



## TERMS & CONDITIONS OF SUPPLY (July 2006 edition)

Envirocare Systems Pty Ltd ABN 68 108 585 495

**These terms:** These terms apply to our sale of goods and have priority over any purchase terms issued by the buyer, except to any extent we agree otherwise in writing. The buyer's failure to acknowledge these terms is not evidence that these terms do not apply. We may change these terms without notice to the buyer before we accept their order.

**Goods:** We may change our range of goods on offer without prior notice. Goods we offer from inventory are subject to our prior sale to other buyers.

**Quotes:** A quote we give expires after 7 days, unless otherwise specified. We may change or withdraw any quote we give, prior to our actual receipt of the acceptance.

**Orders:** An order we receive is subject to our acceptance, and we may decline an order in full or only in part. After we accept an order, the buyer may not cancel the order, or delay delivery, unless we agree in writing.

**Prices:** Prices quoted are for delivery ex our premises and do not include transport costs or GST, but do include usual packaging. Unless we quote a specific fixed price, we will invoice all orders at our current prices on the day of delivery, which prices may change without notice. Unless we quote otherwise, we may vary a price after we accept an order if the quantity we quoted for is varied by the buyer.

**Payment:** A buyer must pay us the price on or before the due date shown on the invoice, otherwise we may: (a) charge interest at 14% per annum on the unpaid amount; (b) suspend, reduce or withdraw any credit facility to the buyer; (c) cancel or suspend delivery of other goods yet to be delivered; (d) alternatively, re-take possession of the goods concerned and then credit the buyer our estimated re-sale value of those goods less our costs; and/or (e) claim a lien over any goods of the buyer in our possession. A buyer may not deduct from the price any set off, counterclaim or other sum (including taxes or charges) unless we agree in writing. If we are extending credit to the buyer, we may suspend, reduce or withdraw the credit facility at any time without reason by notice to the buyer. A credit facility lapses if the buyer does not place an order with us for 6 months.

**Warranties:** Our description of the goods accords with Australian trade usage. A description of weight means weight when loaded for shipment. Packing or packaging is to usual Australian standards. Subject to applicable laws, we do not give any other warranty or condition of our supply.

**Supply:** We may supply less than a quantity agreed if for reasons beyond our reasonable control we are unable to supply the full quantity. In that case, the unit sale price of the goods remains the same but any transport costs relative to quantity will be adjusted in a fair proportion. We may supply an order by instalment, but if we fail to supply a particular instalment by a date specified, the buyer is not entitled to rescind the contract.

**Delivery:** We make goods available to the buyer at our premises or, at the buyer's request and cost, we will cause the goods to be delivered. If we are to deliver: (a) and the buyer does not specify a method of delivery, we may decide the method but all carriers will be the buyer's agents only; (b) delivery times are estimates only and we do not guarantee a particular delivery date or time; and (c) we charge a delivery surcharge of \$10 per delivery. If the buyer fails to take delivery of the goods for 14 days after we notify the buyer they are available, we may store the goods at the buyer's cost (in addition to our other rights).

**Force majeure:** Neither party is liable for a failure to perform the contract if performance is prevented by a circumstance not within the reasonable control of either party.

**Tax invoice:** On or as soon as practicable after supplying goods, we will send the buyer a tax invoice for that transaction.



**Risk of loss:** Risk of loss or damage or deterioration in goods passes from us to the buyer on the goods being loaded on transport for delivery to the buyer. After risk passes, the buyer must insure the goods for full insurable value and have that insurance extend to our ownership of the goods until title passes.

**"On Approval" goods:** If our dispatch advice indicates that goods are supplied to the buyer on approval, the buyer must return the goods to us at their cost on or by the date specified in such advice or on demand. If the buyer does not return the goods when required, or returns them in damaged condition, we may require the buyer to buy the goods at our current prices.

