

## 1. APPLICATION OF TERMS

- (a) These terms apply to every sale of Goods by the Seller and, amongst other things, govern the liability of the Seller unless otherwise agreed in writing by the Seller.
- (b) The Purchaser and Seller agree that these terms constitute the entire agreement between them and that there is no other documentation, correspondence, understandings, representations or warranties or statements of any kind (express or implied) other than these terms unless agreed in writing by the Seller.
- (c) Any order made by a Purchaser otherwise than pursuant to a quotation or tender shall not be binding on the Seller until accepted by the Seller in writing.
- (d) Each tender or quotation by the Seller is, notwithstanding any rule of law, an invitation to treat only and is not an Offer by the Seller to the Purchaser.
- (e) Any condition contained in an order made by the Purchaser, which is inconsistent with, qualifies, or is contrary to these terms, is of no effect unless that condition is expressly accepted in writing by the Seller.
- (f) No alteration or variation of these terms is effective unless expressly stated in the Seller's tender or quotation or in any other case agreed in writing by the Seller.

## 2. OFFER AND VALIDITY

- (a) Unless otherwise advised in writing to the Purchaser any Offer made by the Seller shall remain valid for 30 days from the date of Offer unless withdrawn earlier in writing.
- (b) Any variation, waiver or cancellation of an order made by the Purchaser is of no effect unless accepted in writing by the Seller. If the Seller accepts cancellation of an order, then the Seller may levy a handling charge of up to 10% of the Price.

## 3. PRICE

- (a) Unless otherwise agreed in writing, the Price is ex warehouse situated in Wellington, New Zealand, and transport and delivery costs, insurance and GST all of which must: (i) be paid by the Purchaser; and (ii) if the Seller disburses those costs, be refunded to the Seller by the Purchaser. Without limitation, the Purchaser must pay to the Seller on demand the GST payable by the Company for the Goods.
- (b) The Prices are subject to alteration without notice and the Price payable by the Purchaser for the Goods ordered is the Price applicable at the date the Goods are ordered.
- (c) General Increases  
Any rise or fall in the cost of the Goods or transport, or extra costs incurred in conforming with any Act of Parliament, Order in Council or to any order regulation or by-law made with statutory authority by government departments or by local body or other authorities, introduced since the date of an order by the Purchaser, shall be to the Purchaser's account. Alternatively, the Seller reserves the right to provide details of specific increases for individual component items.

## 4. PAYMENT ITEMS

- (a) Unless credit has been approved in writing by the Seller, all invoices shall be due and payable before delivery of the Goods or upon the Seller's advice to the Purchaser that the Goods are ready for dispatch.
- (b) Where credit has been approved, all invoices are due and payable: (i) at the address of the Company stated in the invoice; (ii) by the 20<sup>th</sup> end of month (EOM); (iii) without set-off, discount or by way of exchange of the Purchaser's goods or services; and (iv) in New Zealand dollars, unless otherwise agreed in writing by the Seller.
- (c) If any part of an invoice is disputed, the Purchaser must promptly pay the amount not in dispute according to applicable payment

terms.

- (d) Where credit has been approved and payment in full is not received by the Seller within 30 days from the date of the invoice ("the interest date") without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, the Seller has the right to charge the Purchaser interest on the monies outstanding from the interest date to the date of payment calculated at 2% per month together with any costs of collection incurred by the Seller. The Seller is entitled to apply any payment received towards any of the goods supplied to the Purchaser.
- (e) Where the Purchasers' account is in arrears, the Seller may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacturing or making any further delivery of Goods under these terms or any other agreement between the Seller and the Purchaser.
- (f) Notwithstanding the above, the Seller reserves the right to restrict or withhold the sale of further Goods on credit if the Seller has reason to doubt the Purchaser's ability to pay for such purchases.
- (g) The Seller may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgments or invoice.
- (h) For orders of less than \$100 a handling charge of \$20.00 per order entry may be charged. When charged, it shall be shown as a separate item.
- For non-stocked or indent items, a 50% upfront payment will be required.
  - For export orders of Goods, payment shall be made through an irrevocable letter of credit opened prior to commencement of manufacture.
- (k) Where the Goods are supplied for contracts relating to design and build: (i) unless otherwise stated in the quotation the Seller reserves the right to submit claims for progress payments against work completed and value of materials to hand, to a value of 90% of the Price during the term of such contract; and (ii) no retentions will be accepted unless specifically agreed to by the Seller.

