

Private & Confidential

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**TERMS AND CONDITIONS:**

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THIS PROPOSAL is offered on the date set out on page 1 BETWEEN 360 WATER PTY LTD ABN 44 162 960 698 having its principal place of business at 20 Alison Street, Redhead NSW 2290 ("360") and the Company whose name, address and details are set out in page 1 ("Customer")

A Glossary of expressions used in this Proposal and rules of interpretation are set out in Clause 27 of this Proposal.

**1. SALE & PURCHASE**

360 WATER agrees to sell to the Customer and the Customer agrees to purchase the Goods (if any) and the Consumables (if any) for the Price and in accordance with the terms and conditions of this Proposal.

**2. PROVISION OF SERVICES**

360 WATER agrees to provide the Services (if any) to the Customer for the Price and in accordance with the terms and conditions of this Proposal.

**3. EXCLUSIONS**

The items or matters described in Item 6 of Schedule are specifically excluded from this sale and 360 WATER is not required to supply or perform those items for the Price. 360 WATER and the Customer may separately agree that 360 WATER will provide any or all of the Excluded Items at an additional cost.

**4. PRICE**

The Customer will pay the Price detailed in Item 3 Scope of Works and Contract Pricing Schedule, Item 4 Equipment Pricing Schedule and Item 5 Buy As Required (BAR) Chemical Supply in accordance with the payment schedule. All payments are to be made in readily available funds within the Terms and Conditions of Sale by the Customer of a Tax Invoice delivered to the Customer in accordance with the Payment Schedule.

**5. GST**

Except where expressly stated, in addition to the Price and any Expenses, the Customer will pay any GST payable on the Price and the Expenses subject to 360 WATER providing a valid Tax Invoice setting out the GST payable.

**6. WORK SITE**

The Customer will at its own expense, provide 360 WATER staff and contractors with access to the work site at all reasonable times and provide:

- (a) a safe and secure workplace in accordance with OH&S requirements
- (b) amenities to industry standards having regard to the location and state of the site
- (c) access to power, water and other utilities reasonably required to provide the Services;
- (d) occupier's liability insurance in respect of 360 WATER staff, agents contractors on sites and premises owned or occupied by the Customer.

**7. 360 WATER Staff**

360 WATER will provide competent and qualified staff to carry out the Services and will ensure that:

- (a) all staff, agents and (if applicable) contractors are covered for workers compensation and employer's liability insurance
- (b) all staff and agents will make themselves aware of the Customer's policies, procedures and requirements in respect of OHS and other workplace policies and procedures,

**8. INTERRUPTIONS TO WORK SCHEDULE**

360 WATER shall not be responsible for any expense or loss incurred directly or indirectly by the Customer as a result of:

- (a) inclement weather,
- (b) poor access due to other on-site activities including production and other on-site projects
- (c) excessive down time beyond the control of 360 WATER.
- (d) exclusions from site due to any union action originated by others.
- (e) unavailability of chemicals or other consumables beyond the control; of 360 WATER; or
- (f) act of God.

**9. WARRANTIES**

The warranties on the Goods are as set out in the documentation accompanying those Goods and provided to the Customer. To the extent permitted by law, no further warranties are provided by 360 WATER in respect of the Goods and Services.

The Customer shall inspect the Goods at or prior to receipt of the Tax Invoice in respect of the Goods and must give notice to 360 WATER of any claim for damages on account of condition, quality, or grade of the Goods, and the Customer must detail the basis and nature of the claim. The failure of the Customer to comply with these conditions shall constitute acceptance of the Goods by the Customer.

360 WATER warrants that the Services will be provided in a professional and workman-like manner and, to the extent permitted by law, the liability of 360 WATER for any breach of this warranty shall be limited to the provision of the service again.

**10.**

**11. LIMITATION OF LIABILITY**

Neither party shall be liable under this Proposal to the other party for any indirect, incidental, consequential, special or punitive damages, the loss of cost savings, the loss of business opportunities, and/or lost profits, however caused, whether as a consequence of the termination or breach of this Proposal, the negligence of the one party, or otherwise.

No liquidated damages provisions apply.

