

Conditions of Sale

The Supplier has agreed to the supply of, and the Customer has agreed to buy, the Goods on the terms and conditions of this Agreement. Where the Goods supplied are wastewater treatment systems (including but not limited to HSTPs, AWTS, all waste septic and CEDs) the Customer shall also be bound and refer to the Supplementary Standard Conditions document. .

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"**Nature Flow Systems**" means Nature Flow Systems Pty Ltd, a company incorporated in Australia and its related bodies corporate.

"**Business Day**" means:

(a) for the purposes of clause 14.1, a day that is not a Saturday, Sunday, public holiday or bank holiday in the city where the notice is received; and

(b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Australia;

"**Customer**" means the person or other entity whose name appears on the Application for Credit and Conditions of Sale or the Tax Invoice.

"**Delivery Address**" means the property identified by the Customer as the address to which the Goods are to be delivered.

"**Dollar**" or "**\$**" means the lawful currency of the Commonwealth of Australia;

"**Force Majeure Circumstance**" means, in respect of a party, any circumstance or event which, despite using all reasonable endeavours, the party is unable to control, including any act of God, flood, fire, damage caused by lightning, storm or tempest, rains falling during normal dry seasons, industry wide strikes, or industry wide lockouts or other industry wide industrial disturbances, acts of war, civil disturbance or enactments of any Government Agency;

"**Goods**" means the goods and/or services supplied by Nature Flow Systems including but not limited to water tanks, fittings and pumps, water and wastewater treatments systems and UV systems;

"**GST**" means any applicable goods and services tax, value added tax or any other like tax, including goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**Intellectual Property Rights**" means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of copyright, patents, inventions, trade secrets, know-how, product formulations, confidential information, designs, circuit layouts, databases, trade marks, brand names, business names, applications for any of the foregoing and any improvements, enhancements or modifications thereto;

"**Order**" means a purchase order for Goods, submitted from time to time by the Customer to Nature Flow Systems under this Agreement;

"**Price**" means the price specified on the tax invoice, as adjusted by Nature Flow Systems from time to time;

"**Third Party Interest**" means any Security Interest, lease, option, voting arrangement, easement, covenant, notation, restriction, interest under any agreement, interest under any trust, or other right, equity, entitlement or other interest of any nature held by a third person.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

(a) a reference to:

(i) the singular includes the plural and vice versa;

(ii) a gender includes all genders;

(iii) a document (including this Agreement) means that document (including any schedules and annexures), as amended, consolidated, supplemented, novated or replaced;

(iv) an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;

(v) parties means the parties to this Agreement and to a party means a party to this Agreement;

(vi) a recital, clause, schedule, annexure or item means a recital, clause, schedule, annexure or item of this Agreement;

(vii) a notice means a notice, approval, demand, request, nomination or other communication given or served by one party to another under or in connection with this Agreement;

(viii) a person (including a party) includes:

(A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;

(B) the person's successors, permitted assigns, substitutes, executors and administrators; and

(C) the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;

(ix) a law:

(A) includes any legislation, treaty, judgement, rule of common law or equity or rule of any applicable stock exchange;

(B) means that law as amended, consolidated, supplemented or replaced; and

(C) includes any regulation, rule, statutory instrument, proclamation, by-law or other subordinate legislation made under that law;

(x) proceedings includes litigation, arbitration and investigation;

(xi) a judgement includes an order, injunction, decree, determination or award of any court or tribunal;

(xii) including or includes means including or includes (as the case may be) without limitation; and

(xiii) time means Brisbane, Australia time;

(b) headings are for convenience only and are to be ignored in interpreting this Agreement;

(c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(d) where an obligation, warranty, representation or covenant is assumed or given by more than one person, it will bind them jointly and severally;

(e) where a payment or other act must be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and

(f) this Agreement must not be construed adversely to a party only because that party was responsible for preparing it.

