

1 Application,

1.1 Application of Terms

- 1.1.1 Unless otherwise specifically agreed in writing, we supply Goods and/or Services on these Terms of Trade only.
- 1.1.2 You agree to be bound by these Terms of Trade.
- 1.1.3 Upon acceptance by us of an Order, that Order may not be cancelled or varied by you without our written consent.
- 1.1.4 Our agents or representatives are not authorised to make any representations, statements, conditions or agreements not expressed by our General Manager in writing, nor are we bound by any such unauthorised statements.

2 Terms of Agreement

2.1 Quotes

- 2.1.1 Any quote or quotation given to you by us will lapse 20 Business Days from the date of that quote, unless we have given a different time period in writing.
- 2.1.2 We may withdraw a quote prior to your acceptance of it by notifying you in writing.
- 2.1.3 Quoted prices apply only to the full quantities of all Goods specified in the quote or the cost of Services specified in the quote, this provision being subject to Sub-Clause 2.3.3.
- 2.1.4 By accepting a quote, either in writing or verbally, you are deemed to have made an Order for the Goods and/or Services specified in the quotation.

2.2 Orders

- 2.2.1 We may accept or decline to accept any Order for Goods and/or Services at our sole and absolute discretion.
- 2.2.2 We reserve the right to cancel an Order we have accepted without any liability to you if the Goods and/or Services are not available or are no longer available, or fulfilling the Order becomes impracticable or uneconomic due to any cause beyond our reasonable control.
- 2.2.3 You may request your order be changed or cancelled by making a request to us in writing. If we accept your change or cancellation, you agree to reimburse us for any reasonable costs incurred in connection with that change or cancellation.

2.3 Price

- 2.3.1 The price for the Goods and/or Services is either:
 - (a) The price agreed between us and you when the Order was made; or
 - (b) The price is set by us at the date of delivery and/or the date at which the Services are completed.
- 2.3.2 All prices are in New Zealand dollars unless stated otherwise.
- 2.3.3 Despite Sub-Clauses 2.1.3 and 2.3.1, we reserve the right to vary the agreed price where:

- (a) There has been an increase in the cost of providing the Goods and/or supplying the Services beyond our reasonable control between the date the price was agreed and the Goods are delivered and/or the Services are provided; and
- (b) Where it is necessary for alterations to specifications of Goods and/or Services after an Order has been placed and accepted by us

2.3.4 Unless otherwise agreed in writing, all prices are exclusive of:

- (a) Delivery charges;
- (b) GST; and/or
- (c) Other government duties, levies or taxes in respect of the Goods, whether incurred in New Zealand or elsewhere.

These will be the responsibility of and to the cost of you. Where the payment of such taxes or duties is our responsibility at law, the price will be increased by the amount of such taxes or duties.

3 Payments

3.1 Payments

- 3.1.1 Unless otherwise agreed by us in writing:
 - (a) We will issue invoices monthly, or at key progress points, or upon completion of Services, or prior to delivery of Goods; and
 - (b) payment must be made by the 20th day of the month following the invoice date.

3.1.2 You agree to make payments without set-off or deduction of any kind.

3.1.3 Notwithstanding 3.1.1, we reserve the right to delay Delivery until all monies owed to us by you are received by us in cleared funds.

3.2 Default

3.2.1 Without prejudice to any other rights or remedies that we may have against you, if we have reasonable cause to suspect a Default Event has occurred or is about to occur, then we may at any time without notice, and using agents if we choose, enter upon any land, premises or property where Goods may be and, in addition to all rights we may have under the PPSA, remove the Goods and you shall hold us harmless accordingly.

3.2.2 Where we choose to exercise our rights under Sub-Clause 3.2.1, you irrevocably warrant that you shall:

- (a) grant us or our agents the right to enter any land, premises or property on demand; and
- (b) surrender the Goods to us on demand.

