

GENERAL TERMS AND CONDITIONS OF SALE (TERMS)

IN THESE TERMS WE, OUR AND US REFERS TO KINGSPAN WATER & ENERGY PTY LIMITED ABN 62 108 491 881 AND YOU OR YOURS REFERS TO THE PURCHASER IDENTIFIED ON THE QUOTE OR ORDER.

1. APPLICATION OF THESE TERMS

- 1.1 These Terms apply to the purchase of rainwater tanks or other water management products and associated accessories and services ("Products") as identified on the quote or order.

2. QUOTES & ORDERS

- 2.1 Prices in a quote provided by us to you ("Quote") will remain open for acceptance for 30 days, unless otherwise agreed by the parties.
- 2.2 We shall be entitled to correct any errors and omissions in and from our Quotes without liability.
- 2.3 Any illustrations, drawings and descriptive matter, including advertisements accompanying a Quote or included in our current catalogues, must be regarded as an approximate representation only and are not binding in detail unless stated to be so in our Quote.
- 2.4 You should satisfy yourself as to the suitability of any Product before placing an order for our Products ("Order").
- 2.5 You acknowledge your responsibility to provide correct fitting details and fitting locations when placing your Order for water tanks. We will charge you for the cost of rectifying or remaking Products made by us on the basis of incorrect details supplied by you, including transport. These costs will be charged at the amounts set out in our current price list.
- 2.6 In placing an Order with us, you agree to be bound by these Terms and any additional terms contained on our Quote. These Terms may only be varied in writing where accepted by both parties.

- 2.7 We will provide you with an Order Confirmation if your Order is accepted by us unless you request us not to confirm Orders.

- 2.8 Once your Order has been accepted, you may request to vary the Order in writing and we may agree to accept or reject the variation at our sole discretion.

- 2.9 Where additional work is required to comply with a variation request we will provide you with a Quote for that work.

- 2.10 You may cancel the Order at any time by notice in writing.

- 2.11 If you cancel your Order we may charge you adequate compensation (including a reasonable profit margin) for all work performed and materials consumed by us in the execution of your Order up to the date of cancellation.

3. PRICES

- 3.1 You agree to pay the price set out in our current price list (plus GST) for the Products as at the date of the Order unless we have set out an alternative price in a Quote, Order Confirmation or Supply Agreement to you.

- 3.2 If, at your request, an Order remains unfulfilled (in whole or in part) for more than 6 months, we reserve the right to amend our pricing of the Order consistent with our most current price list and any discounts applied to the original order. This clause is subject to any written Supply Agreement in place between us.

- 3.3 We may ask you to pay a deposit (up to the full value of the Order) at the time that you place an Order and/or prior to the products going into production.

- 3.4 If you pay a deposit in accordance with clause 3.3 and you cancel your Order, we will refund your deposit less any compensation pursuant to clause 2.11.

4. DELIVERY AND INSTALLATION

4.1 If you Order delivery and/or installation of the Products:

A. You agree to pay the charge set out in our current price list for delivery and/or installation of the Products as at the date of the Order unless we have set out alternative charges in an agreement with you;

B. We will deliver and/or install the Products to your nominated address as set out on the Order. We will give you an estimated date for delivery within a reasonable time of you placing your Order. This is not a binding date and should always be referred to as an "estimated" or "requested" delivery date; and

C. You must advise us of any conditions in relation to the nominated address that may require additional delivery effort from us. Examples of this include, but are not limited to, site access issues, the need for a delivery crane or hoist, four wheel drive access, narrow roads or roads obscured by electrical wires or low hanging tree branches. We will charge you for any costs incurred by us in executing delivery as a result of any such conditions that you failed to inform us of.

4.2 Dates and times quoted for delivery are estimates only but we will use our reasonable endeavours to deliver and install the Products in accordance with those dates. We cannot be held responsible for delays due to weather or other circumstances beyond our control. If we cannot deliver the Products at the dates and times quoted we will not be responsible for loss or damage you suffer as a result of any delay but we will deliver the Products as soon as reasonably possible.

