

1. **General**
- 1.1 These Terms and Conditions apply to all Orders placed with and Products supplied by Davey.
- 1.2 Notwithstanding any qualifications, or purported qualifications, of these Terms and Conditions contained in any purchase order or other document of the Customer, these Terms and Conditions may only be varied in writing by Davey.
- 1.3 Notwithstanding clause 1.1, Davey may by written notice to the Customer alter or replace these Terms and Conditions from time to time. All Orders placed subsequently by the Customer shall be upon these Terms and Conditions as altered or replaced.
2. **Definitions and Interpretation**
- 2.1 "Contract" means an agreement between Davey and a Customer for the supply of Products.
- 2.2 "Customer" means an authorized dealer or other person that enters into a Contract with Davey.
- 2.3 "Davey" means GUD NZ Holdings Limited (Company No 2303633) trading as Davey Water Products.
- 2.4 "Davey Guarantee" means the warranty/guarantee described in clause 12.
- 2.5 "Event of Termination" means any event specified in Clause 15.
- 2.6 "Loss" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.
- 2.7 "Order" means an order placed by a Customer with Davey for the supply of Products.
- 2.8 "PPSA" means the Personal Property Securities Act 1999.
- 2.9 "Products" means all of those goods offered for sale by Davey which are supplied or to be supplied by Davey to a Customer together with related services (if any) from time to time.
- 2.10 "Secured Moneys" means all debts and monetary liabilities the Customer owes Davey on any account or under or in relation to any Contracts and irrespective of whether the debts or liabilities are:
 - a) present or future;
 - b) actual prospective, contingent or otherwise;
 - c) at any time ascertained or unascertained;
 - d) owed or incurred by or on account of the Customer alone, or severally or jointly with any other person;
 - e) owed or incurred by or on account of Davey or severally or jointly with any other person;
 - f) owed to any other person as agent (whether disclosed or not) for or on behalf of Davey;
 - g) owed or incurred as principal, interests, fees, charges, taxes, damages, (whether for breach of contract or tort or incurred on any other ground) or other Loss or on any other account;
 - h) owed or incurred for the account of Davey directly as a result of:
 - i) the assignment to Davey of any debt or liability of a Customer or any other dealing with any such debt or liability;
 - ii) are owed to or incurred to the account of Davey before the date of these Terms and Conditions or before the date of any assignment of these Terms and Conditions to Davey by any other person or otherwise; or
 - iii) comprise any combination of the above.
- 2.11 "Terms and Conditions" means these terms and conditions of sale as amended from time to time by Davey.
- 2.12 Terms that are defined in the PPSA have the same meaning when used in these Terms and Conditions.
3. **Formation of Contract of Sales of Products**
- 3.1 A Contract is made between Davey and the Customer for the sale and purchase of Products only if an Order has been placed and the Order has been accepted by Davey in writing or by delivery of all or part of the Products ordered.
- 3.2 Davey will not accept a Customer's Order for delivery to any:
 - a) person other than the Customer; or
 - b) location or premises other than that agreed to in writing by Davey;
- 3.3 The Customer warrants that the Products shall be intended for incorporating in products or systems manufactured or installed by the Customer or if the Products are re-sold separately then only to qualified trade buyers and end users in New Zealand.
- 3.4 All Contracts are to be subject to and conditional upon the Customer:
 - a) completing a Credit Application in a form and manner to the satisfaction of Davey, if required by Davey;
 - b) providing security for payment in a form and manner to the satisfaction of Davey, if required by Davey;
 - c) warranting to Davey that, if they intend to re-sell the Products to qualified trade buyers and to end users the Customer will protect the good name and reputation of the Products by providing pre-sales education and post-sales service in a form and manner to the satisfaction of Davey; and
 - d) acknowledging that generally Davey products are technically complex products and warrant significant point of sales assistance (including proper selection) and for this reason the Customer agrees not to re-sell the Products through the Internet and worldwide web without prior authorization and then only on such terms as specified by Davey in its absolute discretion.
4. **Prices and Quotations**
- 4.1 The Price payable for Products is that amount set out in the Davey Price List, as published from time to time as at the date of delivery, unless otherwise agreed in writing by Davey.
- 4.2 Unless previously withdrawn Davey's quotations are valid for a period of 30 calendar days from the date of issuance.
- 4.3 All prices quoted by Davey and featured in the Davey Price List are exclusive of GST unless otherwise specified.
- 4.4 Any Customer changes to the specification of the Products after acceptance of an Order by Davey, may incur additional costs, which may be invoiced to the Customer.
- 4.5 Davey will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice and the same shall be subject to correction.
5. **Payments**
- 5.1 The Customer promises to pay the price payable for the Products delivered by Davey without deduction or set-off by electronic bank transfer to Davey's nominated bank account or in such other manner as Davey may agree in writing not later than thirty (30) days after the end of the month of invoice.
