

# NEW ZEALAND - TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Waterco" shall mean Waterco (NZ) Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Waterco.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Waterco to the Customer; and
- 1.3.2 all Goods supplied by Waterco to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Waterco; and
- 1.3.4 all Goods supplied by Waterco and further identified in any invoice issued by Waterco to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by Waterco or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Waterco; and
- 1.3.6 all of the Customer's present and after-acquired Goods that Waterco has performed work on or to or in which goods or materials supplied or financed by Waterco have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by Waterco to the Customer and shall include without limitation the supply of pool equipment and chemicals and all associated Goods and Services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by Waterco to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between Waterco and the Customer and includes all disbursements eg charges Waterco pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Waterco from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Waterco to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Waterco to any other party.
- 3.2 The Customer authorises Waterco to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by Waterco at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Waterco between the date of the contract and delivery of the Goods.

## 5. PAYMENT

- 5.1 Payment for Goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Waterco in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

## 6. QUOTATION

- 6.1 Where a quotation is given by Waterco for Goods:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; &
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 Waterco reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.
- 6.3 All prices quoted are freight exclusive.

## 7. RISK

- 7.1 The Goods remain at Waterco's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when Waterco gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Waterco making time of the essence.
- 7.4 Where Waterco delivers Goods to the Customer by instalments and Waterco fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

## 8. AGENCY

- 8.1 The Customer authorises Waterco to contract either as principal or agent for the provision of Goods that are the matter of this contract.
- 8.2 Where Waterco enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Goods supplied by Waterco passes to the Customer only when the Customer has made payment in full for all Goods provided by Waterco and of all other sums due to Waterco by the Customer on any account whatsoever. Until all sums due to Waterco by the Customer have been paid in full, Waterco has a security interest in all Goods.
- 9.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with Waterco until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Waterco as security for the full satisfaction by the Customer of the full amount owing between Waterco and Customer.
- 9.3 The Customer gives irrevocable authority to Waterco to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if Waterco believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Waterco shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be

excluded. Waterco may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Waterco reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Goods are retained by Waterco pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

- 9.5 The following shall constitute defaults by the Customer:

- 9.5.1 Non payment of any sum by the due date.
- 9.5.2 The Customer intimates that it will not pay any sum by the due date.
- 9.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 9.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Waterco remains unpaid.
- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.

- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and Waterco, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 10. PAYMENT ALLOCATION

- 10.1 Waterco may in its discretion allocate any payment received from the Customer towards any invoice that Waterco determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Waterco, payment shall be deemed to be allocated in such manner as preserves the maximum value of Waterco's purchase money security interest in the Goods.

## 11. GENERAL LIEN

- 11.1 The Customer agrees that Waterco may exercise a general lien against any Goods or property belonging to the Customer that is in the possession of Waterco for all sums outstanding under this contract and any other contract to which the Customer and Waterco are parties.
- 11.2 If the lien is not satisfied within seven (7) days of the due date Waterco may, having given notice of the lien at its option either:
- 11.2.1 Remove such Goods and store them in such a place and in such a manner as Waterco shall think fit and proper and at the risk and expense of the Customer; or
- 11.2.2 Sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

## 12. DISPUTES AND RETURN OF GOODS

- 12.1 No claim relating to the Goods will be considered unless made within seven (7) days of delivery.
- 12.2 No Goods will be accepted for return without the prior consent of Waterco. Waterco may at its sole discretion, repair the Goods or charge a restocking fee of up to 20%.
- 12.3 All claims for return of goods must be accompanied by the number and date of supply invoice. Waterco shall have a reasonable opportunity to investigate any claim and the Customer will be liable for any freight and insurance charges.

## 13. LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Waterco which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Waterco, Waterco's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1 Waterco shall not be liable for:
- 13.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Waterco to the Customer; and
- 13.2.2 The Customer shall indemnify Waterco against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Waterco or otherwise, brought by any person in connection with any matter, act, omission, or error by Waterco its agents or employees in connection with the Goods.

## 14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 14.2 Waterco does not provide any warranty that the Goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

## 15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from Waterco for the purposes of a business in terms of section 2 and 43 of that Act.

## 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Waterco agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Waterco the payment of any and all monies now or hereafter owed by the Customer to Waterco and indemnify Waterco against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 17. CANCELLATION

- 17.1 Waterco shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 17.2 Any cancellation or suspension of this agreement shall not affect Waterco's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Waterco under this contract.

## 18. MISCELLANEOUS

- 18.1 Waterco shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by Waterco to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Waterco has under this contract.
- 18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.4 Orders with an invoice value of less than \$30.00 will incur a handling fees of \$8.00 plus GST.