**12. RISK OF LOSS**

The risk of loss of the Goods and Consumables shall pass from 360 WATER to the Customer upon delivery of the Goods to the Customer at its site or any premises occupied by it.

Risk of loss in the Services shall pass to the Customer upon receipt by the Customer of a Tax Invoice in respect of those Services.

**13. RETENTION OF TITLE**

Title in the Goods shall not pass to the Customer until the Customer has made payment for those Goods and 360 WATER may enter upon any premises owned or occupied by the Customer and recover the Goods (or any of them) if the Customer does not make payment in accordance with the Payment Schedule.

**14. CONFIDENTIALITY AND IP**

Each party agrees that, subject to the requirements of any law, they will keep confidential all documents, information and other material of the other party expressly stated by that other party to be confidential information or that should reasonably be considered to be confidential information.

Water Treatment Specialists

Except as may be expressly provided in the Special Conditions or in any other document, nothing in this Proposal confers any intellectual property rights in respect of copyright, patents or designs on a party except to the extent that a non-transferable and non-assignable license to use that intellectual property may properly be required for the proper use and enjoyment of the Goods or the processes resulting from the provision of the Services.

**15 STOCK:**

Under this agreement any unused stock on site remains the property of 360 WATER and will be returned to 360 WATER upon termination of this agreement. However, buy as required ("BAR") consumables remain the property of the customer once full payment of invoice has been received.

**16 UNCONTROLLED WATER LOSSES OR PLANT OPERATIONAL LOAD CHANGES:**

Our estimated calculations are based upon specific plant operating conditions supplied. Should the load alter substantially or uncontrolled water losses prevail despite remedial recommendations from 360 WATER, then we reserve the right to negotiate additional charges in view of these conditions.

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**18 EQUIPMENT COSTS:**

All equipment proposed in 360 WATER's offer will be charged separately to the contract agreement and offered as fixed price with payment terms being strictly 30 days from receipt of invoice, unless otherwise agreed and negotiated in writing with 360 WATER.

**19 NON-CONFORMANCE (MANAGEMENT BY EXCEPTION):**

As part of 360 WATER's ongoing quality water treatment control program, 360 WATER will inspect and test all systems that fall under 360 WATER's scope of works, as per the current contractual agreement. Control parameters (standards) for each nominated test are identified on 360 WATER's field service reports and in the event of a system or systems test results that show significant deviation from the nominated standards, which are not the fault of 360 WATER and cannot be rectified immediately or require authority to correct on two (2) consecutive service visits, then 360 WATER may issue a Non-conformance/Exception Report to management clearly stating the required corrective action needed.

**20 CONTRACT RENEWALS:**

Unless formerly agreed in writing otherwise, this contract agreement will automatically renew from year to year on the anniversary of the contract date (unless terminated by either party, at any time upon 30 days written notice to the party concerned), using the data available at the following web address 360 WATER will adjust the contract charge by the most recent published CPI data (All Groups: Qtr to Qtr) found at [www.abs.gov.au/](http://www.abs.gov.au/)

If the contract is terminated by either party at any time upon 30 days written notice to the party concerned, notice being effective from the day in which it was received. On the event of contract cancellation before the end of the contract period:

- The Cooling Tower Certificates issued by 360 WATER Technical Dept. will become null and void.
- 360 WATER withhold the right to invoice for the cost difference between the annual contract value for contract periods of one year and the annual contract value for contract periods longer than one year due to the application of a long term contract discount.

**21 INSTALLATION REQUIREMENTS BY CUSTOMER (if required):**

240V GPO to be supplied to within 1m of all dosing and control equipment.

Convenient access to trade waste/sewer line to allow for cooling tower bleed-off from dosing equipment and backwash from Sidestream filtration system(s) if required.

Supply and install ¾" BSP ball valves to the suction and discharge side of the recirculation pumps in order to install dosing pots to the closed heating, chilled and condenser water system(s).

Supply and install ¾" BSP ball valves to the suction and discharge side of the recirculation pumps in order to install the chemical dosing controller(s) to the open condenser water system(s).

