

## Standard Trading Terms and Conditions

### 1. Interpretation

- 1.1. In these Terms and Conditions:
  - 1.1.1. **Agreement** means the definition in clause 2.2 below.
  - 1.1.2. **Stream Water Appliances** means Baronial Pty Ltd (ACN 146 402 351) as trustee for Bryan-Brown Family Trust trading as Stream Water Appliances ABN : 67 742 281 188
  - 1.1.3. **Buyer** means the person, firm or entity purchasing the Goods and/or Services, as detailed in the Purchase Order;
  - 1.1.4. **Force Majeure Event** means any act, event or circumstance, other than a lack of funds
    - 1.1.4.1. as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under the Agreement; and
    - 1.1.4.2. that is beyond the reasonable control of that party.
  - 1.1.5. **Goods** means the products detailed in the Purchase Order;
  - 1.1.6. **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
  - 1.1.7. **Price** means the price for Goods and Services stated on the Purchase Order or agreed between Stream Water Appliances and the Buyer which will be the price for the goods and/or services plus any applicable additions including GST, packaging costs, freight charges, delivery costs and bank charges;
  - 1.1.8. **Purchase Order** means a document supplied in conjunction with these Terms and Conditions (including a written quotation by Stream Water Appliances) and/or any order, which may be written or verbal, placed by the Buyer which specifies details of the Goods and/or Services to be supplied by Stream Water Appliances;
  - 1.1.9. **Services** means services to the Goods to be supplied by Stream Water Appliances to the Buyer, as detailed in the Purchase Order.
  - 1.1.10. **Approved Channels** means the sales channels approved in writing by Stream Water Appliances for the Reseller from time to time (including any channels set out in a Reseller Appointment and/or Reseller Schedule).
  - 1.1.11. **Authorised Materials** means any information, specifications, brochures, imagery, product descriptions, warranty statements, compliance statements, performance claims, marketing copy and other collateral provided or approved in writing by Stream Water Appliances.
  - 1.1.12. **Brand** means the trade marks, logos, business names, product names, get-up, domain names and goodwill of Stream Water Appliances (including any brands owned or controlled by Stream Water Appliances).
  - 1.1.13. **End Customer** means the person, firm or entity that purchases the Goods from the Reseller.
  - 1.1.14. **Prohibited Channels** means any sales channel expressly prohibited by Stream Water Appliances in writing from time to time (including any prohibited channels set out in a Reseller Appointment and/or Reseller Schedule).
  - 1.1.15. **Reseller** means a Buyer that has been appointed in writing by Stream Water Appliances as a reseller of the Goods.
  - 1.1.16. **Reseller Appointment** means a written appointment (including by email) issued by Stream Water Appliances confirming that the Buyer is a Reseller and setting out any reseller-specific terms (including Territory and Approved Channels).
  - 1.1.17. **Reseller Schedule** means any schedule, annexure, policy or other document issued by Stream Water Appliances in writing which sets out reseller-specific terms (including Territory, Approved Channels, reporting and training requirements), as updated from time to time.
  - 1.1.18. **Territory** means the geographic territory (if any) stated in the Reseller Appointment and/or Reseller Schedule.

### 2. Operation

- 2.1. Unless otherwise agreed in writing, these terms and conditions (**Terms and Conditions**) govern every transaction, Purchase Order, sale, quotation and contract placed by a Buyer with Stream Water Appliances for the supply of Goods and/or Services to the extent that these details override any other terms and conditions stipulated, incorporated or referred to in the Buyer's order or related documentation.
- 2.2. The parties agree that both the Purchase Order for the supply of Goods and/or Services specified in that Purchase Order and these Terms and Conditions form an agreement for the supply of Goods and/or Services specified in the Purchase Order to the Buyer by Stream Water Appliances (**Agreement**).
- 2.3. Reseller terms and priority; Where the Buyer is a Reseller, clause 20 (Reseller Terms) applies in addition to these Terms and Conditions. If there is any inconsistency between clause 20 and any other clause of these Terms and Conditions, clause 20 prevails to the extent of the inconsistency. If there is any inconsistency between clause 20 and a Reseller Appointment and/or Reseller Schedule, the Reseller Appointment and/or Reseller Schedule prevails to the extent of the inconsistency.

