



**Waterproofing
Technologies**



envirosystems

TERMS & CONDITIONS OF SUPPLY

1. Definitions

These general terms and conditions of sale apply where Waterproofing Technologies Pty. Ltd. t/a Envirosystems (“**Envirosystems**”) supplies products or services to a Customer under a contract where for the purpose of these terms and conditions and unless the context otherwise requires:

- 1.1. “**Amounts Outstanding**” means, at any time, all amounts owed by the Customer to Envirosystems at that time whether arising under the Contract or otherwise;
- 1.2. “**Conditions**” means these Terms and Conditions of Sale;
- 1.3. “**Contract**” means the contract formed in accordance with clause 2, consisting of Envirosystems’ proposal (if any), the relevant order and these Conditions;
- 1.4. “**Contract amount**” means the monetary value of the works good and/or services provided under the Contract payable by the Customer to Envirosystems;
- 1.5. “**Customer**” means the person (including its successors, personal representatives, and permitted assigns) acquiring Goods from Envirosystems as named in the credit application or an Invoice, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several;
- 1.6. “**Goods**” means all goods and/or services described in a Purchase Order/ Invoice;
- 1.7. “**GST**” means the tax imposed by the A New Tax System (Goods & Services) Act 1999 (Cth).
- 1.8. “**Intellectual Property**” means any patent, registered design, trademark, copyright or any other industrial or intellectual property rights;
- 1.9. “**Invoice**” means a written invoice from Envirosystems to the Customer for the Goods;
- 1.10. “**Loss or Damage**” includes all types of property, pecuniary or other loss or expense or damage, including direct indirect consequential loss or damage and loss of profits or revenue or production capacity.
- 1.11. “**Purchase Order**” means a purchase order or alternative form of order or offer to purchase provided by the Customer to Envirosystems.

2. Contract and Formation

- 2.1. Subject to clause 2.2 a binding contract will form between the Customer and Envirosystems;
 - 2.1.1. if these Conditions form part of an Envirosystems proposal to the Customer then on receipt by Envirosystems of the Customer’s unconditional acceptance of the proposal, evidenced by the Customer’s purchase order referencing the proposal; or
 - 2.1.2. upon Envirosystems written acceptance of the Customer’s purchase order. In the event that the Customer presents any counter terms and conditions, such terms and conditions will be considered null and void and will be superseded entirely by these Conditions.

Waterproofing Technologies Pty Ltd I 295 Princes Hwy, St Peters, NSW Australia 2044

T +61 2 85958699 I F +61 2 85958660 I www.envirosystems.com.au

ABN: 52 118 164 408

- 2.2. The Contract will constitute the entire contract between the parties in connection with the sale of any products and services and all prior written correspondence or material, representations or discussions shall have no effect.
- 2.3. No waiver modifications or variation of the Contract shall be valid or accepted or bind EnviroSystems unless expressly agreed to in writing by an authorised representative of EnviroSystems.
- 2.4. Unless otherwise stated in a proposal by EnviroSystems any offer to supply products is valid for 30 days from the date of the offer.
- 2.5. EnviroSystems reserves the right to vary the offer to reflect any change in cost to EnviroSystems between the date of offer and the date of Contract.
- 2.6. EnviroSystems reserves the right to vary the Contract sum at any time to include the costs of site allowances or changes to industrial conditions.
- 2.7. EnviroSystems reserves the right to suspend any and all inactive accounts who have not purchased over a period of six months. The Customer who was previously on account will revert to Cash On Delivery (COD) until another application has been submitted and approved.

3. Quotations, Purchase Orders and Forecasts

- 3.1. Any quotation made by EnviroSystems is not an offer to sell and no Purchase Order given in pursuance of any quotation will bind EnviroSystems unless and until such Purchase Order is accepted by EnviroSystems in its absolute discretion.
- 3.2. All quotations are subject to withdrawal or variation by EnviroSystems at any time prior to acceptance of a Purchase Order.
- 3.3. If the Customer has provided EnviroSystems with a forecast of future requirements it acknowledges that EnviroSystems will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources to be able to meet those forecast requirements.
- 3.4. If any such forecast is materially inaccurate EnviroSystems shall be entitled to invoice the Customer for all costs, expenses or losses which result from EnviroSystems having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Customer.
- 3.5. EnviroSystems shall also be entitled to invoice the Customer for all finished Goods made to forecast and not taken by the Customer within 2 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Customer.