- 3.2.3 You warrant to us that the permission of the Landlord or Registered Proprietor (if and as applicable) has been obtained so that we or our agent can enter upon the land, premises or property and exercise its rights under Sub-Clause 3.2.1. Where said permission has not been obtained, you agree to indemnify us against any costs arising from your breach of this warranty.
- 3.2.4 If we remove Goods, your right to possession of those Goods and to sell or dispose of those Goods immediately ends.
- 3.2.5 We will not be liable for any loss or damage suffered by you as a result of our exercise or attempt to exercise our rights under this Section.
- 3.2.6 You indemnify us for any cost, expense, loss or damage we incur to remedy any breach of these Terms of Trade by you, and/or in the exercise or attempted exercise of our rights under these Terms of Trade, including but not limited to legal costs incurred by us on a solicitor/client basis and any debt recovery fees which can be incurred at our sole discretion without any reference to you.
- 3.2.7 If payment is not made by the due date for payment, then we may charge default interest at the rate of 14% per annum. The interest will be calculated daily from the date payment was due until the date payment is received by us. We may apportion payments to outstanding accounts as we see fit.
- 3.2.8 We may choose to postpone our performance of any Services and require payment from you before we resume performance of Services; or we may terminate Services without notice to you if a Default Event occurs. In the event of termination of an Order following a Default Event, these Terms of Trade remain in force.
- 3.2.9 In the event that we terminate our agreement for Goods and/or Services under Sub-Clause 3.2.8, then you indemnify us against any losses or damages incurred by us due to non-performance of any relevant contracts we held with third parties.

4 Risk and Delivery

4.1 Risk

- 4.1.1 Risk of damage to or loss or deterioration of the Goods passes to the Customer on Delivery, notwithstanding that we may have arranged or effected Delivery of the Goods.
- 4.1.2 If you fail or refuse to accept Delivery, then the Goods are treated as having been delivered when we deem the Goods were ready for Delivery.

4.2 Insurance

- 4.2.1 You must make your own arrangements for insurance of the Goods, from the point of time at which the Goods are at your risk.
- 4.2.2 You shall remain liable to us for all amounts payable by you, notwithstanding damage to or loss or deterioration of the Goods following Delivery.

- 4.2.3 We are under no obligation to insure Goods against damage, destruction or deterioration from the time that the risk in the Goods passes to you and you hereby indemnify us against any loss, claim, liability or payment incurred by us (directly or indirectly) on account of any Goods suffering damage, loss or deterioration or otherwise on or after Delivery.

4.3 Delivery

- 4.3.1 We reserve the right to deliver the Goods by instalments with Delivery of each instalment deemed a separate Order under the same provisions of the main Order. Should we fail to deliver or make defective delivery of one or more instalments, this does not entitle you to dispute the main Order.
- 4.3.2 We may charge storage and transportation expenses if you fail or refuse to accept Delivery or indicate to us that you will fail or refuse to accept Delivery at the time specified in the Order or at any other times as we are able to deliver the Goods.
- 4.3.3 Any stated or agreed delivery date is an estimate and is not a binding commitment on our part. We will endeavour to have the Goods delivered and/or complete the Services on time but are not liable to you for failure to do so and that failure does not entitle you to cancel the Order or seek costs/damages from us.

5 Security

5.1 Title

- 5.1.1 Title of Goods shall not pass to you until we receive payment of all moneys owing in full cleared funds and you have performed all your other obligations under these Terms of Trade (other than Section 8 which is ongoing).
- 5.1.2 Title of all tools and equipment used by us in performing any Services for you shall at all times remain with us.

5.2 Personal Property Securities Act

- 5.2.1 By virtue of retention of title under Clause 5.1, you acknowledge that these Terms of Trade constitute a security agreement for the purposes of the PPSA; and you grant to us:
 - (a) A security interest in all Goods supplied by us to you, and all Goods that will be supplied in the future by us to you during the continuance of your and our relationship; and
 - (b) A security interest in all Goods as security for payment of all moneys owing by you to us in all Goods supplied by us to you and their proceeds.
- 5.2.2 You undertake to:
 - (a) Do all acts and provide all information we reasonably require to register a financing statement or financing variation statement on the PPSR;

- (b) Advise us immediately in writing of any proposed change in your name or other details on the PPSR;
 - (c) Indemnify, and upon demand reimburse, us for all expenses incurred in registering a financing statement or financing variation statement on the PPSR or releasing any Goods secured thereby;
 - (d) Not to register a financing variation statement or a change demand without our prior written consent;
 - (e) Give us not less than ten (10) Business Days prior written notice of any proposed change in your name and/or any other change in the your details (including but not limited to, changes in the your address, facsimile number, or business practice); and
 - (f) Immediately advise us 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.
- 5.2.3 You waive your right to receive a verification statement regarding any financing statement or financing variation statement in relation to the security interest.
- 5.2.4 You waive your right and, with our agreement, contract out of your rights under sections 116, 120(2), 121 of the PPSA.
- 5.2.5 You agree that nothing in sections 114, 132, 133 and 134 of the PPSA shall apply and, with our agreement, contract out of such sections.
- 5.2.6 Unless the context otherwise provides, the terms and expressions used in this Section 5 have the meanings given to them in, or by virtue of, the PPSA.
- 5.2.7 Except as otherwise provided in the PPSA or other statute, our secured interest in the Goods shall have first priority over any other claims to such Goods.