### 3. Orders

- 3.1. The Buyer must order the Goods and/or Services from Stream Water Appliances by submitting a Purchase Order to Stream Water Appliances.
- 3.2. All Purchase Orders for the Goods and/or Services, must contain applicable details as required by Stream Water Appliances for example, purchase order number, billing address, ACN/ABN (where applicable) of Buyer, items being ordered, quantity and values of items being ordered, full contact details and delivery address.
- 3.3. Stream Water Appliances will accept the terms of the Purchase Order by written or verbal acknowledgement. Stream Water Appliances reserves the right to accept or reject any Purchase Order.
- 3.4. Possession of Stream Water Appliances pricing details by a Buyer, does not constitute an offer to sell.
- 3.5. Stream Water Appliances strives to ensure they maintain sufficient quantities of products, accessories and spare parts to

meet demand, however Stream Water Appliances makes no representation as to the availability of Goods and the Buyer must clarify and confirm the details of their order before purchasing the Goods.

- 3.6. Once a Purchase Order is placed by the Buyer, and confirmed by Stream Water Appliances, a binding agreement is formed.
- 3.7. If a Buyer wishes to cancel an order for Services before Stream Water Appliances has performed the Services, the Buyer must contact Stream Water Appliances and inform them of the cancellation of the order as soon as possible.
- 3.8. If a Buyer wishes to cancel an order for Goods, the Buyer must contact Stream Water Appliances as soon as possible. Stream Water Appliances may, at its sole discretion:
  - 3.8.1. allow the Buyer to cancel the order and refund to the Buyer any monies paid to Stream Water Appliances for the Price of the Goods; or
  - 3.8.2. require the Buyer to fulfil their obligations under this Agreement including paying Stream Water Appliances for the Price of the Goods ordered and accepting delivery of the Goods.

#### **4. Price**

- 4.1. After placing a Purchase Order for Goods and/or Services, Stream Water Appliances shall provide the Buyer with a tax invoice which will include Stream Water Appliances ABN (67 742 281 188) and other such details required by the GST Act.
- 4.2. The Buyer shall pay the Price of the Goods and/or Services stated on the tax invoice for their Goods and/or Services plus any applicable additional costs including GST, installation costs, packaging costs, freight charges, delivery costs, bank charges. The prices shown on any price list may vary from time to time.
- 4.3. The Buyer shall pay Goods and Services Tax (**GST**) at the rate set by the GST Act and shown on the tax invoice.
- 4.4. Unless otherwise agreed in writing, any pricing quoted by Stream Water Appliances is exclusive of GST, installation costs, packaging costs, freight charges, delivery costs, bank charges and such other charges notified by Stream Water Appliances to the Buyer, all of which costs if incurred are payable by the Buyer.
- 4.5. All quotations issue by Stream Water Appliances, will be done so in Australian dollars and will be valid for 30 days, unless otherwise stated by Stream Water Appliances.
- 4.6. Once both parties have agreed to the terms of the Purchase Order, the Price will not be varied, unless otherwise agreed in writing by both parties.
- 4.7. Where delivery of the Goods is to be made by instalments, each delivery shall be treated as a separate contract and failure, suspension or delay in any delivery or defect in the Goods delivered shall not vitiate the Contract as to prevent the supply of the other Goods

#### **5. Terms of Payment**

- 5.1. Buyers who have an established Trading Account with Stream Water Appliances shall pay the Price for the Goods and/or Services additions within 7 days from the issue date of the tax invoice.
- 5.2. Buyers that do not have an established Trading Account with Stream Water Appliances, are required to pay the Price (via Credit Card, Bank Cheque or EFT as directed by Stream Water Appliances), to Stream Water Appliances prior to the Goods being despatched or collected from Stream Water Appliances premises, or upon the completion of the Services.
- 5.3. In some instances, including for orders involving specially made products or large volumes, Stream Water Appliances may require payment of the Price prior to deliver or payment of the Price in instalments.
- 5.4. Property in and title to the Goods supplied by Stream Water Appliances will only pass to the Buyer when the full Price for the Goods has been received by Stream Water Appliances.
- 5.5. If the Buyer does not pay the full amount of the Price on or before the date required for payment, Stream Water Appliances may:
  - 5.5.1. charge interest on the overdue amount at the rate of [1.5% above Stream Water Appliances overdraft rate] per month accruing daily from and including the date 7 days after demand for payment until the date of payment is full; and
  - 5.5.2. suspend or cancel, the supply of any pending contracts, orders or service agreements (without notice) until all amounts owed by the Buyer is paid in full to Stream Water Appliances.
- 5.6. All expenses incurred by Stream Water Appliances in collecting overdue payment from the Buyer, including debt collection agency, legal and court fees, shall be payable by the Buyer to Stream Water Appliances as a debt, upon demand from Stream Water Appliances.
- 5.7. If the Buyer shall fail to make any payment on the date due for payment, Stream Water Appliances may terminate the Agreement in accordance with clause 13.

