



WATERBOYS AUSTRALIA Pty Ltd

TERMS AND CONDITIONS

1. Interpretation

TERMS AND CONDITIONS OF SALE

1.1 In these Terms:

"Australian Consumer Law" means Schedule 2 of *Competition and Consumer Act 2010*.

"Company" means Waterboys Australia Pty Ltd.

"Customer" means the purchaser of Goods from the Company.

"Goods" means all goods sold and/or delivered by the Company to the Customer.

"Terms" means these terms and conditions of sale.

2. Application

- 2.1 The placing of an order by the Customer constitutes acceptance of these Terms.
- 2.2 These Terms apply to all contracts for the sale of Goods by the Company.
- 2.3 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
- 2.4 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Goods or the sale of the Goods other than as contained in these Terms.

3. Prices

- 3.1 Prices are determined at the time of order and, prior to payment of the deposit, are subject to change.



3.2 In the event that the quoted price increases between the Customer placing an order and paying the deposit, the Customer is not obligated to continue with the order.

3.3 Clause 3.2 does not apply if the Company and the Customer have entered into an additional agreement relating to reoccurring orders that addresses changes in price.

4. Payment

4.1 Payments are to be made to the Company without any deduction, set off or discount, other than as stated in these Terms or in the relevant invoice or statement.

4.2 A deposit of 30% of the invoice price must be paid when placing an order. The Customer acknowledges and agrees that the deposit is a

4.3 The balance of the invoice price must be paid in full before delivery.

4.4 Interest is payable on the outstanding amount of all overdue accounts calculated on a daily basis at the rate charged by the ANZ bank on unsecured business overdrafts as from the date due for payment until payment is received by the Company. The Customer acknowledges and agrees that this interest rate is a genuine pre-estimate of the loss that will be suffered by the Company in the event of late payment.

5. Delivery

5.1 The Customer must, within five (5) days of being notified of their availability, collect or accept delivery of the Goods and pay the balance of the invoice price.

5.2 If the Customer fails to collect the Goods or accept delivery of the Goods within twenty one (21) days of being notified of their availability, the Company may terminate this contract. In the event that the Company terminates this contract, the Company may take any steps necessary to recover their loss, including but not limited to retaining all or part of the deposit, reselling the Goods and/or commencing proceedings against the Customer.

5.3 The Company reserves the right to charge the Customers for storage on



Goods not collected or delivered within five (5) days of notification of their availability at the rate of \$40.00 per week or part thereof.

- 5.4** The Company reserves the right to deliver the Goods in whole or in installments, as well as to deliver prior to the date for delivery and, in such event, the Customer must not refuse to take delivery of the Goods.

6. Title

- 6.1** The Company retains legal and equitable title in any Goods supplied to the Customer until such Goods are paid for in full. This retention and reservation of title and ownership is effective whether or not the Goods have been supplied to third parties, altered, or commingled.

- 6.2** The Customer grants a security interest in the Goods (being the Collateral) to the Company to secure the retention of title arrangement, payment of the Secured Money, and all of the Customer's obligations under these Terms and any other associated agreement with the Company.

- 6.3** The Customer consents to the Company perfecting any security interest that it considers these Terms provides for by registration under the PPSA. The Customer agrees to do anything that the Company reasonably requires to ensure that the security interest:

- (a) is enforceable, perfected and otherwise effective; and
- (b) has priority over all other security interests.

- 6.4** To the extent permitted by section 115 of the PPSA, the Company need not comply with sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 142 or 157 of the PPSA.

- 6.5** Terms used in this clause that are not otherwise defined have the meaning set out in the *Personal Property Securities Act 2009 (Cth)*.

7. Risks and Insurance

- 7.1** The Goods are entirely at the risk of the Customer from the moment of delivery to the Customer's point of delivery or on collection, even if title in the Goods has not passed to the Customer at that time.

- 7.2** The Customer must, at its own expense, maintain the Goods and insure



them for the benefit of the Company against theft, breakdown, fire, water and other risks as from the moment of delivery to the Customer and until title in the Goods has passed to the Customer.

8. Inspection

8.1 Unless the Customer has inspected the Goods and given written notice to the Company within two (2) business days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

9. Cancellations

9.1 No order may be cancelled, modified or deferred without the prior written consent of the Company (which is at the Company's sole discretion), except where expressly permitted by these Terms. If such consent is given it is, at the Company's election and subject to the Company being reimbursed all losses sustained as a result of the Customer's cancellation, including loss of profits.

10. Limited Liability

10.1 These Terms do not affect the rights, entitlements and remedies conferred by the Australian Consumer Law.

10.2 To the fullest extent permitted by law, and subject to clause 10.3 below, the Customer releases the Company from, any liability (including but not limited to consequential loss or damage) because of any delay in delivery or fault or defect in the Goods.

10.3 If any statutory provisions under the Australian Consumer Law or any other statute applies to the contract between the Company and the Customer (Contract) then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:

(a) Replacement or repair of the Goods or the supply of equivalent Goods; or

(b) Payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods; and in either case, the Company will not be



liability for any consequential loss or damage or other direct or indirect loss or damage.

11. Warranty

- 11.1** All Goods supplied are covered by such warranties as are specified by the manufacturer and supplied subject to the product standards detailed by the manufacturer.
- 11.2** On discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so.
- 11.3** The provisions of any law (including but not limited to the Australian Consumer Law) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.
- 11.4** The Customer expressly acknowledges and agrees that it has not relied upon, and the Company is not liable for any advice given by the Company, its employees, agents or representatives in relation to the suitability for any purpose of the Goods.

12. Display and Samples

- 12.1** Any display product or sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample.

13. Contract

- 13.1** The Terms of the Contract are wholly contained in these Terms and any other writing signed by both parties. The Contract is deemed to have been made at the Company's place of business where an order was placed and any cause of action is deemed to have arisen there.

14. Design and Intellectual Property

- 14.1.** The Customer is responsible for providing the Company with their logos and any other images that they require on the label.



14.2. The Company will then create the label design and provide it to the Customer for approval.

14.3. The Customer must approve the label design before the Company is required to commence production of the Goods.

14.4. Ownership of any logos or images supplied to the Company by the Customer is not transferred to the Company. However, the Company retains ownership of the intellectual property in the label, and is not required to transfer it to the Customer.

15. Force Majeure

15.1. The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident).

16. Waiver of Breach

16.1. No failure by the Company to insist on strict performance of any of these Terms is a waiver of any right or remedy, which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

17. No Assignment

17.1. Neither the Contract, nor any rights under the Contract may be assigned by the Customer without the prior written consent of the Company, which is at the Company's absolute discretion.

18. Severability

18.1. If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

19. Governing Law

19.1. The law of New South Wales shall govern the agreement between the



parties and the parties submit to the courts of New South Wales in respect of any dispute that arises.