4. Cancellation

- 4.1. Any request by the Customer for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery, or email. The Customer is liable to reimburse EnviroSystems for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received by EnviroSystems, together with EnviroSystems's loss of profit resulting from the cancellation of the Purchase Order.
- 4.2. The Customer may only cancel the Contract with EnviroSystems' consent and only on the basis that the Customer compensates EnviroSystems for all Loss or Damage incurred as a result of the cancellation of the Contract, with such compensation to be made within a timeframe specified by EnviroSystems.

- 4.3. EnviroSystems may suspend delivery, cease manufacturing or cancel any Contract without any liability whatsoever if the Customer at any time and as deemed by EnviroSystems acting reasonably;
 - 4.3.1. breaches any terms or conditions of the contact;
 - 4.3.2. commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and is unable to pay its debts; or
 - 4.3.3. refuses or neglects to take delivery of the products described in the Contract without a valid and reasonable cause.

5. Price Variation

- 5.1. Unless otherwise stated by EnviroSystems in the Contract, EnviroSystems may vary the prices stated in the Contract to reflect any change in the purchase of raw materials or the costs of transporting said materials.
- 5.2. Where a list price applies to the products supplied by EnviroSystems under the Contract all prices listed are (i) subject to alteration with reasonable notice, (ii) applicable to all deliveries on or after the effective date of any price alteration and (iii) do not include GST or any other government impost.

6. Variations to Contract

- 6.1. The Contract amount is based on the scope of work as detailed in the information provided by the Customer to EnviroSystems for the purpose of the Contract including where applicable plans, specifications (including standards and finishes), schedules and nominated quantities.
- 6.2. Any variations to the scope of the works or delivery arrangements or Contract shall be a variation to the Contract entitling EnviroSystems to vary the Contract amount and any other term or condition, provided that such variations are reasonable and justified by the circumstances.

7. Specifications

- 7.1. Where EnviroSystems manufactures or supplies products according to the Customer's specification the Customer shall provide to EnviroSystems accurate information to the extent required by EnviroSystems to enable EnviroSystems to provide the products as specified.
- 7.2. The Customer warrants to EnviroSystems that the information and any products to be manufactured by EnviroSystems under the Contract does not breach any copyright, registered design, patent or other rights of any third party and the Customer shall indemnify and hold harmless EnviroSystems in relation to any such alleged or actual breach.
- 7.3. Whilst every effort is made to ensure their accuracy the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, electronic communications or other descriptive matter provided by or on behalf of EnviroSystems represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty.
- 7.4. The Customer warrants that any goods or other material, including any packaging or artwork manufactured, constructed, or supplied by EnviroSystems which incorporate or are otherwise based in whole or in part upon designs, drawings, specifications or other

information or material supplied to Envirosystems by or on behalf of the Customer shall not infringe any Intellectual Property rights of a third party or breach any law. The Customer indemnifies Envirosystems from and against any action that may be brought against or Loss suffered by Envirosystems because of a breach of that warranty.

- 7.5. Envirosystems reserves the right to make any changes to designs, drawings or specifications supplied to Envirosystems by the Customer, and/or Goods ordered by the Customer, which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Customer.
- 7.6. Envirosystems does not warrant or guarantee that any Goods manufactured, constructed, or supplied by Envirosystems which incorporate or are otherwise based in whole or in part upon any designs, drawings, specifications or other information or material supplied to Envirosystems by or on behalf of the Customer will achieve any standard or performance or any capacity whatsoever.
- 7.7. Envirosystems will not be liable for any defect in the Goods arising from any designs, drawings, specifications or other information or material supplied to Envirosystems by the Customer. Where the Customer approves any artwork or proofs submitted by Envirosystems, Envirosystems will not be liable for any errors or inaccuracies subsequently discovered.
- 7.8. Any advice, recommendation, information, or assistance provided by Envirosystems in relation to the Goods or their use or application is given in good faith and is believed by Envirosystems to be appropriate and reliable. Any such advice, recommendation, information, or assistance is provided without liability or responsibility on the part of Envirosystems.
- 7.9. The Customer acknowledges that they have had sufficient time and opportunity to seek independent legal and financial advice regarding this Contract. The Customer confirms that they fully understand the terms and implications of this document and enters into it voluntarily, without reliance on any representations made by the other party.
- 7.10. In addition to any right of lien which Envirosystems may be entitled to by law, Envirosystems will have a general lien over any designs, drawings, specifications, or tooling supplied to Envirosystems by or on behalf of the Customer which is in Envirosystems's possession until all monies owing by the Customer to Envirosystems on any account has been paid in full.
- 7.11. The Customer accepts and acknowledges that the supply of indent Goods is subject to availability, and that Envirosystems is unable to guarantee availability, or in the absence of availability a delivery date of such Goods. The Customer further acknowledges that full payment of Envirosystems invoice/statement must be made in accordance with clause 8 Payments, irrespective of whether the Goods have been delivered to/collected by the Customer, or if they remain at Envirosystems premises.

8. Payments

- 8.1. Time for payment of the amount due from the Customer to Envirosystems shall be of the essence. The amount due includes the Contract sum, any variations to the Contract sum and any additional charges which Envirosystems is entitled to apply.
- 8.2. Subject to subclauses 8.3 and 8.4 below the Customer shall pay the full amount due in accordance with the credit arrangements (if any) as agreed with Envirosystems.

- 8.3. Where no credit arrangements have been previously agreed to by EnviroSystems but credit has been agreed by EnviroSystems as a condition of a particular contract the Customer shall pay the full amount due in the month following the month of invoice.
- 8.4. Where no credit arrangements have been agreed by EnviroSystems the Customer shall pay the full amount due before any delivery of the products.
- 8.5. The Customer shall pay interest at the rate of 15% per annum calculated monthly on any amount not paid by the due date.
- 8.6. Products can only be returned to EnviroSystems, subject to the following conditions:
 - 8.6.1. EnviroSystems consents in writing that Goods can be returned for credit, return or exchange;
 - 8.6.2. All returned/exchange Goods are unused, unsoiled, undamaged, in original packaging and in saleable condition;
 - 8.6.3. Goods will not be accepted until a full inspection and investigation has been completed by EnviroSystems on the quality of the Goods, it's packaging and age;
 - 8.6.4. Delivery of Goods returned without EnviroSystems prior written consent, will not constitute acceptance of those Goods by EnviroSystems for credit, return or exchange;
 - 8.6.5. Proof of Purchase, such as receipts and/or tax invoices, must be valid, intact and provided to EnviroSystems;
 - 8.6.6. A restocking and handling fee of 15% of the Contract amount and any other charges that are incurred by EnviroSystems to be able to return the Goods to a resalable condition shall be incurred and payable by the Customer;
 - 8.6.7. Freight charges will be payable by the Customer at cost on all pick ups and return transport;
 - 8.6.8. Restocking fee and charges will be communicated in writing and the Customer must first accept the value in writing before EnviroSystems shall acknowledge final acceptance of the return of the Goods;
 - 8.6.9. No returns/exchange will be accepted for either non-standard, special order or custom made Goods;
 - 8.6.10. All powdered products are non-returnable unless agreed by EnviroSystems;
 - 8.6.11. No returns/exchange will be accepted for Commercial quantities, and
 - 8.6.12. No returns/exchange will be accepted after 6 weeks from the delivery date of the Goods. Products may be returned, provided the products are in good order being in the same or substantially same condition as initially delivered, within 7 days of delivery, after which time a re-stocking and handling fee of 15% of the Contract amount will be incurred and payable by the Customer. Freight charges will be payable by the Customer at cost on all pick ups. No returns will be accepted after 6 weeks.
- 8.7. Notwithstanding any other provisions herein the Customer hereby grants EnviroSystems the right to lodge a caveat for any property that the Customer has any form of interest in in relation to any debt owing to EnviroSystems.

9. Delivery

- 9.1. Subject to subclause 9.2 delivery shall be on reasonable notice from the Customer to EnviroSystems and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.

- 9.2. Where the Contract includes a delivery schedule delivery shall be in accordance with the dates contained therein.
- 9.3. EnviroSystems shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond EnviroSystems control.
- 9.4. EnviroSystems reserves the right to delivery by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the Contract.
- 9.5. Delivery is deemed to occur at either (i) the place and time the Customer appropriates the products or (ii) in the absence of the Customer at site the time the products are deposited at the site for delivery nominated by the Customer as certified by the delivery docket/manifest signed by the cartage contractor.
- 9.6. Upon delivery the Customer shall become solely liable for any Loss or Damage to the delivered products by EnviroSystems where the Customer requests delivery of those products to a specific site.
- 9.7. Nothing in this clause shall be construed as altering the transfer of title as specified in clause and in the event of any inconsistency clause 9) will take precedence.

