

1 Becoming bound by this Agreement

Without limiting the way in which the Buyer may become bound by this Agreement, the Buyer will become bound by this Agreement by placing an order with the Seller for the supply of Goods or Services or by the Buyer signing a copy of this Agreement.

2 Ordered Goods

- 2.1 The Goods and Services to be supplied by the Seller are as described on the invoices or Order Form as provided by the Seller to the Buyer.
- 2.2 The Seller may in its sole discretion refuse to supply part or all of any order of Goods or Services placed by the Buyer. The Seller is under no obligation to supply any Goods until it communicates to the Buyer in writing its acceptance of the Buyer's order.

3 Price And Payment

- 3.1 The Buyer will pay to the Seller ("Price"):
- (a) the purchase price for the Goods and/or Services indicated on the Order Form or on invoices provided by the Seller to the Buyer in respect of Goods or Services supplied or if no purchase price is so specified then the purchase price indicated on the Seller's current price list;
- (b) any handling fee, restocking fee, administration fee or other fees and charges levied by the Seller on the Buyer in relation to the supply of Goods or Services;
- (c) the cost of freight (if any) and any other disbursements of the Seller which are notified to the Buyer; and
- (d) any GST and any other taxes, duties, levies, withholdings, government ordinances and related fines, penalties or interest payable by the Seller in respect of the supply of the Goods or Services to the Buyer ("Taxes").
- 3.2 Unless expressly specified by the Seller to the contrary, the Price described on the Order Form or invoice is expressed to be exclusive of all Taxes and the Buyer shall pay such Taxes to the Seller at the same time and as part of paying the Price.
- 3.3 The Seller may by written notice to the Buyer at any time up to thirty days before delivery increase the Price of the Goods or Services to reflect any increase in costs to the Seller which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, Taxes, the cost of labour, materials and other manufacturing costs). The Buyer will have seven days from the receipt of such notice to cancel the order for the Goods or Services by written notice to the Seller. If the Buyer fails to provide such cancellation notice then the Buyer is deemed to have accepted the Price increase.
- 3.4 Unless stated to the contrary on a Seller's invoice or on the Order Form, the Buyer must pay the Seller the Price for the Goods and Services prior to their delivery to the Buyer. If any credit is granted by the Seller then payment will be as specified in the terms of the grant of credit.
- 3.5 The Seller may in its discretion withhold and/or delay delivery of the Goods or Services until the Buyer has paid the Price for them, in which event payment must be made before the delivery date.
- 3.6 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until the Seller has received cleared funds.
- 3.7 At the Seller's sole discretion, payment may be due at the date of this Agreement. The Seller may also require a deposit which the Buyer must pay by the due date specified by the Seller. The deposit paid by the Buyer is non-refundable unless the Buyer's order is cancelled by either party pursuant to **clauses 3.3 or 12.**

4 Delivery Of Goods / Services and Risk

- 4.1 Delivery of the Goods shall be made to the Buyer's address as indicated by the Buyer to Seller at the time of placing the order for the Goods. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer fails to make such arrangements then, at the Seller's discretion, delivery of the Goods shall be made to the Buyer at the Seller's address.
- 4.2 Where delivery of the Goods is made to the Buyer's address then unless specified to the contrary by the Seller, it will be made on an "Ex-works" basis. This will involve the following:
- (a) The Buyer will assume all risk and responsibility in respect of Goods and their delivery from the time that the Goods leave the Seller's premises.
- (b) If applicable, the Buyer will be responsible for arranging export clearance for the Goods however the Seller may, at the Buyer's request, organise this on the Buyer's behalf.
- (c) If requested by the Buyer, the Seller will organise airfreight or other agreed method of delivery. The Buyer however shall bear the cost and risk of delivery.
- 4.3 The Seller may deliver the Goods and Services by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Order Form or as specified on the Seller's invoices for the same.
- 4.4 Delivery of the Goods or Services 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 failure of the Seller to deliver shall not entitle either party to treat this Agreement as repudiated by the Seller.
- 4.6 The Seller shall not be liable for any loss or damage whatsoever caused to the Buyer due to a failure by the Seller to deliver the Goods or Services (or any of them) by any particular due date or at all.
- 4.7 The Buyer shall be responsible for insuring the Goods for the Price from the time that the Buyer assumes risk in the Goods until the time that the Seller is paid the Price by the Buyer.
- 4.8 Delivery and provision of any Services will take place on dates and times separately agreed between the parties.
- 4.9 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer (as determined under **clause 10**), 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 for the Goods. This applies whether or not the Price has become payable under this Agreement.