- 5.2 The Customer shall be liable to pay interest at the rate of 11% per month on all overdue amounts from the due date for payment until the date of payment in full.
- 5.3 The Customer must pay Davey all costs and expenses which Davey may incur in:
 - a) preparing, lodging or registering and then maintaining any Financing Statement or Financing Change Statement on the Personal Property Securities Register; and;
 - b) enforcing its rights under these Terms and Conditions or the PPSA.
- 5.4 Davey shall be entitled to apply or appropriate any payments to any account of the Customer. Should the Customer have a number of accounts, Davey may combine any accounts and offset any amount between accounts.
- 5.5 Davey reserves the right to impose a credit limit at any time, which may be altered or withdrawn at Davey's discretion with effect from the date that Davey notifies the Customer of such change.
- 5.6 If at any time it deems the credit of the Customer to be unsatisfactory, Davey may require security for payment and may suspend performance of its obligations under any Contract until the provision of sufficient security. All costs and expenses of, or incurred by, Davey as a result of such suspension and any recommencement shall be payable by the Customer upon demand.
6. **Delivery**
- 6.1 Delivery occurs and risk in the Products passes to the Customer on the earlier of:
 - a) collection of the Products by the Customer;
 - b) delivery of the Products to the Customer; and
 - c) delivery of the Products by Davey to a carrier nominated by the Customer or arranged by Davey for the purpose of delivering the Products to the Customer.
- 6.2 Davey will use its reasonable endeavours to deliver the Products in accordance with the terms of an Order but will not be liable for any failure to deliver the Products in accordance with any particular requirements of the Customer including any delay in delivery and such failure or delay will not entitle the Customer to reject the Products, terminate the Contract or to claim compensation of any nature.
- 6.3 Unless otherwise agreed, the cost of delivery of the Products to the Customer is the responsibility and to the account of the Customer.
- 6.4 Where Products are to be delivered to or services are to be supplied at the Customer's premises, the Customer shall ensure that Davey or its carriers has uninterrupted access to the Customer's premises to enable the Products to be delivered and, where applicable, the services to be provided. Where access is not provided, the Customer shall pay Davey upon demand such amount calculated by Davey as will compensate Davey for wasted time and expenditure and any storage or other charges.
- 6.5 Unloading of the Products at point of Delivery is the responsibility of the Customer or its agents and the Customer shall be responsible for all costs associated with the unloading of the Products.
- 6.6 Liquidated damages and claims for consequential loss are not accepted by Davey.
7. **Acceptance**
- 7.1 All deliveries should be inspected by the Customer for missing or damaged Products before signing the consignment note. Missing or damaged Products should be noted on the consignment note.
- 7.2 The Customer will be deemed to have accepted the Products as being in accordance with an Order placed with Davey unless it notifies Davey to the contrary within 48 hours of delivery of the Products.
8. **Retention of Title**
- 8.1 Notwithstanding that risk in the Products passes pursuant to Clause 6, property in and ownership of the Products remains with Davey and does not pass to the Customer until such time as all amounts which from time to time are owed by the Customer to Davey have been paid in full and until such time, subject to clause 8.3, the Customer shall:
 - a) hold the Products for and on behalf of Davey as a fiduciary bailee and agent;
 - b) store the Products separately and in such manner that they are clearly identified as the property of Davey;
 - c) keep the Products safe and secure and in a good condition;
 - d) keep the Products fully insured to their full replacement value against all risks; and
 - e) not encumber the Products.
- 8.2 The Customer grants to Davey and its agents an irrevocable license to enter any of the Customer's premises and repossess and remove the Products. The Customer acknowledges that Davey will not be liable for any Loss suffered by the Customer as result of Davey taking such action and indemnifies Davey against such Loss.
- 8.3 The Customer may, in the ordinary course of its business, sell and deliver the Products to a third party (and for that purpose Davey gives the Customer the right to pass the ownership of the Products to the third party). If the Customer resells the Products before payment is made, the Customer shall hold the proceeds of resale of the Products in trust for Davey and account to Davey for all moneys owed by the Customer to Davey. The Customer acknowledges that Davey has the right to trace the proceeds of resale. The Customer's ability to resell the goods shall automatically cease if a receiver is appointed over any of the assets or undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purposes of a reconstruction or amalgamation approved by Davey) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy.
9. **Personal Property Securities Act**
- 9.1 The Customer acknowledges that Davey holds a security interest in the Products and any proceeds of the resale of the Products pursuant to Section 17 of the PPSA and that Davey may register a financing statement in respect of the Products and any proceeds of the resale of the Products in accordance with the provisions of the PPSA.
