

STORMWATER SYSTEMS LIMITED – TERMS OF TRADE

By requesting any goods and/or services from Stormwater Systems Limited, you acknowledge that you have read and understood these Terms of Trade (“this agreement”) and agree to be bound by them. You acknowledge there may be terms in this agreement which apply specifically to this agreement.

1. DEFINITIONS

1.1 **Approved Buyer** means any Buyer who the Seller, at its sole discretion, has approved to have a credit account with the Seller.

Buyer means the person requesting for Goods or Services from the Seller and their representatives.

Goods means those goods supplied by the Seller to the Buyer as described on any quotation, work authorisation, invoice or other communication between the Buyer and Seller in connection with this agreement and, where the context permits, any supply of services as defined in this agreement.

Guarantor means the person who agrees to be liable for all money owed by the Buyer to the Seller now or in the future in respect of goods and/or services provided by the Seller pursuant to this agreement or any other liability of the Buyer to the Seller.

Order means orders for Goods and/or Services from the Seller by the Buyer and which have been approved by the Seller.

Price means the cost of the goods or services as agreed between the Seller and the Buyer, unless expressed otherwise, and excludes the cost of delivery (unless indicated otherwise) and any variations as defined in this agreement.

Seller means Stormwater Systems Limited and its representatives, its successors and assigns.

Services means all services supplied by the Seller to the Buyer, including any advice, recommendations or installation services as described on any quotation, work authorisation, invoice or other communication between the Buyer and Seller in connection with this agreement and, where the context permits, shall include any supply of goods as defined in this agreement.

Underground Mains and Services include but are not limited to stormwater pipes and connections, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign’s Birthday, Labour Day and Waitangi Day;
- (b) If Waitangi Day or ANZAC Day falls on a Saturday or Sunday, the following Monday;
- (c) A day in the period commencing on 24 December in any year and ending on 5 January in the following year, both day’s inclusive
- (d) The day observed as the anniversary of any province in which the business is located.

A working day is deemed to commence at 9.00am and end at 5.00pm.

If there is any inconsistency between the constitution and this agreement this definition of working day shall apply to this agreement.

2. PRICE AND PAYMENT

2.1 The Price shall be the amount indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied or the Seller’s quoted Price which shall be binding on the Seller provided the Buyer accepting in writing the Seller’s quotation within thirty (30) days.

2.2 The Price is exclusive of any GST, taxes or duties unless expressed otherwise. If there are any Variations, the provisions in clause 3 shall apply.

2.3 Payment of any amounts outstanding by the Buyer shall be made in full and clear funds by direct credit to the Seller’s nominated account, or by any other method as agreed to between the Buyer and the Seller.

2.4 Payment for the Goods and/or Services must be made as follows:

- (a) At least four (4) Working Days before the Goods are dispatched;
- (b) If agreed between the Seller and Buyer, by way of instalments in accordance with the Seller’s payment schedule; or
- (c) If the Buyer has an approved credit account with the Seller, payment will be due on the 20th of the month following the date of the invoice.

3. VARIATION

3.1 Any variation from the plan of scheduled works or specifications will be charged to the Buyer on the basis of the Seller’s quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at the time of completion.

3.2 **Where the Buyer is to supply the Seller with any design specifications (including, but not limited to CAD drawings) in accordance with this clause 3, the Buyer shall be responsible for providing accurate data. The Seller shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Buyer.**

3.3 The Buyer acknowledges it will incur extra charges for any changes to the placed Goods Orders to re-design and reconfigure pods and such changes may result in delays in delivery.

- 3.4 The Buyer acknowledges and that it will be charged a call out fee for any on site amendments and any applicable charges for altering product or freight for sourcing alternative and returning product.
- 3.5 Where the Seller has been booked to come to site and arrives at the site in accordance with any agreements between the Buyer and Seller and the site is not ready for the Seller to perform the required services as agreed, either by reason of inadequate site preparation, delay or change in schedule or otherwise, the Seller will charge the Buyer any expenses incurred by the Seller resulting from the site not being ready in addition to a minimum return fee of \$300.00, payable before services are re-provided.

4. DELIVERY OF GOODS

- 4.1 Delivery of the Goods shall be made to the Buyer's address as stipulated on the Buyer's Goods Order.
- 4.2 The Seller will use its best endeavours to ensure that timing of Delivery is as per the Buyer's request or Schedule. The parties acknowledge that the Seller books delivery **TWO** days before the nominated date of delivery. The Buyer agrees that any changes it makes to the date of delivery after the Booking Date will incur a fee and be charged to the Buyer.
- 4.3 The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for re-delivery and/or storage.
- 4.4 Delivery to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 4.5 The Buyer shall ensure that the Seller has clear and free access to the nominated site at the time of delivering Goods.
- 4.6 Delivery of the Goods is taken to occur at the time that:
- (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address notwithstanding the Buyer is not present at the address.