6 Privacy

- 6.1.1 You authorise us to collect and hold your and/or your related parties' personal information from any source, to be used and disclosed for the following purposes:
- (a) Administering, whether directly or indirectly, Orders and enforcing our rights accordingly;
 - (b) Ascertaining at any time your creditworthiness and obtaining at any time credit reports, character references or credit statements; and
 - (c) Enabling us to notify any credit reporting agency of any application for credit or default on any obligation of yours to us and to provide such personal information to any credit agency so such credit agency can maintain correct records; and
 - (d) Enabling you to communicate with us for any purpose.

- (e) To any other entity in which we have a beneficial interest to enable such entity or entities to support us in the provision of Goods and/or Services.
 - (f) Provision to you of marketing materials and other products.
- 6.1.2 If you do not allow us to collect and use personal information, we may be unable to provide the Goods and/or Services.
- 6.1.3 Where you are an individual, the authorities under Sub-Clause 6.1.1 above, are authorities or consents for the purposes of the Privacy Act 2020.
- 6.1.4 In this Section 6, "related parties" means any guarantor of your obligations to us and, if you are a company, trust, and/or limited partnership, then the customer's directors, shareholders, trustees, limited partners, and/or general partners (and the general partner's directors and shareholders) as required or as applicable.

7 Warranties and Limitation of Liability

Read Section 7 Carefully

- 7.1 Warranties**
- 7.1.1 Unless we otherwise agree specifically in writing, this Section 7 provides our default warranty.
- 7.1.2 We warrant that the:
- (a) Goods supplied by us will be fit for the purpose of which you have notified us and to which we have agreed in writing and will be of merchantable quality.
 - (b) Services will be carried out in a good and workmanlike manner and the materials used in performing the Services will be fit for the purpose of which you have notified us and to which we have agreed in writing.
- 7.1.3 We do rely on information you provide us and expect you to stand by your responsibilities in this regard (you shall hold us harmless accordingly).
- 7.1.4 We will repair or make good any substantiated defect in our workmanship in Services provided if written notice of the claim is made immediately after any defect is suspected. We will investigate the claim as soon as practicable and if we agree that the claim is substantiated, we will repair or replace the non-conforming parts at our cost and as expediently as practicable. Travel time and related expenses may be at your cost if it is found any defect is not covered under your warranty.
- 7.1.5 You acknowledge and agree that we do not warrant in any way the performance and operation of those parts of goods that have not been modified by us. It is your responsibility to arrange warranties in respect of those parts. We advise that prior to undertaking further modifications, you are responsible to first check with us to ensure such modifications or work will not void our warranty or negatively impact our Services or Goods supplied.

7.1.6 If we fail to perform our warranty obligations under Sub-Clause 7.1.1, liability for such failure shall be subject to the limitations contained in Clause 7.2.

7.2 Limitation of Liability

7.2.1 Except as otherwise agreed in writing, any and all conditions, guarantees, warranties or representations including but not limited to those which might otherwise be implied by law, trade, custom or otherwise are expressly excluded to the maximum extent permitted by law. In particular, and without limitation:

- (a) All implied terms, conditions and warranties under Part 3 of the New Zealand Contract and Commercial Law Act 2017 are expressly excluded;
- (b) The provisions of the CGA are excluded to the maximum extent permissible by law; and
- (c) You agree and represent that it is acquiring Goods and/or Services from us for the purposes of trade in terms of section 2 and 43 of the CGA.

7.2.2 To the extent permitted by law, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or loss of profit or business) whether suffered or incurred by you or another person and whether in contract, tort or any other legal principle, or otherwise and whether such loss or damage arises directly or indirectly from Goods or Services provided by us to you.

7.2.3 Subject to Sub-Clauses 7.2.2 and 7.2.5, our liability shall be limited to the price charged to you, and none of our employees, contractors, agents, nor any manufacturer(s) of the materials or components of the Goods, will be liable to you for loss or damage of any kind howsoever that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning Goods to us or to any place we have reasonably specified), indirect or consequential loss, loss of contracts, loss of profits, damage caused by or arising from delays in manufacture or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, or faulty materials or components of the Goods.

7.2.4 Where you acquire Goods and/or Services for resale, your contracts with third parties must contain an equivalent provision to this Clause 7.2, in favour of us.

