

## **PURCHASE AGREEMENT**

This agreement sets out the terms under which OZMIST PTY LTD ACN 096 811 488 ("**OZmist**", **we, us, our**) provides products or services to you (being the individual, company or legal person purchasing such products or services) ("**the Customer, you, your**").

If the Customer orders, accepts or pays for any products or services after receiving or becoming aware of these terms, or otherwise indicates assent, then the Customer is taken to have accepted these terms.

### **1. PURCHASE ORDERS**

1.1. These terms will apply to all the Customer's dealings with OZmist, including being incorporated in all agreements, quotations or orders under which OZmist is to provide products or services to the Customer (each a **Purchase Order**) together with any additional terms included in such Purchase Order (provided such additional terms are recorded in writing).

#### **1.2. SUPPLY ONLY**

Unless specifically noted on a Purchase Order, installation is not included in the total price. OZmist can arrange and refer you to a qualified installer. OZmist is not liable for any pricing, quotations, loss or damage from a referred installer. Please contact us to see if we have an installer in your area. If OZmist conduct the installation by way of any agreed Purchase Order; the terms in clause 7 will apply.

### **2. PAYMENT**

#### **2.1. PAYMENT OBLIGATIONS**

Unless otherwise agreed:

- (a) If OZmist issues an invoice to the Customer, payment must be made by the time specified on such invoice.
- (b) In all other circumstances, the Customer must pay for all products and services on or prior to delivery.
- (c) The Customer must not set off any money alleged to be owing by OZmist against money due by the Customer to OZmist.
- (d) OZmist reserves the right to its payment terms and conditions to take precedence over the Customer.

#### **2.2. GST**

Unless otherwise indicated, amounts stated in Purchase Orders or in stores do not include GST. In relation to any GST payable for a taxable supply by OZmist, the Customer must pay the GST subject to OZmist providing a tax invoice.

#### **2.3. CARD SURCHARGES**

OZmist reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa or MasterCard). American Express is not accepted.

### 3. DELIVERY

- (a) For products to be delivered, OZmist may charge the Customer for delivery at any time (notwithstanding that it may not have previously done so).
- (b) Where prices are stated as inclusive of delivery, delivery is to the delivery point specifically accepted by OZmist.
- (c) OZmist will undertake its best endeavours to arrange deliveries to the Customer's specified time(s) and location(s) as outlined in a Purchase Order. However, the Customer acknowledges that OZmist uses third-party suppliers for the delivery and courier of the products, and cannot guarantee that this will be fulfilled. OZmist may provide the details of the third-party but will not be liable for any late deliveries, incorrect deliveries, or issues with transportation (including where the Customer has provided incorrect information).
- (d) If an act or omission by the Customer causes an issue with delivery, the Customer will be liable to OZmist for any additional charges incurred.
- (e) OZmist shall not be liable for loss of or damage to products in transit and the Customer must make all claims for such loss or damage against the carrier. OZmist encourages the Customer to take out insurance to protect itself for loss of or damage to products in transit.

### 4. TITLE AND RISK

- (f) Until the price of products is paid in full, title in those products is retained by OZmist.
- (g) Risk in the products will pass on delivery to the Customer. Delivery may not be refused by the Customer.
- (h) If the Customer does not pay for any products on the due date for payment, the Customer authorises OZmist, its employees and agents to enter any premises occupied by the Customer or any other place where the products are located and use reasonable force to retake possession of the products without liability for trespass or damage.
- (i) OZmist may at its option keep or resell products retaken from the Customer.

### 5. RETURNS, DEFECTIVE PRODUCTS, REFUNDS & WARRANTIES

#### 5.1. RETURN OF PRODUCTS

OZmist will only accept returns of products if:

- (a) the products are defective and the Customer complies with the provisions of [OZmist's Warranty Policy](https://www.ozmist.com.au/help-information/ozmist-warranty/) available at (<https://www.ozmist.com.au/help-information/ozmist-warranty/>) or
- (b) OZmist agrees in writing to accept return the products.

If the Customer fails to comply with the provisions of this clause 5 in respect of defective products, the Customer may, in its discretion, issue only a partial refund or no refund in respect of such defective products, provided that nothing in this clause 5 is intended to limit the operation of any manufacturers' warranties which the Customer may be entitled to or any rights of the Customer which cannot be excluded under applicable law.