10. Title and Risk

- 10.1. Title in the products shall pass to the Customer upon payment of the amount due in full together with any interest due.
- 10.2. Risk in the products shall pass to the Customer upon delivery as deemed in clause 9.

11. Defective Products

- 11.1. The Customer shall immediately inspect the products at the point of delivery or collection.
- 11.2. Notice of any defects shall be given by the Customer to EnviroSystems in writing on the delivery docket/manifest signed by the Customer and immediately returned with the cartage contractor.
- 11.3. Where the point of delivery or collection is unattended the Customer shall give notice in writing to EnviroSystems within 24 hours before the intended time of delivery or collection and prior to installation or application, of any defects in the products.
- 11.4. Unless the Customer provides notice as per clauses 11.1 and 11.2, the products shall be considered to be in good order, condition, and in accordance with the Contract, and will be deemed accepted by the Customer.
- 11.5. EnviroSystems shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product should not be installed or applied.
- 11.6. If the Customer does not halt the product installation or application as per subclause 11.5, they forfeit all rights and release EnviroSystems from any further obligations.

12. Express Warranty

- 12.1. Please refer to EnviroSystems Product Warranty – Terms and Conditions located at <https://envirosystems.com.au/terms-conditions/>

13. Samples

- 13.1. Any sample product or sample colour is provided to indicate only the general nature of the product. EnviroSystems provides no warranty or guarantee that the product supplied shall

correspond in colour texture or blend with any sample or with any previous or future product supplied.

14. Lien

- 14.1. The Customer agrees that EnviroSystems has a lien over any products supplied by EnviroSystems under Contract for the price payable or any amount due from the Customer to EnviroSystems until all amounts have been paid in full.
- 14.2. In the event of default of payment by the Customer, EnviroSystems may sell such products after notice to the Customer as EnviroSystems sees fit including disposal of the products. Any additional Loss or Damage incurred by EnviroSystems in exercising its rights under this clause shall be a debt due and payable on demand from the Customer.

15. Force Majeure

- 15.1. EnviroSystems shall not be liable for any delay Loss or Damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events including industrial disputes, the unavailability of equipment materials or labour, fire, flood, machinery breakdown, civil disturbance, acts of God or government or similar statutory or regulatory action.

16. Intellectual Property

- 16.1. Subject to the remainder of this clause 16, all right, title and interest in and to any goods, materials or developments in which copyright or other Intellectual Property subsist created by or on behalf of EnviroSystems, created jointly with the Customer, or otherwise supplied by EnviroSystems to the Customer, shall vest absolutely in and remain the sole property of EnviroSystems.
- 16.2. The supply of Goods shall imply a licence to the Customer to use the same but for no other purpose.
- 16.3. The Customer undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any such Intellectual Property without the prior written consent of EnviroSystems.
- 16.4. EnviroSystems acknowledges that the Customer retains all right, title and interest in and to Intellectual Property of the Customer supplied to EnviroSystems under any Contract.
- 16.5. The Customer grants EnviroSystems a perpetual, irrevocable, royalty free licence under such Intellectual Property for the purpose of making all supplies contemplated by any Contract.
- 16.6. EnviroSystems represents and warrants that, to the best of its knowledge, the Goods supplied and the use of such Goods or items made from the Goods either alone or in conjunction with other goods will not infringe any Intellectual Property right.
- 16.7. The Customer will notify EnviroSystems of any claim or suit involving the Customer in which such infringement is alleged and if EnviroSystems considers itself to be affected it will be entitled to control the defence of such infringement allegation.
- 16.8. The Customer agrees to cooperate fully with EnviroSystems in the defence of any Intellectual Property claim or action arising from this Contract. This includes, but is not limited to, providing relevant information, documents, and access to personnel as reasonably requested. To the extent EnviroSystems considers itself to be affected by the

claim, then Customer shall not settle any such claim without the prior written consent of Envirosystems.

