

## Conditions of Sale

The Supplier has agreed to the supply of, and the Customer has agreed to buy, the Goods on the terms and conditions of this Agreement. Where the Goods supplied are wastewater treatment systems (including but not limited to HSTPs, AWTS, all waste septic and CEDs) and/or UV treatment systems the Customer shall also be bound and refer to the Supplementary Standard Conditions document.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**"Coastal Wastewater Specialists"; "CWWS"** means Coastal Services Q Pty Ltd, a company incorporated in Australia and its related bodies corporate.

**"Business Day"** means:

- (a) for the purposes of clause 14.1, a day that is not a Saturday, Sunday, public holiday or bank holiday in the city where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Australia;

**"Company"** means Coastal Service Q Pty Ltd, a company incorporated in Australia and its related bodies corporate.

**"Customer"** means the person or other entity whose name appears on the Application for Credit and Conditions of Sale or the Tax Invoice.

**"Delivery Address"** means the property identified by the Customer as the address to which the Goods are to be delivered.

**"Dollar"** or **"\$"** means the lawful currency of the Commonwealth of Australia;

**"Force Majeure Circumstance"** means, in respect of a party, any circumstance or event which, despite using all reasonable endeavours, the party is unable to control, including any act of God, flood, fire, damage caused by lightning, storm or tempest, rains falling during normal dry seasons, industry wide strikes, or industry wide lockouts or other industry wide industrial disturbances, acts of war, civil disturbance or enactments of any Government Agency; or inability on the part of the Company to obtain raw materials from any anticipated source; or site conditions; or progress with building works; or any other cause whatsoever beyond the Company's control;

**"Goods"** means the goods and/or services supplied by Coastal Wastewater Specialists including but not limited to filters, plumbing fittings, UV glassware & other relevant spares, water and wastewater treatments systems and UV systems;

**"GST"** means any applicable goods and services tax, value added tax or any other like tax, including goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Intellectual Property Rights"** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of copyright, patents, inventions, trade secrets, know-how, product formulations, confidential information, designs, circuit layouts, databases, trade marks, brand names, business names, applications for any of the foregoing and any improvements, enhancements or modifications thereto;

**"Order"** means a purchase order for Goods, submitted from time to time by the Customer to Coastal Wastewater Specialists under this Agreement;

**"Payment"** means and refers to payment in cleared funds so that payment will not be deemed to be made unless the clearance of any cheque or payment by other means such as electronic funds transfer, credit card and the like approved by any credit provider;

**"Practical Completion"** (in relation to goods and services supplied by the Company) means the stage in the manufacture, delivery or supply of such goods or services when the manufacture, delivery or supply of the goods or services is complete except for minor omissions and minor defects which do not prevent the goods or services from being reasonably capable of being used by the Customer.

**"Price"** means the price specified on the tax invoice, as adjusted by Coastal Wastewater Specialists from time to time;

**"Special Terms"** (in relation to any particular class or category of goods or services supplied by the Company) means the terms under the heading "Special terms" in relation to the particular class or category of goods or services.

**"Terms"** means these "Conditions of Sale" including the "Supplementary Conditions of Sale", and the term "Conditions" has a corresponding meaning.

**"Third Party Interest"** means any Security Interest, lease, option, voting arrangement, easement, covenant, notation, restriction, interest under any agreement, interest under any trust, or other right, equity, entitlement or other interest of any nature held by a third person.

#### 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
  - (i) the singular includes the plural and vice versa;
  - (ii) a gender includes all genders;
  - (iii) a document (including this Agreement) means that document (including any schedules and annexures), as amended, consolidated, supplemented, novated or replaced;
  - (iv) an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (v) parties means the parties to this Agreement and to a party means a party to this Agreement;
  - (vi) a recital, clause, schedule, annexure or item means a recital, clause, schedule, annexure or item of this Agreement;
  - (vii) a notice means a notice, approval, demand, request, nomination or other communication given or served by one party to another under or in connection with this Agreement;
  - (viii) a person (including a party) includes:
    - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;
    - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
    - (C) the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
  - (ix) a law:
    - (A) includes any legislation, treaty, judgement, rule of common law or equity or rule of any applicable stock exchange;
    - (B) means that law as amended, consolidated, supplemented or replaced; and
    - (C) includes any regulation, rule, statutory instrument, proclamation, by-law or other subordinate legislation made under that law;
  - (x) proceedings includes litigation, arbitration and investigation;
  - (xi) a judgement includes an order, injunction, decree, determination or award of any court or tribunal;
  - (xii) including or includes means including or includes (as the case may be) without limitation; and
  - (xiii) time means Brisbane, Australia time;
- (b) headings are for convenience only and are to be ignored in interpreting this Agreement;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) where an obligation, warranty, representation or covenant is assumed or given by more than one person, it will bind them jointly and severally;
- (e) where a payment or other act must be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) this Agreement must not be construed adversely to a party only because that party was responsible for preparing it.