#### **6. Acceptance and Delivery**

- 6.1. The Buyer agrees to accept the Goods once the Goods leave Stream Water Appliances (or designated third party supplier) premises. Any goods become the Buyer's sole risk once the Goods leave Stream Water Appliances premises, irrespective of which party organised the transport or the method utilised. It is the responsibility of the buyer to organise suitable insurance for, loss, damage or any other related matter.
- 6.2. Delivery dates are estimates quoted in good faith, based on data available at the time. Delay by Stream Water Appliances in providing delivery of the Goods for any reason will not entitle the Buyer to repudiate or terminate this Agreement or be reimbursed or indemnified for any damage or loss by reason of the delay.
- 6.3. The Buyer acknowledges that no goods are insured by Stream Water Appliances, in relation to storage, transportation or any part of the delivery processes.
- 6.4. Stream Water Appliances will endeavour to ensure all product deliveries are acceptable to the Buyer. However Stream Water Appliances accepts no responsibility for site deliveries, where appropriate personnel or equipment are not available to properly manage requirements or sign applicable proof of delivery or acceptance documents.

## **7. Force Majeure**

- 7.1. Subject to clause 7.4, a party's obligations under the Agreement will be suspended during the time and to the extent a party is prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.
- 7.2. If a party is affected by a Force Majeure Event, it must:
  - 7.2.1. as soon as reasonably possible after being affected, give the other party particulars of the Force Majeure Event and the manner in which the performance of the obligations will be prevented or delayed; and
  - 7.2.2. take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that the party is not obliged to settle a strike, lockout or other labour difficulty.
- 7.3. A Force Majeure Event does not relieve a party from liability for an obligation which arises before the occurrence of such event.
- 7.4. The parties agree that:
  - 7.4.1. a Force Majeure Event affecting the Buyer does not relieve the Buyer from an obligation to pay money at the time and in the manner provided for in this Agreement;
  - 7.4.2. If a Force Majeure Event prevents or delays Stream Water Appliances from performing its obligations, the Buyer's obligation to pay money in relation to a Good and/or Service that has not yet been supplied by Stream Water Appliances is suspended until that Good and/or Service is supplied.

## **8. Transfer of Property and Risk**

- 8.1. Property in and title to each unit of the Goods supplied by Stream Water Appliances shall not pass to the Buyer until payment of the Price of the Goods has been received by the Stream Water Appliances in full (each unit being considered as a whole). In this instance "Goods supplied" includes complete products, accessories, spare parts, and any associated components supplied by Stream Water Appliances.
- 8.2. Until property of the Goods passes to the Buyer, the Buyer shall, unless otherwise agreed by Stream Water Appliances in writing, store the Goods as bailee, in a manner and location considered suitable to Stream Water Appliances, ensuring the product/s are clearly identified as being the property of Stream Water Appliances and remain in the condition as supplied. Should any damage occur to the product, packaging or associated components during this time, then all related costs of rectification/replacement will be the responsibility of the Buyer.
- 8.3. If the Buyer fails to make payment in accordance with these Terms and Conditions, or Stream Water Appliances reasonably believes the Buyer is unable to make payment for the Goods within prescribed terms, the employees, agents and/or contractors of Stream Water Appliances shall be entitled to enter any premises in which the Goods are stored to repossess the Goods, without being in any way liable to trespass.