17. Artwork, Printing

- 17.1. Without limiting clause 17, the Customer indemnifies Envirosystems from and against all claims, demands, suits, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees) to which Envirosystems may become wholly or partially liable by reason of any artwork required to be done in accordance with the Customer's specifications involving an infringement or alleged infringement of any Intellectual Property and any Loss that results therefrom.
- 17.2. The Customer represents and warrants that the artwork it provides to Envirosystems does not breach any third-party intellectual property rights and complies with all relevant legislation.
- 17.3. If the Customer supplies Envirosystems with any artwork for use on or in conjunction with packaging supplied by Envirosystems, then use or reproduction by Envirosystems of that artwork is not to be construed as a warranty or representation that it complies with the relevant legislation (in Australia or elsewhere) in relation to labelling, and the Customer hereby indemnifies Envirosystems in relation to any Loss arising as a result of the use or reproduction of such artwork.
- 17.4. The Customer is responsible for providing the correct Global Trade Item Number (GTIN) in writing to Envirosystems where this is applicable, and warrants that the provided GTIN is accurate and complies with all relevant regulations and standards.
- 17.5. If the Customer supplies the copy/artwork for the GTIN symbol, then the Customer must ensure substantial compliance with the specifications for such symbols contained in the most recent edition of the applicable Industry Guidelines for the Numbering and Barcoding of Trade Items.
- 17.6. Envirosystems will exercise reasonable care in printing the GTIN symbol and will take all reasonable steps to ensure the accuracy and scannability of these symbols.
- 17.7. No GTIN symbol can be considered defective if it is commercially scannable or is in substantial compliance with GTIN specifications at the time of manufacture.
- 17.8. Envirosystems's liability for manufacturing defects in GTIN symbols is limited to, at Envirosystems's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at Envirosystems's discretion.

18. Tooling, Moulds, Dies, Designs etc.

- 18.1. All dies, designs, sketches, negatives, photographs, plates, moulds, stereos, tooling, blocks, and engravings commissioned or made available by Envirosystems in connection with the supply of any Goods shall remain the property of Envirosystems notwithstanding that a charge may be made for their recovery, creation, use, maintenance, and storage.

19. Quantity and Quality Tolerances

- 19.1. Each indent or bespoke Purchase Order must satisfy the minimum run-size requirements of Envirosystems. The quantity of the Goods delivered by Envirosystems under the Purchase Order can vary by up to 10% of the quantity specified by the Customer in the Purchase Order. The Customer will be invoiced for quantities delivered.

- 19.2. Where the Customer does not supply detailed colour specifications, EnviroSystems shall develop colour specifications and print the product accordingly to the Customer's general instructions.
- 19.2.1. The Customer shall then either attend EnviroSystems's premises to view the production run and approve the colour specifications developed or alternatively the Customer shall be forwarded samples by mail for approval.
- 19.2.2. In either case the Customer shall initial the samples approved. Any changes to the approved standards and specifications for subsequent production runs must be agreed upon in writing by both the Customer and EnviroSystems.
- 19.2.3. Failure by the Customer to approve colour specifications will deny the Customer the right of objection in relation to the limits of colour variation developed by EnviroSystems for that run.
- 19.2.4. Where the Customer has selected colour specifications for light, nominal and dark standards specifying the nominal colour reproduction and associated light and dark limits, the Customer will only have the right of objection to the nominal colours selected by him if such colours have been nominated using a colour system accepted by EnviroSystems.
- 19.3. Where the Customer supplies specifications to EnviroSystems, any Goods not varying in the specification stipulated by the Customer by more than the established industry tolerance shall be deemed accepted by the Customer as complying with the Contract.

20. Pallets

- 20.1. All pallets delivered with the products remain the property of EnviroSystems and shall be returned in good order and conditions to EnviroSystems within 30 days of the delivery or on demand by EnviroSystems.
- 20.2. Any pallet not returned by the said date shall be deemed rented by the customer at a rate as determined by EnviroSystems, provided that such rate is communicated to the Customer in advance and is reasonable and customary in the industry.

21. Assignment

- 21.1. Any contract incorporating these terms and conditions cannot be assigned by the Customer in whole or in part unless agreed in writing by EnviroSystems and on any terms and conditions EnviroSystems sees fit.

22. Measurement and Payment

- 22.1. Unless otherwise stated in the Contract the measurement of quantities for the purpose of calculating payments due to EnviroSystems shall be on the basis of the quantities shown on the delivery docket receipt/manifest.