## 5. DELIVERY, TITLE AND RISK

- (a) Until the Purchaser has paid the price for the Goods supplied under each contract: (i) the Seller is and remains the legal and equitable owner of the Goods; (ii) the Purchaser holds the Goods as a fiduciary bailee for the Seller and must store the Goods safely and in a manner that clearly shows the ownership of the Seller; and (iii) the Purchaser grants to the Seller, its employees and authorised representatives an irrevocable license to enter the Purchaser's premises (or any other premises either under the control of the Purchaser or where the Goods are stored on behalf of the Purchaser) at any time to inspect the Goods and, if the Purchaser defaults in paying for those Goods, to use reasonable force to take possession of the Goods without liability for trespass, negligence, payment of any compensation to the Purchaser or other person or otherwise. Any exercise of this right is without prejudice to any other rights the Seller has against the Purchaser, including the right at all times to make a claim against the Purchaser for the invoiced price of the Goods, when due and payable.
- (b) Clause 5(a) also applies until the Purchaser: (i) has paid all monies owing to the Seller on any account whatsoever, including any costs incurred by the Seller because of the Purchaser's failure to pay or late payment of any such monies and the costs incurred by the Seller in recovering the Goods from the Purchaser; and (ii) has complied with all its obligations under these terms and conditions. Notwithstanding clause 5(a), the Purchaser may, subject to clause 5(d), re-sell and deliver the Goods in the ordinary course of its business but if the Purchaser: (i) is paid for that sale, the Purchaser

holds all of the proceeds of sale on trust for the Seller and must promptly pay those proceeds to the Seller (keeping them separate and identifiable from the Purchaser's other funds until it has done so); (ii) intermingles those proceeds of sale with the Purchaser's other funds, the Purchaser acknowledges that the Seller has a beneficial interest in those intermingled funds to the extent of the monies owing by the Purchaser to the Seller at any time; and (iii) is not paid for that sale, the Purchaser must assign to the Seller, if the Seller so elects by notice in writing, its claim against the person who bought the Goods from the Purchaser. For this purpose, the Purchaser irrevocably appoints the Seller as the Purchaser's attorney.

(c) The Purchaser's right to re-sell the Goods pursuant to clause 5(c) cease if the Seller exercises its right to the return of the Goods pursuant to clause 5. The Purchaser also acknowledges that any purported exercise of its rights under clause 5(c) once the Seller elects to exercise its rights for the return of the goods (either by notice in writing to the Purchaser or by physical recovery of the Goods pursuant to clause 5(a)) would be outside the ordinary course of the Purchaser's business.

(d) If the Purchaser makes a new object from the Goods (whether finished or not), mixes the Goods with other goods or the Goods otherwise become part of other goods (Combined Goods) then clauses 5(a), 5(b) and 5(c) apply to the Combined Goods as if each reference in those clauses to Goods was a reference to Combined Goods. For these purposes, ownership of the Combined Goods passes from the Purchaser to the Seller at the beginning of the first operation by which the Goods become Combined Goods.

(e) If the Purchaser pays for Goods by cheque, then payment only occurs when all cheques have been presented and cleared in full.

(f) Notwithstanding the operation of this clause, risk in the Goods (including responsibility for insurance) passes to the Purchaser upon delivery of the Goods to the Purchaser. Delivery of the Goods to a carrier nominated by the Purchaser constitutes delivery to the Purchaser (regardless of who pays for freight). Each sub-clause of this clause is intended to operate separately from the rest. If any sub-clause of this clause is held to be invalid, then it will be severed from the rest of the clause (which continues in full force).

(g) The Seller will make all reasonable efforts to meet any date for delivery of the Goods agreed between the Seller and the Purchaser. Where a delay in delivery is caused by Force Majeure the time for delivery is extended by a reasonable period.

(h) The Seller reserves the right to dispatch the Purchaser's order in one delivery or by installments. Where the Seller acknowledges an order which provides for delivery by installment the Seller is entitled to separate payment for each installment delivered (as if it were a separate contract) but failure to deliver any installment does not entitle the Purchaser to repudiate the contract as to any remaining installments.

(i) All statements or forecasts of delivery times made by the Seller are made in good faith but are estimates only, not commitments. The Seller is not bound by any such estimate.

(j) Where the Purchaser requests a particular method of delivery, and the Seller agrees in writing then the Purchaser must pay for the cost of delivery by that method from the point of dispatch of the Goods by the Seller. Otherwise, the Seller will select the method of delivery.

(k) The Seller's liability for shortages in the quantity of the Goods is limited to making up the shortages. The Seller is not liable for any claim for shortages in quantity unless the Purchaser notifies the Seller of the shortages in writing within 7 days of delivery and provides the Seller a reasonable opportunity to take all necessary steps to investigate the claim.