5. PROVISION OF SERVICES AND ACCESS

- 5.1 Any time specified by the Seller for provision of the Services is an estimate only. The Seller will not be liable for any loss or damage incurred by the Buyer as a result of any delay. Notwithstanding, both parties agree they shall make every endeavour to enable the Services to be provided at the time and place as arranged between both parties. In the event the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Buyer, the Seller shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date as set out in clause 3.5.
- 5.2 The Buyer shall ensure that the Seller has clear and free access to the nominated site at the time of providing the Services to enable them to do so. The Seller shall not be liable for any loss or damage to the site during and after the provision of the Services (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, and site equipment such as septic tanks), unless due to the negligence of the Seller. The Buyer acknowledges that any claim made to the Seller for damage to the site or site equipment must be lodged with the Seller within twelve (12) hours of completion of the Services, time being of the essence.
- 5.3 The Seller reserves the right to refuse to enter the nominated site to provide the Services in the event that the Seller believes the site to be unsafe. In this event, the Buyer agrees that it is their responsibility to ensure the site is made safe before the Seller will enter the site, and the Seller shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 5.4 The Buyer shall, prior to commencement of the Services, advise the Seller of the precise location of all known Underground Mains and Services, asbestos and any hazardous materials on site (which must be clearly marked). Whilst the Seller will take all care to avoid damage to any Underground Mains and Services, the Buyer agrees to indemnify the Seller for all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified by the Buyer.

6. INTELLECTUAL PROPERTY

- 6.1 **The Buyer acknowledges that all Intellectual Property in any and all Goods supplied to the Buyer by the Seller is exclusively owned by the Seller. Nothing in this agreement transfers ownership in any intellectual property rights to the Buyer. The Buyer agrees not to use the intellectual property of the Seller in any way without the prior written approval of the Seller.**
- 6.2 Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller, the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 6.3 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 6.4 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 6.5 The Buyer agrees that the Seller may (at no cost) use, for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

7. INSPECTION AND RETURN OF GOODS

- 7.1 The Buyer shall inspect the Goods on delivery and, within 48 hours of delivery, notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If no notice has been given to the Seller within the specified time, the Buyer is deemed to have accepted the Goods.
- 7.2 The Seller will, within a reasonable time following receipt of the Buyer's notice, inspect the Goods and notify in writing to the Buyer Goods which the Seller considers to be faulty. The Seller has the sole discretion to determine whether the Goods inspected by the Seller are faulty.
- 7.3 For Goods which the Seller has agreed in writing is faulty in accordance with clause 7.2, subject to clause 7.4, at the Seller's sole discretion, the Seller may either replace the Goods, repair the Goods or accept the Goods for credit. The Seller's liability for the faulty Goods is limited to the costs of replacing or repairing the Goods or limited to the Price as applicable. If the Seller accepts the Goods for credit, a handling fee of up to 15% of the value of the returned Goods plus any freight may be incurred.
- 7.4 Clause 7.3 is subject to the following:
- (a) the Buyer must have complied with the provisions of clause 10.1;
 - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
 - (c) the Goods have been returned at the Buyer's cost within seven (7) days of the delivery date; and
 - (d) the Goods have been returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

8. RISK AND TITLE

- 8.1 All risk in the Goods pass to the Buyer upon completion of delivery, notwithstanding:
- (a) situations where the Seller has retained possession or control of the Goods; or
 - (b) where the Buyer has requested the Seller to leave the Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location.
- 8.2.1 Title in the Goods shall not pass until the Buyer has paid all amounts owing for the Goods and met all other obligations due by the Buyer to the Seller in respect of all contracts between the Buyer and Seller.
- 8.3 The Goods, or proceeds of the sale of the Goods, shall be kept separate until clause 8.2 has been complied with.
- 8.4 The Buyer further agrees to the following:
- (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's Agent may enter upon or into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
 - (g) Until such time the Buyer has the Seller's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Seller will be the owner of the end products.

9. CREDIT ACCOUNT

- 9.1 At its sole discretion, the Seller may approve credit accounts with an approved credit limit with Approved Buyers.
- 9.2 Failure to adhere to clause 2.4(c) will result in any credit or favourable terms being withdrawn. The Seller also reserves the right to terminate and suspend any credit arrangements with the Approved Buyer in accordance with clause 13 herein.
- 9.3 If any amounts outstanding have not been paid by the Buyer by the end of the month following the date of the invoice, interest at a monthly rate of 5% on the portion of the sum outstanding will be added to the amounts outstanding.

10. SELLER'S RIGHT TO DISPOSE OF GOODS

- 10.1 In the event the following occurs, the Seller reserves the right to dispose of the Goods and claim from the Buyer the loss to the Seller on such disposal:
- (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller.

11. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

11.1 The Buyer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or collateral (account) being a monetary obligation of the Buyer to the Seller for Goods or Services that have previously been supplied and that will be supplied in the future by the Seller to the Buyer.

11.2 The Buyer undertakes to:

- (a) within 5 days of being requested by the Seller, sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

12. SECURITY AND CHARGES

Notwithstanding anything contained herein or any other rights which the Seller may have:

12.1 Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

12.2 Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Buyer basis.

12.3 To give effect to the provisions of this agreement the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee, any debt collector as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the debt collector shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13. DEFAULT AND TERMINATION

13.1 The Buyer will be in default of this agreement if:

- (a) any money payable to the Seller becomes overdue,
- (b) the Seller considers the Buyer will be unable to meet its payments as they fall due;
- (c) the Buyer becomes insolvent;
- (d) the Buyer convenes a meeting with its creditors or proposes or enters into an arrangement with creditors;
- (e) the Buyer makes an assignment for the benefit of its creditors;
- (f) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer;
- (g) the Buyer is in breach of any of its obligations in connection with this agreement.

13.2 If the events of default in clause 13.1 occurs, all amounts owing to the Seller immediately become due and payable. Without prejudice to the Seller's other remedies at law, the Seller shall also be entitled to cancel all or any part of any order of the Buyer which remains unperformed, suspend or terminate the supply of Goods to the Buyer and any of its other obligations under this agreement.

13.3 The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers as a result of this suspension or termination.

13.4 The Buyer shall not set off against the Price any amounts owed by the Seller to the Buyer in accordance with this agreement.

13.5 Upon acceptance of this agreement by the Buyer, the Buyer will continue to be bound by the terms in this agreement unless the events of default in this clause 13 occur, the agreement has been terminated or with the written consent of the Seller, whichever is earlier.

14. INDEMNITY

14.1 The Buyer will indemnify the Seller for all costs and losses incurred by the Seller as a result of the Buyer's default or breach of this agreement, including any expenses, losses or legal fees incurred in enforcing the provisions of this agreement.

15. WARRANTIES

15.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the Seller of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the Seller's warranties applicable to the various products and available on the Seller's website.

16. LIMITATION OF LIABILITY

16.1 The Buyer disclaims any right to rescind or cancel the contract, to sue for damages or to claim restitution arising out of any misrepresentation made to him by the Seller or its representatives.

16.2 The Buyer acknowledges that it has purchased the Goods relying solely upon its own skill and judgment and not on any representation or warranty unless provided for in clause 21.1.

16.3 In the event of any breach of this agreement by the Seller, the remedies of the Buyer are limited to damages. In any event, the liability of the Seller shall not exceed the Price of the Goods.

16.4 The Seller shall not be liable to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this agreement.

17. INSURANCE

17.1 The Seller shall have public liability insurance of a minimum of \$2,000,000. It is the Buyer's responsibility to ensure that they are similarly insured.

17.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the following applies:

- (a) the Seller is entitled, without prejudice to any of its other rights or remedies under this agreement (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies irrespective of whether the Price has become payable under this agreement; and
- (b) the production of this agreement by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

18. PRIVACY ACT

18.1 The Buyer authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing any Goods and Services provided by the Seller to any other party.

18.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in this clause 18.

18.3 Where the Buyer is a natural person the authorities under this clause 18 are authorities or consents for the purposes of the Privacy Act 1993.

19. TERMINATION

19.1 The Seller reserves the right to terminate this agreement, the delivery of Goods or provision of Services at any time before the Goods are delivered or the Services are provided by giving 24 hours prior written notice to the Buyer. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.2 On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

20. CHANGES IN STRUCTURE OR CONTACT DETAILS OF BUYER

20.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, address, contact phone numbers, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

21. INTERPRETATION AND GENERAL

21.1 The following provisions will apply in the construction and interpretation of this agreement, except to the extent that the context requires modification:

- (a) references to the background, clauses, schedules and appendices are to this agreement;
- (b) the headings are for convenience purposes only and will not affect the interpretation of this agreement;
- (c) words importing the singular include the plural and vice versa, and the masculine gender includes the feminine gender and vice versa;
- (d) the word person includes any individual, company, corporation, corporation sole, trust, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity or any other association of persons either corporate or unincorporated;

- (e) references to any statute or regulation are to New Zealand statutes and regulations unless the context otherwise requires and will, with all necessary modifications, apply to any modifications or re-enactments;
 - (f) references to written and in writing include any means of visible representation, including communication by email; and
 - (g) references to any document include all modifications and replacement documents from time to time.
- 21.2 To the extent permissible by law, the parties to the agreement contract out of the provisions of the Consumer Guarantees Act 1993.
- 21.3 The invalidity of any part of this agreement shall not affect the enforceability of the rest of the agreement.
- 21.4 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.
- 21.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 21.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 21.7 The Seller reserves the right to review this agreement at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.