5. TITLE AND RISK

- 5.1 Risk in the Products will pass to you at the time of delivery to your Nominated Address. You must ensure that the Products are kept in good condition and are not damaged in any way until title in the Products passes to you in accordance with clause 5.2 or the Products are returned to us under clause 5.4.
- 5.2 Title in the Products will pass to you when you have paid, in full, all monies owing to us in relation to the Products (including any installation and delivery charges). Payment by cheque will be deemed to be received when the funds have been cleared by the bank on which the cheque is

drawn.

- 5.3 Until title has passed to you, you must allow us to inspect the Products at any time during business hours. If you breach your obligation to pay us for the Products, your implied right to use the Products is immediately terminated and we are entitled to demand the return of the Products. You must return the Products to us at your expense within a reasonable time following our demand. If you fail to do so, you acknowledge and agree that we may enter upon any premises owned, occupied or controlled by you where the Products are situated (without liability for trespass or any resulting damage) and retake the Products and we may keep or resell any Products repossessed and reserve any other rights we may have at law (including but not limited to under the PPSA).

6. APPLICATION OF THE PPSA

- 6.1 In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 6.2 You grant us a security interest under the PPSA in any Products supplied under these Terms.
- 6.3 The Products are rainwater tanks or other water harvesting products and associated accessories and services.
- 6.4 You acknowledge and agree that we may apply to register a security interest in the Products at any time before or after delivery of the Products. You waive your right under s 157 of the PPSA to receive notice of any verification of the registration.
- 6.5 We can apply amounts we receive from you towards amounts owing to us in such order as we choose.
- 6.6 If you default in the performance of any obligation owed to us under these Terms or any other agreement with us to supply Products to you, we may enforce our security interest in any Products by exercising all or any of our rights under these Terms or the PPSA. To the maximum extent permitted by law, both parties agree that the following provisions of the PPSA do not apply to the enforcement by us of our security interest in the Products: sections 95, 118, 121(4), 125, 130, 132(3) (d), 132(4), 135, 142 and 143.
- 6.7 Both parties agree not to disclose information of

the kind mentioned in s 275(1) of the PPSA, except in circumstances required by ss 275(7) (b) - (e) of the PPSA.

- 6.8 You must promptly do anything required by us to ensure that our security interest is a perfected security interest and has priority over all other security interests in the Products.
- 6.9 Nothing in this clause is limited by any other provision of these Terms or any other agreement between the parties.

7. INVOICING AND PAYMENT

- 7.1 We will provide you with an invoice for all deposit payments requested by us.
- 7.2 We will provide you with an invoice for the Products once the order, or – where applicable – part thereof, has been fulfilled.
- 7.3 Products must be paid in full prior to delivery unless prior arrangements have been made with us in writing.
- 7.4 If the due date for payment for the Products has passed, we may suspend further deliveries to you until all amounts due have been received.
- 7.5 You will be liable for all costs reasonably incurred by us in the recovery or attempted recovery of amounts owed by you under this agreement. In addition, you will be liable for any fees or charges we will incur in relation to any dishonoured cheque(s).

8. GST

- 8.1 Payments to be made by you under these terms of sale are exclusive of Goods and Services Tax ("GST") under the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") unless expressly stated.
- 8.2 If a supply to you under these Terms is subject to GST, you must pay us an additional amount equal to the GST payable on that supply, at the same time as the payment to which that supply relates is payable.
- 8.3 Your liability under clause 8.2 is to reimburse the full amount of GST to us disregarding and excluding our entitlement to input tax credits or reimbursements for GST.
- 8.4 Notwithstanding clause 8.3, if we are entitled to an input tax credit in relation to

any amount recoverable from you under clause 8.3, the amount payable by you will be reduced by the amount of the input tax credit that we have received or claimed and are entitled to receive.

