



## CREDIT ACCOUNT APPLICATION

Please complete the sections below and read the Terms and Conditions of Trade overleaf or attached. Please note that by setting up a trade account, you are giving us authorisation to add your main email address to our database for price increase notifications, and other important company updates.

Date:  Trade name:

Name to appear on invoices:

Billing address:

Postcode:

Shipping address:

Postcode:

### MAIN CONTACT

Name:

Phone:

Email:

### ACCOUNTS CONTACT

Name:

Phone:

Email:

### COMMERCIAL CLIENTS ONLY

Requested credit limit: \$

Company number:

Date established:

Contact name:  Position:  Phone:

### DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full name:

Full name:

Home address:

Home address:

Postcode:

Postcode:

ID:  DOB:

(drivers license, passport etc)

ID:  DOB:

(drivers license, passport etc)

Home phone:

Home phone:

## NEWSLETTER

If you would like to be signed up to our newsletter database, please select which categories you are interested in:

Bathroom/Kitchen

Central Heating & Cooling, and Plumbing

## TRADE REFERENCES

Business name 1:  Address or A/C number:

Phone:  Email:

Business name 2:  Address or A/C number:

Phone:  Email:

Business name 3:  Address or A/C number:

Phone:  Email:

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Waterware Services Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

Client signature

Name

Position

Date

## OFFICE USE ONLY

Account opened date:  Account code:

Pricing group:  Sales rep(s):

Credit limit:  Territory:

Account opened by:  Signature:

NOTES:

# Waterware Services Ltd – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Waterware" means Waterware Services Limited T/A Waterware Group, its successors and assigns or any person acting on behalf of and with the authority of Waterware Services Limited T/A Waterware Group.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Waterware to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Client, is a reference to each Client jointly and severally; and
  - if the Client is a partnership, it shall bind each partner jointly and severally; and
  - if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Services supplied by Waterware to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by Waterware to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Waterware to the Client.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using Waterware's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.8 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between Waterware and the Client in accordance with clause 7 below.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 None of Waterware's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Waterware in writing nor is Waterware bound by any such unauthorised statements.
- 2.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.5 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with Waterware and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Goods/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Waterware reserves the right to refuse Delivery.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 The parties agree that for the purposes of the Construction Contracts Act 2002 where Waterware is a commercial provider this Contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this Contract shall be in no way limited by any contract that the Client may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Client of any monies whether by progress payments or otherwise.

## 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Waterware shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- resulting from an inadvertent mistake made by Waterware in the formation and/or administration of this Contract; and/or
  - contained in/omitted from any literature (hard copy and/or electronic) supplied by Waterware in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Waterware, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 4. Change in Control

- 4.1 The Client shall give Waterware not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Waterware as a result of the Client's failure to comply with this clause.

## 5. On-Line Ordering

- 5.1 The Client acknowledges and agrees that:
- Waterware does not guarantee the website's performance;
  - display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Waterware;
  - on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - there are inherent hazards in electronic distribution, and as such Waterware cannot warrant against delays or errors in transmitting data between the Client and Waterware including orders, and you agree that to the maximum extent permitted by law, Waterware will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Waterware and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
  - if the Client is not the cardholder for any credit card being used to pay for the Goods, Waterware shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 Waterware reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Waterware's business, or violated these terms and conditions.

## 6. Out of Stock/Substitution

- 6.1 Waterware will use its reasonable endeavours to ensure that all Goods ordered by the Client are supplied to the Client. If the Goods ordered are not available in stock, Waterware shall work with the Client on a case by case basis where options may include back order of Goods or amendment to the order.

## 7. Price and Payment

- 7.1 At Waterware's sole discretion the Price shall be either:
- as indicated on any invoice provided by Waterware to the Client; or
  - the Price as at the date of Delivery of the Goods/Equipment according to Waterware's current price list; or
  - Waterware's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 7.2 Waterware reserves the right to change the Price:
- if a variation to the Goods/Equipment which are to be supplied is requested; or
  - if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - if during the course of the Services, the Goods cease to be available from Waterware's third party suppliers, then Waterware reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - in the event of increases to Waterware in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Waterware's control.

