

ENVIROFLEX TERMS AND CONDITIONS OF SUPPLY

1. When these Terms apply

- (a) These Terms:
 - (i) apply where Enviroflex supplies Goods or Services to you; and
 - (ii) include all those statutory rights conferred on you which Enviroflex is not capable of excluding, restricting or modifying, including statutory rights conferred on you under the Australian Consumer Law and where you are a Consumer.
- (b) Acceptance by you of these Terms may be by:
 - (i) signing and returning a copy of these Terms; or
 - (ii) performing an act that is done with the intention of adopting or accepting these Terms, including continuing to order Goods or Services after receiving these Terms or an amended version of them from Enviroflex or by oral acceptance.
- (c) If you comprise more than one person:
 - (i) the Contract binds each person jointly and severally; and
 - (ii) Enviroflex is only required to give notices, quotes and other information, to one of the persons (who undertakes to provide the notices, quotes and information to the other person or persons).
- (d) Enviroflex may alter these Terms and the altered terms shall then:
 - (i) apply to orders placed by you after such notice period has elapsed; and
 - (ii) supersede all previous terms and conditions imposed by Enviroflex regarding such orders.
- (e) No changes to these Terms are binding unless agreed in writing or altered pursuant to clause 1(d).
- (f) No employee or agent of Enviroflex is authorised to make a representation, warranty or promise in relation to the Goods or Service other than as contained in the Contract. Subject to clause 1(a)(ii), Enviroflex and you acknowledge and agree these Terms take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by you to Enviroflex.

2. Orders

- (a) Each order placed by you will constitute an offer by you to acquire the Goods or Services from Enviroflex on and subject to these Terms. Enviroflex may refuse to accept an order, or part of an order, placed by you without giving reasons.
- (b) You may not without Enviroflex consent cancel an order after Enviroflex has accepted the order. If Enviroflex consents to the cancellation of an order, you will be liable for any costs incurred by Enviroflex up to the time of cancellation, including Enviroflex's loss of profits and a cancellation fee.

3. Prices

- (a) All prices quoted are in Australian dollars and except as otherwise expressly stated, exclusive of insurance, delivery charges, GST and any other sales, value added or similar tax which may apply.

- (b) The price of the Goods and Services will be:
- (i) in the absence of a quoted price given in writing by Enviroflex, Enviroflex's price at the date of Enviroflex's acceptance of the order according to Enviroflex's current price list; or
 - (ii) Enviroflex's quoted price which will be binding on Enviroflex:
 - (A) for a period stated in Enviroflex's quotation; and
 - (B) if no period is stated in the quotation, a period of 30 days from the date of the inspection of the premises,
- and which may be accepted by you, by written notice to Enviroflex, at any time within that period unless earlier revoked in writing by Enviroflex.
- (c) Price lists are not an offer. You acknowledge that price lists may be varied from time to time without notice and that it is your responsibility to check Enviroflex's price lists prior to placing an order. Should the price of a Good or Service change between you placing an order for that Good or Service and Enviroflex accepting the order, you may cancel the order for that Good or Service, by notifying Enviroflex in writing within 24 hours of Enviroflex's acceptance of the order.
- (d) If a party makes a taxable supply under the Contract (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable. Despite anything stated in this clause, the Recipient is not obliged under the Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply. If an adjustment event arises in relation to a taxable supply made by a Supplier under the Contract, the amount paid or payable by the Recipient pursuant to this clause will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

4. Payment

- (a) You must pay the Price for Goods or Services supplied to you by credit card (plus any charges that may be applicable) or bank transfer.
- (b) Time for payment for the Goods and Services is of the essence and will be stated on Enviroflex's invoice, quotation or any other order forms. If no time is stated by Enviroflex then payment must be made on delivery of the Goods or the performance of the Services (as applicable).
- (c) Payments are to be made to Enviroflex without any deduction or discount other than as stated in these Terms or in the relevant invoice, quotation or order form. All payments received from you may be applied by Enviroflex in the manner Enviroflex determines.
- (d) Unless otherwise agreed in writing between the parties, Enviroflex may withhold delivery of the Goods until you have paid for them in full, in which case payment must be made on or before the delivery date.
- (e) Without prejudice to any other rights or remedies of Enviroflex, if you fail to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, then:
 - (i) you must pay to Enviroflex interest on the unpaid amount at 1.5% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia; and
 - (ii) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by you upon demand by Enviroflex.

- (f) If Enviroflex takes steps or action to recover any amount due to it you will be responsible for all Loss incurred by Enviroflex in recovering the monies due.