## 2.SUPPLY OF GOODS

- (a) All supplies of Goods by Coastal Wastewater Specialists to the Customer during the term of this Agreement will be on the terms and conditions of this Agreement.
- (b) No other terms or conditions will apply to the supplies of Goods by Coastal Wastewater Specialists unless they are accepted in writing by Coastal Wastewater Specialists.
- (c) The Customer acknowledges that Coastal Wastewater Specialists supply of Goods is subject to availability at the time of ordering.
- (d) Coastal Wastewater Specialists will not be liable in any circumstances for failure to supply any product ordered by Customer.
- (e) Coastal Wastewater Specialists reserves the right to discontinue any product or change its design at any time.
- (f) In the event of the discontinuance or change in design of Goods, Coastal Wastewater Specialists is not liable for supply of any outdated Goods. The Customer may update to the new model at their own cost.

## 3.ORDERS

- (a) The Customer must submit an Order directly to Coastal Wastewater Specialists.
- (b) Any Purchase Order submitted by the Customer to Coastal Wastewater Specialists will constitute an offer on the terms and conditions of this Agreement, as amended or supplemented by the express terms of the Purchase Order.
- (c) If Coastal Wastewater Specialists accepts an Order, Coastal Wastewater Specialists and the Customer will be contractually bound to complete the Order in accordance with the terms and conditions of this Agreement.
- (d) Unless the Company expressly agrees in writing to the contrary, where there is any inconsistency between:-
  - (i) these terms and any applicable Special Terms the provisions of such Special Terms will prevail;
  - (ii) between these Terms, any Special Terms and any terms and conditions set out on any form of order placed by the Customer, or in any acceptance of any quotation or tender made by the Company, the Customer agrees that any applicable Special Terms shall prevail over these terms and any terms and conditions in the Customer's order or in the Customer's acceptance of any quotation or tender placed by the Company, and that if there are no Special Terms these Terms shall prevail over any such terms and conditions in the Customer's order, or in the acceptance of any quotation or tender made by the Company.
- (e) Any reference in these Terms to a person having the apparent authority to perform some act on behalf of the Customer with respect to goods or services supplied or to be supplied by the Company includes without limitation:-
  - (i) in the placing of an order with, or acceptance of any quotation or any tender made by the Company with a reference to any person performing any clerical or managerial function in the business of the office of the Customer;
  - (ii) In the placing of any order at, from or in respect of the work site to which goods and/or services are to be supplied by the Company, or in the giving of any request or direction directly or indirectly related to the delivery of any goods, their handling, or placement by any person whether an employee of the Customer or not, who has the apparent charge of the acceptance of the goods or service on delivery.
- (f) Orders can only be modified, suspended or cancelled after negotiation and agreement between the Customer and Coastal Wastewater Specialists. The Customer must indemnify Coastal Wastewater Specialists in respect of any expenses incurred by Coastal Wastewater Specialists relating to the modification or cancellation of any order. An administration fee of 10% or \$50 (whichever is the greater) will apply.
- (g) Coastal Wastewater Specialists reserves the right to decline to trade with any company or person. Coastal Wastewater Specialists has no obligation to provide an account for exercising this right.

## 4.EXPORT ORDERS

- (a) Customers are responsible for the costs of and obtaining of any and all licences required when ordering Goods that are required to be exported to another country.
- (b) Customers are responsible for complying with any and all export and import regulations which are in force in Australia and the destination country when ordering Goods that are required to be exported to another country.

