

1. GENERAL

Unless otherwise agreed in writing, these terms will apply to the provision of all Goods by AWMA Pty Ltd ABN 46 108 429 876 of 118 Roviras Road Cohuna, Victoria 3568. Any terms and conditions contained in your purchase order or otherwise notified to us will apply only if they are specifically accepted in writing by us.

2. QUOTATIONS AND PURCHASE ORDERS

- a. Quotations from AWMA are in Australian dollars and valid for a period of acceptance of 30 days from date of issue or as otherwise specified in the quotation. Prices given relate to that quotation only.
- b. In order to purchase the Goods, Customer must place with AWMA a Purchase Order consisting of order number, AWMA's quotation reference, full description of the goods required, delivery date and destination.
- c. A contract shall be formed by and upon AWMA's accepting from the customer a Purchase Order in accordance with these terms.
- d. The Terms shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- e. Any conditions or terms of purchase submitted by customer deviating from or inconsistent with the Agreement will not be binding upon AWMA.
- f. The quoted price is based upon the particular specifications of the Goods current at the time of quotation. AWMA reserves the right to vary the price if there is any variation in the specification after the Purchase Order is placed.
- g. All quotations are prepared in accordance with the information supplied by the Customer including, but not limited to, drawings, sketches, site dimensions, photographs and written advice. Whilst all care is taken by AWMA to ensure the Goods shall interface with the structure, we are not responsible for any civil interface issues related to the information supplied by the Customer. Should it be considered necessary, AWMA may be engaged to attend site to perform a detailed site survey and measurement to eliminate risks associated with the design of the Goods and the civil structure.
- h. Unless stated otherwise, all quotations include an allowance for the preparation of an Overview Drawing for review and approval (full or conditional) by the Customer. This drawing shall be based on the information provided by the Customer and summarised within the quotation. Should it be necessary to reissue Overview Drawings, or requests are made to vary the details within the drawings from the information previously provided, then AWMA reserve the right to issue a variation request for said changes. Where a drawing revision is required to correct an omission or error by AWMA then this shall be performed at no cost to the Customer.

3. CANCELLATION OF ORDERS

- a. Customer may not alter or cancel a Purchase Order without AWMA's prior written consent.

4. RETURNS OF GOODS AND CREDITS

- a. Customer is deemed to have accepted the Goods unless it makes a claim in accordance with clause 4(b) of these Terms.
- b. Customer may reject any Goods that are wrongly supplied or oversupplied by notifying AWMA of the claim and providing full particulars of the claim within 5 days of receipt of those Goods. Please email us at info@awmawatercontrol.com.au within that time if you are not satisfied with your purchase so that we can resolve any problems.
- c. This refund policy does not apply to Goods which have been worn or used, damaged after delivery, or if any attempt has been made to alter the Goods or if they have been dropped or broken. All Goods must be returned in their original condition. All freight and insurance costs are to be paid by the customer.
- d. Customer assumes any risk of loss, theft or damage to the goods during transit. AWMA will not be responsible for shipments lost or damaged in transit if Customer chooses not to insure this risk through AWMA.

5. DELIVERY AND STORAGE

- a. All quoted delivery dates are estimates only. AWMA will attempt to send the Goods via its nominated carrier or via Customer's preferred carrier. Costs associated with Customer's preferred carrier will be at Customer's own expense.
- b. Delivery times are typically within 4-6 weeks of design approval, or as nominated in AWMA quotation, subject to confirmation at the time of order placement.

- c. AWMA is deemed to have delivered the Goods when the Goods are made available to the Customer for physical collection by or on behalf of the Customer at the Customer's nominated delivery point.
- d. Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle AWMA to withhold OF delay delivery of any remaining Goods ordered.
- e. If you wish to query a delivery please contact us at info@awmawatercontrol.com.au

6. PAYMENT OF PURCHASE PRICE

- a. The total purchase price, unless otherwise stated in the Purchase Order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation costs, insurance and third party suppliers.
- b. Payment of purchase order must be made in full within 30 days after the date of the invoice or otherwise in accordance with customer's credit arrangement or agreed terms.
- c. Customer acknowledges that any amount owing pursuant to these terms is a liquidated debt due and owing to AWMA without the need for AWMA to issue any notice or take any steps to prove the debt.
- d. If the Customer defaults in payment by the due date of any amount payable to AWMA, then all money which would become payable by the Customer to AWMA at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and AWMA may, without prejudice to any of its other accrued or contingent rights:
 - a) charge the Customer interest on any sum due at the rate of 1.5% per month for the period from the due date until the date of payment in full;
 - b) charge the Customer for, and the Customer must indemnify AWMA from, all costs and expenses (including without limitation all credit collection and mercantile agency fees and charges together with all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - c) cease or suspend supply of any further goods or services to the Customer;
 - d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

7. TITLE AND RISK

- a. Title to the Goods shall remain with AWMA until all monies owing by Customer to AWMA have been paid in full.
- b. Until such time Customer has paid in full all monies owing to AWMA, Customer shall store the Goods separately and mark them so that they are clearly and easily identified as AWMA's property.
- c. The risk in the Goods passes to Customer at the time of Delivery.
- d. Customer acknowledges that title to the Goods remains vested in AWMA and will not pass to Customer until the Price for the Goods and Services and any other amounts that may remain outstanding by Customer to AWMA from previous transactions has been paid in full and received by AWMA.
- e. Customer acknowledges that until such time as title in the goods has passed to Customer that they shall be responsible for the care and maintenance of the Goods and Customer shall insure the Goods against theft or any damage until such time as title in the Goods has passed to Customer.
- f. (a) Customer acknowledges that these Terms constitute a security agreement for the purposes of section 10 of the **Personal Property Securities Act 2009 (PPSA)** (Security Agreement) and that a security interest, as defined by section 12 of the PPSA (Security Interest) exists in the following:
 - (i) all Goods and Services previously supplied by AWMA or any supplier or related party of AWMA;
 - (ii) all Goods and Services that will be supplied in the future by AWMA or any supplier or related third party pursuant to the terms of this Agreement;
 - (iii) the benefit of any agreement relating to the Goods;
 - (iv) any proceeds from any disposal, assignment, insurance payout or other dealings with the Goods or any other rights referred to in paragraphs (i)-(iii) above.
- (b) Customer will execute documents and do such further acts as may be required by AWMA to register the Security Interest granted to AWMA, including registering a financing statement or financing change statement or to register any other document, including for correction of any defect on the Personal Property Security Register (PPSR).