## **9. Disclaimer, Limitation of Liability and Release**

- 9.1. To the maximum extent permitted by law:
  - 9.1.1. Stream Water Appliances liability in relation to the performance or otherwise of our obligations under the Agreement (including in respect of any, liabilities, losses, damage, damages, penalties, fines, taxes, judgments, costs and legal and other expenses, whether arising in tort (including negligence) or otherwise) will not exceed the Price of the Goods and/or Services under the Agreement.
  - 9.1.2. Stream Water Appliances will not be liable to the Buyer for any loss of profits or any consequential or indirect loss of any nature whatsoever, including loss of use, revenue or any loss of business, production, contract or goodwill.
  - 9.1.3. Stream Water Appliances will not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in or failure to deliver the Goods in whole or in part.
  - 9.1.4. The Buyer release Stream Water Appliances and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death arising from the Buyer's use of the Goods, including if that damage or loss results from our negligence.
  - 9.1.5. Stream Water Appliances will not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any incorrect data supplied by the Buyer, particularly relating to product selection and operation, resource availability, location and dimensional details.
  - 9.1.6. This clause does not limit any rights that a consumer may have under the Australian Consumer Law.

## **10. Indemnity**

- 10.1. Without limiting any other clause of these Terms and Conditions, to the maximum extent permitted by law, the Buyer indemnify Stream Water Appliances and its directors, officers, agents, employees and contractors (jointly and severally, the **Indemnified Persons**) and keep each of the Indemnified Persons indemnified against all loss, actions, claims, proceedings, costs, expenses (including legal fees), claims and damages in respect of which the Indemnified Persons shall or may become liable (whether during or after the provision of the Goods and/or Services) arising from or in relation to any one or more of the following:
  - 10.1.1. breach of the Agreement by the Buyer;
  - 10.1.2. any wrongful, willful or negligent act or omission of the Buyer or any of its employees, agents or contractors;
  - 10.1.3. the storage, handling or use of any Goods in a manner inconsistent with any instructions or directions given to the Buyer by Stream Water Appliances or the manufacturer of the Goods, sold under or in connection with the Agreement, except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, willful or negligent act or omission of us or any of our employees, agents or contractors;
  - 10.1.4. any injury or loss sustained by any person who is employed or engaged by the Buyer as an employee, agent or contractor for the purpose of (among other things) the performance of the Buyer's obligations under the Agreement and who suffers any injury or loss arising out of or in the course of such employment or engagement by failing to use the Goods in a manner consistent with any instructions or directions given to the Buyer by Stream Water Appliances or the manufacturer of the Goods; or
  - 10.1.5. the Buyer failing to:
    - 10.1.5.1. use or maintain the Goods in a manner consistent with any instructions or directions given to the Buyer by Stream Water Appliances or the manufacturer of the Goods;
    - 10.1.5.2. comply with any law relating to the labelling or use of the Goods;
    - 10.1.5.3. take any other reasonable precautions to bring to the attention of potential users of the Goods and Stream Water Appliances

- dangers associated with the Goods, and to detect any matters in relation to which Stream Water Chillers become liable;
- 10.1.5.4. otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods or any directions or instructions given by us in relation to the Goods.