## 5.DELIVERY AND SURCHARGES

### 5.1 Point of delivery

- (a) Goods will be delivered to the roadside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload, the Customer must provide suitable, safe and properly supervised access and egress and turning facilities for the relevant delivery vehicle.
- (b) The Customer agrees to indemnify and keep indemnified the Company and its agents for all claims for any damages and injury to any person and to any public or private property which may result including any costs associated with the delivery vehicle entering or leaving the site, and the cost of any returned product as a result of the Customer failing to provide suitable and safe access to and egress from the delivery site where entry into the delivery site is required.
- (c) The Customer must ensure that all deliveries within the work site are carried out in accordance with all applicable laws including any related to occupational health and safety both as to the place and method of work.
- (d) The Company may charge the Customer for costs incurred as a result of any parking fines, traffic infringements or other fines associated with waiting at the delivery site.
- (e) The Customer must be present at the delivery site and must sign the Company or Company's Agent delivery docket to acknowledge that the products and quantities described on the delivery docket have been delivered and comply with the Customer's order.
- (f) Where the Customer does not sign or is not available to sign the delivery docket, the Company may rely upon directions from the person apparently in charge of that part of the work site for which the goods and services are supplied as proper and sufficient delivery and the signature of the driver on the delivery docket shall be sufficient evidence of delivery to the Customer of the products and quantities described in the delivery docket.

### 5.2 Timing

- (a) Coastal Wastewater Specialists will:
  - (i) inform the Customer of the delivery date at least 24 hours prior to the intended delivery;
  - (ii) use reasonable endeavours to meet delivery estimates;
  - (iii) promptly notify the Customer if it seems likely that delivery of the Goods will be delayed for any reason.
- (b) Where the Customer is required to be present for the delivery, the Customer will:
  - (i) make themselves or their agent available between 6 am and 6 pm on the delivery date;
  - (ii) provide at least 48 hours notice if they require the delivery date to be changed;
  - (iii) pay the costs associated with the change in delivery date;
- (c) Where delivery is unable to be affected due to the absence of the Customer, the Customer agrees to pay the costs associated with a second delivery;
- (d) Coastal Wastewater Specialists in no circumstances will be held liable to compensate the Customer for non-delivery or late delivery.
- (e) All prices are for supply, delivery and/or installation, as applicable, during the Company's normal business operating hours, Monday to Friday, unless otherwise quoted in writing. Work by the Company outside of these hours will incur a surcharge at the Company's ruling rates unless waived by the Company.
- (f) Unless the quoted price is inclusive of delivery to a nominated delivery site, the Customer will be charged for delivery.
- (g) Delivery must be accepted by the Customer and discharge completed as soon as possible after the arrival of the delivery vehicle on site. A waiting time or hourly hire surcharge will apply unless waived by the Company when a delivery vehicle is unable to unload promptly and without delay upon arrival at the delivery site.

- (f) A statement signed by the Company's credit manager stating the amount of any surcharges payable or additional delivery charges or other costs payable by the Customer to the Company shall be in absence of manifest error be conclusive and binding on the Customer.

### **5.3 Risk and Damage in Transit**

- (a) Risk to the Goods will be deemed to have passed to the Customer upon delivery in accordance with clause 5 or (where applicable) to any carrier nominated by the Customer..
- (b) If on delivery, any Goods are found to be damaged, it is the Customer's responsibility to either:
- (i) Refuse delivery and notify Coastal Wastewater Specialists of this refusal in writing within 3 business days of delivery;
  - (ii) Note the damage on the delivery docket or receipt of delivery and notify Coastal Wastewater Specialists of the damage in writing within 3 business days of delivery.
- (c) If the Customer:
- (i) provides the delivery driver with an unqualified signed delivery docket or receipt of delivery; OR
  - (ii) has noted the damage on the delivery docket or receipt of delivery and fails to notify Coastal Wastewater Specialists of any damage or defect in the Goods within 3 business days of delivery, the Customer shall be deemed to have received the Goods in good order and condition.
- (d) Coastal Wastewater Specialists in no circumstances will be held liable for any loss or damage to Goods in transit however arising, unless the carrier has admitted liability and paid for the damage caused to the Goods.

