

CCWB SUPPLY & SERVICE TERMS & CONDITIONS

To the fullest extent permitted by law, all dealings between CCWG and any Customer relating to any CCWG Products or Services are subject to the following Terms, unless otherwise agreed in writing.

1. DEFINITIONS

Agreement has the meaning given to that term in clause 9(a) of these Terms.

CCWG means Cool Clear Water Group Limited (ABN 64 126 087 509) and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns.

CCWG Equipment means the equipment and materials rented by the Customer from CCWG, as stipulated in a Supply and Service Agreement.

Commencement Date means the date that Installation occurs on.

Consumer Price Index means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Customer means a person or entity that purchases Products or Services from CCWG pursuant to a Supply and Service Agreement.

Customer Equipment means all Equipment supplied by CCWG pursuant to a Supply and Service Agreement and lawfully retained by the Customer following termination of this Agreement.

Equipment means CCWG Equipment and Customer Equipment.

Further Term(s) has the meaning given to that term in clause 5(d).

GST means any goods and services tax, value added tax or sales tax imposed on the sale or supply of goods, services and rights, including but not limited to a tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition acts of the Commonwealth of Australia.

Installation means installation at the Site of the Equipment.

Installation Fee means the amount stipulated in a Supply and Service Agreement payable by the Customer for the completion of the Installation by CCWG.

Minimum Term means the minimum initial term stipulated in a Supply and Service Agreement.

Price means the monthly GST inclusive price stipulated in a Supply and Service Agreement payable by the Customer to CCWG for the Equipment, Products and/or Services.

Products means the goods stipulated in a Supply and Service Agreement.

Supply and Service Agreement means (in order of priority): (a) the valid, signed supply and service agreement in respect of the Equipment, Products and/or Services in the form prescribed by CCWG; (b) these Terms; (c) any attachments to the valid, signed supply and service agreement.

Services means the maintenance of the CCWG Equipment and the Customer Equipment and replacement of filters at such intervals and in such manner as CCWG in its sole discretion deems necessary.

Site means the Customer's address stipulated in a Supply and Service Agreement for delivery of the Equipment and Products and provision of the Services.

Supplier means a supplier of material required to fulfil a Supply and Service Agreement.

Terms means these supply and service terms and conditions.

Warranty has the meaning given to that term in clause 14 of these Terms.

2. SUPPLY AND SERVICE

CCWG agrees to supply the Equipment and Products and provide the Services to the Customer on the terms set out below.

3. PAYMENT

- (a) In consideration for the supply of the Equipment and/or Products and the provision of the Services, the Customer must pay CCWG:
 - (i) the Installation Fee on the Commencement Date; and
 - (ii) the Price in advance during the Minimum Term and Further Term(s) (if any) within 7 days of receipt of a tax invoice from CCWG.
- (b) The Customer agrees that all payments received will be allocated towards amounts owed by the Customer to CCWG at CCWG's discretion.
- (c) The Customer further agrees that any payments dishonoured or reversed by the Customer's bank (made by cheque, direct debit or credit card) will be immediately reimbursed by the Customer to CCWG, including all fees charged by the Customer's bank to CCWG plus reasonable administration charges. Any outstanding moneys, including Equipment collection fees, debt collection agency fees, solicitors' costs plus overdue interest charges calculated in accordance with clause 19 shall be paid by the Customer.
- (d) Credit card payments may attract a fee of up to 1.75% (including GST) at CCWG's sole discretion.

4. VARIATION TO FEES AND CHARGES

- (a) CCWG, acting reasonably, reserves the right to adjust:
 - (i) the price of the Products and Services during the Minimum Term; and
 - (ii) the Price during the Further Term(s) (if any),

(iii) taking into account increases in the costs of products to CCWG and the Consumer Price Index.

- (b) If CCWG determines a price adjustment under this clause 4 is necessary, it will give the Customer 30 days' prior written notice of the amount of the adjustment.