(l) Claims made for damage or loss in transit must be made against the carrier in the prescribed manner.

(m) Prior to acknowledging delivery to the carrier, the Purchaser must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Goods, then the Purchaser must endorse the carrier's note accordingly.

(n) The Seller is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the

Goods both when the Seller has not packed the Goods and when the Purchaser has nominated a carrier.

(o) Without limiting the generality of clauses 5(h) and (q), if delivery of the Goods by the Seller is delayed by The Purchaser varying the order after it has been accepted by the Seller, the Seller may in its absolute discretion review the order and vary the Price and delivery date accordingly.

(p) The Seller is not liable to the Purchaser for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods.

## 6. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

The Purchaser grants the Seller a security interest on all goods supplied by the Seller as security for all indebtedness owed whatsoever to the Seller. The Purchaser agrees: (i) to promptly give the Seller all assistance and information (including signing any documents) as the Seller requests to ensure that the Seller has a perfected first ranking security interest in all goods (and the proceeds thereof) supplied by the Seller; (ii) that the Seller may register a financing statement on the Personal Property Securities Register against the Purchaser; (iii) not to change its name without notifying the Seller in writing of the Purchaser's intention to change its name at least 10 business days prior to doing so; (iv) it waives the right to receive a copy of any verification statement under s148 of the PPSA; and (v) it has no rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.

## 7. FORCE MAJEURE

The company will not accept any liability or responsibility for circumstances or events beyond the reasonable control of the Seller, including without limitation war, strikes, lockouts, slowdowns, fire, riot, tempest, war, embargo, governmental act, regulation or request, accident, delay in transportation or inability to obtain necessary labour, materials or manufacturing facilities or default by any manufacturer, supplier, subcontractor to the Seller preventing or hindering the Seller in the due performance and observance of its duties and obligations under these terms ("Force Majeure").

## 8. PACKING

The Seller will pack the Goods in accordance with its standard practice. Alternative packing specified by the Purchaser shall be at the expense and risk of the Purchaser and the Seller shall not be responsible for any loss or damage caused as a result of such packing.

## 9. WARRANTY

Goods manufactured by the Seller (a) The Seller's liability for any Defective Goods, or for any loss, injury, or damage attributable thereto is limited to repairing or replacing, at the Seller's option, those Defective Goods that arise within the Warranty Period PROVIDED THAT: (i) the Seller is notified within 30 days of the alleged defect first coming to the Purchaser's notice and within the Warranty Period; and (ii) the Defective Good is returned promptly to the Seller's work at the Purchaser's cost if the Seller so requires and the Seller will return the repaired or replaced. Goods at the Seller's cost to the original contract delivery point (unless otherwise arranged); and (iii) any unauthorised repairs or alterations to the Goods invalidates this warranty.

(b) This warranty does not cover damage from misuse, accident,

neglect or improper operation, maintenance, installation, modification or adjustment.

**10. GOODS RETURNED FOR CREDIT**

- (a) The Purchaser may return goods for credit only with the Seller's prior written consent. A handling and restocking charge will be charged at the Seller's discretion. The credit given for returned goods will be the value of the goods only, adjusted for handling or other charge that might have applied to the original invoice.
- (b) Goods returned for credit shall be delivered to the Seller free into store in the original packing, unsoiled and undamaged, along with a delivery docket stating the original invoice number, and the reason for return, within 30 days of receipt of the goods.
- (c) Credit shall not be given for incorrect supply of goods unless the Seller receives written confirmation of the order prior to dispatch of the goods.
- (d) If the Purchaser is unable to take delivery or if delivery cannot otherwise be affected, the Seller at its sole discretion may store the goods at the Purchaser's risk and expense, or take such other steps as are considered appropriate.
- (e) The Purchaser cannot return for credit non-stock or indent items or Goods made to order.
- (f) The Purchaser must have written approval prior to returning credit Goods more than 30 days from the date of delivery.