### **5.4 Force Majeure**

- (a) Subject to clause 5.4(b), if delivery of the Goods is delayed due to any Force Majeure Circumstance:
- (i) Coastal Wastewater Specialists may at its option delay or cancel the whole or part of this Agreement; and
  - (ii) Coastal Wastewater Specialists will not be in default under this Agreement, nor be liable for any Loss incurred or suffered by the Customer or by any other person, for that reason only.
- (b) The right of Coastal Wastewater Specialists to rely on clause 5.4(a) is conditional on it:
- (i) promptly notifying the Customer of the nature of the Force Majeure Circumstance and the way in which, and the extent to which, delivery is delayed;
  - (ii) using all reasonable endeavours to limit the effects of the Force Majeure Circumstance and to complete delivery of the Goods as soon as practicable; and
  - (iii) promptly notifying the Customer of any material change in the Force Majeure Circumstance.

## **6. PAYMENT**

### **6.1 Price**

- (a) The Customer will pay Coastal Wastewater Specialists the Price for Goods that are delivered in accordance with this Agreement.
- (b) Unless otherwise specified, quoted Prices are exclusive of all Taxes.
- (c) Coastal Wastewater Specialists reserves the right to change the price of any Goods without notice.
- (d) The price is based on costs for transport, labour, services and materials current as at the date of the agreement for provision of goods or services, and the Company may at its discretion adjust the price to reflect any variation to any of these costs prior to delivery.
- (e) Any prices quoted in writing by Coastal Wastewater Specialists will be for a period of 7 days from the date of offer.

### **6.2 Payment of invoices**

- (a) Coastal Wastewater Specialists provides to the Customer an invoice with each Order of Goods. Unless prior written arrangements have been made for credit, payment for goods and/or services is due in full prior to dispatch and delivery.
- (b) Where goods or services are to be supplied in more than a single shipment or delivery, full payment must be made prior to the unloading of the first delivery.
- (c) Payment for surcharges must be made at the time they are incurred; details of items for which surcharges may be made are set out herein.
- (d) The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of goods and/or services.
- (e) The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by the Company prior to the supply, and if retentions are agreed, then such retention must be by bank guarantee and not by way of cash retention.
- (f) If at any time or from time to time the Customer holds any bank guarantee by way of retention amount, the bank guarantee must be released upon practical completion being provided in respect of the relevant goods or services.
- (g) The Customer must pay the Company the cost of any bank fees arising from dishonoured cheques paid by the Customer to the Company and must also indemnify the Company for administrative charges and for any legal or other debt collection costs incurred by the Company.

### **6.3 Credit Arrangements**

- (a) Unless there is an agreement in writing by the Company varying the Company's payment terms, the payment terms of the Company for all credit accounts are strictly "NET THIRTY (30) DAYS" ("the due date"). Payment is due on or before 30 days from the invoice date irrespective of the day upon which the invoice and/or statement in respect of such purchase is received by the Customer.
- (b) Acceptance by the Company of the Customer's late payment or the Customer exceeding the credit limit set by the Company shall not amount to a waiver of the Company of its right to payment "net 30 days" nor is it an agreement to provide credit other than in accordance with these Terms or as otherwise stipulated by the Company from time to time.

### **6.4 Disputed invoices**

- (a) In the event of any dispute arising between the Company and the Customer the Customer shall forthwith pay to the Company the amount claimed by the Company to be held by the Company until settlement of the dispute.
- (b) The Customer agrees to mediate any dispute with the Company before referral of such dispute to legal proceeds or mediation.
- (c) If Coastal Wastewater Specialists and the Customer are unable to resolve a dispute over the amount of an invoice within 5 Business Days of the due date for that invoice, clause 13 will apply.
- (d) If legal action is taken by Coastal Wastewater Specialists to recover monies due, then Coastal Wastewater Specialists reserves the right to charge the Customer all fees incurred in such proceedings. This provision is without prejudice to any of Coastal Wastewater Specialists other rights and remedies under these Conditions of Sale or at law.

### **6.5 Customer Default**

The Customer shall be in default if –

- payment in full is not made strictly within payment terms; or
- if the Customer exceeds any credit limit granted by the Company; or
- If the Customer, being an individual is declared or commits an act of bankruptcy, enters into an arrangement or composition with his/her creditors, signs an authority under Part X of the Bankruptcy Act (or any similar provision of the Bankruptcy Act) or any execution is levied against his/her property, or being a corporation has a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator appointed to it or has winding up proceedings initiated against it or any executive is levied against its property;
- And in the event of default, the Company will be entitled (without the obligation to give any notice to the Customer) to (in addition to any other rights it may have). Compensation (for its reduced revenue receipts) being payment of interest on all amounts overdue at the rate of five (5) percent per annum above the current base lending rate of CWS calculated monthly on the amounts outstanding from the date on which they were due and payable, and before and after any judgment being obtained by Coastal Wastewater

