

## **Aqua Prep PTY LTD – TERMS**

The following terms and conditions of sale ("Terms") shall apply to and form part of any contract for the supply of goods ("Goods") or services ("Services") by Aqua Prep Pty Ltd (ABN 83 053 937 093) ("Aqua Prep") to a customer ("Customer").

### **1. QUOTES**

- 1.1. No quote given by Aqua Prep to the Customer shall constitute an offer. Any order from the Customer to Aqua Prep for the supply of Goods or Services shall not bind Aqua Prep until accepted by Aqua Prep in writing.
- 1.2. Prices given in any quote by Aqua Prep apply to that quote only, shall not apply in any other instance and are valid for 90 days from the date of issue.

### **2. PURCHASE ORDERS**

- 2.1. To make a purchase order, an official order must be submitted by the Customer to Aqua Prep quoting an order number (where applicable), a full description of the Goods or Services to be purchased and the delivery time and address. Reference to Aqua Prep's quote number and statement of works provided to the Customer must also be made (where applicable).
- 2.2. Any terms and conditions set out in the Customer's order deviating from or inconsistent with these Terms shall not bind Aqua Prep despite any statement by the Customer in its order that its terms and conditions shall prevail over these Terms.
- 2.3. A contract comprising these Terms and the documents referred to in clause 2.1 (but subject to clause 2.2) shall only be or be deemed to have been entered into between Aqua Prep and the Customer for the supply of the Goods or Services when Aqua Prep has accepted the Customer order in writing or by performance ("Contract").

### **3. DELIVERY**

- 3.1. This Clause 3 applies to the delivery of Goods to the Customer from time to time.
- 3.2. Aqua Prep is entitled to charge a fee for any delivery.
- 3.3. Aqua Prep is deemed to have delivered Goods when available for unloading at the Customer's nominated delivery point.
- 3.4. Risk in the Goods passes at the point of delivery, but title passes upon full payment.
- 3.5. The Customer is responsible for unloading Goods from Aqua Prep's delivery vehicle.
- 3.6. If Goods are to be collected by the Customer from Aqua Prep's place of business, delivery of Goods occurs when the Goods are made available to be loaded on the Customer's vehicle.
- 3.7. Aqua Prep shall be deemed to have delivered the Goods following the Contract even if the Customer fails to accept delivery.

#### 4. **PAYMENT**

- 4.1. The Customer must pay Aqua Prep for the Goods and Services following the Contract. Except as otherwise agreed by Aqua Prep in writing, the terms of payment are payment on receipt of the invoice.
- 4.2. Any extension of credit to the Customer by Aqua Prep shall be at the sole discretion of Aqua Prep and, where extended unless otherwise advised in writing by Aqua Prep. Aqua Prep requires payment in full within 30 days of the date of Aqua Prep's invoice.
- 4.3. Without in any way limiting Aqua Prep's right to require payment in full on the due date, Aqua Prep may, in its sole discretion, charge: (a) interest on overdue accounts on the balance of the amount owing at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) plus four per cent (4%); and, in addition (b) an amount to cover all legal costs and other expenses incurred by Aqua Prep as a consequence of the delay in payment.
- 4.4. The Customer agrees that Aqua Prep may use the services of a credit reporting agency from time to time to obtain credit information concerning the Customer (and the Customer must procure the consent of its directors to obtain credit information about them) to assess creditworthiness. This authority continues until all supply has ceased and all liabilities to Aqua Prep have been fully discharged.
- 4.5. The time specified for payment is of the essence.

#### 5. **INDEMNITIES**

- 5.1. Without prejudice to any other rights, Aqua Prep may have against the Customer, and to the extent permitted by law:
  - a) The Customer must indemnify Aqua Prep for any Losses incurred by Aqua Prep should the Customer breach the Contract or cancel any order or part of an order for the Goods or Services; and
  - b) The Customer indemnifies Aqua Prep against any Claim made or initiated against Aqua Prep by any third party regarding any damage, death or injury caused by or in any way attributable to the Goods or Services supplied by Aqua Prep.
  - c) There is no need for Aqua Prep to suffer Loss before enforcing clause 5.1.

#### 6. **WARRANTY**

- 6.1. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. These rights are limited to where the Customer is a "consumer" under the Australian Consumer Law. The Customer is a "consumer" only if the price of the Goods or Services is \$40,000 or Less or the Goods or Services are ordinarily acquired for personal, domestic, or household use or consumption.