**11. DRAWINGS AND DOCUMENTATION**

- (a) Any descriptive specifications, lighting designs, energy savings business cases, drawings and particulars submitted by the Seller with a quotation or tender are reliant upon the quality of the information provided to Ecopoint and are provided on a best effort basis and do not form part of the contract, tender or quotation.
- (b) Any statement, description, illustration or other information in the Seller's catalogues, price lists and other advertising matter are provided merely to give a general idea of the Goods, are approximate only and do not form part of the contract, tender or quotation.
- (c) Any documents submitted by the Seller to the Purchaser remain the property of the Seller and constitute the confidential information of the Seller, and the Purchaser shall not use them for any purpose other than that stipulated in these terms and the purpose for which they are supplied.
- (d) The Purchaser hereby covenants not to disclose to any person without the previous consent in writing of the Seller any information described per clause 10(a) and (b) or other materials, procedures, trade secrets, records, accounts, market and publishing knowledge ("the trade information") supplied by and relating to the Seller, customers of the business or any other matter relating to the Seller or the goods which the Purchaser may be provided, by or at the request of the Seller, nor will the Purchaser attempt to use the trade information by any of its agents, servants, employees, or any associated parties and will upon demand by the Seller forthwith as required by the Seller destroy or return any of the trade information supplied and capable of destruction or return.
- (e) If the sale is not completed, or offer not accepted, upon the Seller's request, any documents submitted with the Seller's Offer shall be returned to the Seller within 14 days of the request.
- (f) Any performance figures stated in the tender or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.
- (g) Drawings and documentation supplied by the Company are standard technical commercial literature.

**12. TESTS AND PERFORMANCE**

- (a) All goods will be inspected, and the Seller's standard tests carried out. Any additional test required by the Purchaser shall be at the Purchaser's expense.
- (b) After 7 days' notice that the Seller is ready to conduct any test required by the Purchaser the test may be conducted by the Seller in the Purchaser's absence and the Purchaser shall be deemed to have been present. All tests shall be carried out at the Seller's premises.
- (c) If the results of the tests are outside any performance limits specified in the contract the Seller shall be given a reasonable time within which to rectify performance, stated in the tender or quotation unless such figures are expressly guaranteed by the Seller in writing.

**13. SUBJECT AND LIMITS OF THE OFFER**

- (a) The prices quoted by the Seller are only for the supply of those goods specified in the Offer and shall not apply to any additional goods supplied by the Seller unless agreed in writing by the Seller.
- (b) Following acceptance of the Offer the Seller shall not be required to comply with any additional standards, specifications, rules or other requirements proposed by the Purchaser and if such additional standards, specifications, rules or other requirements are proposed by the Purchaser the Seller reserves the right to decline to proceed or review the Offer.  
Unless otherwise notified in writing to the Purchaser the Goods are of standard design and the Seller is not required to comply with tender specifications regarding the operation of the Goods.
- (c) The price of the Goods unless expressly provided for does not include technical assistance or training of the Purchaser's employees, servants or agents by the Seller.
- (e) The Purchaser must ensure that the Goods ordered are fit and suitable for the purpose for which they are required, and the Seller is under no liability if they are not.
- (f) The Purchaser is solely responsible for obtaining all necessary permits to comply with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.

**14. TERMINATION**

- (a) The Seller may terminate or suspend the contract without notice if the Purchaser: (i) is in breach of a term of the contract and fails to remedy the breach within 14 days of notice in writing by the Seller specifying the breach and requesting the Purchaser to remedy it; (ii) has failed or refused to take delivery of the goods or any part thereof and such failure or refusal continues for a period 7 days after the Seller advises the Purchaser that the goods are ready for delivery;
- (iii) is declared bankrupt, resolves to go into liquidation or has a petition for its bankruptcy or winding up presented, or enters into a scheme of arrangement with its creditors, or if any liquidator, receiver or official manager is appointed in respect of the Purchaser; (iv) enters into any agreement relating to the sale, assignment or dispossession of its business OR its shareholders or partners transfer, assign or part with or agree to transfer, assign or part with more than 25% of their present shareholding or share in the partnership.
- (b) In the event of such termination the Seller shall, after taking into account payments made by the Purchaser to the Seller, be entitled to payment for work done and expenditure made under the contract up to and including the date of termination and any direct and indirect expense or loss suffered by the Seller including without limitation the Seller's loss of profit on the contract and the legal costs of the Seller (on a full indemnity basis) incurred in relation to the termination and any proper breach and in exercising any rights and remedies as a consequence of the termination and any breach.
- (c) Termination of the contract pursuant to these provisions, shall be without prejudice to the rights of the Seller accruing up to the date

of termination.

(d) If by Force Majeure the Seller is unable to perform or observe its obligations under these terms, the Seller does not breach its obligations so long as Force Majeure continues to operate.

#### 15. CANCELLATION

If any order of undelivered goods is cancelled or suspended by the Purchaser without the Seller's prior consent the Seller shall be entitled to charge the following cancellation fees.