Specialists against the Customer in respect of the amount owing, until the Company receives full payment of the outstanding amount, plus

- (i) An accounting fee being recovery agents and actual legal costs to the Company in recovering due amounts, plus
- (ii) Payment for purchases made by the Customer from the Company, the payment of which would otherwise not be due and payable, plus
- (iii) Disallow any discounts otherwise claimable by the Customer, plus
- (iv) Terminate or suspend delivery of any order which is the subject of any other sale between the Company and the Customer, plus
- (v) Treat the Customer's default as a repudiation of any existing contract for the purchase of Goods/Services and recover any unpaid sum plus the compensation referred to in (1) of the clause plus the fee referred to in (ii) of this clause from the Customer by way of liquidated damages.

#### **7.GST**

- (a) If a party ("GST Supplier") makes any supply to another party ("GST Recipient") in connection with this Agreement (including the supply of the Goods), the GST Recipient must pay to the GST Supplier an amount equal to any GST payable to the relevant taxing authority by the GST Supplier in relation to that supply ("GST Amount"), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- (b) The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing to the GST Recipient a tax invoice complying with any law under which GST is imposed. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit or other statutory set-off to which it is entitled.

#### **8.OWNERSHIP**

- (a) Ownership of the Goods is retained by Coastal Wastewater Specialists until the Purchase Price is paid in full (including any outstanding interest incurred pursuant to Clause 6.3) for the Goods and for all other Goods supplied by Coastal Wastewater Specialists to the Customer.
- (b) The Customer shall not have any power to mortgage, charge or encumber the Goods whilst in its possession until payment in full has been made.
- (c) The Customer acknowledges that until full payment is made -
  - (i) The Customer holds the goods as bailee of the Company and that a fiduciary relationship exists between the Customer and the Company
  - (ii) The Customer shall hold the goods in such a manner that they are clearly identifiable as the property of the Company, however risk will pass to the Customer on
  - (iii) Where the goods are used in the manufacturing process or mixed with other materials or products, the Customer shall maintain separate records of the value of the goods so consumed in relation to each unit of finished product and upon the sale of any unit of finished product immediately remit that amount from the proceeds of the sale to the Company
  - (iv) If the Customer sells any of the Company's goods, it sells the goods as a fiduciary agent of the Company provided that such sales shall not give rise to any obligations on the part of the Company.
- (d) In the event that the Customer defaults in payment of the Goods sold by Coastal Wastewater Specialists or if a receiver is appointed of any of the Customer's assets or if the Customer becomes insolvent or is adjudicated bankrupt or enters into an arrangement or compromise with its creditors, Coastal Wastewater Specialists may take possession of the Goods and may enter on to any premises in which the Goods are located for the purpose of doing so without notice. The Customer irrevocably authorises the Company to enter the Customer's premises or any premises under the control of the Customer or any agent of the Customer if the goods are stored at such premises and use reasonable force to take possession of the goods without liability for the tort or trespass, negligence or payment of any compensation to the Customer whatsoever, and the Customer indemnifies and agrees to keep the Company indemnified from any claim or loss made or suffered by any said party in the exercise of the Company of any such right.

#### **9.RETURNS**

- (a) The Customer must telephone the sales office of Coastal Wastewater Specialists before returning any goods. The Customer must supply the office with the original invoice number and the date of purchase. A Return Authorisation Form will be issued in approved cases.
- (b) Any returned Goods must be received by Coastal Wastewater Specialists within 7 days of the date of the original delivery and must be in their original packaging.
- (c) Goods will not be acceptable as returns unless they are returned undamaged, unaltered and in their original packaging.
- (d) The Customer accepts liability for all freight costs incurred in the return of Goods including return for warranty repair or replacement.
- (e) A restocking fee of \$50 or 10% of the Purchase Price (whichever is greater) will be payable on all returns.

#### **10.WARRANTIES**

##### **10.1 Subject to limitations**

For the avoidance of doubt, this clause 10 is subject to clause 12.