5. TERM AND TERMINATION

- (a) The Agreement shall commence on the Commencement Date.
- (b) Subject to subclause (c), the Agreement remains in force for the Minimum Term.
- (c) If the Customer wishes to terminate the Agreement at the end of the Minimum Term, it must notify CCWG in writing no later than 30 days before the end of the Minimum Term (**Termination Notice**).
- (d) If CCWG does not receive a Termination Notice from the Customer, the Agreement will automatically renew on the same terms and conditions (subject to clause 29) for further successive terms of 12 months (**Further Term(s)**) until terminated by either party by giving 90 days' prior written notice of the terminating party's intention to terminate the Agreement.
- (e) If the Customer elects to return the CCWG Equipment and any unused Products prior to the end of the Minimum Term or Further Term(s) (if any), the Customer is still liable to pay for all outstanding charges (including without limitation the Price for the duration of the Minimum Term or the Further Term (as applicable)), invoices, reasonable overdue interest charges, debt collection fees, dishonour fees and any other reasonable charges which may apply on demand as a debt due and owing from the Customer to CCWG. Upon termination of this Agreement, the fee for any unused Products will not be refunded.
- (f) Termination of this Agreement shall not prejudice CCWG's right to retain all monies paid, call-up any monies unpaid and take immediate possession of any Equipment or Products held by the Customer and shall be without prejudice to any other rights of CCWG.

6. TITLE AND RISK IN THE EQUIPMENT AND PRODUCTS

- (a) The Customer acknowledges that title in the CCWG Equipment remains with CCWG at all times.
- (b) Risk in the CCWG Equipment and Products passes to the Customer upon delivery to Site.
- (c) Title in the Customer Equipment passes to the Customer upon delivery to the Site, subject to payment in full of all monies owed on any basis by the Customer to CCWG at that time (**Full Payment**).
- (d) CCWG reserves the right to take possession and dispose of Equipment and Products as it sees fit during normal business hours until Full Payment and the Customer grants permission to CCWG to enter any property where any Equipment or Product is located or installed in order to do so with such force as may be reasonably necessary. The Customer acknowledges that CCWG shall not be liable for any damage to the Site arising in the course of such repossession or disposal.
- (e) The Customer accepts risk in and liability for the safe custody of the Equipment and Products immediately upon delivery to the Site.

7. LIMITATION OF CCWG'S LIABILITY

- (a) The *Trade Practices Act 1974* (Cth) and other laws imply conditions and warranties into contracts for the supply of goods and services and prohibit the exclusion, restriction or modification of such conditions and warranties (Part V Division 2 of the *Trade Practices Act 1974* (Cth)). This clause 7 is not intended to exclude or restrict the application of such laws.
- (b) To the maximum extent permitted by law, all conditions and warranties that would be implied (by statute, general law, customs or otherwise) are expressly excluded from these Terms and any Agreement arising under these Terms.
- (c) To the maximum extent permitted by law, the liability of CCWG in respect of a breach of an implied condition or warranty under law that cannot be excluded, or any warranty made under these Terms is limited to:
 - (i) in the case of goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; or
 - (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (d) CCWG shall not be liable for any claim, loss (including loss of profit, revenue or opportunity) or expense (including any contingent, consequential, direct, indirect, special or punitive damage, whether due to negligence or otherwise) arising in respect of any damage to people, or property.

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- (e) No other term, condition, agreement, warranty, representation or understanding whether express or implied other than these Terms, is made or given by CCWG.

8. EXCLUSIONS

- (a) If CCWG publishes material concerning its business or prices, anything so published which is inconsistent with these Terms is expressly excluded.
- (b) The Customer will rely on its own knowledge and expertise in selecting any Equipment, Product or Services for any purpose. Any advice or assistance given for or on behalf of CCWG shall be accepted at the Customer's sole risk and shall not be or be deemed given as expert or adviser nor to have been relied upon by the Customer or anyone claiming through the Customer.