2. SUPPLY OF GOODS

(a) All supplies of Goods by Nature Flow Systems to the Customer during the term of this Agreement will be on the terms and conditions of this Agreement.

(b) No other terms or conditions will apply to the supplies of Goods by Nature Flow Systems unless they are accepted in writing by Nature Flow Systems.

(c) The Customer acknowledges that Nature Flow Systems's supply of Goods is subject to availability at the time of ordering.

(d) Nature Flow Systems will not be liable in any circumstances for failure to supply any product ordered by Customer.

(e) Nature Flow Systems reserves the right to discontinue any product or change its design at any time.

(f) In the event of the discontinuance or change in design of Goods, Nature Flow Systems is not liable for supply of any outdated Goods. The Customer may update to the new model at their own cost.

3. ORDERS

(a) The Customer must submit an Order directly to Nature Flow Systems.

(b) Any Purchase Order submitted by the Customer to Nature Flow Systems will constitute an offer on the terms and conditions of this Agreement, as amended or supplemented by the express terms of the Purchase Order.

- (c) If Nature Flow Systems accepts an Order, Nature Flow Systems and the Customer will be contractually bound to complete the Order in accordance with the terms and conditions of this Agreement.
- (d) Orders can only be modified, suspended or cancelled after negotiation and agreement between the Customer and Nature Flow Systems. The Customer must indemnify Nature Flow Systems in respect of any expenses incurred by Nature Flow Systems relating to the modification or cancellation of any order. An administration fee of 10% or \$50 (whichever is the greater) will apply.
- (e) Nature Flow Systems reserves the right to decline to trade with any company or person. Nature Flow Systems has no obligation to provide an account for exercising this right.

4. EXPORT ORDERS

- (a) Customers are responsible for the costs of and obtaining of any and all licences required when ordering Goods that are required to be exported to another country.
- (b) Customers are responsible for complying with any and all export and import regulations which are in force in Australia and the destination country when ordering Goods that are required to be exported to another country.

5. DELIVERY

5.1 Point of delivery

- (a) Nature Flow Systems will unload tanks at the nearest, most easily accessible point within the boundaries of the Delivery Address.
- (b) The point of delivery will be at the discretion of the driver, with regard to Workplace Health and Safety requirements.

5.2 Timing

- (a) Nature Flow Systems will:
 - (i) inform the Customer of the delivery date at least 24 hours prior to the intended delivery;
 - (ii) use reasonable endeavours to meet delivery estimates;
 - (iii) promptly notify the Customer if it seems likely that delivery of the Goods will be delayed for any reason.
- (b) Where the Customer is required to be present for the delivery, the Customer will:
 - (i) make themselves or their agent available between 6 am and 6 pm on the delivery date;
 - (ii) provide at least 48 hours notice if they require the delivery date to be changed;
 - (iii) pay a reschedule fee of \$66.00 where the notice required by clause 6.2 (b) above is not given;
- (c) Where delivery is unable to be affected due to the absence of the Customer, the Customer agrees to:
 - (i) pay the costs associated with a second delivery;
 - (ii) pay a reschedule fee of \$66.00.
- (d) Nature Flow Systems in no circumstances will be held liable to compensate the Customer for non-delivery or late delivery.

5.3 Risk and Damage in Transit

- (a) Risk to the Goods will be deemed to have passed to the Customer upon delivery in accordance with clause 5.
- (b) If on delivery, any Goods are found to be damaged, it is the Customer's responsibility to either:
 - (i) Refuse delivery and notify Nature Flow Systems of this refusal in writing within 3 business days of delivery;
 - (ii) Note the damage on the delivery docket or receipt of delivery and notify Nature Flow Systems of the damage in writing within 3 business days of delivery.