23. Unanticipated and Latent Conditions

- 23.1. Should EnviroSystems encounter physical and/or latent conditions on the site or its surrounding which EnviroSystems considers could not reasonably have been anticipated at the date of the offer then;
- 23.1.1. EnviroSystems shall advise the Customer of the existence of such changed conditions and the measure necessary to deal with the conditions; and

- 23.1.2. All additional work carried out by EnviroSystems or any Loss or Damage incurred by EnviroSystems as a result of the unanticipated or latent conditions shall be at the Customer's expense, provided that EnviroSystems has taken all reasonable steps to mitigate such Loss or Damage.

24. Delay in Installation

- 24.1. Unless otherwise stated in the Contract the installation of products shall be carried out in accordance with the program of works as agreed between the Customer and EnviroSystems.
- 24.2. Where the program of works is delayed or suspended for any reason or cause outside the control of EnviroSystems all additional Loss or Damage incurred by EnviroSystems by reason of such delay or suspension shall be borne by the Customer.
- 24.3. EnviroSystems shall not be liable for any Loss or Damage incurred by the Customer arising out of delay or suspension of the work under the Contract howsoever caused.

25. Installation or Application of Products

- 25.1. Where EnviroSystems installs or applies products or provides services (including toll manufacturing) according to the Customer's designs, plans, specifications or directions (the "information") the Customer warrants to EnviroSystems that the information is correct accurate and sufficient for the specified purpose.
- 25.2. EnviroSystems shall not be liable for any Loss or Damage or injury howsoever arising in connection with the installed, applied or manufactured products as a result of the information supplied by the Customer.

26. Acceptance of Installation or Application

- 26.1. At the completion of any installation or application works EnviroSystems shall notify the Customer within 7 days of such notification and the Customer shall provide to EnviroSystems a list of any items or work which the Customer considers to be outstanding or defective.
- 26.2. EnviroSystems shall not be liable for any outstanding work or defects which are not notified with this clause or clause 11.

27. Statutory Requirements

- 27.1. Should any such term or condition be deemed by legislation to be void, voidable or unenforceable then that term or condition shall be severed and the remaining terms and conditions shall continue with full force and effect.

28. Notices

- 28.1. All notices given under or in connection with a contract shall be in writing and given or delivered to the recipient at its address as specified in the contract or at its registered offices.

29. Dispute Resolution

- 29.1. The Customer and EnviroSystems hereby agree that any and all claims (contractual, statutory, common law or otherwise), disputes, or suits that in any way, directly or indirectly,

arise out of or relate to the contract shall first be submitted to non-binding mediation before a neutral mediator jointly selected by the parties.

29.2. In the absence of resolution by mediation, all such claims shall be settled by arbitration in accordance with the Australian Centre for International Commercial Arbitration's rules current at the date of the reference of the dispute to arbitration. Any such mediation and/or arbitration shall take place in Sydney, Australia.

29.3. Any claims, disputes or suits between the parties hereto shall be governed by, and construed and enforced in accordance with, the laws and courts of the New South Wales and the courts competent to determine appeals from those courts.

30. Governing Law

30.1. The contract is governed by and subject to the laws of New South Wales and any competent court within that State.

31. Confidential Information

31.1. If at any time EnviroSystems disclosures to the Customer or the Customer becomes aware of confidential information of EnviroSystems including information relating to products, formula, recipe, materials, systems, procedures, processes, tests or equipment or information that by its very appearance and content is of a commercial or confidential nature or can be reasonably construed as being of a commercial or confidential nature the Customer shall not use the information for any purpose not approved by EnviroSystems and shall not disclose that confidential information to any person without EnviroSystems' written approval.

31.2. Should the Customer be in possession of any such confidential information the Customer warrants that it will on discovery of the confidential information contact and inform EnviroSystems of the information in the Customer's possession and take all action necessary to maintain the confidential nature of the information.

32. Limitation of Liability

32.1. EnviroSystems and its directors, employees, consultants, contractors and agents shall not be liable to the Customer (i) under or in connection with the contract (ii) in tort for negligence or otherwise (iii) otherwise at law (including by statute to the extent it is possible to exclude liability) and in equity generally including without limitation for restitution for unjust enrichment for any Loss or Damage which is not expressly provided for by contract. To the extent that EnviroSystems is liable under contract then EnviroSystems liability to the Customer will be reduced to the extent the Customer contributed to the Loss or Damage and in any event and in the aggregate is limited to the Contract sum.