9. BINDING AGREEMENT

- (a) A binding agreement between CCWG and the Customer will come into existence on the earlier of the date CCWG confirms acceptance of a Supply and Service Agreement or CCWG commences delivery of any Equipment, Products or Services (**Agreement**).
- (b) If any dispute arises over any Supply and Service Agreement (including any question of identity, authority or telephone, facsimile, computer or e-mail Supply and Service Agreement) CCWG's internal records will be deemed to be conclusive evidence of the Equipment, Products and/or Services ordered.
- (c) Each Supply and Service Agreement shall be and be deemed a representation made by the Customer at the time it is placed that the Customer is solvent and able to pay all of its debts as and when they fall due.
- (d) Failure to pay in accordance with these Terms shall be and be deemed conclusive evidence that the Customer had no reasonable grounds for making the representations and that the representations were unconscionable, misleading and deceptive.
- (e) When a Supply and Service Agreement is signed, the Customer shall inform CCWG of any material facts which would or might reasonably affect any decision to accept the Supply and Service Agreement and/or grant credit in relation to it. Failure to do so shall be deemed to be unconscionable, misleading and deceptive.

10. ABILITY TO SUPPLY

The Customer agrees that CCWG will not be liable for any delay in supply or availability of any Equipment, Products and/or Services.

11. DELIVERY

The Customer acknowledges and agrees:

- (a) that CCWG will deliver the Equipment and Products to the Site;
- (b) that CCWG may elect to charge for any delivery;
- (c) that it shall be deemed to have immediately accepted delivery and liability for Equipment and Products when CCWG notifies the Customer that the Equipment and Products have been delivered to the Site, whether attended or not;
- (d) that a certificate purporting to be signed by an officer of CCWG confirming delivery shall be conclusive evidence of delivery, as shall any signed delivery docket;
- (e) that CCWG will not be liable for any delay, failure or inability to deliver any Equipment and Products or to perform any Services;
- (f) that it shall provide reasonable and proper access to the Site for the purpose of delivery of the Equipment and Products;
- (g) to pay all costs and expenses arising from frustrated or delayed delivery;
- (h) that CCWG may delay, cancel or suspend any delivery for any period or cancel any part of any Agreement without liability to anyone;
- (i) no delay or failure to deliver any Equipment or Products shall entitle the Customer to cancel the Agreement or refuse to accept delivery and Installation of the Equipment and/or Products.

12. INSTALLATION

- (a) The Customer acknowledges and agrees that:
- (i) a licensed plumber contracted by CCWG shall complete the Installation; and
- (ii) it shall provide reasonable and proper access to the Site for the purpose of the Installation.
- (b) CCWG will not be liable for any delay, failure or inability to complete the Installation.

13. MAINTENANCE OF EQUIPMENT

The Customer agrees to maintain the Equipment in a clean and hygienic condition and acknowledges that if CCWG considers the Equipment to be in a substantially unclean or unhygienic condition, CCWG reserves the right to clean and sanitise (or exchange) the Equipment on the Customer's behalf at the Customer's reasonable expense. CCWG agrees to notify the Customer in advance of its intention to clean and sanitise the Equipment and any charges which may apply.

14. MOVING AND ALTERATIONS TO THE SITE

- (a) The Customer agrees not to remove the Equipment from the premises where it is initially installed (or subsequently moved to under the provisions of this clause 14) without first notifying CCWG in writing and only after receiving written approval from CCWG.

CCWG agrees not to unreasonably withhold its approval to move the Equipment.

- (b) The Customer must notify CCWG of any proposed structural alterations to the Site which may affect the Equipment.
- (c) Any alteration to the Equipment or the Installation which may be necessary must be carried out by CCWG or a licensed plumber contracted by CCWG, at the Customer's expense.