- (c) If the Customer:

- (i) provides the delivery driver with an unqualified signed delivery docket or receipt of delivery; OR
- (ii) has noted the damage on the delivery docket or receipt of delivery and fails to notify Nature Flow Systems of any damage or defect in the Goods within 3 business days of delivery, the Customer shall be deemed to have received the Goods in good order and condition.
- (d) Nature Flow Systems in no circumstances will be held liable for any loss or damage to Goods in transit however arising, unless the carrier has admitted liability and paid for the damage caused to the Goods.

5.4 Force Majeure

- (a) Subject to clause 5.4(b), if delivery of the Goods is delayed due to any Force Majeure Circumstance:
 - (i) Nature Flow Systems may at its option delay or cancel the whole or part of this Agreement; and
 - (ii) Nature Flow Systems will not be in default under this Agreement, nor be liable for any Loss incurred or suffered by the Customer, for that reason only.
- (b) The right of Nature Flow Systems to rely on clause 5.4(a) is conditional on it:
 - (i) promptly notifying the Customer of the nature of the Force Majeure Circumstance and the way in which, and the extent to which, delivery is delayed;
 - (ii) using all reasonable endeavours to limit the effects of the Force Majeure Circumstance and to complete delivery of the Goods as soon as practicable; and
 - (iii) promptly notifying the Customer of any material change in the Force Majeure Circumstance.

6. PAYMENT

6.1 Price

- (a) The Customer will pay Nature Flow Systems the Price for Goods that are delivered in accordance with this Agreement.
- (b) Unless otherwise specified, quoted Prices are exclusive of all Taxes.
- (c) Nature Flow Systems reserves the right to change the price of any Goods without notice.
- (d) Any prices quoted in writing by Nature Flow Systems will be for a period of 7 days from the date of offer.

6.2 Payment of invoices

- (a) Nature Flow Systems provides to the Customer an invoice with each Order of Goods. Subject to withholding under clause 6.4(a), payment is due in full immediately upon receipt of the invoice by the Customer.
- (b) Payment is to be made in advance or by cash on delivery, unless credit arrangements have been approved in writing by Nature Flow Systems.

6.3 Credit Arrangements

- (a) If credit arrangements have been approved by Nature Flow Systems, payment is due Net 7 days upon receipt of the invoice by the Customer ("the due date").
- (b) If any amount is not paid Net 7 days under a credit arrangement, the Customer shall pay interest on the outstanding amount at the rate of 5% per annum above the current base lending rate of Nature Flow Systems.
- (c) Interest is payable from the due date until the amount is actually paid, and before and after any judgment being obtained by Nature Flow Systems against the Customer in respect of the amount owing.

6.4 Disputed invoices

- (a) If the Customer, acting reasonably and bona fide, disputes the amount of an invoice provided under clause 6.2, it may withhold the disputed portion pending resolution of the dispute, but it must still pay the undisputed portion by the due date for that invoice.
- (b) If Nature Flow Systems and the Customer are unable to resolve a dispute over the amount of an invoice within 5 Business Days of the due date for that invoice, clause 11 will apply.
- (c) The Customer must pay Nature Flow Systems interest in accordance with clause 6.3 on any amount withheld under clause 6.4(a) which is subsequently agreed, or otherwise determined, to be payable by the Customer.
- (d) If legal action is taken by Nature Flow Systems to recover monies due, then Nature Flow Systems reserves the right to charge the Customer all fees incurred in such proceedings. This provision is without prejudice to any of Nature Flow Systems's other rights and remedies under these Conditions of Sale or at law.

7. GST

- (a) If a party ("GST Supplier") makes any supply to another party ("GST Recipient") in connection with this Agreement (including the supply of the Goods), the GST Recipient must pay to the GST Supplier an amount equal to any GST payable to the relevant taxing authority by the GST Supplier in relation to that supply ("GST Amount"), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- (b) The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing to the GST Recipient a tax invoice complying with any law under which GST is imposed. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit or other statutory set-off to which it is entitled.