##### **10.2 General**

Each party represents and warrants to each of the other parties that:

- (a) this Agreement constitutes a full and binding legal obligation upon it;
- (b) it has taken all necessary corporate or other action to properly authorise the execution of this Agreement;
- (c) it has full corporate authority or statutory power (as the case may be) and lawful authority, to execute this Agreement and to properly perform its obligations under this Agreement;
- (d) to its knowledge, there are no Claims pending or threatened against it which may have a material effect upon the subject matter of this Agreement.

##### **10.3 Goods**

Coastal Wastewater Specialists represents and warrants to the Customer that:

- (a) Coastal Wastewater Specialists has the right to supply the Goods in accordance with this Agreement and the Goods will be supplied to the Customer free of all Third Party Interests;
- (b) the supply of the Goods to the Customer, and the subsequent use of the Goods by the Customer, will not infringe the Intellectual Property Rights of any third person;
- (c) the Goods will:
  - (i) be of good and merchantable quality and fit for the purpose for which goods of the same or a similar nature as the Goods are commonly supplied; and
  - (ii) not contain any material defects in workmanship or materials, for the period specified in the relevant manufacturer's warranty.

##### **10.4 Warranty Claims**

- (a) Coastal Wastewater Specialists will not be responsible for any defect in the Goods to the extent that it was caused or contributed to by the negligent or reckless installation, use or repair of the Goods.
- (b) Any advice, recommendation, information, assistance or service ("Customer Information") provided by Coastal Wastewater Specialists in relation to the Goods is given in good faith and is believed to be appropriate and reliable, and such Customer Information provided and any statement or representation made by Coastal Wastewater Specialists in relation to any Goods supplied is provided or made without liability or responsibility on the part of Coastal Wastewater Specialists.

- (c) To the fullest extent permitted by law, the Customer releases Coastal Wastewater Specialists from and against all liability whatsoever for any injury, loss or damage sustained by the buyer howsoever arising.
- (d) It is the Customer's responsibility to ensure and satisfy itself that the Goods and any method of use or application of the Goods are suitable for that Customer's purposes and the risk of any damage or loss or adverse consequences arising or resulting from the purchase or use of the Goods is voluntarily assumed by the Customer.
- (e) Subject to Clause 5.3(b), Coastal Wastewater Specialists warrants to the Customer that, at its option, Coastal Wastewater Specialists shall in the case of defective goods repair or replace the defective Goods or pay the cost of the replacement or repair of the goods.
- (f) Subject to the Customer complying with Clause 5.3(b) and Clause 10.4(e), and where the Goods are warranted directly by the Manufacturer, in the event that any such Goods are found to have a manufacturing defect, Coastal Wastewater Specialists will endeavour to transfer to the Customer the benefits of any warranty given to it by the manufacturer of the products
- (g) The Customer accepts liability for all freight costs incurred in the return of products including warranty repair or replacement of faulty goods without exception.
- (h) Coastal Wastewater Specialists shall not be liable to the Customer for defective Goods if the defect arises because the Customer has:
  - (i) Repaired or altered the Goods without written consent of Coastal Wastewater Specialists authorised officers or
  - (ii) Subjected the Goods to conditions outside the manufacturer's stated instructions on storage, usage, installation, use or maintenance.
- (i) All Goods supplied are warranted by the direct manufacturer of the Goods – the Customer will be directed to seek warranty through the appropriate manufacturer of the Goods.
- (j) The Company shall not in any circumstances be liable to the purchaser or to any other person for any indirect, special or consequential loss or damage of any nature whatsoever.
- (k) All warranties which would be implied into these Terms by statute are negated except to the extent that such negation is specifically forbidden by statute.
- (l) All other guarantees, conditions, warranties, undertaking or representations express or implied are hereby expressly excluded (except those which by law cannot be excluded, restricted or modified).

## **11. INDEMNITIES**

### **11.1 Subject to limitations**

For the avoidance of doubt, this clause 11 is subject to clause 12.

### **11.2 Intellectual Property Rights**

- (a) The Customer warrants that any design or instruction furnished to Coastal Wastewater Specialists will not be such as will cause Coastal Wastewater Specialists to infringe any patent, registered design or trademark in the execution of the Customer's order.
- (b) The Customer agrees to indemnify Coastal Wastewater Specialists against any infringement or unauthorised use of patents, trademarks, designs or copyrights arising out of the manufacture and use of the Goods.
- (c) It is specifically agreed that the sale and the purchase of the Goods does not confer on the Customer any license or rights under any patents, trademarks, designs or copyrights the property of Coastal Wastewater Specialists.