15. EQUIPMENT AND PRODUCT WARRANTY

- (a) Subject to clause 13 and this clause 14, CCWG warrants the CCWG Equipment for the Term (**Warranty Period**) and will perform without charge, all repairs necessary to keep the CCWG Equipment in good operating condition or, at its discretion, to replace it with equivalent equipment (**Warranty**). The Warranty shall be null and void and the Customer is responsible for reasonable costs of repair or replacement of Equipment if the failure of the CCWG Equipment is a result of extraordinary wear and tear caused by the Customer, alteration or tampering with the merchandise parts, misuse or the Customer's negligence.
- (b) If the CCWG Equipment is found to be defective during the Warranty Period, CCWG will, in its sole discretion, repair or replace such defective CCWG Equipment without cost to the Customer for parts or direct repair labour.
- (c) Repairs to the CCWG Equipment may only be carried out by CCWG or CCWG's authorised agent or nominee.
- (d) Repairs and Service calls pursuant to this clause 15 shall be carried out during normal working hours, excluding Public Holidays, at no expense to the Customer. Repairs and Service calls outside normal working hours and on Public Holidays will be charged by CCWG at CCWG's rates as may be advised from time to time.
- (e) The Customer acknowledges and agrees that this Warranty does not cover:
- (i) repairs of Customer Equipment which are necessary to keep the Customer Equipment in good operating condition (or replacement of the Customer Equipment) to the extent the need for such repairs or replacement arises out of the Installation;
- (ii) CCWG Equipment suffering defects or damage from abnormal use, unauthorised modification or repair, misuse, neglect, abuse, accident, alteration or improper Installation; or
- (iii) damage to CCWG Equipment arising from acts outside CCWG's reasonable control.

16. VARIATION OR CANCELLATION

Subject to clause 29, no variation or cancellation of any Supply and Service Agreement shall be valid unless in writing signed by CCWG and the Customer.

17. OTHER TERMS AND CONDITIONS

These Terms alone will apply to Supply and Service Agreements to the exclusion of any Customer terms or conditions, unless otherwise agreed in writing.

18. SEVERABILITY

Any part of these Terms may be severed without affecting any other part.

19. INTEREST

Interest will be charged on overdue amounts at the rate of 15% (but in any event not less than the rate prescribed under Commonwealth or State legislation governing penalty interest rates (whichever is the higher), plus an additional 3%).

20. USE OF EQUIPMENT, PRODUCTS AND SERVICES

The Customer agrees to use the CCWG Equipment and Products in accordance with all manufacturer's, Supplier's and/or CCWG recommendations and directions.

21. RECOVERY COSTS

The Customer will pay all costs and expenses (on a full indemnity basis) incurred by CCWG or its solicitors, legal advisers, recovery agents and other parties acting on CCWG's behalf in respect of any action instituted against the Customer (or being considered) whether for debt, loss, damages, repossession of any Equipment or Products or otherwise.

22. ATTORNMENT

The Customer irrevocably and unconditionally appoints CCWG (or any CCWG nominee) as its attorney in all things to give effect to the Customer's obligation arising under these Terms.

23. DEFAULT

- (a) Upon any default or breach by the Customer of these Terms or any other dealing or arrangement with CCWG:
- (i) CCWG may immediately terminate the Agreement without notice to the Customer; and
- (ii) CCWG may in its sole discretion retain all monies paid, call-up any monies unpaid, cease further deliveries, recover from the Customer as liquidated all ascertained damages (but not as a penalty) arising and take immediate possession of any Equipment or Products held by the Customer, without prejudice to any other rights and without being liable to any party.

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- (b) The Customer indemnifies CCWG against any loss, liability, cost or expense suffered or incurred by CCWG (including legal costs and expenses) arising from or in connection with a breach of these Terms by the Customer.
- (c) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against CCWG whilst the Customer is in default under any part of these Terms or in any of its dealings with CCWG.

- (ii) to a contracted mailing house or to another organisation providing services to CCWG bound by confidentiality agreements; or
- (iii) to an entity that acquires the business or assets of CCWG.

