

## Standard Terms and Conditions

### 1. Definitions

In this document the following words shall have the following meanings:

- a. "Buyer" means the organisation or person who buys Goods
- b. "Goods" means the articles to be supplied to the Buyer by the Seller;
- c. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- d. "Seller" means Biofilta Pty Ltd, [www.biofilta.com.au](http://www.biofilta.com.au)

### 2. General

- a. These Terms and Conditions shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- b. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### 3. Price and Payment

- a. The price shall be the Total less agreed discount, unless otherwise agreed in writing between the parties. The price is exclusive of GST or any other applicable costs.
- b. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
- c. Where credit is offered payment of the price and GST and any other applicable costs shall be due within 14 days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered payment will be required before release of goods by the Seller.
- d. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2 per cent per annum above the base rate of the Reserve Bank of Australia.
- e. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - i. require payment in advance of delivery in relation to any Goods not previously delivered;
  - ii. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

### 4. Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

### 5. Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

### 6. Delivery

- a. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- b. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- c. Any damages, shortages, over deliveries and duplicated orders should be reported to the Seller within 14 days of signed receipt to enable replacement or refund.

### 7. Risk

Risk in the Goods shall pass to the Buyer upon receipt of the goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

### 8. Title

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

### 9. Return of Unused Goods

- a. All goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed, in which case the following terms apply.
- b. Any returns must be authorised by a representative of the Seller before any credit will be given.
- c. Where the Seller agrees to accept the return of goods that are not damaged the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not be obliged to accept any goods that are damaged in any way. The Seller will only accept returns that appear in the Sellers current Publication List.
- d. Credit of amounts due or paid in will only be given for goods that are in saleable condition.

## 10. Liability

- a. Subject to any rights the Buyer has under any consumer protection law or any other Laws that cannot be excluded, the Seller will not be liable to the Buyer or any third party for any loss, damage, cost, expense or injury (including indirect or consequential loss such as loss of revenue, profits, anticipated savings, goodwill or business opportunity, injury to your reputation) in contract, tort (including negligence), under statute or otherwise, howsoever caused including directly or indirectly from or in connection with any transaction (actual or contemplated) undertaken the Seller.
- b. Subject to any rights the Buyer has under any consumer protection law or any other Laws that cannot be excluded, the Seller excludes, all implied terms and warranties whether statutory or otherwise, relating to our website or the subject matter of these Terms and Conditions. The Buyer may be entitled to certain rights under consumer protection law or other Laws that cannot be excluded, including any statutory guarantees that are provided under competition and consumer legislation, including, as applicable, the Competition and Consumer Act 2010 (Cth).
- c. The Seller's liability to the Buyer for loss or damage of any kind arising out of these Terms and Conditions will be reduced or limited to the extent (if any) that the Buyer cause or contribute to the loss or damage.

## 11. Indemnity

To the maximum extent permitted by law, the Buyer agrees to fully indemnify and hold the Seller harmless against any expenses, costs, losses (including consequential losses) or damage that the Seller may suffer or incur as a result of or in connection with the Buyers use of, access to or conduct in connection with the Seller, including but not limited to, any breach by the Buyer of these Terms and Conditions.

## 12. Intellectual Property Rights

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

## 13. Force Majeure

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

## 14. Relationship of Parties

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

## 15. Assignment and Sub-Contracting

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

## 16. Waiver

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## 17. Severability

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 18. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Australia and the parties hereby submit to the exclusive jurisdiction of the Australian courts.

## 19. Warranty

The Seller warrants only to the Buyer that this product will be free from defects in material and workmanship under normal use and service for ten years after the date of purchase. The Seller reserves the right, before having any obligation under this limited warranty, to inspect the damaged product. This limited warranty does not cover any damage due to accident, misuse, abuse or negligence. To make a claim, please contact the Seller at [marketing@biofilta.com.au](mailto:marketing@biofilta.com.au)