5. Delivery and Installation

- (a) You must make the delivery premises available at the time agreed in advance by the parties. If the premises is not available at the agreed time, an "unproductive call fee" of \$200 will be charged to you by Enviroflex.
- (b) You:
 - (i) may be required to provide scaffolding in compliance with all laws and at your cost, for all Goods and Services provided by Enviroflex at a height exceeding two metres from the ground;
 - (ii) must provide Enviroflex with a "Certificate of Electrical Safety" or warrant that there is a functional electrical trip switch prior to installation of Goods comprising of "Envirowall" products;
 - (iii) must, in the case of Spray installs provide to site tap water and 2 sources of 15 Amp/240 volt power; and
 - (iv) must, in the case of non "Envirowall" installations, where the property has power, ensure it is turned off for the duration of the install;
 - (v) must, where you are installing the Goods, comply with the manufacturer's instructions.
- (c) Enviroflex will use all commercially reasonable efforts to deliver the Goods and Services for which it has accepted an order by the date (if any) specified in the order and in the absence of any date, within a reasonable time.
- (d) To the extent permitted by law, failure of Enviroflex to deliver Goods by the date specified in the order does not entitle either party to treat an order or the Contract as repudiated. Except where Enviroflex's liability may not be excluded under the Australian Consumer Law, Enviroflex is not liable for any Loss due to the failure by Enviroflex to deliver the Goods (or any of them) promptly or at all, other than to refund any Price paid by you where the Goods are not delivered at all.
- (e) Enviroflex may deliver the Goods by separate instalments. Each separate instalment will be invoiced and must be paid for in accordance with these Terms.
- (f) Delivery of the Goods to a third party nominated by you is deemed to be delivery to you for the purposes of these Terms.

6. Title, Risk and Insurance

- (a) The Goods are entirely at your risk from the moment of the delivery to your point of delivery or on collection, even though title in the Goods has not passed to you at the time.
- (b) Title to the Goods passes to you on payment in full (in cash or cleared funds) of the Price for the Goods and all other amounts payable by you to Enviroflex on any account whatsoever .
- (c) Until full payment in cleared funds is received by Enviroflex for all Goods supplied by it to you, as well as all other amounts payable by you to Enviroflex on any account whatsoever:
 - (i) legal title and property in all Goods supplied under the Contract remain vested in Enviroflex and does not pass to you;

- (ii) subject to (iii), you must keep the Goods separate from other goods and maintain the labelling and packaging of Enviroflex so that they are readily identifiable as the property of Enviroflex;
- (iii) you must not sell the Goods except in the ordinary course of your business (if applicable);
- (iv) you must, at your own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company; and
- (v) Enviroflex may, at any time, demand the return of the Goods and shall be entitled without notice to you and without liability to you, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of Enviroflex, and for this purpose you irrevocably license Enviroflex to enter such premises, undertake that you will procure any necessary authority to enter from any relevant person and also indemnifies Enviroflex from and against all loss suffered or incurred by Enviroflex as a result of exercising its rights under this clause, except to the extent that such loss was directly caused by Enviroflex's acts or omissions.

7. Defective Goods and Services

- (a) You must, as soon as possible after delivery and installation (where applicable), check whether the Goods and Services were damaged or defective when delivered and/or installed.
- (b) The Goods and Services will be considered to have been supplied in good condition unless you give Enviroflex notice of the damage or defect within two business days after supply and/or installation.
- (c) If you give Enviroflex notice under clause 7(b) in respect of Goods, you must:
 - (i) preserve the Goods in the state in which they were delivered; and
 - (ii) during that period, allow Enviroflex access to your premises to inspect the Goods.
- (d) To the extent permitted by law (and in particular, the Australian Consumer Law), Enviroflex's liability:
 - (i) in respect of defective Goods or for breach of a condition, warranty or Consumer Guarantee applicable to the Goods is limited to any one of the following options as determined by Enviroflex:
 - (A) replacement of the Goods or the supply of equivalent Goods;
 - (B) repair of the Goods;
 - (C) payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (D) payment of the cost of repairing the Goods; or
 - (E) where you are not a Consumer, provision of a credit.
 - (ii) in respect of defective Services or for a breach of a condition, warranty or Consumer Guarantee applicable to Services is limited to any one of the following options as determined by Enviroflex:
 - (A) provide the Services again;
 - (B) pay the cost of having the Services provided again; or

(C) where you are not a Consumer, provision of a credit.

(e) For the avoidance of doubt:

- (i) you must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of Enviroflex to do so; and
- (ii) Enviroflex is not liable for damage or defects to Goods which was due to the act or omission of another person, or to some other cause beyond Enviroflex control, such as where under floor insulation is damaged by the subsequent installation of heating ducts by a third party.

8. Claims and Liability

(a) You must:

- (i) promptly inform Enviroflex of all complaints or claims relating to any of the Goods or Services;
- (ii) not admit liability or resolve or settle any complaint or claim relating to any of the Goods or Services which may result in Enviroflex incurring any liability (whether to a customer, you or any other person); and
- (iii) deal promptly with all complaints or claims relating to any of the Goods or Services in a manner that will not result in Enviroflex incurring any liability.

(b) Except only for those rights and remedies that you have in respect of the Goods or Services under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:

- (i) Enviroflex excludes any liability for Consequential Loss; and
- (ii) Enviroflex is not liable to you for any other Loss which you suffer, incur or are liable for in connection with supply of the Goods or Services under the Contract, except in accordance with clause 7(d) or to the extent that the other Loss was caused by Enviroflex's negligent acts or omissions.