7.2.5 You indemnify us, our suppliers and manufacturers of any goods against any failure by you, our customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the CGA.

8 Intellectual Property and Confidentiality

8.1 Intellectual Property

8.1.1 All our intellectual property rights and interests in the Goods and/or Services remain our sole property.

8.1.2 In relation to any intellectual property handed to us by you, you shall indemnify us against any breach of intellectual property rights as assigned to any third party in respect to the Services undertaken.

8.2 Confidentiality

8.2.1 You will at all times treat as confidential all non-public information and material received from us.

8.2.2 We may require you to enter a mutual confidentiality agreement prior to any Goods and/or Services being provided to you.

9 Dispute Resolution

9.1 Good Faith Negotiations

9.1.1 The parties agree that before taking any court action, they will use their best efforts to resolve any dispute under or in connection with these Terms of Trade through good faith negotiations.

9.1.2 If the parties have not reached an agreement in accordance with Sub-Clause 9.1.1 within ten (10) Business Days of you providing Notice in Writing to us or our providing Notice in Writing to you of the dispute, then either party shall have the right to commence proceedings or other enforcement action as it sees fit.

9.1.3 Notwithstanding Sub-Clause 9.1.1, we may initiate debt recovery action including but not limited to the commencement of court proceedings for non-payment of invoices at any time and you agree to indemnify us for costs of recovery including but not limited to legal costs, interest charged, collection costs (including any barristers costs or charges by a debt collection agent), court fees and any costs of enforcement incurred by us and any debt recovery fees, which can be incurred at our sole discretion without any reference to you, the customer.

9.2 Right to Seek Relief

9.2.1 This Section 9 does not affect our right to seek urgent interlocutory and/or injunctive relief:

- (a) in any other court, orders granting interim relief or interim protective measures in support of proceedings to be brought before a New Zealand court; or
- (b) to enforce a New Zealand judgment in any other country.

10 Definition and Interpretation

10.1 Definitions

In these Terms of Trade:

- 10.1.1 "CGA" means Consumer Guarantees Act 1993.
- 10.1.2 "You" or "Your" means the person seeking Goods and/or Services from us.
- 10.1.3 "Default Event" means you:
 - (a) fail to pay us by the due date for payment for Goods and/or Services supplied to you;

- (b) breach any of the provisions of these Terms of Trade;
 - (c) become insolvent or is adjudged bankrupt;
 - (d) cease or threaten to cease trading;
 - (e) Have a receiver, liquidator, official assignee or statutory manager appointed over any of your assets; or
 - (f) Have any other event occur which gives us reasonable cause to believe that you may fail to meet your obligations to us.
- 10.1.4 **“Delivery”** (of Goods) to you takes place at the earlier of when: -
- (a) you or your agent collects Goods; or
 - (b) the Goods are dispatched from our premises.
- 10.1.5 **“Force Majeure”** means vis major, or an event, or an action that will give rise to a breach from an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, World Health Organisation pandemic (whether accepted by the New Zealand government or otherwise or the government of the Customer’s jurisdiction), prevention from or hindrance in obtaining any financial instrument or other supplies, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, bank intervention (including but not limited to freezing of accounts, refusal by a bank to release or move funds on a Party’s instructions, sanctions, injunctions or other forms of sanction or estoppel against the bank itself, failure or insolvency of the said bank), labour disputes of whatever nature and any other reason beyond our control.
- 10.1.6 **“Goods”** means any goods or materials sourced, produced or supplied by us as part of, incidental to or independently of our Services provided to you.
- 10.1.7 **“GST”** means Goods and Services Tax per the Goods and Services Tax Act 1985.
- 10.1.8 **“Invoice”** means any invoice issued by us.
- 10.1.9 **“Notice in Writing”** means notice delivered in writing and includes notice by email.
- 10.1.10 **“Order”** means an order, request or instructions for Goods and/or Services from us by you.
- 10.1.11 **“We”, “us” or “our”** means Blue H2O Filtration NZ Pty Ltd being a duly registered company in New Zealand, with NZBN N° 9429046524010.
- 10.1.12 **“PPSA”** means the Personal Properties Securities Act 1999.
- 10.1.13 **“PPSR”** means the Personal Property Securities Register.
- 10.1.14 **“Terms of Trade”** means these Terms of Trade and includes any schedules, Invoices, quotations, estimates and documents referred to in these Terms of Trade.
- 10.1.15 **“Services”** means any services provided to you by us whether in conjunction with, incidental to or independently of the supply of Goods or otherwise.

