Smart Approved WaterMark Terms and Conditions

1. Applicability

1.1 These terms and conditions govern the Smart WaterMark Scheme to the Client.

1.2 Smart Approved WaterMark reserves the right to vary these terms and conditions at any time.

1.3 Headings used in these terms and conditions are for ease of reference only and do not affect the meaning of these terms and conditions.

2. Definitions

In these terms and conditions:

‘Application’ means the document completed by the client, along with any attachments and supporting material, to be considered for a certificate;

‘Approval Procedures’ means procedures used by the Expert Panel in assessing a product or service for the purposes of granting or renewal of a Certificate;

‘Certificate’ means the document issued by Smart WaterMark to indicate that a product, service or organisation has been approved;

‘Client’ means the company, organisation or individual seeking a Certificate for a product, service or organisation;

‘Expert Panel’ means the panel of individuals, to determine whether or not a product, service or organisation should be granted a Certificate;

‘Household’ means a permanent individual unit, townhouse, villa or suburban house on a block of land where the owner, renter, leaser or occupier has applied for a label based upon providing proof of purchases or receiving a rebate;

‘Product’ means water using products or water replacement products that are available to Australian consumers;

‘Service’ means water related services that are available to consumers, the community and industry;

‘WSAA’ means Water Services Association of Australia.

3. Fees

3.1 The Client must pay to the Smart WaterMark Scheme all fees as set out in the Schedule of Fees.

3.2 Smart WaterMark reserves the right to amend the Schedule of Fees at any time.

4. Intellectual property rights
The Client acknowledges that:

(a) Smart WaterMark is the owner of the copyright, know-how and other intellectual property rights in the Smart WaterMark Scheme, approval procedures and any associated documentation; and

(b) no right, title or interest in the Smart WaterMark Scheme or any associated documentation is transferred to the Client by receiving a certificate.

5. Confidentiality

5.1 In relation to the client’s application and any material used to support the application, the client must identify any information that it considers to be confidential in nature. Smart WaterMark warrants that it will treat such information, suitably identified, as confidential.

5.2 All discussions and deliberations of the Expert Panel are confidential – with the exception of the final decision which takes the form of one of three options: Accept, Reject or Request Further Information.

5.3 The obligations of confidentiality under these terms and conditions do not extend to information that:

- is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
- is public knowledge (otherwise than as a result of breach of these terms and conditions);
- is required by the Approval Procedures to be disclosed; or
- is required by law to be disclosed.

6. Access and co-operation

6.1 The Client agrees to comply with the applicable Approval Procedures and to provide the Expert Panel, its agents and contractors with all cooperation and assistance required by the applicable Approval Procedures necessary to enable the panel to consider and approve the issuing of a certificate.

7. Accuracy of information provided

7.1 The Client warrants that all information made available to the Expert Panel is, to the best of its knowledge and belief, complete and accurate.

8. Certification

8.1 If—
(a) the Client complies with these terms and conditions; and
(b) the client has paid the appropriate application fee as set out in the Schedule of Fees; and
(c) after assessment of the Client’s product, service or organisation in accordance with the applicable Approval Procedures, the Expert Panel approves the application and grants the Certificate;

(i) the client will be notified; and
(ii) a certificate will be issued and access to the label arranged upon the payment of the fees as set out in the Schedule of Fees.

8.2 If the Expert Panel rejects the application, the Client will be advised accordingly.

8.3 If the Expert Panel wishes to seek further information before making a decision, the client will be notified.

9. Certificate

Duration of Certification

9.1 Subject to these terms and conditions, the Certificate continues until the expiry date as referenced on the Certificate – usually 2 years.

Renewal of Certification

9.2 It is the responsibility of the Client to renew the Certificate before the expiry date as referenced on the Certificate.

Changes

9.3 The client must maintain the product, service or organisation to accord with the Approval Procedures and as stated in the application and supporting material.

9.3 The client must notify the Expert Panel or reapply, if any specifications, that are related to the Approval Procedures and as stated in the application and supporting material, significantly change.

9.4 The client must promptly inform the Expert Panel of any change in ownership and contact details, including address, and website address.

Use of Certificate

9.5 The client must not, without the permission of Smart WaterMark Committee’s alter, modify, or deface the Certificate.

9.6 Subject to these terms and conditions, the client may publicise the fact that a Certificate has been approved and use the Certificate as evidence of approval. The client may copy the Certificate.

9.7 The original and all copies of the Certificate remain the property of Smart WaterMark and must be returned immediately if requested.

No misrepresentation of the Certificate

9.8 The Client must not—

(a) engage in any conduct which might mislead, deceive or confuse any person in relation to; or
(b) otherwise misrepresent the nature, status, scope or effect of its Certificate.

9.9 The Client must promptly comply with any directions given by Smart WaterMark to correct any conduct or misrepresentation in breach of clause 9.8.

Suspension, cancellation or expiry of Certification

9.10 Smart WaterMark may suspend the Client's Certificate with immediate effect by giving notice to the Client if:

(a) the scheme ceases to exist.
(b) the client ceases to carry on business.
(c) the client ceases to be able to pay its debts as they become due;

(d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business of the client; or

(e) the client breaches these Terms and Conditions.