## 11. Warranty

- 11.1. All Stream Water Appliances Goods are manufactured to quality standards and covered, on a back to base basis, for a 12 month period (from date of despatch).
- 11.2. Stream Water Appliances warrants that it will perform any Services in a timely manner and in accordance with these terms and Conditions and any applicable laws.
- 11.3. Stream Water Appliances warrants that if Goods supplied by it are found to be defective in workmanship or materials within the warranty period (as stated by the manufacturer of the Good), which begins at the date of the despatch of the Goods by Stream Water Appliances, Stream Water Appliances will, as it elects:
- 11.3.1. rectify or repair the defect;
  - 11.3.2. replace the Goods; or
  - 11.3.3. recompense the Buyer for the defective Goods.
- 11.4. In order to claim the Warranty outlined in clause 11.3, the Buyer must:
- 11.4.1. comply with these Terms and Conditions;
  - 11.4.2. comply with the proper usage of goods; and
  - 11.4.3. ensure that all servicing and maintenance procedures have been completed as instructed by Stream Water Appliances, at the appropriate timing indicated by Stream Water Appliances.
- 11.5. If the Buyer wishes to claim the Warranty for any Good/s, the Warranty is provided strictly on a back-to-base basis. The Buyer should contact Stream Water Appliances and the parties will arrange for the Goods to be returned to Stream Water Appliances. When Stream Water Appliances has received the Good/s from the Buyer, it will assess the Good/s and if the Good/s are deemed by Stream Water Appliances to be faulty and covered by the Warranty, then Stream Water Appliances will, as it sees fit, dependent upon the instance:
- 11.5.1. rectify or repair the defect;
  - 11.5.2. replace the Goods; or
  - 11.5.3. recompense the Buyer for the defective Goods.
- 11.6. To the maximum extent permitted by law, freight costs for returning the Goods must be paid by the Buyer. If the Buyer has a valid claim under Stream Water Appliances warranty or the Australian Consumer Law, Stream Water Appliances will reimburse the Buyer for the freight costs.
- 11.7. If the returned Good/s are deemed to have failed due to factors not covered by Stream Water Appliances Warranty or those implied by the Australian Consumer Law, all freight costs and other associated costs of returning the Goods, will be the Buyer's responsibility.
- 11.8. Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify any condition, guarantee, warranty, right or remedy implied by law (including, without limitation, the *Competition and Consumer Act 2010* (Cth) where to do so would contravene the law or cause any part of these Terms and Conditions to be void.
- 11.9. The warranty specified in clause 11.3 is in addition to the rights which are available to a consumer under the *Competition and Consumer Act 2010* (Cth). Subject to clause 11.3, all conditions, guarantees and warranties as to the acceptable quality, condition, fitness for purpose or correspondence with description or sample of the goods, except where such exclusion would contravene the law of cause any part of these Terms and Conditions to be void.
- 11.10. To the maximum extent permitted by law, where Stream Water Appliances is liable for breach of this Agreement or a condition, guarantee or warranty implied by the Australian Consumer Law, being Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (other than section 51, 52 and 53), to the maximum extent permitted by law, Stream Water Appliances liability is limited at the election of Stream Water Appliances to:
- 11.10.1. In relation to Goods:
    - 11.10.1.1. the replacement of the goods or the supply of equivalent goods;
    - 11.10.1.2. the repair of the goods;
    - 11.10.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - 11.10.1.4. the payment of the cost of having the goods repaired,
  - 11.10.2. in relation to Services:
    - 11.10.2.1. supplying the Services again; or
    - 11.10.2.2. payment of the cost of having the Services supplier again.

## 12. Website

- 12.1. The materials displayed on Stream Water Appliances website (**the Site**), including without limitation all information, text, materials, graphics, software, tools, results derived from the use of software and tools, advertisements, names, logos and trade marks on the Site (**Content**) are protected by copyright, trade mark and other intellectual property laws unless expressly indicated otherwise on the Site.
- 12.2. The Buyer must not modify, copy, reproduce, republish, frame, download onto a computer, upload to a third party, post, transmit or distribute this Content in any way except as expressly provided for in these General Conditions or with our express prior written consent.
- 12.3. The Site may contain links to third party sites (**Linked Sites**). Linked Sites are not under our control and we are not responsible for the content of any Linked Site or any hyperlink contained in a Linked Site (**Subsequent Site**). The Buyer links to any Linked Site or Subsequent Site entirely at its own risk.
- 12.4. Although Stream Water Appliances has no reason to believe that any information contained on the Site is inaccurate, Stream Water Appliances does not warrant the accuracy, adequacy or completeness of the information on the Site.
- 12.5. Stream Water Appliances does not accept responsibility for loss suffered as a result of the Buyer's reliance on the accuracy or currency of information contained in the Site. Stream Water Appliances and our directors, officers, agents, employees and contractors do not guarantee or warrant the Site will be uninterrupted, without delay, error-free, omission-free or free of viruses. The content is provided "as is" without warranties of any kind, express or implied, including as to accuracy, timeliness and completeness.



### **13. Termination**

- 13.1. Either party may terminate the Agreement with immediate effect by giving written notice to the other (**Defaulting Party**) if the Defaulting Party:
- 13.1.1. breaches any of its obligations under this Agreement and does not rectify the failure (where the failure is rectifiable) within 5 Business Days of receiving notice of the breach from the non-defaulting party; or
  - 13.1.2. becomes the subject of bankruptcy proceedings, is placed in receivership or judicial administration, goes into liquidation or becomes subject to a similar legal process, ceases to carry on its business or takes any action for the purposes of preparing for or giving effect to any of the foregoing events.
- 13.2. Either party may terminate the Agreement for convenience by giving 1 month's written notice to the other party.
- 13.3. On the termination of the Agreement, the Agreement is at an end as to its future operation except that termination will not affect any rights or obligations which may have accrued prior to termination.
- 13.4. Despite any other term, on termination of the Agreement:
- 13.4.1. all Purchase Orders (whether or not accepted by Stream Water Appliances at the time of termination) will be automatically cancelled unless otherwise directed in writing by Stream Water Appliances; and
  - 13.4.2. The Buyer must within 5 Business Days, pay all amounts owing to Stream Water Appliances, whether otherwise due at that time or not.