24. ACTS OF INSOLVENCY

- (a) If the Customer commits or is involved in any act of insolvency, it shall be deemed in default under these Terms.
- (b) An act of insolvency is deemed to include, without limitation, bankruptcy, liquidation, receivership, administration or the like.

25. PROTECTION OF CCWG EQUIPMENT

- (a) The Customer must not offer for sale, mortgage, pledge, underlet, lend or otherwise deal with the CCWG Equipment, whether in its possession or not and will not remove the CCWG Equipment or any parts of it from the Site and will not allow a lien to be created in respect of it.
- (b) The Customer must do all things and punctually pay all moneys necessary to protect the CCWG Equipment against distress, execution or seizure and indemnifies CCWG against all losses, costs, charges, damages and expenses incurred by CCWG by reason or in respect thereof.
- (c) The Customer must:
 - (i) ensure that the CCWG Equipment is insured during the Term for market value and cost of replacement against fire, accident, theft and damage;
 - (ii) cause any moneys payable in respect of a successful insurance claim to be paid to CCWG; and
 - (iii) not do anything which might prejudice a successful claim against insurance pursuant to this clause 25.

26. JURISDICTION

All Agreements with CCWG arising out of these Terms shall be deemed to be made in the State/Territory nominated by CCWG and the Customer agrees to submit to the jurisdiction of the appropriate Courts in or nearest the Capital of that State/Territory.

27. CREDIT FACILITIES

CCWG is entitled in its sole discretion to vary or withdraw any credit facility granted to a Customer (or nominee), without liability to the Customer (or nominee) or any other party.

28. WAIVER

If CCWG elects not to exercise any of its rights as a result of any breach of these Terms, it shall not be nor be deemed to be a waiver of any rights relating to any subsequent or other breach of these Terms.

29. VARIATION TO TERMS – DEEMED NOTICE

The Customer will be deemed to have received notice of (and shall be bound by) any variation to these Terms (**Variation**) immediately upon such Variation being adopted by CCWG, whether or not the Customer has received actual notice of such Variation.

30. LIABILITY AND INDEMNITY

- (a) CCWG will not be liable to the Customer for any loss or damage suffered by the Customer howsoever caused, including without limitation loss or damage caused by the negligence of CCWG, its employees, servants or agents relating to the Installation.
- (b) The Customer indemnifies and holds CCWG harmless against any and all claims or loss related to or arising from any dealing with CCWG, including, without limitation, any liability arising under the *Trade Practices Act 1974* (Cth) or any other law or as a result of any default as described in clause 23 or otherwise.
- (c) Nothing in these Terms restricts CCWG's right to pursue the Customer for any unpaid Installation Fee or Price, monies owed to CCWG for any damages loss, liability or any other cause of action.

31. FORCE MAJEURE

CCWG shall not be nor deemed to be in default or breach of these Terms as a result of the occurrence of an event of Force Majeure. For the purposes of this clause 31, Force Majeure means any occurrence or event beyond the reasonable control of CCWG and includes any strike or lock-out.

32. COLLECTION OF PERSONAL INFORMATION

- (a) The Customer consents to CCWG using and disclosing its personal information for the express purpose of accepting, processing and fulfilling the Customer's order, notifying the Customer of its order status, product research and development, assisting the Company to improve customer services and allowing CCWG to market the services of its partners.
- (b) The Customer may notify CCWG at any time if the Customer does not wish to continue receiving marketing information from CCWG.
- (c) CCWG will not disclose the Customer's personal information to any person unless it is:
 - (i) required or authorised by law;

33. CCWG CONTACT DETAILS

For any queries concerning these Terms or to make a Warranty claim, please contact CCWG at:

Cool Clear Water Group Limited
38 Industry Street
MALAGA WA 6090

or by:

Telephone: 1300 787 905;
Fax: +61 8 9248 5592; or
Email: reception@coolclearwater.com.au

during normal business hours.