A maximum pressure requirement for controller manifolds not to exceed 250kPA

**22 NEW CONSTRUCTION WORKS – COOLING AND HEATING SYSTEMS:**

It is essential that 360 WATER be given sufficient prior notice before any new cooling and heating systems are to have untreated water introduced into them for any reason. This will allow 360 WATER to plan and prepare for each system a methodology to initiate a water treatment program to minimise any possible corrosion damage by exposure of the systems to untreated water for any length of time. These may be temporary measures or commissioning of the normal pre-clean program and subsequent on-going water treatment preventative maintenance depending on the situation.

Non-compliance may result in premature system corrosion and failure.

**23 ANNUAL BOILER AND CHILLER INSPECTIONS:**

Onus is on the customer to provide 360 WATER with at least one month's prior written notice to any boiler or chiller waterside inspection. This will enable 360 WATER to prepare the equipment ready for inspection by adjusting chemical programs or pre-dosing with specific cleaners as well as providing necessary shut down procedures in order to enhance the overall inspection process. An 360 WATER representative must also be present during any waterside inspection to evaluate the condition of the equipment and the performance of the water treatment program. 360 WATER take no responsibility for any waterside problem or be in a position to provide accurate remedial advice without sufficient prior written notice to be present on site during an inspection.

**24 VALIDITY:**

60 days from date of quotation.

**25 INVOICING:**

Contract invoices would be sent at monthly intervals

Equipment, services outside the contract, exclusions and BAR invoices will be sent after dispatch &/or job completion unless otherwise agreed in writing

Payment is strictly within 30 days of invoice for 360 WATER Account Holders.

**26 PAYMENT AND DEFAULT:**

a) Subject to any payment terms specified in the Quotation, and unless otherwise agreed expressly in writing, the price payable in accordance with clause 4 will be due and payable by the Client on the date specified in writing by 360 Water Solutions but, in any case, no later than 30 days following the of the statement account.

b) If: the Client makes default in any payment; an application is made to court for an order, or an order is made, that the Client be wound up, or to appoint a liquidator or provisional liquidator; a controller or administrator is appointed over all or any part of the assets of the Client; the Client resolves to wind itself up, or otherwise dissolve itself, or gives notice of intension to do so or is otherwise wound up or dissolved; the Client is, or states that it is, unable to pay its debts when they fall due; or anything analogous or having a substantially similar effect to any of the events specified above happens under the law applicable jurisdiction, then 360 Water may, at its option, withhold further deliveries or terminate the Agreement without notice to the Client, without prejudice to any other action or remedy which 360 Water has or might otherwise have had, and all monies owing and outstanding to 360 Water will become immediately due and payable.

c) If any payment is not received by 360 Water in accordance with clause 26 (a), then, without prejudice to any other right or remedy, all outstanding money carries interest on daily balances until paid at a rate of 2% per month, and 360 Water may recover the amount owing together with all interest forthwith from the Client as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Client may have against 360



Water for any other matter related to this Agreement. Any legal expenses and fees incurred by 360 Water in the recovery of any money by the Client will be paid by the Client at the same time as any money owing.

#### **27 DEFINITIONS AND INTERPRETATION**

In this Proposal, unless the context otherwise requires:

“Consumables” means the material described in Item 3 Equipment Pricing Schedule and Item 4 Buy As Required (BAR) Chemical Supply;

“Customer or Client” means the person or persons to whom any Quotation is made, any persons offering to contract with 360 Water, and any persons who purchases Goods and/or Services from 360 Water;

“Excluded Items” means those items or services described in Item 6;

“Expenses” means the amounts referred to in Item 6;

“Goods” means the goods, equipment and other materials supplied by 360 Water to the Client;

“GST” means Goods and Services Tax as defined in A New Tax System (Goods & Services Tax) Act 1999 (Cwlth);

“360 WATER” means 360 Water Pty Ltd ABN 44 162 960 698;

“Services” means the services to be provided by 360 WATER described in Item 2; and

“Special Conditions” means the conditions set out in Schedule 3 forming part of this Proposal.

In this Proposal, headings and holdings are for convenience only and do not affect the interpretation of this Proposal and, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include any gender;

(c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;

(d) a reference to a clause, party or schedule is a reference to a clause of, and a party, and schedule to, this Proposal and a reference to this Proposal includes this Proposal as amended from time to time and any schedule;