

1. Definitions

- 1.1 “WNZL” means Waterflow New Zealand Limited, its successors and assigns, or any person acting on behalf of, and with the authority of, Waterflow New Zealand Limited.
- 1.2 “Customer” means the person/s buying the Goods as specified in any quotation, order, invoice or other document, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by WNZL to the Customer, at the Customer’s request, from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Third Party” means any third party subcontractor engaged by WNZL to assist and carry out services to complete the Services as detailed in WNZL’s quote to Customer (including but not limited to, electrical or plumbing services).
- 1.5 “Price” means the Price payable for the Goods as agreed between WNZL and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and WNZL.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 These terms and conditions may be meant to be read in conjunction with WNZL’s Hire Form, and:
 - (a) where the context so permits, the terms ‘Services’ or ‘Goods’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Customer agrees that should the Customer introduce any third party to WNZL as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services, and/or to request any variation thereto, on the Customer’s behalf (such authority to continue until all requested Services have been completed, or the Customer otherwise notifies WNZL in writing that said person is no longer the Customer’s duly authorised representative).
- 3.2 In the event that the Customer’s duly authorised representative, as per clause 3.1, is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise WNZL in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to WNZL for all additional costs incurred by WNZL (including WNZL’s profit margin) in providing any Services, or variation/s thereto, requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

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

5. Specifications

- 5.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in WNZL’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by WNZL.
- 5.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use, as in some instances the Goods are made to order and WNZL offers no refund, either partial or fully, in the event of any cancellation by the Customer.
- 5.3 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, WNZL reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases WNZL will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order on hold until such time as WNZL and the Customer agree to such changes.

6. Price and Payment

- 6.1 At WNZL’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by WNZL to the Customer; or
 - (b) the Price as at the date of Delivery according to WNZL’s current price list; or
 - (c) WNZL’s quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of one hundred and eighty (180) days.
- 6.2 WNZL reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) in the event of increases to WNZL in the cost of labour or materials, which are beyond WNZL’s control.
- 6.3 At WNZL’s sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by WNZL, which may be:
 - (a) on, or before, Delivery; or
 - (b) twenty (20) days following the end of the month in which a statement is posted to the Customer’s address, or address for notices; or
 - (c) the date specified on any invoice or other form as being the date for payment; or

- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by WNZL.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Customer and WNZL.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to WNZL an amount equal to any GST WNZL must pay for any supply of Goods by WNZL under this contract or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.
- 7. Delivery**
- 7.1 Delivery of the Goods (“**Delivery**”) is taken to occur at the time that:
- (a) the Customer (or the Customer’s nominated carrier) takes possession of the Goods at WNZL’s premises; or
 - (b) WNZL (or WNZL’s nominated carrier) delivers the Goods to the Customer’s nominated address, even if the Customer is not present at the address. The Customer shall ensure that WNZL has clear and free access to the nominated address at all times to enable them to make Delivery. WNZL shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of WNZL.
- 7.2 At WNZL’s sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.3 WNZL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by WNZL for delivery of the Goods is an estimate only and WNZL will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that WNZL is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then WNZL shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 Prior to WNZL commencing the Services the Customer must advise WNZL of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst WNZL will take all care to avoid damage to any underground services the Customer agrees to indemnify WNZL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 7.5.
- 8. Risk**
- 8.1 Risk of damage to or loss of, the Goods passes to the Customer on Delivery, and the Customer must insure the Goods on, or before, Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, WNZL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by WNZL is sufficient evidence of WNZL’s rights to receive the insurance proceeds without the need for any person dealing with WNZL to make further enquiries.
- 8.3 If the Customer requests WNZL to leave Goods outside WNZL’s premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer’s sole risk.
- 8.4 The Customer acknowledges and accepts that it is their responsibility to ensure that the Goods are installed in accordance with WNZL’s installation manual. WNZL shall not be liable for any loss, damage or claim howsoever arising if the Goods have not been installed in accordance with the manual.
- 8.5 Any advice, recommendations, information, assistance or service provided by WNZL in relation to the Goods supplied is given in good faith, is based on information provided to WNZL, and WNZL’s own knowledge, and experience. It shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.
- 9. Access**
- 9.1 It is the responsibility of the Customer to ensure that clear access to, and from, the nominated address, and that such access is suitable to accept WNZL’s vehicles or any other equipment as may be deemed necessary thereby. The Customer shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the property. The Customer shall also be liable for all costs associated with any delays due to access, unless otherwise specified at the time of quoting.
- 9.2 The Customer acknowledges and agrees that WNZL shall have uninterrupted full access to the nominated address until such time as the Services have been completed and all WNZL’s equipment has been removed.
- 10. Compliance with Laws**
- 10.1 The Customer and WNZL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety laws relating to WorkSafe guidelines on building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.
- 11. Title**
- 11.1 WNZL and the Customer agree that ownership of the Goods shall not pass (and the Customer’s obligations to WNZL under this contract shall not cease) until:
- (a) the Customer has paid WNZL all amounts owing to WNZL; and
 - (b) the Customer has met all of its other obligations to WNZL under this contract and any other agreement between the parties.
- 11.2 Receipt by WNZL 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, and until then WNZL’s rights and ownership in relation to the Goods, and this contract, shall continue.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:

- (a) the Customer is only a bailee of the Goods, and (unless the Goods have become fixtures) must return the Goods to WNZL on request; and
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for WNZL, and must pay to WNZL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
- (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for WNZL and must pay or deliver the proceeds to WNZL on demand; and
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of WNZL and must sell, dispose of or return the resulting product to WNZL as it so directs; and
- (e) and unless the Goods have become fixtures, the Customer irrevocably authorises WNZL to enter any premises where WNZL believes the Goods are kept and recover possession of the Goods; and
- (f) WNZL may recover possession of any Goods in transit, whether or not Delivery has occurred; and
- (g) the Customer 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 WNZL; and
- (h) WNZL may commence proceedings to recover the Price, notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods, and/or any monetary obligation of the Customer to WNZL for Services, previously supplied (if any), and that will be supplied in the future, by WNZL to the Customer.
- 12.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WNZL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, WNZL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of WNZL; and
 - (d) immediately advise WNZL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 WNZL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by WNZL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by WNZL under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of WNZL agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies WNZL from and against all WNZL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising WNZL's rights under this clause.
- 13.3 The Customer irrevocably appoints WNZL and each director of WNZL as the Customer'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 Customer's behalf.

14. Defects, Returns and Warranties

- 14.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days (time being of the essence) notify WNZL of any alleged defect, discrepancy in quantity, damage or failure to comply with the description or quotation. The Customer shall afford WNZL an opportunity to inspect the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which WNZL has agreed in writing that the Customer is entitled to reject, WNZL's liability for any defect or damage to the Goods is:
 - (a) limited to the value of the express warranty (as specified in clause 14.2), or warranty card, provided to the Customer to WNZL (at WNZL's sole discretion); or
 - (b) limited to any warranty to which WNZL is entitled, if WNZL did not manufacture the Goods. WNZL 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; or
 - (c) otherwise negated absolutely.
- 14.2 Subject to this clause 14, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) WNZL has agreed that the Goods are defective and accept them for return; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of Delivery; and
 - (d) 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.
- 14.3 Subject to the conditions of warranty set out in clause 14.4, WNZL warrants that if any defect in the workmanship of WNZL becomes apparent and is reported thereto within twelve (12) months of Delivery, then WNZL will either (at its sole discretion) repair or replace the

workmanship. However, in respect of all claims, WNZL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship, or in properly assessing the Customer's claim.

- 14.4 Notwithstanding clauses 14.1 to 14.2, WNZL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain, install or store the Goods; or
 - (b) the Customer using the Goods for any purpose other than that for which they were designed; or
 - (c) the Customer continuing to use the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or
 - (d) the Customer failing to follow any instructions or guidelines provided by WNZL; or
 - (e) fair wear and tear, any accident, or act of God.

15. Intellectual Property

- 15.1 Where WNZL has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of WNZL.
- 15.2 The Customer warrants that all designs, specifications or instructions given to WNZL will not cause WNZL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify WNZL against any action taken by a third party against WNZL in respect of any such infringement.
- 15.3 The Customer agrees that WNZL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods (or digital media thereof) which WNZL has created for the Customer.

16. Default and Consequences of Default

- 16.1 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 WNZL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes WNZL any money, the Customer shall indemnify WNZL from and against all costs and disbursements incurred by WNZL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WNZL's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies WNZL may have under this contract, if the Customer has made payment to WNZL by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by WNZL under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 16.4 Without prejudice to any other remedies WNZL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions WNZL may suspend or terminate the supply of Goods to the Customer. WNZL will not be liable to the Customer for any loss or damage the Customer suffers because WNZL has exercised its rights under this clause.
- 16.5 Without prejudice to WNZL's other remedies at law, WNZL shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to WNZL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to WNZL becomes overdue, or in WNZL's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

- 17.1 WNZL may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered (or Services have commenced) by giving written notice to the Customer. On giving such notice WNZL shall repay to the Customer any money paid by the Customer for the Goods. WNZL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels this contract, of Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by WNZL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

18. Privacy Act 1993

- 18.1 The Customer authorises WNZL (or WNZL's agent) to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by WNZL from the Customer directly or obtained by WNZL 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 Customer.
- 18.2 Where the Customer is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer shall have the right to request WNZL for a copy of the information about the Customer retained by WNZL and the right to request WNZL to correct any incorrect information about the Customer held by WNZL.

19. Construction Contracts Act 2002

- 19.1 The Customer hereby expressly acknowledges that:

- (a) WNZL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to WNZL by a particular date; and
 - (iv) WNZL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if WNZL suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if WNZL exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to WNZL under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of WNZL suspending work under this provision.

20. General

- 20.1 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.
- 20.2 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 Auckland Courts of New Zealand.
- 20.3 Subject to clause 14 WNZL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by WNZL of these terms and conditions (alternatively WNZL's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 20.4 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by WNZL to the Customer.
- 20.5 The Customer hereby disclaims any right to rescind, or cancel any contract with WNZL or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by WNZL and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 20.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by WNZL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.7 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). WNZL 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 Customer agrees and understands that they have no authority to give any instruction to any of WNZL's sub-contractors without the authority of the WNZL.
- 20.8 The Customer agrees that WNZL may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for WNZL to provide Services to the Customer.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.