**Ownership:** Title in goods passes from us to the buyer when those goods are fully paid for. Until that time a buyer holds the goods for us as owner and, if we require it, the buyer must store those goods in a way that they can be identified as our goods. If despite the above, the buyer sells our goods to a third party, the buyer holds the book debt arising from such sale and, upon payment of such debt, the proceeds of sale (but only to the extent of the moneys and any outstanding interest owing to us in respect of our goods) upon trust for us and the balance of the book debt or proceeds belong to the buyer. Also, if despite the above, the buyer makes new goods from our goods using other goods or materials, or if our goods in any way become constituent of any other goods, we own these new goods until paid the moneys and any outstanding interest owing to us in respect of our goods. To this end, the ownership of such new goods (whether finished or not) are transferred to us when our goods are converted into new goods or become constituent of other goods.

**Returns:** A buyer may return goods to us only with our prior written consent and at the buyer's cost. We will credit returns only where goods are received back by us in the same condition and packaging as in the original delivery. If goods are returned due to the buyer's ordering mistake or for some reason other than the goods being defective, and we accept the goods back, we may charge the buyer a surcharge of 10% of the price of the goods.

**Product recall:** If we decide to voluntarily recall any goods, then we will be liable for the costs of transport and replacement for the goods recalled.

**Claims:** A claim that a shipment was short is not valid unless advised to us in writing (with reasonable details) within 2 working days after the shipment as delivered was first available for inspection by the buyer or their agent. Subject to applicable laws, a claim that goods delivered were defective for reasons that are our responsibility is not valid unless advised to us in writing (with reasonable details) within 2 working days after the defect was found. Subject to applicable laws, we may decline any claim for defective goods if the buyer does not take reasonable steps to preserve the goods pending an inspection by our agent, if we require inspection.

**Liability:** Subject to applicable laws, if goods we supply are short or defective for reasons that are our responsibility, our total liability is limited to, at our election: (a) the prompt replacement of the goods, or the supply of equivalent goods; or (b) the payment of the cost of promptly replacing the goods or of acquiring equivalent goods. In no case are we liable for any loss of profits or any incidental, consequential or punitive damages as a result of any claim in connection with our supply of goods (or arising from the relationship of the parties), even if we were advised of the possibility of such damages. If we are to replace goods that are defective for reasons that are our responsibility, we may require the original goods to be destroyed at our cost.

**Seller's rights:** In addition to our other rights, we may suspend or cancel a contract and retake possession of goods if the buyer is believed by us to be insolvent or if the buyer is in default under any contract with us. We may set off any claim we have against a buyer against any claim that buyer may have against us on the same or another contract. The buyer is liable to pay all costs or expenses we incur in recovering or attempting recovery of moneys they owe us or in otherwise enforcing our rights under a contract. Such costs may include legal costs on a solicitor/client basis.

**Jurisdiction:** The laws in Western Australia govern the contract.



**Client Details**

Company/Trading Name \_\_\_\_\_

ABN \_\_\_\_\_ ACN \_\_\_\_\_

Postal Address \_\_\_\_\_ Suburb \_\_\_\_\_ Post Code \_\_\_\_\_

Street Address \_\_\_\_\_ Suburb \_\_\_\_\_ Post Code \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Mobile \_\_\_\_\_

Accounts Payable Contact Person \_\_\_\_\_

Email address for Accounts \_\_\_\_\_

Contact Person for Service & Deliveries \_\_\_\_\_ Phone \_\_\_\_\_

**ON BEHALF OF THE CLIENT, I ACCEPT ALL OF THE ABOVE TERMS & CONDITIONS OF SALE AS OUTLINED FROM PAGES 1 - 3.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Position \_\_\_\_\_

PLEASE COMPLETE, SIGN AND FAX/EMAIL BACK TO:

F: 08 9451 1209

E: [orders@envirocaresystems.com.au](mailto:orders@envirocaresystems.com.au)

P: 08 9451 1165