### **14. Installation**

- 14.1. If the Buyer organises installation of any Good or part of a Good, supplied by Stream Water Appliances, the installation must comply with:
- 14.1.1. all installation recommendations and instructions supplied by Stream Water Appliances or the manufacturer; and
  - 14.1.2. all industry, HSE and legal requirements and guidelines.
- 14.2. Stream Water Appliances will not be held responsible for any failure on behalf of the Buyer for not complying with clause 14.1.
- 14.3. Stream Water Appliances will endeavour to provide advice and assistance to the Buyer regarding installation of the Goods, however it is the Buyer's responsibility to ensure that prior to any purchase of Goods, all necessary installation requirements and associated costs have been considered and accounted for.

### **15. Operation and Maintenance**

- 15.1. The Buyer is required to operate the Goods in the manner designated by Stream Water Appliances and any related manufacturer's instructions and for the sole purpose that the Goods were designed.
- 15.2. Due to the nature of the Goods supplied and their potential health risks, the Buyer must ensure that the Goods are operating safely and maintained adequately at all times, and pose no health risk to users.
- 15.3. The Buyer must ensure that a suitability qualified person / organisation, is engaged to undertake any installation and / or service requirements. Stream Water Appliances can provide support to clients throughout this process.

### **16. Dangerous and Hazardous Goods**

- 16.1. Some Goods or parts of Goods supplied by Stream Water Appliances, may be considered to be hazardous or dangerous. Stream Water Appliances will provide appropriate notification, documentation and directions as to how the Goods should be used and handled, as required, for these Goods.
- 16.2. If the Buyer purchases Goods that are considered to be hazardous or dangerous from Stream Water Appliances, it is the Buyer's responsibility to ensure that they and their employees, agents and/or contractors who come in contact with the Goods, comply with any documentation or directions given by Stream Water Appliances and all applicable laws and recommendations in relation to those Goods.

### **17. Transport**

- 17.1. If the Buyer does not nominate a transport company during the order process; Stream Water Appliances will arrange all appropriate actions utilising their preferred carrier, with all costs for transport being incurred by the Buyer.
- 17.2. It should be noted that if any Hazardous or Dangerous Goods are to be shipped, additional costs will be incurred by the Buyer for transport of the Goods.
- 17.3. The transport carrier for the Goods and the costs for transport, including any additional costs for transport, will be detailed on the Purchase Order.

### **18. Personal Property Securities Act 2009 Cth (PPSA)**

- 18.1. In this clause financing statement, security agreement, security interest, interested person, register and proceeds has the meaning given to it by the PPSA.
- 18.2. The Buyer acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of section 20 the PPSA and that a security interest exists in all Goods (and their proceeds) supplied by Stream Water Appliances to the Buyer from time to time.
- 18.3. Stream Water Appliances may perfect its security interest by lodging a financing statement on the PPSA register.
- 18.4. The Buyer must execute any documents and do such further acts as may be required by Stream Water Appliances to register its security interest, with the priority it requires, and to maintain that registration.
- 18.5. To the maximum extent permitted by law, all costs incurred by Stream Water Appliances in registering or lodging a financing statement or a financing change statement must be paid by the Buyer to Stream Water Appliances on demand.
- 18.6. The Customer, to the maximum extent permitted by law, waives its rights under sections 95, 118, 121, 130, 132 and 135 of the PPSA and any rights to receive from Stream Water Appliances, any notice under the PPSA (including, without limitation, a statement of account or notice of a verification statement) unless the notice is required by the PPSA and the relevant requirement cannot be excluded.
- 18.7. The Buyer 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 (as defined in the PPSA) granted to Stream Water Appliances Chillers under these Terms and Conditions.
- 18.8. The Buyer irrevocable grants to Stream Water Appliances the right to enter upon the Buyer's property or remises, without notice, and with Stream Water Appliances out being in any way liable to the Buyer or to any third party, if Stream Water Appliances has cause to exercise any of rights under section 123 and/or section 128 of the PPSA, and the Buyer shall indemnify Stream Water Appliances from any claims made by any third party as a result of such exercise.