(a) Where the goods are listed in the Seller's current New Zealand catalogue or price list for the time being as stock items a cancellation fee of 20% of the net invoice amount.) The Seller does not guarantee the performance figures. Where the goods are listed in the Seller's current New Zealand catalogue or price list for the time being as non-stock items and the order is cancelled or suspended: (i) prior to shipment of the goods from the relevant overseas port a cancellation fee of 50% of the net invoice amount; (ii) after shipment of the goods from the relevant overseas port a cancellation fee of 100% of the net invoice amount.

(b) Where the goods are not listed in the Seller's current New Zealand catalogue or price list except as excluded in clause 15(d) a cancellation fee of 100% of the net invoice amount.

(c) Where the goods are part of a manufacturing contract, the Seller shall after taking into account payments made by the Purchaser to the Seller, be entitled to payment for work done and expenditure made under the contract up to and including the date of termination and any direct or indirect loss suffered by the Seller including without limitation the Seller's loss of profit on the contract, legal costs of the Seller and all consequential losses and costs incurred as a result of cancellation.

#### 16. EXCLUSIONS

(a) The Seller is not liable under any circumstances whatsoever for: (i) any injury, damage or loss, including consequential damage or loss (including without limitation loss of market, loss of profit or loss of contracts) whether to persons or property arising out of this sale or the Goods supplied pursuant to it including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto and without limitation, the Seller is not liable for any loss of profit or other special damage or consequential damages arising out of any latent or other defect in the Goods; or (ii) any reduction in the Price for any shortages in any delivery, unless the shortage is noted by the Purchaser on the Seller's delivery note for that delivery; or (iii) or any loss of or damage to the Goods whilst in transit.

(b) If any liability may not be excluded by this sale and where the Goods then the liability of the Seller for a breach of a condition or warranty implied by any statute is limited to repairing the Goods or at the Seller's option, replacing the Goods or supplying equivalent Goods. In no event is the Seller liable to the Purchaser or any third party, in contract or tort, for more than the Price.

#### 17. INDEMNITIES, PATENTS AND DESIGN RIGHTS

All patents, registered designs, trademarks or copyright held by the Seller concerning the Goods remain the absolute property of the Seller and must not be reproduced or disclosed without the Seller's prior written consent. The Purchaser must not, without the Seller's prior written consent, copy or allow others to copy any drawings,

equipment or part thereof supplied by the Seller.

#### 18. SEVERANCE

If any provision or part of any provision of these conditions is unenforceable or if the Seller elects not to enforce said provisions, it will be severed from the rest and such unenforceability shall not affect any other part of such provision or any other provision of these terms.

#### 19. PROPER LAW

The contract shall be governed by the law of New Zealand and the parties agree to submit to the jurisdiction of the courts of New Zealand.

#### 20. ARBITRATION

If at any time any questions, dispute or difference whatsoever shall arise between the Purchaser and the Seller upon, in relation to, or in connection with these terms either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall thereupon be referred to the arbitration in New Zealand of a person to be mutually agreed upon, or failing agreement within thirty days of the receipt of such notice of some person appointed on the application of either party by the President of the Institution of Professional Engineers of New Zealand.

#### 21. DEFINITIONS

In these terms the following defined terms apply:

**Company** means Ecopoint New Zealand.

**Defective Goods** means a Good (or part thereof) that is defective solely because its design, materials contained within it or the way it is manufactured is faulty.

**Goods** means any product delivered pursuant to these terms, including labour and Software.

**GST** means any consumption tax imposed by Government, whether at point of sale or at some other occurrence, by whatever name, which operates during the term of this agreement and includes without limitation a goods and services tax, an indirect tax and value added tax.

**Offer** means tender, quotation or any other offer to supply Goods;

**Price** means the price quoted in the Company's catalogue (published from time to time), Offer or the contract or sale price; **Purchaser** means the company, firm or persons to whom the Seller's Offer or invoice is addressed and includes successors in title and permitted assigns.

**Sale** means and includes the sale by the Seller of Goods as well as any order or offer made or given by the Seller and any contract entered into between the Purchaser and the Seller.

**Seller** means Ecopoint Limited; or any other company named in the Offer.

**Specifications** means the document containing technical information relating to the functionality and/or of criteria for the Goods, and

**Warranty Period** is the earlier of either;

(a) the product specific warranty period stated on data sheets, starting from the date of delivery (stated on the sales invoice); or

(b) the date of receipt of the Goods.

If it is not possible to determine the date of delivery or date of receipt, the specific warranty period from the date of manufacturing, as indicated on the product will be used.