33. PPS Law

33.1. In this clause PPSA means the Personal Property Securities Act 2009 (Cth) and terms defined in the PPSA have the same meaning in this clause (unless otherwise defined in this clause).

33.2. The Customer agrees that these Conditions constitute a security agreement for the purposes of the PPSA.

- 33.3. The Customer grants to Envirosystems, and each of its Related Bodies Corporate (each a **"Secured Party"**), a security interest in all Unpaid Goods and equipment supplied to the Customer by Envirosystems and any proceeds in respect of those Unpaid Goods and equipment (**"Proceeds"**) to secure the Amounts Outstanding.
- 33.4. The Customer acknowledges that such security interest shall be held jointly and severally by the Secured Parties and agrees that such security interest may be enforced by any one or more of the Secured Parties. To the extent that any Secured Party is not a party to these Conditions, these Conditions shall take effect as a deed poll by the Customer in favour of that Secured Party and shall be enforceable by that Secured Party.
- 33.5. The Customer agrees that a Secured Party may register, in any manner it considers appropriate, any security interest on the Personal Property Securities Register which in its opinion is created by or contemplated under these Conditions and, for the avoidance of doubt, may include any or all the Secured Parties as the secured party in such registration.
- 33.6. The Customer agrees not to lodge any Amendment Demand with respect to any registration made by a Secured Party.
- 33.7. The Customer agrees, at its own cost, to do anything (such as obtaining consents, signing and producing documents and supplying information) which a Secured Party reasonably requires for the purposes of;
- 33.7.1. ensuring that any security interest is enforceable, perfected with the highest priority and otherwise effective; or
- 33.7.2. enabling a Secured Party to apply for any registration, or give any notification, in connection with a security interest; or
- 33.7.3. enabling a Secured Party to exercise rights in connection with a security interest.
- 33.8. The Customer agrees that until ownership of the Unpaid Goods has passed to the Customer under clause 10, it will not enter into any agreement or arrangement which gives rise to, or permits any other person to register, any security interest in respect of the Unpaid Goods or the Proceeds without the Secured Party's prior written consent, and will not otherwise deal with the Unpaid Goods or Proceeds in a way that will or may prejudice any rights of a Secured Party under these Conditions.
- 33.9. To the maximum extent permitted by law, the Customer waives: (a) its rights to receive any notice or statement that is required by:
- 33.9.1. any provision of the PPSA (including a notice of a verification statement); or
- 33.9.2. any other law before a secured party exercises a right, power, or remedy; and
- 33.9.3. any time period that must otherwise lapse under any law before a Secured Party exercises a right, power, or remedy.
- 33.10. If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse of time is one day or the minimum period the law allows to be agreed (whichever is the longer).
- 33.11. However, nothing in this clause prohibits a Secured Party from giving a notice under the PPSA or any other law.

34. Miscellaneous

- 34.1. Envirosystems may vary any of these Conditions in writing at any time, provided that the Customer is given at least thirty (30) days' notice prior to the implementation of such changes.

- 34.2. The Customer may not exercise any right of withholding, deduction, or setoff.
- 34.3. The Customer may not assign or novate any of its rights or obligations under the Contract without the prior written consent of Envirosystems.
- 34.4. The Customer agrees that Envirosystems may apply payments to Amounts Outstanding as it sees fit, notwithstanding any contrary appropriation by the Customer.
- 34.5. Failure by Envirosystems to insist on strict performance of any of these Conditions shall not be deemed a waiver thereof. The waiver by Envirosystems of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any other provision, or of any further breach of the same or any other provision of the Contract.
- 34.6. If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- 34.7. The Contract (including the details appearing on the accepted Purchase Order and any credit application and Invoice) constitutes the entire agreement between the Customer and Envirosystems and no modification is binding in relation to the Contract unless agreed to in writing by Envirosystems.
- 34.8. Any dispute arising out of the Contract is governed by the laws of the State or Territory of Australia where the Purchase Order was received by Envirosystems and the Customer submits to the jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.
- 34.9. All costs and expenses incurred by Envirosystems to remedy any breach by the Customer of the Contract or to enforce Envirosystems's rights under the PPSA or the Contract shall be recoverable from the Customer in addition and without prejudice to Envirosystems's right to damages for breach of the Contract.