## **19. General**

### **19.1. Jurisdiction**

These Terms and Conditions and the transactions contemplated by the Terms and Conditions, shall be governed by or construed in accordance with the laws from time to time of the Australian State or Territory in which delivery of the Goods takes place.

### **19.2. Severance**

If any clause or part of these Terms and Conditions not being of fundamental nature is held to be void, illegal or unenforceable in a jurisdiction, it is severed for that jurisdiction. The validity and enforceability of the remainder of these Terms and Conditions shall not be affected.

### **19.3. No Waiver**

Should Stream Water Appliances not enforce any provision of these terms and conditions, it should not be treated as a waiver of any provision, nor shall it affect Stream Water Appliances ability to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

### **19.4. Sub-Licenses**

Each party may license or sub-contract all or any part of its rights and obligations with the prior written consent of the other party.

### **19.5. Authorisation**

The Buyer warrants the power to enter into this Agreement having obtained appropriate authorisation and confirms that there are no impediments (including insolvency) restricting the progress of this transaction.

### **19.6. Business or Ownership Change**

Should either party undergo any relevant business or ownership changes, then the other party must be notified as soon as possible and at least 14 days of the change occurring.

### **19.7. Terms and Conditions – Changes**

Any variation of this Agreement must be acknowledged in and consented to in writing by both parties.

## **20. Reseller Terms**

20.1. Application: This clause 20 applies only where the Buyer is a Reseller.

### **20.2. Reseller Appointment**

20.2.1. A Buyer is only a Reseller if Stream Water Appliances has issued a Reseller Appointment in writing.

20.2.2. Stream Water Appliances may impose reasonable conditions in a Reseller Appointment and/or Reseller Schedule (including Territory, Approved Channels, reporting and training requirements).

20.2.3. Unless expressly stated otherwise in a Reseller Appointment, the Reseller Appointment is non-exclusive.

### **20.3. No agency or authority**

20.3.1. The Reseller is an independent contractor and must not represent that it is an agent, partner, employee or legal representative of Stream Water Appliances.

20.3.2. The Reseller has no authority to bind Stream Water Appliances or make any representation, warranty or guarantee on behalf of Stream Water Appliances except as expressly set out in Authorised Materials.

### **20.4. Territory and channels**

20.4.1. The Reseller must only promote and sell the Goods in the Territory (if any).

20.4.2. The Reseller must only sell the Goods through Approved Channels and must not sell the Goods through Prohibited Channels.

20.4.3. The Reseller must not export the Goods or sell the Goods for export outside the Territory (if any) without Stream Water Appliances prior written consent.

20.4.4. The Reseller must not appoint sub-resellers, distributors or agents for the Goods without Stream Water Appliances prior written consent, despite clause 19.4.

### **20.5. Brand and marketing controls**

20.5.1. The Reseller acknowledges that Stream Water Appliances owns (or controls) all right, title and interest in the Brand and all related goodwill.

20.5.2. During the term of the Reseller Appointment, Stream Water Appliances grants the Reseller a limited, revocable, non-transferable, non-exclusive license to use the Brand solely to promote and sell the Goods, strictly in accordance with Authorised Materials, the Reseller Appointment and these Terms and Conditions.

20.5.3. The Reseller must not create, publish or distribute any marketing materials relating to the Goods or Brand that are not Authorised Materials without Stream Water Appliances prior written approval.

20.5.4. The Reseller must not make any product performance, health, filtration, certification or compliance claims except as contained in Authorised Materials.

20.5.5. The Reseller must not register, acquire or use any business name, domain name, social media handle, page name or advertising identifier that contains or is confusingly similar to the Brand without Stream Water Appliances prior written consent.

20.5.6. The Reseller must immediately remove or amend any material (including online content) when reasonably directed by Stream Water Appliances.

### **20.6. Resale pricing and conduct**

20.6.1. The Reseller is responsible for setting its own resale prices. Stream Water Appliances may provide recommended retail prices only.

20.6.2. The Reseller must not engage in misleading or deceptive conduct (or conduct likely to mislead or deceive) in relation to the Goods or Brand, including in relation to warranty, performance, suitability, certification, delivery timeframes or servicing.

20.6.3. The Reseller must promptly notify Stream Water Appliances of any material complaint trend, suspected safety issue, or suspected counterfeit or non-genuine product relating to the Goods.