## **12. LIMITATION OF LIABILITY**

### **12.1 Consequential loss**

- (a) Coastal Wastewater Specialists liability for any Claim or Loss in connection with this Agreement will not extend to any indirect or consequential loss relating to, but not limited to:
  - (i) Electrical connections, removal of excess spoil from excavations and identification of underground services;
  - (ii) Collision with underground services or obstructions;
  - (iii) The Customer or their agent's voluntary assistance to transport and/or locate the Goods supplied and/or delivered by Coastal Wastewater Specialists to the Customer.

### **12.2 Duty to mitigate**

- (a) Each party must take all reasonable steps to mitigate the effect on that party of any Claim or Loss for which another party may be liable under this Agreement.

## **13. DISPUTES**

- (a) In the event that there is an unresolved dispute between the parties in connection with this Agreement, each of the disputing parties must promptly nominate a senior representative and those representatives must promptly commence good faith discussions in an attempt to resolve the dispute without resorting to formal proceedings.
- (b) No party may commence formal proceedings until at least 10 Business Days after the commencement of discussions under clause 13(a), except to:
  - (i) seek urgent interlocutory relief;
  - (ii) avoid the expiration of any applicable statutory limitation period; or
  - (iii) preserve a priority in relation to other creditors.
- (c) Pending the resolution of a dispute in accordance with this clause 13, the parties must continue to perform their obligations under this Agreement to the extent that those obligations are not the subject of the dispute and it is reasonably practicable to do so.

## **14. GENERAL PROVISIONS**

### **14.1 Notices**

- (a) All notices given or served under this Agreement must be in legible writing, in English and sent to the recipient at the address or facsimile number set out below, or the address on the tax invoice or such other address or facsimile number specified by the recipient from time to time:

<b>Supplier</b>	Coastal Wastewater Specialists
Address:	PO Box 2009, Hervey Bay QLD 4655
Facsimile:	07 4128 8171
Attention:	

#### **Customer**

Address:  
Facsimile:  
Attention:

### **14.2 Disclaimer**

- (a) Specification and particulars in relation to products referred to in Coastal Wastewater Specialists brochures, marketing materials or website are subject to change without notice. Coastal Wastewater Specialists will not be held liable for any errors or omissions.
- (b) Where goods are ordered by way of general description or by sample the goods will be manufactured and/or delivered by the Company so they correspond to the general description or sample but the Customer acknowledges that there may be minor changes in the manufacture of goods from time to time to allow for variations in raw materials and/or as a result of any request from the Customer or by any person having the apparent authority of the Customer to make such a request.
- (c) Any warranty as to the suitability or fitness for purpose of any goods and services is expressly excluded.

- (d) Any intellectual property or innovation design or method of manufacture in or of such goods will be and remain the property of the Company and must not be interfered with or used without the Company's prior written consent.
- (e) Where the goods are manufactured and/or delivered to the Customer's specifications:
  - (i) the goods will be manufactured and/or delivered in accordance with such specifications
  - (ii) the Company will not have responsibility for the adequacy or suitability of the design and any warranty as to suitability or fitness for purpose of such goods is expressly excluded.
  - (iii) the Customer must ensure that goods manufactured to the Customer's specification do not breach or infringe the intellectual property of any third party, and the Customer must indemnify and kept he Company indemnified against any claim arising out of such breach or infringement.
- (f) For goods supplied to the Customer who is undertaking the installation of those goods, the Customer agrees to indemnify the Company against any liability the Company may incur as a result of failure of the Customer to follow good and proper practices, or due to a lack of ability, expertise or skill in handling the particular type of goods being installed.

**14.3 Invalid or unenforceable**

If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
  - (i) that provision in another jurisdiction; or
  - (ii) the remaining provisions of this Agreement.

**14.4 Waiver and exercise of rights**

- (a) A waiver of a provision or of a right arising under this Agreement may only be given in writing by the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

**14.5 Further assurances**

Each party must, at its own expense, whenever requested by another party, promptly do or cause to be done everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

**14.6 Entire agreement**

This Agreement and any other documents referred to in this Agreement or executed in connection with this Agreement contain the whole of the understanding between the Company and the Customer and supersede any prior representations, negotiations, arrangements, understandings or agreements and all other communications made by the company relating to the subject matter of this Agreement and/or relating to manufacture or supply of the goods and services or any part thereof including but without limiting the foregoing those relating to performance of the goods or any part of thereof or the results that ought to be expected from using the goods and services.

