1 TERMS AND CONDITIONS

The following terms and conditions apply to and form part of any agreement for the supply of goods by the Company to the customer.

1. APPLICATION
The Sales of goods by ECOTECH PTY LTD is made upon the conditions below. If there are any inconsistencies between these conditions and those printed on customer’s purchase orders, the former will prevail.

2. PRICE VARIATION
The prices quoted are based on the quantities quoted. ECOTECH PTY LTD reserves the right to amend the prices should there be any variation between ECOTECH PTY LTD quoted quantity and customer’s purchase order quantity.

3. CURRENCY VARIATION
Where currency exchange rates are quoted on ECOTECH PTY LTD written quotation, prices may be adjusted at the date of invoice of goods in accordance with the exchange rate of the day. The percentage of the price affected by this currency variation is one hundred percent unless otherwise agreed to in writing.

4. Goods and Services Tax (GST)
Prices quoted do not include GST. GST is charged in accordance with Goods and Services Act as per Commonwealth of Australia.

5. RETURNS
Returns of goods can only be accepted, after prior agreement in writing and subjected to an inspection. Returned Goods will not be accepted for goods which were specifically manufactured or altered to customer specifications. Return of Goods will not be accepted after 30 days from date of invoice. Any costs incurred for returned goods such as freight and inspection will be charged to the customer.

6. DELIVERY
ECOTECH PTY LTD will do its best to meet delivery estimates but cannot accept any liability whatsoever for failure to do so. Failure to meet a delivery date shall not prejudice any contracts as regards to other deliveries.

7. DELIVERY CHARGES
A nominal delivery charge will be made against all orders. When ECOTECH PTY LTD is unable to complete an order from stock, this charge will only apply to the first delivery. Customers requesting scheduled deliveries will be charged for each delivery.

8. PAYMENT
The customer shall pay for each delivery of goods as per the credit amount and credit terms agreed in writing between Ecotech and Customer. If the customer fails to make due payments for one or more part deliveries, ECOTECH PTY LTD will be freed from any further obligation incurred by accepting the customer’s order in the first place.

9. BINDING AGREEMENT
A binding agreement/contract shall be deemed to be entered into only when ECOTECH PTY LTD has confirmed the customer’s order in writing.

10. TITLE
10.1 Title to the goods sold by ECOTECH PTY LTD to the customer shall not pass from the Company to the customer until the later of:

(a) unconditional payment in full to the Company for those goods; and
unconditional payment in full of all other amounts owing or unpaid by the customer to the Company on any account including in respect of goods previously or subsequently supplied to the customer.

Payment in full will not be regarded as having been received by the Company unless and until payment is made in cleared funds.

10.2 The risk of loss or damage to goods shall pass to the customer upon delivery of the goods to the customer. Where the customer is a company or firm, it is hereby agreed that the director or principal is liable for any debt incurred by the said named director or principal for on behalf of anybody with ECOTECH PTY LTD.

10.3 Until such time as title to goods passes to the customer under clause 10.1:

(a) the customer will hold the goods as a fiduciary and as bailee for the Company and will be responsible for any loss, damage or conversion of the Company’s goods;

(b) the customer must store the goods in such a manner as to show clearly that they remain the Company’s property;

(c) the Company may enter any premises owned or occupied by the customer or its agents to inspect the goods or inspect the customer’s books or records regarding the goods at any time; and

(d) the customer may only use the goods in the ordinary course of the customer’s business, or sell the goods in the ordinary course of the customer’s business for full market value at arm’s length to a bona fide purchaser for value without notice of these terms and conditions, provided that where the customer sells goods:

(i) the customer must hold all monies the customer receives for the sale of the goods (“Proceeds”) as bailee, fiduciary agent and trustee for the Company and not by way of security. The Company has the right to trace and claim Proceeds. Receipt by the customer of payment will be treated as conclusive evidence that the customer has received Proceeds;

(ii) the customer will sell as principal and the customer will have no power to commit the Company to any contract or otherwise or to any liability, but as between the customer and the Company the customer will sell as fiduciary agent; and

(iii) the customer accounts to the Company for all Proceeds which must be kept in a separate account on trust for the Company for that purpose until accounted for to the Company.

