the day after sending. An email or facsimile report shall be conclusive evidence of it having been sent and served.

19. Governing Law

19.1. This Contract shall be governed by and construed and interpreted in accordance with the laws of the State or Territory of Australia in which the Seller has its principal place of business.

19.2. Any dispute will be subject to the exclusive jurisdiction of the Courts of that State or Territory.

20. Non-disclosure and Use of Information

20.1 Extent of Obligation

- (a) Except to the extent necessary to comply with any government policy relating to the public disclosure of confidential information (which policy is in place at the commencement of this Contract and stipulated in the Contract Details), neither the Seller nor the Customer will make public, disclose or use for purposes other than for the purposes of this Contract the confidential information of the other, unless the other gives its written approval. Confidential information includes:
- (i) information marked as confidential, unless such information is of the nature described in clause 20.1(b); and
 - (ii) information which by its nature is confidential.
- (b) A party is not obliged by this clause to keep information confidential if that information:
- (i) is trivial or obvious;
 - (ii) was already in the receiving party's possession at the time of receipt from the other party;
 - (iii) has become public knowledge (other than through a breach of an obligation of confidence imposed under this Contract);
 - (iv) was published or otherwise becomes part of the public domain other than through a breach of this Contract by the disclosing party;
 - (v) has been held by the receiving party for a period in excess of the time limit (if any) specified in the Contract Details for the retention of confidential information;
 - (vi) was independently developed by the receiving party without reference to the confidential information of the furnishing party; or
 - (vii) was disclosed as a result of a legal obligation or by order of a stock exchange or government agency, provided that the receiving party must to the extent practicable give the disclosing party prompt notice of the existence of such an obligation and must, at the disclosing party's cost, make a reasonable effort to otherwise protect the confidentiality of such information.
- (c) Nothing contained in this Contract will restrict a party from the use of any ideas, concepts, know how or techniques which it independently develops or acquires under this Contract, except to the extent such use infringes the other party's Intellectual Property Rights.

20.2 Obligations of Personnel

- (a) Each party will take all reasonable steps to ensure its Personnel engaged to perform work under this Contract do not disclose confidential information of the other party obtained during the course of performing such work.
- (b) Unless the Seller can demonstrate that it has internal procedures in place to ensure employees will adequately protect confidential information, the Customer may at any time require the Seller to arrange for its employees engaged in work under this Contract to execute a deed of confidentiality .
- (c) The Customer may at any time require the Seller to arrange for its agents engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Appendix 4.

20.3 Disclosure to Media and Others

Neither party will disclose to the media any information regarding this Contract or work performed under this Contract without the written consent of the other party. Unless expressly prohibited in the Contract Details, however, the Seller may include the Customer's name and a factual description of the work performed under this Contract:

- (a) in a list of references;
- (b) in proposals to third parties; and
- (c) in its annual report.

20.4 Protection of Personal Information

This clause applies only where the Seller deals with personal information when, and for the purpose of, providing Services under this Contract.

- (a) The Seller acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of Services under this Contract:
 - (i) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
 - (ii) not to do any act or engage in any practice that would breach an Information Privacy Principle (**IPP**) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (iii) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (iv) to notify individuals whose personal information the Seller holds, that complaints about acts or practices of the Seller may be investigated by the Privacy Commissioner who has power to award compensation against the Seller in appropriate circumstances;
 - (v) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a National Privacy Principle (**NPP**) (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Seller, unless:
 - A. in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or

- B. in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
 - (vi) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
 - (vii) to immediately notify the Customer if the Seller becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 20.3, whether by the Seller or any Distributor;
 - (viii) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 20.3; and
 - (ix) to ensure that any employee of the Seller who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Seller set out in this clause 20.3.
- (b) The Seller must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the Distributor has the same awareness and obligations as the Seller has under this clause, including the requirement in relation to subcontracts.
 - (c) The Seller agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Seller under this clause 20.3, or a Distributor under the subcontract provisions referred to in clause 20.3(b).
 - (d) In this clause 20.3, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:
 - (i) ‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a Material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

20.5 Survival of Clause 20

Clause 20 will survive the termination or expiry of this Contract.

21. Interpretation

21.1. Where words importing the singular number or the plural number are used they include the plural number and singular number respectively and where words are used

importing the neuter, female or masculine gender they include if applicable the masculine, feminine or neuter gender respectively.

21.2. Any reference to the Seller or the Customer includes their respective lawful successors and assigns.

21.3. The reference to any statute, by-law, code of conduct or standard is a reference to any and all applicable amendments, vacations or replacements thereof.

22. Disputes

22.1. In the event of any dispute arising between the Seller and the Customer as to any Party's rights or obligations under the Contract or as to whether either Party has breached or failed to meet its obligations then both Parties agree to meet together and in good faith seek to resolve the dispute.

22.2. If notwithstanding this clause the dispute remains unresolved either Party may take such actions as it thinks fit to enforce its rights against the other.

23. Whole Agreement

23.1. The content of the documents in Clause 2 constitute the whole of the terms of this Contract. Except to the extent the law provides as mandatory requirement a term to be implied, no term is to be implied into this Contract.

23.2. All prior representations, undertakings and statements made by either Party to the other and not expressly included in this Contract are hereby expressly excluded from this Contract and each Party expressly hereby states that it has not relied in any way on such prior representations, undertakings or statements in deciding to enter into this Contract.