**14.7 Time**

Time is of the essence in this Agreement.

**14.8 Governing law and jurisdiction**

- (a) This Agreement is governed by the laws of Queensland, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.

**14.9 Termination and Suspension**

If the Company is not satisfied in its absolute discretion as to the Customers' ability to pay for the goods and/or services ordered or proposed to be ordered, the Company may suspend or terminate supply and shall not be liable in any way for any claim, damage, expense or cost arising there from and all monies then outstanding by the Customer shall immediately become due and payable.

**14.10 Privacy Policy (Short Version)**

1. You consent to us conducting a credit assessment of you and to using any information we have to establish your creditworthiness.
2. Where relevant we will comply with the provisions of the Privacy Act 1988 (Cth) and Regulatory Requirements. This means if you have applied for consumer or commercial credit, then to establish your creditworthiness we may need to disclose personal information to a credit reporting agency to obtain a consumer credit report about you. This may also involve the credit reporting agency creating or maintaining a credit information file containing information about you.
3. The type of information we may disclose is limited to:
  - (a) your identity particulars;
  - (b) the fact that you are entering a Contract with us;
  - (c) any payments overdue for more than 60 days and for which we have taken steps to recover;
  - (d) information that you have defaulted under this Contract or are no longer in default;
  - (e) information that in our opinion you have committed a serious credit infringement; and
  - (f) dishonoured payments – if cheques or payments by you for more than \$100 have been dishonoured more than twice.
4. Subject to what is permitted by law, the types of third parties we may disclose your personal information to include, where relevant:
  - (a) credit reporting agencies;
  - (b) our agents, contractors and external advisers whom we engage from time to time to carry out, or advise on, our functions and activities;
  - (c) your agents and contractors, including your finance broker, builder and settlement agent and your legal or financial adviser;
  - (d) your executor, administrator, trustee, guardian or attorney;
  - (e) our referees;
  - (f) regulatory bodies, government agencies, law enforcement bodies and courts;
  - (g) any person or organisation who introduces you to us;
  - (h) other organisations with whom we have alliances or arrangements for the purpose of promoting our respective products and services;
  - (i) any agents used by us and our business partners in administering such an arrangement or alliance;
  - (j) debt collecting agencies;
  - (k) other financial institutions;
  - (l) external payment systems operators;
  - (m) your and our insurers or prospective insurers and their underwriters;
  - (n) any person to the extent necessary, in our view in order to carry out any instruction you give to the by us;
  - (o) other organisations (including our related bodies corporate) and their agents for the marketing of specific products and services (unless you tell us not to.)
5. This information may be given before, during or after the provision of credit to you.
6. If you are taking supply, or have agreed to take a supply of products from us you agree we may obtain from or give to related companies a report about your creditworthiness for the purposes of product supply.
7. Full version available on request.

**14.11 Special terms Relating to sale and/or delivery and/or installation of wastewater treatment systems, water treatment systems and any other application utilizing UV disinfection and/or filtration and/or other methods of pathogen/contaminant reduction and/or control.**

- (a) The Company will not be liable for any loss or damage which directly or indirectly occurs where the Customer fails or neglects to

- communicate to the Company any particular requirements or specifications relating to any of this class of products.
- (b) The Terms and Conditions contained in or endorsed on any quotation and /or estimation for the supply of goods or services by the Company are specifically incorporated into any agreement for such supply and the special attention of the Customer is drawn to any provisions of such quotation (as apply) which relates to:-
- (i) the description of the goods and services to be manufactured
  - (ii) the delivery of such goods or services and in particular the allowances made in the price in respect of delivery and matters and things for which surcharges or additional charges will be claimed by the Company, including without limitation any arising from variation of any kind;
  - (iii) the installation of such goods or services and in particular the matters and things allowed for in the price in respect of installation and matter and things for which surcharges or additional charges will be claimed by the Company, including without limitation any arising from variation of any kind;
  - (iv) technical matters, procedures and specifications for the manufacture, delivery and installation of any goods as contracted to be manufactured, delivered and installed as is the case by the Company.
- (c) The Customer shall also be bound and refer to the Supplementary Standard Conditions document.

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