- 7.3 Variations will be charged for on the basis of Waterware's quotation, and will be detailed in writing, and shown as variations on Waterware's invoice. The Client shall be required to respond to any variation submitted by Waterware within ten (10) working days. Failure to do so will entitle Waterware to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At Waterware's sole discretion a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Waterware, which may be:
- on or before delivery of the Goods/Equipment;
  - by way of instalments/progress payments in accordance with Waterware's payment schedule;
  - for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - the date specified on any invoice or other form as being the date for payment; or
  - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Waterware.
- 7.6 Waterware may in its discretion allocate any payment received from the Client towards any invoice that Waterware determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Waterware may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Waterware, payment will be deemed to be allocated in such manner as preserves the maximum value of Waterware's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 7.7 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Waterware.
- 7.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Waterware nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Waterware an amount equal to any GST Waterware must pay for any supply by Waterware under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 8. Delivery of Goods/Equipment

- 8.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Waterware's address; or
  - Waterware (or Waterware's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.2 At Waterware's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 8.3 Waterware may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- such discrepancy in quantity shall not exceed 5%, and
  - the Price shall be adjusted pro rata to the discrepancy.
- 8.5 Any time specified by Waterware for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. Waterware will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then Waterware shall be entitled to charge a reasonable fee for redelivery and/or storage.

## 9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Waterware is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Waterware is sufficient evidence of Waterware's rights to receive the insurance proceeds without the need for any person dealing with Waterware to make further enquiries.
- 9.3 If the Client requests Waterware to leave Goods outside Waterware's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

## 10. Access

- 10.1 The Client shall ensure that Waterware has clear and free access to effect delivery of the Goods. Waterware shall not be liable for any loss or damage to the Client's premises (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Waterware.

## 11. Title to Goods

- 11.1 Waterware and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid Waterware all amounts owing to Waterware; and
  - the Client has met all of its other obligations to Waterware.
- 11.2 Receipt by Waterware of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
- until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Waterware on request;
  - the Client holds the benefit of the Client's insurance of the Goods on trust for Waterware and must pay to Waterware the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Waterware and must pay or deliver the proceeds to Waterware on demand;
  - the Client shall not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Waterware and must sell, dispose of or return the resulting product to Waterware as its direct;
  - the Client irrevocably authorises Waterware to enter any premises where Waterware believes the Goods are kept and recover possession of the Goods;
  - Waterware may recover possession of any Goods in transit whether or not Delivery has occurred;
  - the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Waterware; and
  - Waterware may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to Waterware for Services – that have previously been supplied and that will be supplied in the future by Waterware to the Client.
- 12.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Waterware may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, Waterware for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
  - not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Waterware; and
  - immediately advise Waterware of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Waterware and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Waterware, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

- 12.6 The Client shall unconditionally ratify any actions taken by Waterware under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.

## 13. Security and Charge

- 13.1 In consideration of Waterware agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any monies).
- 13.2 The Client indemnifies Waterware from and against all Waterware's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Waterware's rights under this clause.
- 13.3 The Client irrevocably appoints Waterware and each director of Waterware as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

## 14. Defects

- 14.1 The Client shall inspect the Goods/Equipment on Delivery and shall within fourteen (14) days of Delivery (time being of the essence) notify Waterware of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Waterware an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which Waterware has agreed in writing that the Client is entitled to reject, Waterware's liability is limited to either (at Waterware's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 14.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

## 15. Return of Goods

- 15.1 Returns of Goods will only be accepted provided that:
- the Client has complied with the provisions of clause 14.1; and
  - Waterware has agreed in writing to accept the return of the Goods; and
  - the Goods are returned at the Client's cost within thirty (30) days of the Delivery date; and
  - Waterware will not be liable for Goods which have not been stored or used in a proper manner; and
  - the Goods are returned 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.
- 15.2 Waterware may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.3 Subject to clause 14.1, non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

## 16. Warranty

- 16.1 For Goods not manufactured by Waterware, the warranty shall be the current warranty provided by the manufacturer of the Goods. Waterware shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 16.2 To the extent permitted by statute, no warranty is given by Waterware as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Waterware shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 16.3 The conditions applicable to the warranty given on Goods supplied by Waterware are contained on the "Warranty Documentation" that will be supplied with the Goods.

## 17. Consumer Guarantees Act 1993

- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Waterware to the Client.

