



# GENERAL TERMS AND CONDITIONS OF SALE (TERMS)

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**IN THESE TERMS WE, OUR AND US REFERS TO KINGSPAN WATER & ENERGY PTY LIMITED ABN 62 108 491 881 AND YOU OR YOURS REFERS TO THE PURCHASER IDENTIFIED ON THE QUOTE OR ORDER.**

## 1. APPLICATION OF THESE TERMS

1.1 These terms apply to the purchase of rainwater tanks or other water harvesting products and associated accessories and services as identified on the Quote or Order ("Products").

## 2. QUOTES & ORDERS

2.1 Prices in a quote will remain open for acceptance for 30 days, unless otherwise agreed by the parties.

2.2 We shall be entitled to correct any errors and omissions in and from our Quotes without liability.

2.3 Any illustrations, drawings and descriptive matter, including advertisements accompanying a quotation or included in the company's current catalogues, must be regarded as an approximate representation only and are not binding in detail unless stated to be so in our quotation.

2.4 You should satisfy yourself as to the suitability of any Product before placing an Order.

2.5 In placing an order with us, you agree to be bound by these terms and the additional terms contained on our quote for the Products (if any).

2.6 We will notify you if your Order is accepted by us within 30 days of receiving it unless you request us to not confirm Orders.

2.7 Once your Order has been accepted, you may cancel the Order at any time by notice in writing.

2.8 If you cancel your Order we may charge you adequate compensation for all work performed and materials consumed by us in the execution of your Order up to the date of cancellation.

## 3. PRICES

3.1 You agree to pay the price set out in our current price list for the products as at the date of the Order unless we have set out an alternative price in a quote to you.

3.2 We reserve the right to request full payment upfront, prior to the Product going into production.

3.3 We may ask you to pay a deposit for the products at the time that you place an Order.

3.4 If you paid a deposit in accordance with clause 3.3 and you cancel your Order we will refund your deposit less any compensation pursuant to clause 2.8.

3.5 If subject to clause 8, you will be liable for all excise, goods and services or any other taxes or charges which may be established or levied by any governmental authority on the sale, delivery or use of the Products (or part of the Products).

## 4. DELIVERY AND INSTALLATION

4.1 If you Order delivery and/or installation of the Products:

A. You agree to pay the charge set out in our current price list for delivery and/or installation of the products as at the date of the Order unless we have set out alternative charges in a quote to or agreement with you;



B. We will deliver and/or install the Products to your nominated address as set out on the Order. We will give you an estimated date for delivery within a reasonable time of you placing your Order. This is not a binding date and should always be referred to as an "estimated" or "requested" delivery date; and

C. You must advise us of any conditions in relation to the nominated address that may require additional delivery effort from us. Examples of this include, but are not limited to, a delivery crane or hoist, four wheel drive access, narrow roads or roads obscured by electrical wires or low hanging tree branches. We will charge you for any costs incurred by us in executing delivery as a result of any such conditions that you failed to inform us of.

4.2 Dates and times quoted for delivery are estimates only but we will use our reasonable endeavours to deliver and install the Products in accordance with those dates. We cannot be held responsible for delays due to weather or other circumstances beyond our control. If we cannot deliver the Products at the dates and times quoted we will not be responsible for loss or damage you suffer as a result of any delay but we will deliver the Products as soon as reasonably possible.

## 5. TITLE AND RISK

5.1 Risk in the Products will pass to you at the time of delivery to your Nominated Address. You must ensure that the Products are kept in good condition and are not damaged in any way until title in the Products passes to you in accordance with clause 5.2 or the Products are returned to us under clause 5.4.

5.2 Title in the Products will pass to you when you have paid, in full, all monies owing to us in relation to the Products (including any installation and delivery charges). Payment by cheque will be deemed to be received when the funds have been cleared by the bank on which the cheque is drawn.

5.3 Until title has passed to you, you must allow us to inspect the Products at any time during business hours.

5.4 If you breach your obligation to pay us for the Products, your implied right to use the Products is immediately terminated and we are entitled to demand the return of the Products. You must return the Products to us at your expense within a reasonable time following our demand.

## 6. APPLICATION OF THE PPSA

6.1 In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

6.2 You grant us a security interest under the PPSA in any Products supplied under these Terms.

6.3 The Products are rainwater tanks or other water harvesting products and associated accessories and services.

6.4 You acknowledge and agree that we may apply to register a security interest in the Products at any time before or after delivery of the Products. You waive your right under s 157 of the PPSA to receive notice of any verification of the registration.

6.5 We can apply amounts we receive from you towards amounts owing to us in such order as we choose.

6.6 If you default in the performance of any obligation owed to us under these Terms or any other agreement with us to supply Products to you, we may enforce our security interest in any Products by exercising all or any of our rights under these Terms or the PPSA. To the maximum extent permitted by law, both parties agree that the following provisions of the PPSA do not apply to the enforcement by us of our security interest in the Products: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

6.7 Both parties agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.



6.8 You must promptly do anything required by us to ensure that our security interest is a perfected security interest and has priority over all other security interests in the Products.