- 9.2 The Customer will do anything reasonably required by Davey to ensure that Davey has and maintains a perfected first ranking security interest in the Products and any proceeds of the resale of the Products under the PPSA.
- 9.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by Davey under the PPSA and agrees that as between Davey and the Customer, the Customer shall have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where Davey has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
10. **Cancellation**
- 10.1 All Orders once placed are irrevocable but may be varied by agreement in writing and on terms which will indemnify Davey against all Loss.
- 10.2 A fee will be applied to any Order for non-standard Products that is cancelled before delivery to the Customer based on the costs Davey will incur as a direct result of the cancellation.
- 10.3 Davey shall be entitled to cancel any Order by notifying the Customer in writing if fulfilment is impossible within a reasonable period of time because of war, strike, lockout, political conditions, delayed or faulty delivery from a sub-supplier or other incident of force majeure and Davey shall not be liable for any resulting Loss suffered by the Customer.
11. **Returns**
- 11.1 The Customer may not return Products for credit without the prior written approval of Davey and only then on the condition that the Products are:
 - a) listed in Davey's current published Price List when returned and are in an unused condition, in original packaging, unsoiled, undamaged and in re-saleable condition; and
 - b) returned within 60 days from the date of delivery, with freight and insurance prepaid by the Customer and accompanied by a Goods Return Advice stating the original invoice number, date of purchase, customer order number and reason for return.
- 11.2 The value of credit, if any, will be in the absolute and unfettered discretion of Davey, and in any case limited to the amount originally invoiced for the Products, save that the Products returned will attract a charge (the amount of which shall be at the discretion of Davey but not less than 15% of the price for those Products).
12. **Warranty**
- 12.1 Products are supplied with printed material, including but not limited to, specifications, installation and operating instructions and the Davey Guarantee.
- 12.2 The Davey Guarantee is provided to the original user only. In the unlikely event that a Product develops any malfunction within the guarantee period due to faulty materials or manufacture, Davey will at its option repair or replace the Product free of charge, subject to the conditions below.
- 12.3 The Davey Guarantee does not cover:
 - a) normal wear or tear;
 - b) replacement of consumables (i.e. mechanical seals, bearings or capacitors);

- c) loss or damage resulting from:
- i) accident, abnormal operation conditions or Acts of God;
 - ii) misuse or negligent handling or mishandling;
 - iii) improper use including operation of the Products at a duty point other than that specified and quoted for which the Product was not designed, manufactured, recommended or advertised;
 - iv) failure to carry out maintenance or repairs or maintenance or repairs carried out by unauthorised or unqualified persons; or
 - v) sand, abrasive materials, corrosion due to saline water, hazardous liquid, electrolytic action, liquid temperature beyond the recommended range, cavitations, lightning strike, improper supply voltage or insufficient liquid to enable the Products to perform; or
- d) freight or any other costs incurred in making a claim.
- 12.4 The Customer must retain any receipt provided by Davey as proof of purchase and provide the same as evidence of the date of original purchase when claiming under the Davey Guarantee.
- 12.5 Any additional warranty /guarantee which is supplied with a Product does not extend to any defects in products, components, or parts, where those have been supplied to Davey by third parties save that although Davey will not be obliged by these Terms and Conditions to do so, Davey will assist the Customer to obtain the benefit of the third party's warranty /guarantee, if any.
- 12.6 To the maximum extent permitted by law and except as set out in these Terms and Conditions:
- a) all express and implied warranties, guarantees and conditions however arising, including under the Sale of Goods Act 1908, Consumer Guarantees Act 1993 and Fair Trading Act 1986 are excluded;
 - b) the Customer releases Davey from, and shall indemnify, keep indemnified and hold harmless Davey in respect of all claims arising in connection with the Products; and
 - c) the Customer acknowledges that it has not relied upon any representation made by Davey, which has not been stated expressly in the Contract or contained in any installation and operating instructions provided with a Product.
- 12.7 Where the Customer is in trade, the parties acknowledge and agree that they are contracting out of sections 9, 12A and 13 of the Fair Trading Act 1986 in respect of all matters covered by these Terms and Conditions.
- 12.8 To the maximum extent permitted by law, Davey shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from the Products.
- 12.9 Notwithstanding anything in these Terms and Conditions, Davey shall be subject to any warranties implied by law to the extent that it is not possible to exclude, restrict or modify such warranties.
- 12.10 The Customer indemnifies Davey and third parties against all Loss incurred by Davey arising from and in connection with the following:
- a) any act of omission of the Customer including but not limited to, negligence of the Customer, or any unauthorised representation made or warranty/guarantee given by the Customer in connection with the Products; and
 - b) any breach of or default under these Terms and Conditions by the Customer.
13. **Installation and Commissioning**
- 13.1 Unless specifically included in Davey's offer, installation and commissioning is not included in the price quoted. Installation and commissioning can be requested from Davey and will be charged separately.