## 18. Intellectual Property

- 18.1 Where Waterware has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Waterware. Under no circumstances may such designs, drawings and documents be used without the express written approval of Waterware.
- 18.2 The Client warrants that all designs, specifications or instructions given to Waterware will not cause Waterware to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Waterware against any action taken by a third party against Waterware in respect of such infringement.
- 18.3 The Client agrees that Waterware may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Waterware has created for the Client.

## 19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Waterware's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Waterware any money the Client shall indemnify Waterware from and against all costs and disbursements incurred by Waterware in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Waterware's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Waterware may have under this Contract, if a Client has made payment to Waterware, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Waterware under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Waterware's other remedies at law Waterware shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Waterware shall, whether or not due for payment, become immediately payable if:
- any money payable to Waterware becomes overdue, or in Waterware's opinion the Client will be unable to make a payment when it falls due;
  - the Client has exceeded any applicable credit limit provided by Waterware;
  - the Client 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 20. Cancellation

- 20.1 Without prejudice to any other remedies Waterware may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Waterware may suspend or terminate the supply of Goods/Equipment to the Client. Waterware will not be liable to the Client for any loss or damage the Client suffers because Waterware has exercised its rights under this clause.
- 20.2 Waterware may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice Waterware shall repay to the Client any money paid by the Client for the Goods/Equipment. Waterware shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Waterware as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Waterware is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. Waterware acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in

Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Waterware acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Waterware that may result in serious harm to the Client, Waterware will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to Waterware in respect of Cookies where the Client utilises Waterware's website to make enquiries. Waterware agrees to display preference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- IP address, browser, email client type and other similar details;
- tracking website usage and traffic; and
- reports are available to Waterware when Waterware sends an email to the Client, so Waterware may collect and review that information ("collectively Personal Information")

If the Client consents to Waterware's use of Cookies on Waterware's website and later wishes to withdraw that consent, the Client may manage and control Waterware's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

21.3 The Client authorises Waterware or Waterware's agent to:

- access, collect, retain and use any information about the Client; (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- for the purpose of marketing products and services to the Client.

(b) disclose information about the Client, whether collected by Waterware from the Client directly or obtained by Waterware from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.

21.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by Waterware and the right to request that Waterware correct any incorrect Personal Information.

21.6 Waterware will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

21.7 The Client can make a privacy complaint by contacting Waterware via e-mail. Waterware will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

## 22. Equipment Hire

22.1 Equipment shall at all times remain the property of Waterware and is returnable on demand by Waterware. In the event that Equipment is not returned to Waterware in the condition in which it was delivered Waterware retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all Waterware shall have right to charge the Client the full cost of replacing the Equipment.

22.2 The Client shall:

- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
- not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Waterware to the Client.

22.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, Waterware's interest in the Equipment and agrees to indemnify Waterware against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

22.4 Notwithstanding the above clause, immediately on request by Waterware the Client will pay:

- any lost hire charges Waterware would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- any insurance excess payable in relation to a claim made by either the Client or Waterware in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Waterware's.

22.5 Return of the Equipment ("Return") will be completed when the:

- Equipment is returned by the Client to Waterware's place of business; or
- Waterware takes back possession of the Equipment once collection by Waterware is affected.

## 23. Service of Notices

23.1 Any written notice given under this Contract shall be deemed to have been given and received:

- by handing the notice to the other party, in person;
- by leaving it at the address of the other party as stated in this Contract;
- by sending it by registered post to the address of the other party as stated in this Contract;
- if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- if sent by email to the other party's last known email address.

23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 24. Trusts

24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Waterware may have notice of the Trust, the Client covenants with Waterware as follows:

- the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- the Client will not without consent in writing of Waterware (Waterware will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - the removal, replacement or retirement of the Client as trustee of the Trust;
  - any alteration to or variation of the terms of the Trust;
  - any advancement or distribution of capital of the Trust; or
  - any resettlement of the trust property.

## 25. General

25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.3 These terms and conditions and any contract to which they apply shall be

governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.

25.4 Except to the extent permitted by law "CGA", Waterware shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Waterware of these terms and conditions (alternatively Waterware's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

25.5 Waterware may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

25.6 The Client cannot licence or assign without the written approval of Waterware.

25.7 Waterware may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Waterware's sub-contractors without the authority of Waterware.

25.8 The Client agrees that Waterware may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Waterware to provide Goods/Equipment to the Client.

25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.

25.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.