- 6.2. In addition to any consumer guarantees that Aqua Prep may have to provide the Customer under the Australian Consumer Law, Aqua Prep provides the Customer with a limited warranty to, at Aqua Prep's option, repair or replace (as applicable) the Goods or Services if they significantly depart from Aqua Prep's specifications. This warranty expires 12 months after the Goods or Services' sale date.
- 6.3. Aqua Prep shall bear its costs and expenses of responding to the Customer's warranty claim. However, the Customer must bear the Customer's costs in making a warranty claim and transporting the Goods to Aqua Prep.
- 6.4. Concerning this warranty, Aqua Prep is not required to pay for claims:(a) made outside of the warranty period;(b) for consequential or indirect losses, damages, costs, expenses (including Loss of profits, Loss of revenue, Loss of opportunity, Loss of business, Loss of reputation, Loss of goodwill) or any other losses beyond the normal measure;(c) where the Goods have been modified or not installed following Aqua Prep's instructions or the manufacturers' recommendations: or(d) where the Goods have been subject to inappropriate use, negligence, accident, or any other external factor outside the control of Aqua Prep.
- 6.5. To make a warranty claim, the Customer must contact Aqua Prep directly on 03 9588 0361 within office hours, by email at sales@aquaprep.com.au or by post to 22 Graham Daff Blvd, Braeside VIC 3195 within seven days of identifying the alleged defect and within the warranty period.
- 6.6. Aqua Prep may need to inspect the Goods and may require the Customer to provide Aqua Prep with the Goods or access to the Goods within seven days.
- 6.7. Within 21 days of carrying out an inspection (if necessary) or otherwise within 21 days of the date of the warranty claim, Aqua Prep shall determine whether to honour the warranty claim and shall notify the Customer.

## 7. **DEFAULT**

- 7.1. If the Customer fails to make due payment for any Goods or Services supplied by Aqua Prep or commits a breach of the Contract, or any other term of the sale, or by act or omission enables the appointment of an administrator, scheme manager, trustee, receiver, receiver and manager, liquidator, controller or any other person authorised to enter into possession or assume control of any property of the Customer, Aqua Prep may, without prejudice to any other rights it may have, do any or all of the following:
  - a) Withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all sums of money owing or accrued.
  - b) Withhold any further deliveries of Goods or performance of Services required under the Contract; and
  - c) suspend and/or terminate the performance of any other contracts that Aqua Prep has with the Customer.

## 8. LIMITATION OF LIABILITY

- 8.1. Subject to clause six and the extent permitted by law, all implied conditions, warranties, guarantees, and undertakings are expressly excluded, and except as provided in clause 8, Aqua Prep is not liable for any Losses arising out of or in connection with any breach of Contract by Aqua Prep or any negligence of Aqua Prep, its employees, subcontractors or agents and the Customer releases Aqua Prep from all Claims for such Losses.
- 8.2. To the extent permitted by law, if Aqua Prep is liable for a breach of a guarantee implied by the Australian Consumer Law (not being a condition or warranty implied by Section 64 of the Australian Consumer Law), then its liability for a breach of any such guarantee shall be limited, at its option, to any one or more of the following:
- a) In the case of Goods: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or acquiring equivalent goods; or the payment of the cost of having the Goods repaired.
  - b) In the case of Services: the supply of the Services again, or the payment of the cost of having the Services supplied again.
- 8.3. To the extent permitted by law, without limiting the generality of clauses 8.1 and 8.2:
- a) Where Aqua Prep contracts to install Goods, Aqua Prep shall not be liable for any delay in installing the Goods or for Losses arising out of the installation of the Goods; and
  - b) Aqua Prep shall not be liable for Losses caused by a failed supply of power, water, or other utilities. The Customer shall provide and maintain an adequate supply of utilities.
- 8.4. The Customer acknowledges that it does not rely and that it is unreasonable for the Customer to rely on the skill or judgement of Aqua Prep as to whether the Goods are reasonably fit for the purpose for which the Goods are being acquired or (and the Customer acknowledges that it does not rely and that it is unreasonable to rely on Aqua Prep's skill or judgement) as to the fitness for purpose for which the Services are being acquired and any materials supplied in connection with those Services.

## 9. INTELLECTUAL PROPERTIES

- 9.1. The Customer acknowledges that all rights, title and interest in any Intellectual Property Rights are the sole property of Aqua Prep, and the Customer shall gain no right, title or interest in the Intellectual Property Rights.
- 9.2. The Customer acknowledges Aqua Prep's exclusive rights to ownership of any modification, translation or adaptation of the Intellectual Property Rights and any other improvement or development based on or derived from any Intellectual Property Rights.
- 9.3. The Customer acknowledges that Aqua Prep may obtain injunctive relief for any breach or the continuation of any breach of the Contract and that damages may not be an adequate remedy.

9.4. All tools dies, jigs, and other items used in the manufacture of Goods by Aqua Prep for the Customer shall remain the sole property of Aqua Prep and may, unless otherwise agreed to in writing by Aqua Prep, be used by Aqua Prep in manufacturing items for other customers.

9.5. The Customer must obtain Aqua Prep's prior written consent before using any of Aqua Prep's advertising or marketing materials.

## 10. **ERRORS IN DOCUMENTS**

10.1. Clerical errors and misprints in computation, typing or otherwise in Aqua Prep's documents, including quotes, published price lists, catalogues, delivery dockets, invoices, statements or credit notes, may be corrected by Aqua Prep at any time by means of a reissue of the document or by adjusting dockets regarding the original transaction.

## 11. **ASSIGNMENT**

11.1. Aqua Prep reserves the right to assign or sub-contract its obligations to the Customer to any third party.

11.2. Except with the prior written consent of Aqua Prep (which consent may be withheld by Aqua Prep at its sole discretion), the Customer must not assign, novate or sub-contract any of its rights or obligations under the Contract.

11.3. Where the Customer subcontracts or assigns its obligations under clause 11.2, Aqua Prep reserves, and the Customer grants Aqua Prep the right to pursue the Customer as principally liable for any amounts owed to Aqua Prep.

## 12. **DISPUTE RESOLUTION**

12.1. If a dispute arises out of or relates to the Contract or any orders or agreements made under or in connection with the Contract, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or according to any laws, the parties to the Contract and the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to litigation.

12.2. The mediation shall be conducted per the ACDC Guidelines for Commercial Mediation ("Guidelines"), which are operating when the matter is referred to the ACDC.

12.3. The Guidelines set out the procedures to be adopted, the selection process of the mediator and the costs involved.

12.4. The terms of the Guidelines are hereby deemed incorporated into the Contract.

12.5. This clause 12 shall survive termination of the Contract.

12.6. During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Contract which are not under dispute, and which can be performed by the parties.

12.7. Nothing in this clause 12 prevents Aqua Prep from obtaining any injunctive or other interlocutory relief from a court of appropriate jurisdiction.

13. **FORCE MAJEURE**

Aqua Prep shall not be liable for any claims for non-fulfilment or late delivery should actual delivery of the Goods or any parts or any Services be prevented or delayed in consequence of unforeseen events, including strikes, unforeseen breakdown of machinery, suspension of electricity or other relevant power supply, riots, war, acts of terror, robbery, civil commotion, adverse weather conditions, disaster caused by fire or water, action of government or port authority, delay of vessel, embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply the Goods or components promptly.

14. **ENTIRE AGREEMENT**

The Contract contains the entire agreement between the parties on the subject matter of the Contract, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings relating to the subject matter of the Contract. Any variation or modification of the Contract must be in writing and agreed upon by both parties.

15. **NO WAIVERS**

Aqua Prep's failure or delay in exercising a power or right does not operate as a waiver of that power or right, and exercising a power or right does not preclude its exercise in the future or any other power or right. A waiver is not effective unless it is in writing and only for the specific instance to which it relates and for the specific purpose for which it is given.

16. **SEVERABILITY**

If any provision of the Contract is held invalid, unenforceable, or illegal for any reason, the Contract remains otherwise in full force and effect apart from such provision, which shall be deemed deleted.

17. **NOTICES**

Notices under the Contract must be in writing and English and may be delivered by hand, post or email to the address or email address notified by the relevant party. A notice is taken to be received:

- a) In the case of posting, on the third Business Day after posting.

- b) In the case of email, at the time the email was received by the recipient's mailbox during Business Hours. If not during Business Hours, at 9.00 am (Melbourne time) on the next Business Day, and
- c) In the case of hand delivery, when delivered during Business Hours. If not during Business Hours, at 9.00 am (Melbourne time) on the next Business Day.

## 18. GOVERNING LAW

The laws of the State of Victoria govern the Contract. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.

## 19. DEFINITIONS AND INTERPRETATION

In the Contract:

- a) A reference to includes or includes should be construed without limitation.
- b) A reference to legislation or a provision of legislation includes a modification or re-enactment, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- c) "Australian Consumer Law" means the Australian Consumer Law of the Competition and Consumer Act 2010 (Cth).
- d) "Business Day" means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.
- e) "Business Hours" means between 9.00 am and 5.00 pm (Melbourne time) on a Business Day.
- f) "Claims" means all claims, demands, actions and proceedings.
- g) "Intellectual Property Rights" means any intellectual and industrial property rights throughout the world in, derived from or arising out of the Goods and Services, including all rights conferred under statute, common law or equity in respect of or in connection with any confidential information, copyright (including future copyright and rights like copyright), moral rights, inventions (including patents), trademarks, service marks, designs, circuits layouts, software and its source code or any other intellectual property as defined in Article 2 of the World Intellectual Property Convention of July 1967, whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights;
- h) "Losses" means all losses, costs, damages, liabilities, outgoings, payments, judgments, penalties, and expenses.