- (c) Customer agrees to:-
- (i) fully indemnify and upon demand being made by AWMA reimburse AWMA for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Secured Property charged thereby;
 - (ii) not register a financing change statement in respect of a Security Interest without the prior written consent of AWMA;
 - (iii) not register or permit to be registered, a financing statement or a financing change statement in relation to any Secured Property in favour of any other third party without the prior written consent of AWMA; and
 - (iv) Immediately advise AWMA of any subsequent dealings with the Secured Property which would diminish any proceeds which AWMA may be entitled pursuant to the terms and conditions as set out in these Terms.
- g. To the extent that chapter 4 of the PPSA would otherwise apply to enforcement by the AWMA of any Security Interest in the Secured Property, the parties agree that the following provisions of the PPSA are excluded:
- (a) to the extent permitted by section 115(1) of the PPSA sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
 - (b) to the extent permitted by section 115(7) of the PPSA sections 129(2) and (3), 132, 133(1)(b), 134(2), 135, 136(3), (4) and (5) and 137.
- h. Customer consent to the waiver of the requirement for notice under any other provision of the PPSA that Customer may notify to the AWMA after the date of these Terms and waives any rights it has to receive that notice.
- i. Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted pursuant to the provisions of these Terms.
- x. Third party losses
 - xi. Loss or denial of opportunity
 - xii. Costs to remedy a breach
 - xiii. Any indirect, remote, abnormal, or unforeseeable loss
- Or any similar loss whether or not in the reasonable contemplation of the parties at the time of the execution of the contract.

10. TERMINATION

- a. AWMA may terminate this Agreement at any time where:
 - i. The Customer becomes, or threatens to become, or AWMA for the view (acting reasonably) that the Customer is or may become insolvent, or otherwise takes steps under the Corporations Act 2001 (Cth) in anticipation of becoming insolvent; or
 - ii. The Customer breaches the Agreement and AWMA consider that the breach cannot be remedied within a reasonable time (determined by AWMA); or
 - iii. The Customer fails to remedy a breach within a reasonable of it being given notice of the breach
- b. Customer must pay or reimburse AWMA upon demand for all of AWMA's cost, including AWMA's legal costs on a full indemnity basis, in connection with or incidental to:-
 - (i) any default by Customer in observing or performing any of its obligations under these Terms;
 - (ii) the termination of these Terms otherwise than by the expiration of time; and
 - (iii) the attempted or actual enforcement, preservation or exercise of any right under these Terms.

8. INSURANCE

- a. Customer must keep the Goods insured against all risks for Goods of that kind from time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer.

9. LIMITATION OF LIABILITY FOR GOODS

- a. Other than is provided in clause 9 AWMA makes no warranties or representations to customer.
- b. AWMA warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 12 months from delivery. This warranty does not cover costs of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes or normal wear and tear and is otherwise subject to any specific warranty terms provided with the Goods which prevail to the extent of any inconsistency with these terms.
- c. Any warranty defect AWMA may either elect to repair or replace any such defective Goods at AWMA's expense. The replacement or repaired Goods shall be covered by the unexpired portion of the warranty period.
- d. Goods that are not manufactured by AWMA the original manufacturer's warranty will apply. AWMA's liability for such equipment shall not exceed the liability of the manufacturer.
- e.
- f. AWMA's total liability whether arising under the Agreement, any other contract, tort, equity or otherwise at law (including whether negligent) shall be limited to re-performing any Services or repaying the cost of the Goods and in any event shall under no circumstances exceed the total dollar amount of the Goods purchased by Customer under the relevant Agreement for the Goods giving rise to the liability.
- g. Except as expressly provided to the contrary in these terms, all representations, warranties, terms and conditions in relation to the Goods whether express or implied are hereby excluded unless otherwise not permitted to be excluded at law.
- h. AWMA shall not be liable to the Customer, whether under this Agreement, any other contract, or any other principle of law (at common law or equity), for Consequential Loss, and such liability is excluded.
- i. For the purposes of this clause 9 Consequential Loss means:
 - i. Loss of profit
 - ii. Loss of revenue
 - iii. Loss of production
 - iv. Loss of access to markets
 - v. Loss of business reputation, future reputation or publicity
 - vi. Damage to credit rating
 - vii. Loss of goodwill
 - viii. Loss of credit rating
 - ix. Loss of use

11. PROPRIETARY INFORMATION

- a. Customer acknowledges that all proprietary information and all right, title and interest therein are the sole property of or licensed by AWMA and Customer shall gain no right, title or interest in the Proprietary Information.

12. MISCELLANEOUS

- a. The Goods supplied are intended for use only in Australia or New Zealand, unless AWMA otherwise agrees. If Customer exports the Goods, it is Customer's responsibility to ensure the Goods and the users comply with the laws of destination.
- b. The Agreement is governed by and must be interpreted in accordance with the state of Victoria.