8. OWNERSHIP

- (a) Ownership of the Goods is retained by Nature Flow Systems until the Purchase Price is paid in full (including any outstanding interest incurred pursuant to Clause 6.3) for the Goods and for all other Goods supplied by Nature Flow Systems to the Customer.
- (b) The Customer shall not have any power to mortgage, charge or encumber the Goods whilst in its possession until payment in full has been made.
- (c) In the event that the Customer defaults in payment of the Goods sold by Nature Flow Systems or if a receiver is appointed of any of the Customer's assets or if the Customer becomes insolvent or is adjudicated bankrupt or enters into an arrangement or compromise with its creditors, Nature Flow Systems may take possession of the Goods and may enter on to any premises in which the Goods are located for the purpose of doing so without notice.

9. RETURNS

- (a) The Customer must telephone the sales office of Nature Flow Systems before returning any goods. The Customer must supply the office with the original invoice number and the date of purchase. A Return Authorisation Form will be issued in approved cases.
- (b) Any returned Goods must be received by Nature Flow Systems within 7 days of the date of the original delivery and must be in their original packaging.
- (c) Goods will not be acceptable as returns unless they are returned undamaged, unaltered and in their original packaging.
- (d) The Customer accepts liability for all freight costs incurred in the return of Goods including return for warranty repair or replacement.
- (e) A restocking fee of \$50 or 10% of the Purchase Price (whichever is greater) will be payable on all returns.

10. WARRANTIES

10.1 Subject to limitations

For the avoidance of doubt, this clause 10 is subject to clause 12.

10.2 General

Each party represents and warrants to each of the other parties that:

- (a) this Agreement constitutes a full and binding legal obligation upon it;
- (b) it has taken all necessary corporate or other action to properly authorise the execution of this Agreement;
- (c) it has full corporate authority or statutory power (as the case may be) and lawful authority, to execute this Agreement and to properly perform its obligations under this Agreement;
- (d) to its knowledge, there are no Claims pending or threatened against it which may have a material effect upon the subject matter of this Agreement.

10.3 Goods

Nature Flow Systems represents and warrants to the Customer that:

- (a) Nature Flow Systems has the right to supply the Goods in accordance with this Agreement and the Goods will be supplied to the Customer free of all Third Party Interests;
- (b) the supply of the Goods to the Customer, and the subsequent use of the Goods by the Customer, will not infringe the Intellectual Property Rights of any third person;
- (c) the Goods comply with all applicable Australian laws and standards, including with respect to safety, packaging and labelling; and
- (d) the Goods will:
- (i) be of good and merchantable quality and fit for the purpose for which goods of the same or a similar nature as the Goods are commonly supplied; and
 - (ii) not contain any material defects in design, workmanship or materials, for the period specified in the relevant manufacturer's warranty.