6.9 Nothing in this clause is limited by any other provision of these Terms or any other agreement between the parties.

## 7. INVOICING AND PAYMENT

7.1 We will provide you with an invoice for the Products once they are delivered to you or you pick them up.

7.2 Products must be paid in full prior to delivery unless prior arrangements have been made with us in writing.

7.3 If the due date for payment for the Products has passed, we may suspend further deliveries to you until all amounts due have been received.

7.4 You will be liable for all costs reasonably incurred by us in the recovery or attempted recovery of amounts owed by you under this agreement. In addition you will be liable for any fees or charges we will incur in relation to any dishonoured cheque(s).

## 8. GST

8.1 Payments to be made by you under these terms of sale are exclusive of Goods and Services Tax ("GST") under the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") unless expressly stated.

8.2 If a supply to you under these Terms is subject to GST, you must pay us an additional amount equal to the GST payable on that supply, at the same time as the payment to which that supply relates is payable.

8.3 Your liability under clause 8.2 is to reimburse the full amount of GST to us disregarding and excluding our entitlement to input tax credits or reimbursements for GST.

8.4 Notwithstanding clause 8.3, if we are entitled to an input tax credit in relation to any amount

recoverable from you under clause 8.3, the amount payable by you will be reduced by the amount of the input tax credit that we have received or claimed and are entitled to receive.

8.5 We agree to provide you with a tax invoice in accordance with the GST Act (and associated regulations).

## 9. AUSTRALIAN CONSUMER LAW

9.1 Under the Australian Consumer Law ("ACL"), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services.

9.2 Nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.

## 10. WARRANTIES AND LIABILITY

10.1 We will comply with the terms of any express warranty we provide to you in writing in relation to the Products. Any express warranty given is in addition to and does not limit your rights under the ACL.

10.2 We accept liability to you if we breach these Terms or act negligently under the principles applied by the courts, except for as set out in paragraphs 10.3 and 10.4.

10.3 To the extent permitted by law, if we fail to comply with a statutory guarantee which by law may not be excluded, then to the extent the law permits us to limit our liability in respect of such failure, our liability, is limited to:

A. in the case of goods:

- (i) replacement or the cost of replacing the goods or supply of equivalent goods; or
- (ii) repair or the cost of repairing the goods; and



B. in the case of services, supplying the services again or payment of the cost of having the services supplied again.

10.4 To the extent permitted by law and subject to clause 9.2, we are not liable to you for:

A. any loss to the extent that it is caused by you, for example, through your negligence or breach of these Terms; and

B. any indirect losses that happen as a side effect of the main loss or damage and which are not reasonably foreseeable loss to the extent that it is caused by you, for example, through your negligence or breach of these Terms.

## 11. USE OF THE PRODUCTS FOR PARTICULAR PURPOSES

If you require the Products for a particular purpose or you require the Products to possess special or uniform characteristics, you must specify that purpose or those characteristics in writing on your Order. If we consider that your request can be fulfilled, we will provide written confirmation in our acceptance of your Order. If you do not specify any particular purpose or special or uniform characteristics in the Order or we do not expressly confirm such purpose or characteristic, then the Products may not be suitable for that purpose or possess those characteristics.

## 12. FORCE MAJEURE

12.1. We will not be liable to you for a failure to comply with our obligations under these Terms if that failure is caused by a Force Majeure Event. We will notify you of any Force Majeure Event as soon as reasonably possible.

12.2 For the purposes of clause 12.1, "Force Majeure Event" means an act of God, war, fire, strike, lockout, trade or industrial dispute, government

interference, third party transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond our reasonable control.

## 13. LICENCES AND APPROVALS

You must obtain all licences, permits and approvals in relation to your purchase and use of the Products.

## 14. SUBCONTRACTING

We may subcontract the manufacture, supply, delivery and/or installation of Products or any part thereof to a third party.

## 15. PRIVACY ACT

You acknowledge that credit information may be given to a credit reporting agency, on the understanding that the Privacy Act 1988 (Cth) allows us to give a credit reporting agency certain information about you. To enable us to assess your application for commercial credit, you authorise us to obtain from a credit reporting agency a credit report containing personal and commercial credit information about you. In accordance with the Privacy Act, you authorise us to give and receive from any credit provider information in our possession or the credit provider's possession about your credit worthiness, credit standing, credit history and credit capacity. You understand that the information may be used to assess an application for credit by you and assess your credit worthiness. Terms used in this clause 15 that are not defined in this document but are specifically defined in the Privacy Act have the same meaning as in the Privacy Act.

## 16. GENERAL

The laws in the State or Territory in which the sale of the Products is made applies to these Terms.