10.4 The customer must ensure that the goods are not and will not be subject to any security interest (including a lien) granted or created in favor of any third party (whether under contract, statute or common law) without the Company’s prior written consent. Without limiting the Company’s rights, if the customer becomes aware of a third party’s interest in or relating to a security interest, including a lien, in respect of the goods, the customer must notify the Company immediately in writing and provide the Company with all relevant details relating to the security interest, including the third party’s full name and contact details, the nature of the security interest and the goods subject to the security interest.

10.5 Despite this clause 10, the Company is entitled to maintain an action against the customer for payment of the purchase price of the goods.

11. DEFAULT

11.1 If:

(a) the customer breaches any of these terms and conditions;

(b) any cheque tendered by or on behalf of the customer is dishonoured for payment;

(c) the customer fails to comply with any demand for payment issued by the Company;
(d) any amount payable by the customer to the Company becomes overdue for payment or, in the Company’s opinion, the customer will be unable to meet its payment obligations to the Company as they fall due;

(e) any of the following occurs in respect of the customer, if it is a company:

(i) a receiver, manager, administrator or controller becomes entitled to take possession of any of the customer’s assets, any proceedings are instituted for the winding up of the customer, or the customer enters into a deed of company arrangement;

(ii) the customer becomes an externally-administered body corporate; or

(iii) the customer becomes insolvent; or

(f) the customer (being an individual) commits an act of bankruptcy or is or becomes an insolvent under administration; then, without prejudice to the Company’s other remedies under these terms and conditions or at law:

(g) the Company will be entitled to cancel all or any part of any of the customer’s orders which remain unfulfilled;

(h) all amounts owing to the Company will, whether or not due for payment, become immediately payable;

(i) the customer’s right to possess goods still owned by the Company under these terms and conditions will cease; and

(j) the Company will be entitled to enter any premises where the goods in respect of which title has not passed to the customer under clause 10.1 are kept, and repossess and sell such goods. The customer indemnifies the Company in respect of any claims or actions against, and costs, expenses and other liabilities incurred by, the Company in relation to the removal, repossession and sale of goods pursuant to these terms and conditions, including without limitation any claims brought by third parties.

12. PPSA
12.1 The customer agrees that these terms and conditions and in particular the provisions of clause 10 create a PMSI in goods (and their proceeds) supplied by the Company to the customer from time to time.

12.2 The customer agrees to do all things necessary and execute all documents reasonably required by the Company to register the PMSI granted by the customer under these terms and conditions, and ensure that the Company acquires a perfected security interest in the goods under the PPSA.

12.3 The PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions or any purchase money obligations of the customer.

12.4 Until title to goods passes to the customer under clause 10.1, the customer waives its rights under sections, 95, 118, 120, 121(4), 129, 130, 132(3)(d), 132(4), 135, 142, 143, 157(1) and 157(3) of the PPSA, to the extent that is permitted by law. The Company may also contract out of any other provisions of the PPSA not specified in this clause 12.4 as determined by the Company from time to time, provided that is also permitted under the PPSA.

12.5 Where the Company has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.

12.6 The customer agrees that repossession and retention of goods pursuant to the PPSA will only satisfy so much of the amounts owing by the customer to the Company as is equivalent to the Company’s estimation of the market value of the goods as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the customer has in the goods.
12.7 Until title to goods passes to the customer under clause 10.1, the customer must not give to the Company a written demand, or allow any other person to give to the Company a written demand, requiring the Company to register a financing change statement under the PPSA in respect of the customer or the goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of the goods.

12.8 The customer will be responsible for payment of any fees (and any other costs) that the Company incurs in relation to investigating, perfecting or registering its security interest in the goods, and those fees and costs may be added as a charge on invoices issued by the Company to the customer.