10.4 Warranty Claims

- (a) Nature Flow Systems will not be responsible for any defect in the Goods to the extent that it was caused or contributed to by the negligent or reckless installation, use or repair of the Goods.
- (b) Any advice, recommendation, information, assistance or service ("Customer Information") provided by Nature Flow Systems in relation to the Goods is given in good faith and is believed to be appropriate and reliable, and such Customer Information provided and any statement or representation made by Nature Flow Systems in relation to any Goods supplied is provided or made without liability or responsibility on the part of Nature Flow Systems.
- (c) To the fullest extent permitted by law, the Customer releases Nature Flow Systems from and against all liability whatsoever for any injury, loss or damage sustained by the buyer howsoever arising.
- (d) It is the Customer's responsibility to ensure and satisfy itself that the Goods and any method of use or application of the Goods are suitable for that Customer's purposes and the risk of any damage or loss or adverse consequences arising or resulting from the purchase or use of the Goods is voluntarily assumed by the Customer.
- (e) Subject to Clause 5.3(b), Nature Flow Systems warrants to the Customer that, at its option, Nature Flow Systems shall supply the same quantity of the Goods as replacement for the defective Goods or refund to or credit the Customer with the purchase price of the defective Goods.
- (f) Subject to the Customer complying with Clause 5.3(b) and Clause 10.4(e), and where the Goods are warranted directly by the Manufacturer, in the event that any such Goods are found to have a manufacturing defect, Nature Flow Systems Pty Ltd will endeavour to transfer to the Customer the benefits of any warranty given to it by the manufacturer of the products
- (g) The Customer accepts liability for all freight costs incurred in the return of products including warranty repair or replacement of faulty goods without exception.
- (h) Nature Flow Systems Pty Ltd shall not be liable to the Customer for defective Goods if the defect arises because the Customer has:
- (i) Repaired or altered the Goods without written consent of Nature Flow Systems Pty Ltd authorised officers or
 - (ii) Subjected the Goods to conditions outside the manufacturer's stated instructions on storage, usage, installation, use or maintenance.
- (i) Nature Flow Systems provides direct warranty for the following Goods only: Nature Flow® System Water Treatment Systems (excluding UV glassware) and Nature Flow® Wastewater Treatment Systems (excluding pumps, tanks & UV glassware). All other Goods supplied are warranted by the direct manufacturer of the Goods – the Customer will be directed to seek warranty through the appropriate manufacturer of the Goods.

11. INDEMNITIES

11.1 Subject to limitations

For the avoidance of doubt, this clause 11 is subject to clause 12.

- 11.2 Defective Goods**
(a) The Supplier hereby indemnifies the Customer against any Claim or Loss that may be brought against or incurred or suffered by any of them (as the case may be) and which arises directly or indirectly out of any Defective Goods or allegedly Defective Goods, except to the extent that such Claim or Loss was caused or contributed to by the Customer.
- 11.3 Intellectual Property Rights**
(a) The Customer warrants that any design or instruction furnished to Nature Flow Systems Pty Ltd will not be such as will cause Nature Flow Systems Pty Ltd to infringe any patent, registered design or trademark in the execution of the Customer's order.
(b) The Customer agrees to indemnify Nature Flow Systems Pty Ltd against any infringement or unauthorised use of patents, trademarks, designs or copyrights arising out of the manufacture and use of the Goods.
(c) It is specifically agreed that the sale and the purchase of the Goods does not confer on the Customer any license or rights under any patents, trademarks, designs or copyrights the property of Nature Flow Systems Pty Ltd.
- 12. LIMITATION OF LIABILITY**
- 12.1 Consequential loss**
(a) Nature Flow Systems's liability for any Claim or Loss in connection with this Agreement will not extend to any indirect or consequential loss relating to, but not limited to:
(i) Electrical connections, removal of excess spoil from excavations and identification of underground services;
(ii) Collision with underground services or obstructions;
(iii) The Customer or their agent's voluntary assistance to transport and/or locate the Goods supplied and/or delivered by Nature Flow Systems to the Customer.
- 12.2 Duty to mitigate**
(a) Each party must take all reasonable steps to mitigate the effect on that party of any Claim or Loss for which another party may be liable under this Agreement.
- 13. DISPUTES**
(a) In the event that there is an unresolved dispute between the parties in connection with this Agreement, each of the disputing parties must promptly nominate a senior representative and those representatives must promptly commence good faith discussions in an attempt to resolve the dispute without resorting to formal proceedings.
(b) No party may commence formal proceedings until at least 10 Business Days after the commencement of discussions under clause 13(a), except to:
(i) seek urgent interlocutory relief;
(ii) avoid the expiration of any applicable statutory limitation period; or
(iii) preserve a priority in relation to other creditors.
(c) Pending the resolution of a dispute in accordance with this clause 13, the parties must continue to perform their obligations under this Agreement to the extent that those obligations are not the subject of the dispute and it is reasonably practicable to do so.
- 14. GENERAL PROVISIONS**
- 14.1 Notices**
(a) All notices given or served under this Agreement must be in legible writing, in English and sent to the recipient at the address or facsimile number set out below, or the address on the tax invoice or such other address or facsimile number specified by the recipient from time to time:
Supplier Nature Flow Systems Pty Ltd
Address: PO Box 189, Jimboomba QLD 4280
Facsimile:
Attention:

Customer
Address:
Facsimile:
Attention:
- 14.2 Disclaimer**
(a) Specification and particulars in relation to products referred to in Nature Flow Systems brochures, marketing materials or website are subject to change without notice. Nature Flow Systems will not be held liable for any errors or omissions.
- 14.3 Invalid or unenforceable**
If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
(a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
(b) it does not affect the validity or enforceability of:
(i) that provision in another jurisdiction; or
(ii) the remaining provisions of this Agreement.
- 14.4 Waiver and exercise of rights**
(a) A waiver of a provision or of a right arising under this Agreement may only be given in writing by the party granting the waiver.
(b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
(c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
(d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- 14.5 Further assurances**
Each party must, at its own expense, whenever requested by another party, promptly do or cause to be done everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.
- 14.6 Entire agreement**
This Agreement and any other documents referred to in this Agreement or executed in connection with this Agreement comprise the entire agreement of the parties about the subject matter of this Agreement and supersede any prior representations, negotiations, arrangements, understandings or agreements and all other communications.
- 14.7 Time**
Time is of the essence in this Agreement.
- 14.8 Governing law and jurisdiction**
(a) This Agreement is governed by the laws of Queensland, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
- 14.9 Privacy Policy (Short Version)**
1. You consent to us conducting a credit assessment of you and to using any information we have to establish your creditworthiness.
2. Where relevant we will comply with the provisions of the Privacy Act 1988 (Cth) and Regulatory Requirements. This means if you have applied for consumer or commercial credit, then to establish your creditworthiness we may need to disclose personal information to a credit reporting agency to obtain a consumer credit report about you. This may also involve the credit reporting agency creating or maintaining a credit information file containing information about you.
3. The type of information we may disclose is limited to:

- (a) your identity particulars;
 - (b) the fact that you are entering a Contract with us;
 - (c) any payments overdue for more than 60 days and for which we have taken steps to recover;
 - (d) information that you have defaulted under this Contract or are no longer in default;
 - (e) information that in our opinion you have committed a serious credit infringement; and
 - (f) dishonoured payments – if cheques or payments by you for more than \$100 have been dishonoured more than twice.
4. Subject to what is permitted by law, the types of third parties we may disclose your personal information to include, where relevant:
- (a) credit reporting agencies;
 - (b) our agents, contractors and external advisers whom we engage from time to time to carry out, or advise on, our functions and activities;
 - (c) your agents and contractors, including your finance broker, builder and settlement agent and your legal or financial adviser;
 - (d) your executor, administrator, trustee, guardian or attorney;
 - (e) our referees;
 - (f) regulatory bodies, government agencies, law enforcement bodies and courts;
 - (g) any person or organisation who introduces you to us;
 - (h) other organisations with whom we have alliances or arrangements for the purpose of promoting our respective products and services;
 - (i) any agents used by us and our business partners in administering such an arrangement or alliance;
 - (j) debt collecting agencies;
 - (k) other financial institutions;
 - (l) external payment systems operators;
 - (m) your and our insurers or prospective insurers and their underwriters;
 - (n) any person to the extent necessary, in our view in order to carry out any instruction you give to the by us;
 - (o) other organisations (including our related bodies corporate) and their agents for the marketing of specific products and services (unless you tell us not to.)
5. This information may be given before, during or after the provision of credit to you.
6. If you are taking supply, or have agreed to take a supply of products from us you agree we may obtain from or give to related companies a report about your creditworthiness for the purposes of product supply.
7. Full version available on our website at www.waterpacaustralia.com or on request.