### **20.7. Product integrity and handling**

20.7.1. The Reseller must store, handle and transport the Goods in accordance with Stream Water Appliances instructions and any manufacturer requirements.

20.7.2. The Reseller must not alter, relabel, repack, refurbish, reverse engineer or tamper with the Goods without Stream Water Appliances prior written consent.

20.7.3. The Reseller must not remove, obscure or modify any serial numbers, compliance labels or product identifiers.

Stream Water Appliances

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- 20.7.4. The Reseller must not represent used, refurbished or reconditioned Goods as new.
- 20.8. Installation, service and maintenance (where applicable)
- 20.8.1. Where installation, commissioning, operation or servicing is required, the Reseller must ensure that the work is performed by suitably qualified and appropriately licensed persons and in accordance with:
- (a) clause 14 (Installation);
  - (b) clause 15 (Operation and Maintenance); and
  - (c) any manufacturer and Stream Water Appliances recommendations and instructions.
- 20.8.2. The Reseller must not represent itself as an "authorised service agent" of Stream Water Appliances unless expressly approved in writing by Stream Water Appliances.
- 20.8.3. The Reseller must keep accurate records of installations and servicing it arranges for the Goods and must provide those records to Stream Water Appliances upon reasonable request.
- 20.9. Warranty, End Customers and recalls
- 20.9.1. The Reseller must not provide any warranty, guarantee or representation on behalf of Stream Water Appliances except as expressly stated in Authorised Materials and/or the warranty documentation supplied with the Goods.
- 20.9.2. The Reseller must not do anything which may invalidate manufacturer warranties or Stream Water Appliances warranty processes (including any failure to comply with maintenance requirements).
- 20.9.3. If Stream Water Appliances issues a recall, safety notice or corrective action, the Reseller must immediately:
- (a) cease sale of affected Goods.
  - (b) quarantine affected stock; and
  - (c) reasonably cooperate with Stream Water Appliances directions (including communications to End Customers, returns and rectification).
- 20.10. Customer information and privacy
- 20.10.1. To the extent permitted by law, the Reseller must collect and provide to Stream Water Appliances End Customer information reasonably required for:
- (a) warranty registration and warranty administration.
  - (b) servicing schedules and maintenance reminders; and
  - (c) product safety notices, recalls and corrective actions.
- 20.10.2. The Reseller must comply with all applicable privacy laws and ensure any End Customer notices/consents required to share information with Stream Water Appliances are obtained.
- 20.11. Reporting and audit
- 20.11.1. The Reseller must provide sales and activity reporting in the form and frequency reasonably required by Stream Water Appliances (including as set out in any Reseller Schedule).
- 20.11.2. On reasonable notice, Stream Water Appliances may request evidence of the Reseller's compliance with this clause 20 (including channel compliance, marketing approvals and service records) and the Reseller must reasonably cooperate.
- 20.12. Insurance:
- The Reseller must maintain insurance appropriate to its activities (including public liability and, where applicable, product liability) at levels reasonably required by Stream Water Appliances and provide certificates of currency upon request.
- Suspension, withdrawal and termination of Reseller Appointment
- 20.12.1. Without limiting clause 13, Stream Water Appliances may suspend or withdraw a Reseller Appointment immediately by written notice if the Reseller:
- (a) sells through Prohibited Channels or outside the Territory (if any);
  - (b) misuses the Brand or publishes unapproved marketing;
  - (c) makes unauthorised claims, warranties or representations;
  - (d) tampers with, repackages or modifies the Goods without approval; or
  - (e) does anything that materially damages or risks materially damaging Stream Water Appliances reputation or the Brand.
- 20.12.2. A suspension or withdrawal under clause 20.13.1 is without prejudice to any other rights Stream Water Appliances may have under these Terms and Conditions or at law.
- 20.13. Suspension, withdrawal and termination of Reseller Appointment
- 20.13.1. On withdrawal/termination of the Reseller Appointment (for any reason), the Reseller must immediately:
- (a) cease all use of the Brand;
  - (b) remove the Brand from all websites, listings, advertisements, social media pages and collateral under its control; and
  - (c) cease representing any ongoing authorised relationship with Stream Water Appliances.
- 20.13.2. Any sell-off of remaining stock after withdrawal/termination is only permitted if Stream Water Appliances gives prior written consent and may be subject to conditions (including time limits and channel restrictions).