12.9 The customer agrees not to change the customer’s name without the Company’s prior written consent.

13. EXCLUSION AND LIMITATION OF LIABILITY
13.1 Exclusion of excludable warranties

(a) The Company excludes all warranties and guarantees in connection with any goods supplied to the customer (or in connection with any advice regarding such goods), other than those which may not be excluded under the Competition and Consumer Act 2010 (Cth) or other relevant legislation. For the avoidance of doubt, this exclusion includes an exclusion of all conditions and warranties implied by custom, the general law or statute.

(b) The customer acknowledges and agrees that in ordering or agreeing to acquire any goods from the Company, it relies on its own investigations and the professional advice it has received and does not rely on any representation, guarantee, warranty or assurance from or on behalf of the Company as to any matter.

13.2 Limitation of liability where exclusion not available

The Company’s liability under any guarantee, condition or warranty implied or stipulated by the Competition and Consumer Act 2010 (Cth) or similar legislative provision which may not be excluded but may be limited in any of the following ways, is limited at the Company’s option to:

(a) in the case of goods supplied by the Company:
   (i) the replacement of the goods or the supply of equivalent goods;
   (ii) the repair of the goods; or
   (iii) the refund of the price paid by the customer for the goods; or
(b) in the case of services supplied by the Company:
   (i) the supply by the Company of the services again; or
   (ii) the refund of the fee or other price paid by the customer for the services.

13.3 Exclusion of indirect loss etc

Notwithstanding anything to the contrary contained in these terms and conditions, the Company is not liable for any:

except for
(a) claims brought by third parties against the customer, or any liability or potential liability of the customer to pay compensation or damages to any third parties; and

(b) indirect loss, or consequential loss, or loss of income, profits, revenue, anticipated savings or opportunity, or any damage to goodwill or reputation,

any such liability which may not be excluded by force of the *Competition and Consumer Act 2010* (Cth) or similar legislative provision.

14. INDEMNITY
14.1 Without prejudice to any other rights the Company may have against the customer, and to the extent permitted by law, the customer indemnifies the Company for, and keeps it harmless from, any loss, damage or expense (including, without limitation, legal costs on a full indemnity basis, whether or not the subject of a court order) suffered or incurred by it arising out or in connection with:

(a) any breach by the customer of, or default by the customer under, these terms and conditions or any other agreement between the parties;

(b) the occurrence of any matter referred to in clauses 11.1(a) to (f) of these terms and conditions; and

(c) any other act or omission of the customer, or any officer, employee, agent or contractor of the customer.

14.2 Each indemnity in these terms and conditions is a continuing obligation, continues after the termination of any agreement between the parties, and is additional, separate and independent from the other obligations of the parties. It is not necessary for the Company to incur expense or make payment before enforcing a right of indemnity conferred by these terms and conditions.

15. INTELLECTUAL PROPERTY
15.1 All right, title, and interest in, and all Intellectual Property Rights consisting of or subsisting in, goods or any part of any of them (in both print and machine-readable forms) belong to the Company or the Company’s third party suppliers. The customer acquires no ownership of copyright or other Intellectual Property Rights, or any proprietary interest in the goods or any part of any of them, or in any materials provided as part of any goods or other products or services provided by the Company, including any copies thereof.

15.2 The customer may use the data and reports which form part of, are created by, or are created or provided as part of, goods for the purpose for which the data or reports were created or provided.

16. SEVERABILITY
If any provision of these terms and conditions is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of these terms and conditions nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

17. DEFINITIONS
In these terms and conditions:

17.1 “customer” means any person or entity who orders or purchases goods from the Company from time to time;

17.2 “ECOTECH PTY LTD” or “Company” means Ecotech Pty Ltd (ABN 32 005 752 081).

17.3 “goods” means goods or services supplied or to be supplied (as the context requires) by the Company to the customer from time to time;
17.4 “Intellectual Property Rights” means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, trade secrets, domain names, data base rights, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

17.5 “PMSI” means a purchase money security interest, as defined in the PPSA; and

17.6 “PPSA” means the Personal Property Securities Act 2009 (Cth).