5 Liability and representations

- 5.1 The Buyer acknowledges that it has undertaken its own inspections and made its own independent enquiries in reaching its decision to purchase the Goods and/or Services.
- 5.2 The Buyer agrees that it will not make any representations about the Goods, Services or the Seller to the Buyer's customers or any other third party without obtaining the prior written consent of the Seller.
- 5.3 The Buyer acknowledges that the Seller has not made and will not make any express or implied warranties in relation to the Goods, Services or other goods or services provided under this Agreement other than those contained in this Agreement. Subject to **clauses 5.6 and 5.6** any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.
- 5.4 The Buyer agrees that the Seller shall not be liable in respect of any claim by the Buyer (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Goods, Services and/or any other goods or services under this Agreement and whether as a result of any breach, default, negligence or otherwise by the Seller.
- 5.5 Subject to **clauses 5.6 and 5.6**, the maximum liability of the Seller for any and all breaches of this Agreement and for any negligence or other tortious conduct in relation to this Agreement will be capped at the amount of the Price paid by the Buyer to the Seller under this Agreement.
- 5.6 In the event that the Fair Trading Act 1986 (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute into this Agreement, the liability of the Seller is limited, at the option of the Seller, to:
- (a) in the case of goods (including the Goods), any one or more of the following:
- (i) the replacement of the goods or the supply of equivalent goods or the payment of the cost of the same; or
- (ii) the repair of the goods or the payment of the cost of repair; or
- (b) in the case of services (including the Services), the supply of the services again or the payment of the cost of having the services supplied again.
- 5.7 Any of the terms and conditions contained herein which limit or exclude any term, condition or warranty, express or implied, or the liability of the Seller shall apply to the extent permitted by law and shall not be construed as excluding, qualifying or limiting the Buyer's statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by statute.

6 Defects / returns following delivery

- 6.1 The Goods will be deemed to have been delivered in accordance with this Agreement unless the Buyer, within seven days following receipt of the Goods notifies the Seller of any defect, shortage in quantity, damage or failure to comply with the Order Form. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way.
- 6.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject pursuant to **clause 6.1**, the Seller's liability is limited, in addition to any limitation under **clause 5**, to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of **clause 6.1**;
- (b) the Goods are returned in accordance with procedures specified by the Seller from time to time; and
- (c) the Goods are returned undamaged in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 6.3 The Seller may, in its discretion but it is not obligated to, accept any undamaged Goods for a credit or return. Any credit or return agreed to by the Seller may incur a restocking fee as specified by the Seller from time to time plus any freight.

7 Warranty Repairs

- 7.1 Subject to the conditions of warranty set out in this **clause 7**, the Seller warrants that if any defect in any workmanship in the Goods becomes apparent and is reported to the Seller within the warranty period as stipulated by the Seller at the time of sale (and in the absence of such stipulation, the warranty period will be 3 months) then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.
- 7.2 The warranty shall not cover, and the Supplier shall not have any liability or responsibility for, any defect or damage which may be caused or partly caused by or arise through:
- (a) failure on the part of the Buyer to properly maintain any Goods;
- (b) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller in respect of the Goods;
- (c) any use of the Goods otherwise than for any application specified on the Order Form or as specified by the Seller from time to time;
- (d) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; and/or
- (e) fair wear and tear, any accident or Act of God.
- 7.3 The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled by the Buyer without the Seller's written consent.
- 7.4 In respect of all warranty claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.
- 7.5 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

8 Intellectual Property

- 8.1 The copyright, design rights, patent rights and all other intellectual property rights of any kind whatsoever in the Goods and their designs and drawings (including any designs or drawings specifically created for the Buyer) shall remain vested in and owned by the Seller. Such Intellectual Property Rights shall only be used by the Buyer at the Seller's discretion and in accordance with terms specified by the Seller.