- 13.2 Any commissioning is to be done after installation is complete, power and water is available and the specified duty or performance can be achieved.
- 13.3 Commissioning test equipment (gauges, flow meters etc) is to be installed and operating by the Customer before commissioning.
- 13.4 Commissioning will be to determine the correct operation of the Davey supplied equipment, not the whole system.
14. **Drawings & documentation**
- 14.1 All drawings and descriptions supplied by Davey shall remain the property of Davey and may not be copied, reproduced, passed on or in any other way communicated to a third party without the express written permission of Davey. The ownership of descriptions necessary for proper installation, starting, operation and maintenance of the supplied Products shall pass to the Customer upon delivery of the Products.
- 14.2 Unless otherwise agreed by Davey in writing, standard Davey documentation shall be provided in all cases. A variation to standard documentation requires prior written approval and may be subject to additional costs. Davey shall not be liable for any delays as a result of non-compliance with non-standard documentation requests.
- 14.3 The Customer acknowledges that Davey remains the owner of all copyright, designs, patents, trademarks and other intellectual property rights used on or in relation to the Products, drawings and descriptions and advertising material supplied in connection with such Products.
15. **Termination**
- 15.1 It is an event of termination if:
- a) the Customer breaches or fails to observe any of these Terms or Conditions;
 - b) the Customer trades outside the terms and conditions of the Customer's credit facilities (if any) or the supply of Product to the Customer will result in the Customer trading outside the terms and conditions of the Customer's credit facilities and, in particular, the credit limit in force from time to time;
 - c) the Customer commits an act of bankruptcy, becomes insolvent or Davey notifies the Customer in writing of its view that the Customer is in financial difficulties;
 - d) an administrator or receiver or liquidator is appointed over all or any of the business undertaking of the Customer or the Customer is served with a statutory demand under the Companies Act 1993;
 - e) any guarantor of the Customer's indebtedness to Davey revokes a guarantee;
 - f) the Customer knowingly misrepresenting Davey or its products to members of the public or prospective purchasers;
 - g) the Customer supplies the Products to a person who has been terminated as a Customer, having knowingly misrepresented Davey or its products to members of the public or prospective purchasers, where Davey has requested the Customer to desist because of concern that there will be further misrepresentation; or
 - h) there occurs or will occur directly or indirectly a material change in ownership or control of the Customer.
- 15.2 If an Event of Termination occurs Davey will be entitled (without prejudice to any other right or remedy provided) at its option to immediately do any one or more of the following:
- a) refuse to accept or to complete any Order, or any portion of an Order which is unfulfilled provided that where Davey elects to fulfill an order these Terms and Conditions will apply to that Order;
 - b) cease to supply Products to the Customer or any part or division of the Customer;
 - c) suspend or cancel any credit facility provided to the Customer; or
 - d) terminate any Contract;
- and furthermore:
- e) the Customer will not be entitled to any compensation in respect of such action or termination;
 - f) where the Customer has paid for Products, Davey may, at its option, require the return for credit of any Products in the possession of the Customer; and
 - g) the Customer will immediately return to Davey all price lists and other material provided by Davey to the Customer.
16. **Miscellaneous**
- 16.1 If any of these Terms and Conditions infringe any applicable law it must be read down so that it does not infringe that law, otherwise it will be severable.
- 16.2 The Customer must not assign any Contract without the prior written consent of Davey.
- 16.3 All notices to be given by a party under these Terms and Conditions must be in writing and may be given to the other party by hand delivery, prepaid post or facsimile addressed to the other party at its last known address, facsimile number or email address as specified by the other party. Any notice will be deemed to have been received by the person to whom it was sent in the case of:
- a) hand delivery, upon delivery;
 - b) prepaid post, three days after dispatch;
 - c) facsimile, upon completion of the transmission; or
 - d) email, when the email enters the information system of the addressee.
- 16.4 Each party agrees to keep all information of the other party that is of a confidential nature (including pricing) which is disclosed arising out of or in connection with these Terms and Conditions (apart from information in the public domain or independently developed by the other party) in strict confidence. A party must only use the other party's confidential information for purposes necessary to comply with, or enjoy a benefit conferred by, these Terms and Conditions.
- 16.5 Waiver of any right by Davey arising from a breach of these Terms of Conditions or upon the occurrence of an Event of Termination must be in writing and executed by Davey. A failure or delay in the exercise of a right arising from a breach of these Terms and Conditions or the occurrence of an Event of Termination by Davey does not result in a waiver of that right.
17. **Applicable law**
- 17.1 These Terms and Conditions and any Contracts are governed by and must be construed in accordance with the laws of New Zealand and the Customer agrees to submit to the exclusive jurisdiction of the courts of New Zealand.