- 8.5 We agree to provide you with a tax invoice in accordance with the GST Act (and associated regulations).

9. AUSTRALIAN CONSUMER LAW

- 9.1 Under the Australian Consumer Law ("ACL"), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services.
- 9.2 Nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.

10. WARRANTIES AND LIABILITY

- 10.1 We will comply with the terms of any express warranty we provide to you in writing in relation to the Products. Any express warranty given is in addition to and does not limit your rights under the ACL. You acknowledge and agree that you do not otherwise rely on any representation, warranty, statement or promise except as expressly set out in these Terms, and all conditions, warranties and other terms which would be implied or otherwise incorporated into these Terms as binding on us are excluded to the fullest extent permitted by law.
- 10.2 If we fail to comply with a statutory guarantee which by law may not be excluded, then to the extent the law permits us to limit our liability in respect of such failure, our liability, is limited at our option to:
- A. in the case of goods:
- (i) replacement of the goods or supply of equivalent goods; or
 - (ii) repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods or having the goods repaired; and
- B. in the case of services:
- (i) supplying the services again; or
 - (ii) payment of the cost of having the services

supplied again.

10.3 We or any of our employees, officers, contractors, subcontractors or related bodies corporate, do not have any liability to you or any other person for any indirect, consequential, special or economic loss or damage or exemplary damages arising due to a breach of these Terms or in tort (including negligence) in connection with the provision of, or failure to provide, any Products or otherwise under or in connection with these Terms including, without limitation, loss of revenue, profits, production or opportunity, increases of operating and financing costs, or damage to reputation.

10.4 Our total liability to you or any other person, and the total liability of any of our employees, officers, contractors, subcontractors or related bodies corporate, to you for a breach of these Terms or in tort (including negligence) in connection with the provision of, or failure to provide, any Products or otherwise under or in connection with these Terms (except for liability arising due to the supply or provision of goods or services in breach of a condition or warranty implied by law that cannot be lawfully excluded) is limited to the amount paid by you under any invoice for the Products.

11. USE OF THE PRODUCTS FOR PARTICULAR PURPOSES

If you require the Products for a particular purpose or you require the Products to possess special or uniform characteristics, you must specify that purpose or those characteristics in writing on your Order. If we consider that your request can be fulfilled, we will provide written confirmation in our acceptance of your Order. If you do not specify any particular purpose or special or uniform characteristics in the Order or we do not expressly confirm such purpose or characteristic, then you acknowledge and agree that the Products may not be suitable for that purpose or possess those characteristics.

12. FORCE MAJEURE

12.1 We will not be liable to you for a failure to comply with our obligations under these Terms if that failure is caused by a Force Majeure Event. We will notify you of any Force Majeure Event as soon as reasonably possible.

12.2 For the purposes of clause 12.1, "Force

Majeure Event" means an act of God, war, terrorism, flood, fire, strike, lockout, trade or industrial dispute, government interference, third party transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond our reasonable control.

13. LICENCES AND APPROVALS

You must obtain all licences, permits and approvals in relation to your purchase and use of the Products.

14. SUBCONTRACTING

We may subcontract the manufacture, supply, delivery and/or installation of Products or any part thereof to a third party.

15. PRIVACY ACT

You acknowledge that credit information may be given to a credit reporting agency, on the understanding that the Privacy Act 1988 (Cth) allows us to give a credit reporting agency certain information about you. To enable us to assess your application for commercial credit, you authorise us to obtain from a credit reporting agency a credit report containing personal and commercial credit information about you. In accordance with the Privacy Act, you authorise us to give and receive from any credit provider information in our possession or the credit provider's possession about your credit worthiness, credit standing, credit history and credit capacity. You understand that the information may be used to assess an application for credit by you and assess your credit worthiness. Terms used in this clause 15 that are not defined in this document but are specifically defined in the Privacy Act have the same meaning as in the Privacy Act.

16. GENERAL

The laws in the State or Territory of Australia in which the sale of the Products is made apply to these Terms.