#### 5.2. DEFECTIVE PRODUCTS

A Warranty Claim needs to be lodged in accordance with OZmist's Warranty Policy, whereby:

If OZmist will determine in its absolute discretion:

- (a) that the relevant Product is faulty and covered by warranty, OZmist will provide the Customer with a repair, replacement or refund of the Product at its cost; or
- (b) that the relevant Product is not faulty or is faulty due to the Customer's fault or any exclusions set out in the warranty, OZmist will refuse your warranty claim.

### 5.3. REFUNDS

In order to obtain a refund, the Customer must (unless otherwise directed by OZmist):

- (a) pack the relevant products in their original packaging including any accessories, manuals, documentation or registration shipped with the products; and
- (b) return the products to OZmist either in-store, or via courier subject to clause 5.4.

### 5.4. PICK-UPS

If the Customer has received the defective Product(s) by courier, OZmist may arrange a pick-up and advise the Customer of the date of pick-up. Pick-up times are generally between 9am and 5pm Monday to Friday. The Buyer must ensure someone is in attendance at the pick-up point on the allocated date. Return of goods by the Customer for a warranty claim is the responsibility of the Customer. If the claim is valid, OZmist will return the repaired or replacement items at its cost.

### 5.5. WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods/products or services provided.

## 6. LIABILITY

### 6.1. LIABILITY

- (a) To the maximum extent permitted by law the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Customer to OZmist under the most recent Purchase Order.
- (b) The limitation of liability in clause 6.1(a) does not apply to the Customer with respect to clause 3 – Delivery, clause 4 – Title and Risk; and clause 7 – Installations.

### 6.2. CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any products or services provided by OZmist, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

## 7. INSTALLATIONS

### 7.1. INSTALLATION

If installation (as a service by OZmist) is specifically requested on a Purchase Order with a specific date/s ("**Installation Date**"), these terms will apply.

### 7.2. INSTALLATION DATES

OZmist will be entitled to change the Installation Date:

- (a) by giving the Customer 2 days' notice; or
- (b) on the date of the installation, if weather conditions, lack of access or other circumstances beyond OZmist's control, do not permit the installation to be carried out.

### 7.3. INSTALLATION REQUIREMENTS

On the Installation Date, the Customer must:

- (a) be present at the site and, if reasonably requested by the OZmist, remain there while the installation is being carried out;
- (b) provide access to all personnel, equipment and vehicles reasonably required to carry out the installation;
- (c) ensure that the site is clean and ready for OZmist to carry out the installation;
- (d) if the Customer is not at the site on the Installation Date and/or the site is not clean and ready, OZmist will be entitled to charge the Customer a call-out fee for each member of OZmist's personnel who were booked to attend the site;
- (e) ensure a suitable water connection capable of the required flow rate and minimum supply pressure at times of the greatest load must be available within 2 meters of the pump location. If further away than 2 meters, additional charges payable by the Customer will apply.

### 7.4. INSTALLATION CONDITIONS

7.4.1. Electrical charges are not included in the Purchase Order unless specifically noted.

7.4.2. Installation will be performed during normal work hours (i.e. 7 am to 4pm).

### 7.5. DAMAGE

- (a) The Customer acknowledges the installation might occasion minor damage to the site. Where such damage occurs, OZmist will use its best endeavours to repair the damage however will not be liable for any minor damage or for damage arising out of any pre-existing conditions of the site.
- (b) Where the Customer incurs costs repairing any damage to the site occasioned during the installation, whether by employing third parties to conduct repairs or otherwise, OZmist will not be liable for such costs, unless OZmist agrees to remedy such damage in advance in writing.

## 8. GENERAL

### 8.1. GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### 8.2. AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

### 8.3. WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### 8.4. SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

### 8.5. JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

#### 8.6. ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

#### 8.7. COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

#### 8.8. COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

#### 8.9. ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

#### 8.10. INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.
- (l) **(Purchase Order)** as defined in clause 1; and includes standalone orders, and payments.

For any questions about this agreement, please contact your OZmist Representative; or via:

Website: <https://www.ozmist.com.au/contact-us/>

Email: [enquiries@ozmist.com.au](mailto:enquiries@ozmist.com.au)

Phone: 1300 306 478 between Monday – Friday : 8:00am – 5:00pm (AEST)