9. Warranties

(a) All Goods supplied are covered by such warranties as are specified by the relevant manufacturer and are subject to the product standards detailed by the relevant manufacturer.

(b) No warranty or guarantee is given by Enviroflex that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the Australian Consumer Law.

(c) You warrant to Enviroflex that:

- (i) before entering into this Contract, you made your own enquiries to satisfy yourself as to the truth and accuracy of, and has therefore not relied upon, any written or oral information provided by Enviroflex; and
- (ii) you have fully informed yourself in relation to all legal and operational requirements related to the supply and use of the Goods and Services and made your own assessment of the suitability of the Goods and Services for the use to which they will be put.

10. Termination

(a) Either party (**Terminating Party**) may immediately terminate the Contract by written notice to the other party if the other party (**Defaulting Party**):

- (i) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by the Defaulting Party within 10 business days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (ii) suffers an Insolvency Event.
- (b) If the Contract is terminated under this clause 10, Enviroflex will have an immediate right to possession of Goods held by you and all amounts owing by you in respect of the Goods together with all other debts owing by you to Enviroflex will become due and payable and must be paid by you on demand by Enviroflex. Further, Enviroflex will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:
- (i) suspend indefinitely all further deliveries of Goods in respect of any orders being processed for delivery and cancel any order or refuse to accept any further orders;
 - (ii) cancel any credit facility provided to you;
 - (iii) require the return of all Goods the property in, and ownership of, has not passed in accordance with clause 6(b); and
 - (iv) exercise its rights under clause 6(c)(v) to enter your premises wherever situated without impediment, and with the full co-operation and assistance of you, to locate, retrieve and take possession of Goods held by you.

11. Force Majeure

Where Force Majeure prevents or delays Enviroflex from performing any obligation under the Contract, the requirement to perform that obligation is suspended as long as the Force Majeure continues.

12. Privacy and consent to marketing activities

- (a) You agree that personal data provided by you may be used and retained by Enviroflex for the following purposes and for other purposes as may be agreed between you and Enviroflex or required by law from time to time:
 - (i) the provision of Goods and Services;
 - (ii) the marketing of goods or services by Enviroflex, its agents or distributors in relation to Enviroflex's goods and services, including by describing the Goods and Services provided to you;
 - (iii) analysing, verifying or checking your credit, payment and status in relation to provision of Goods and Services;
 - (iv) processing of any payment instructions, direct debit facilities and credit facilities requested by you; and
 - (v) enabling the daily operation of your account and the collection of amounts outstanding in your account in relation to the Goods or Services.
- (b) You consent to Enviroflex including images, videos and descriptions of the provision and delivery of your Goods and Services (which may include images, videos and descriptions of the delivery premises) to promote Enviroflex by any form of media, including on Enviroflex's website, blog and

social media accounts. If you do not give the consent described in this clause, you must inform Enviroflex in writing at the time of placing the order for the Goods or Services.

13. General

- (a) No failure by Enviroflex to insist on strict performance of any of these Terms is a waiver of any right or remedy which Enviroflex may have, and is not a waiver of any subsequent breach or default by you.
- (b) In these Terms, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- (c) Neither the Contract, nor any rights under the Contract may be assigned by you without the prior written consent of Enviroflex.
- (d) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- (e) The Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (f) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Contract, clauses 3, 4, 6, 7, 8, 10(b), 12 and 13 survive the termination of the Contract.

14. Definitions

In these Terms:

- (a) **Australian Consumer Law** means *Schedule 2 of the Competition and Consumer Act 2010 (Cth)* and the corresponding provisions of the relevant State and Territory fair trading acts;
- (b) **Consumer** has the meaning given to it in *section 3 of the Australian Consumer Law*;
- (c) **Consumer Guarantee** means a right or guarantee under the Australian Consumer Law that cannot lawfully be excluded;
- (d) **Contract** means the contract of purchase of Goods or Services between Enviroflex and you which comprises these Terms and all orders for Goods or Services placed by you and accepted by Enviroflex;
- (e) **Consequential Loss** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;
- (f) **Enviroflex** means Enviroflex Pty Ltd ABN 35 092 931 676 of 1 Forbes Close Knoxfield VIC 3180;
- (g) **Force Majeure** means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a shortage or unavailability of raw materials, production capacity or transportation; and any other event not within the reasonable control of Enviroflex;
- (h) **Goods** means goods supplied by Enviroflex to you;

- (i) **Insolvency Event** means the happening of any of these events:
 - (i) a party suspends payment of its debts generally, is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001 (Cth)*;
 - (ii) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (iii) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
 - (iv) a party goes bankrupt; or
 - (v) a party ceases, or threatens to cease, to carry on business;
- (j) **Loss** means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;
- (k) **Price** means the price for the supply of the Goods or Services as provided for in clause 3;
- (l) **Services** mean services supplied by Enviroflex to you;
- (m) **Terms** means these terms and conditions of supply; and
- (n) **you** means the person, entity, firm or corporation that acquires Goods or Services from Enviroflex pursuant to these Terms and includes your permitted assigns, successors, employees, servants and agents.