10.2 Interpretation

- 10.2.1 **Binding:** these Terms of Trade bind you, your employees, representatives, agents, assigns and successors.
- 10.2.2 **Clauses:** references to Clauses or Sub-Clauses, are references to these Terms of Trade’s Clauses and Sub-Clauses.
- 10.2.3 **Headings:** Headings are for ease of reference only and do not form any part of the context or affect the interpretation of these Terms of Trade.
- 10.2.4 **Plural and Singular:** singular words include the plural and vice versa.
- 10.2.5 **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships (limited or otherwise), joint ventures, associations, organisations, government departments, trusts, municipal authorities, state owned enterprises, in each case whether or not having separate legal personality.
- 10.2.6 **Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.
- 10.2.7 **Business Days:** Any reference to business days or days means the days on which we are open for ordinary business but does not include Saturday, Sunday or a nationally recognised public holiday.

11 General Terms

11.1 Signatories

Where you are a company, trust, or limited partnership, each of the directors, trustees, or general partner(s) or directors of the general partner(s) personally guarantee your obligations under these Terms of Trade (jointly and severally).

11.2 Severability

If any provision of these Terms of Trade shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and will remain enforceable to the greatest extent permitted by law.

11.3 Amendment to Terms of Trade

We reserve the right to amend these Terms of Trade from time to time. Notice of any amendments will be deemed to be delivered by way of updating the Terms of Trade on its website at www.bhfnz.com.

11.4 Waiver

No failure, forbearance or delay by us to exercise any right, power or remedy under these Terms of Trade will operate as a waiver of that right, power or remedy. A waiver of any right, power or remedy will not be effective unless that waiver is in writing from us. A waiver of any right arising from any breach of any term under these Terms of Trade will not be a continuing waiver of the right in relation to any other or subsequent breach.

11.5 No Partnership

Nothing contained in these Terms of Trade will be deemed or construed to constitute any party to be a partner, agent or representative of any other party, or to create any trust or commercial partnership.

11.6 Notices

11.6.1 Any notice or other communication given pursuant to these Terms of Trade must be in writing and must be served by one of the following means, and in respect of each is deemed to have been served as described:

(a) By personal delivery – when received by the other party;

(b) By post via registered or ordinary mail to the other party at their usual or last known place of residence or address – on the third working day following the date of posting; or

(c) By sending via electronic mail to the other party at their usual or last known email address – immediately upon clearing from the sending party’s outbox provided that a non-delivery report is not received by the sending party.

11.6.2 You shall at all times maintain an address for service in New Zealand with irrevocable authority to accept receipt of service, unless we otherwise agree in writing. If you fail to provide us with such an address, then you irrevocably authorise our accountants to accept receipt of service of proceedings for and on your behalf and you shall hold the nominated accountants harmless.

11.7 No Assignment

You may not assign any of your rights or obligations under these Terms of Trade without our prior written consent.

11.8 E&OE

We shall not be bound by any error or omission made by us on any invoice, quotation, estimate, or any other document issued by us.

11.9 Force Majeure event,

11.9.1 In the case of a Force Majeure reason, we shall not be in breach of our obligations or responsibilities under these Terms.

11.9.2 We will endeavour to notify you of a Force Majeure event.

11.9.3 The operation of these Terms of Trade (but not those under Clause 11.10) will be suspended during the period (and only during the period) in which the said Force Majeure reason continues, provided that

(a) immediately upon the reason ceasing to exist the party relying upon it must give written advice to the other of this fact.

(b) If the reason continues for a period of more than sixty (60) business days and/or substantially affects the commercial basis of the Order between us and you, the parties agree to consult together for the purposes of agreeing what action should be taken in the circumstances and, if appropriate, must negotiate in good faith to amend and modify appropriately the provisions and terms of the Order as necessary to deal with the reason for the inability to perform.

(c) If such negotiations are unsuccessful the party not claiming relief under this clause may terminate the Order upon giving twenty (20) business days written notice of such termination to the other party in which event Clause 11.10 shall apply.

11.10 Obligations to Survive Termination

Sections 3 (Payment), 5 (Security), 6 (Privacy), 7 (Warranties and Limitation of Liability) and 8 (Intellectual Property and Confidentiality) survive Termination.

11.11 Governing Law

11.11.1 These Terms of Trade are governed in accordance with the laws of New Zealand and any dispute under these Terms of Trade or action against us shall be subject to the exclusive jurisdiction of all Courts of New Zealand.

11.11.2 You accept that any proceedings issued against us may only be filed and heard in Hamilton, New Zealand and hold us harmless accordingly.