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- 8.2 The Buyer warrants that all designs or instructions provided by it to the Seller will not cause the Seller to infringe any copyright, patent, registered design or trademark in the execution of the Buyer's order.
- 9 Default & Consequences Of Default**
- 9.1 Interest on overdue amounts from the Buyer shall accrue daily from the date when payment becomes due until the date of payment at a rate of 1.5% compounding per calendar month.
- 9.2 If the Buyer defaults in payment of any amounts when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements arising from such default including legal costs on a solicitor and own client basis and in addition all of the Seller's third party costs of collection.
- 9.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation arising hereunder (including those relating to payment), the Seller may suspend or terminate the supply of Goods and Services to the Buyer and any of its other obligations under this Agreement. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 9.4 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller hereunder shall, whether or not due for payment, immediately become payable in addition to the interest payable under **clause 9.1** hereof.
- 10 Title**
- 10.1 Property in the Goods shall not pass from the Seller to the Buyer until:
- (a) the Seller has received from the Buyer, payment of the Price and all amounts owing for the particular Goods under this Agreement; and
- (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all agreements between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 10.2 Until such time as property in the Goods passes from the Seller to the Buyer:
- (a) The Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (b) The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made.
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee and licensee of the Buyer, where the Goods are situated and take possession of the Goods.
- (d) The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from its sale or disposal of the Goods on trust for the Seller.
- (e) The Buyer shall not deal with any money of the Seller in its possession in any way which may be adverse to the Seller.
- (f) The Buyer shall not encumber or charge the Goods in any way or otherwise grant any interest in the Goods while they remain the property of the Seller.
- (g) The Seller may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- (h) Until such time that ownership in the Goods passes to the Buyer, if the Goods are converted or made part of any end product, the parties agree that the Seller will be the owner of the end product.
- 11 Pledge**
- Any Goods which are the property of the Buyer which are placed in the possession of the Seller by the Buyer are pledged to the Seller and the Seller, if not paid in full for any amounts owing under this Agreement, has the right to deal with the Buyer's Goods in any way whatsoever.
- 12 Cancellation**
- The Seller may terminate this Agreement or cancel delivery of Goods to the Buyer at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13 Credit reporting**
- 13.1 The Buyer agrees to sign any consents or other forms required by the Seller under which it will consent, amongst other things, to the Seller obtaining credit information about the Buyer or providing a credit report in relation to the Buyer or exchanging credit information about the Buyer to third parties, including as outlined in this **clause 13**.
- 13.2 The Buyer agrees for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.
- 13.3 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers named in the application for credit or named in a consumer credit report issued by a reporting agency for the following purposes: (a) to assess a credit application by the Buyer; (b) to notify other credit providers of a default by the Buyer; (c) to exchange information with other credit providers as to the status of the credit account, where the Buyer is in default with other credit providers; and (d) to assess the credit worthiness of the Buyer.
- 13.4 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 13.5 The Buyer agrees that personal data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and the Seller or required by law from time to time:
- (a) provision of the Goods and/or Services;
- (b) marketing of the Goods and/or Services by the Seller or its agents;
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of the Goods and/or Services;
- (d) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer;
- (e) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and/or Services; or
- (f) providing information to potential guarantors of the Buyer's obligations to the Seller.
- 13.6 The Seller may give information about the Buyer to a credit reporting agency to obtain a consumer credit report about the Buyer and/or to allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 14 Definitions and Interpretation**
- 14.1 **"Act of God"** means any act of nature (including, fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war is declared or not), civil war, rebellion, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or a telecommunications service and any other similar act which is beyond the reasonable control of a party.
- 14.2 **"Buyer"** means the person who orders or purchases any Goods or Services from the Seller.
- 14.3 **"Goods"** means goods supplied by the Seller to the Buyer.
- 14.4 **"Price"** means the amounts payable by the Buyer to the Seller as specified in **clause 3.1**.
- 14.5 **"Order Form"** means the quotation, order form, work authorisation or any other similar forms which describe the Goods and Services to be provided by the Seller and any other particulars set out in this Agreement.
- 14.6 **"Seller"** means **BLUE H₂O FILTRATION NZ PTY LTD 125-025-489** and its successors and assigns.
- 14.7 **"Services"** means all services supplied by the Seller to the Buyer and includes any advice or recommendations in relation to the Goods.
- 14.8 **"this Agreement"** means the agreement between the Seller and the Buyer on the terms of this document.
- 14.9 In the interpretation of this Agreement unless the contrary intention appears:
- (a) the words "includes" or "including" will not limit whatever follows;
- (b) a reference to a person includes a reference to a corporation firm association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;
- (c) a reference to any legislation includes a reference to any modification or re-enactment;
- (d) an obligation upon two or more persons is borne by them jointly and severally; and
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 15 General**
- 15.1 Any notice given under this Agreement must be in writing and must be signed by the party or its agent giving the notice. A notice is taken to be received, in the case of a notice delivered by hand, when so delivered; in the case of a notice sent by pre-paid post, on the third day after the date of posting; or in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms that the facsimile has been successfully sent.
- 15.2 If any provision of this Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.3 This Agreement shall be governed by the laws of New Zealand and the parties consent to the jurisdiction of the Courts of New Zealand and their Courts of appeal.
- 15.4 The Buyer shall not set off against the Price amounts due from the Seller to the Buyer.
- 15.5 The Seller may license or sub-contract all or any part of its rights and obligations under this Agreement without the Buyer's consent.
- 15.6 The Seller reserves the right to review the terms and conditions of 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 at the later of (a) the date on which the Seller notifies the Buyer of such change; or (b) the date that the Buyer places its next order for Goods or Services after being notified of the change.
- 15.7 Apart from any obligation to pay money due under this Agreement, neither party shall be liable for any default hereunder due to an Act of God.
- 15.8 A waiver of any right or power under this Agreement will only be valid if given in writing by the party granting the waiver.
- 15.9 This Agreement supersedes all prior representations, arrangements and agreements between the parties in relation to its subject matter and forms the entire agreement between the parties.
- 15.10 Each provision of this Agreement capable of having effect after termination shall survive termination of this Agreement and shall not merge on such termination.