(f) the client applies the label to a non-approved product or service.

(g) the client is found not to deliver water savings or efficiencies as advised to the Expert Panel.

(h) the client is found not to be of a high quality, based upon consumer complaints and/or independent tests carried out by the Expert Panel or other recognised agencies.

(i) at the end of the two (2) year period, the client does not renew.

9.11 Where the Client's Certificate is suspended—

(a) if the Client responds within 30 days and if the Expert Panel is satisfied with the remedial action taken by the client – the suspension will be lifted

(b) if the Client responds within 30 days and if the Expert Panel is not satisfied with the remedial action taken by the client – the certificate will be cancelled

(c) if the Client fails to respond in 30 days - the certificate will be cancelled

9.12 If the Certificate is cancelled under Clause 9.10 and 9.11:

(a) no payments will be refunded

(b) the client must take all reasonable steps reasonably to prevent the public being misled or otherwise harmed

(c) the client must cease using the Certificate

(d) the client must cease all advertising, promotions or other publication related to Certificate;
(e) the client must take any steps reasonably to notify staff, customers and/or suppliers of the cancellation of the Certificate;

(f) the client must take steps to remove all references to the certificate, including signage, product labelling, publications and web site

(g) the client must take all other necessary steps to ensure that third parties are not misled to believe that the Certification has not been cancelled.

(h) Smart WaterMark will remove the certificate from all listings and promotional material

(i) Smart WaterMark will use its best endeavours to ensure that the public are informed including issuing press releases and making media comment.

10. Client Termination of Certificate

10.1 The Client may terminate the Certificate by giving the Smart WaterMark written notice – 3 months in advance.

10.2 If the Client complies with Clause 9.12 (b) – (g) inclusive, a pro-rata refund for the amount paid by the client, as set out in the Schedule of Fees will be refunded, at the end of the 3 month notice period.

10.3 Smart WaterMark will enact Clause 9.12 (h) & (i) at the end of the 3 month notice period

11. Appeals

The client has rights to appeal the decision of the Expert Panel. Such an appeal needs to be made in writing to:

Smart Watermark PO Box 13172
Law Courts Post Office
Melbourne Victoria 8010

12. Notices

12.1 A party giving notice under the Contract must do so in writing with the notice:

(a) directed to the recipient’s address for correspondence as nominated in the Application or as varied by any notice; and

(b) hand delivered or sent by prepaid post or facsimile or emailed to that address. 12.2 A notice given in accordance with clause 13.1 is taken to be received:

(i) if hand delivered, on delivery;
(ii) if sent by prepaid post, three days after the date of posting; or

(iii) if sent by facsimile or e-mail, when the sender's facsimile or e-mail system generates a message confirming successful transmission of the total number of pages of the notice.

13. Assignment
The Client must not assign or otherwise transfer any or all of its rights in relation to the certificate, without the prior written consent from Smart WaterMark.

14. Limitation of liability

14.1 Smart WaterMark excludes from these terms and conditions all conditions and warranties implied by statute (including the Trade Practices Act, 1974), general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (‘non-excludable statutory condition’).

14.2 Except to the extent prohibited by the Trade practices Act, or any other applicable laws, Smart WaterMark excludes liability for any loss or damage suffered by the Client (whether direct, indirect or consequential) arising in any way out of any services (including defective services) rendered by Smart WaterMark or out of the Client's product which is the subject of a Certificate by Smart WaterMark and The Expert Panel or any negligent act or omission of Smart WaterMark, its officers, employees, agents or contractors, including but not limited to profits lost and damage sustained or incurred as a result of a claim by a third person.

15. Insurance

The Client must:

(a) take out and maintain valid and enforceable public liability, professional indemnity and workers' compensation insurance policies to cover potential liability of:

(i) the Client arising out of a breach of Contract; and

(ii) Smart WaterMark arising out of the Client's breach of these terms and conditions or any act or omission of the Client, as if Smart WaterMark were a jointly insured party under each of those policies; and

(b) provide Smart WaterMark with Certificates of currency and any other evidence of those policies if requested.

16. Indemnity

The Client must indemnify Smart WaterMark and the Expert Panel from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against Smart WaterMark and Expert Panel) that Smart WaterMark and Expert Panel may sustain or incur as a result, whether directly or indirectly, of:

(a) any breach of these terms and conditions by the Client, including, but not limited to, a breach in respect of which Smart WaterMark and the Expert Panel exercises an express right to terminate these terms and conditions; or

(b) any loss of or damage to any property or injury to or death of any person;

(i) Caused by any negligent act or omission or wilful misconduct of the Client or its officers and employees;

(ii) arising out of or in connection with the Client's product, process or service that is the subject of Certification.
17. Relationship

Under these Terms and Conditions, the Certificate and Approval Procedure does not create any fiduciary, employment, agency or partnership relationship between Smart WaterMark, the Expert Panel and the Client.

18. Force majeure

No party is liable for any failure to perform or delay in performing its obligations under these terms and conditions if that failure or delay is due to flood, fire, earthquake or other occurrence beyond that party's reasonable control.

19. Governing law and jurisdiction

19.1 The Contract is governed by the law applicable in the State of Victoria, Australia.
19.2 Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria.