AQUEA™ Pty. Ltd.
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HELLO@AQUEA.COM.AU
WWW.AQUEA.COM.AU
0481 875 870

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TRADING TERMS & CONDITIONS

The following sets out the standard terms and conditions for all commercial transactions a customer (you) may have with AQUEA Pty. Ltd. To the extent permitted by law, the following terms & conditions will apply and AQUEA will not be held liable for any breach of these terms by its customers and/or 3rd parties.

These trading terms are subject to change without notice. Standard Terms and Conditions appear on AQUEA's Account Application Form, our web site (www.aquea.com.au) and are available on request.

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1. Glossary of Terms

1.1 "**Customer**" includes distributors, resellers and trade-partners of AQUEA.

1.2 "**Consumer**" includes end-users and trade-customers that purchase AQUEA's products via AQUEA's authorised distribution & sales channels.

1.3 "**Distributor**" includes businesses approved by AQUEA to purchase AQUEA's products for the express purpose of reselling to their customers.

1.4 "**AQUEA**" is the trading name of AQUEA Pty. Ltd., and can be used in place of "AQUEA Pty. Ltd." and vice-versa

1.5 **"Intellectual Property" -** All proprietary rights throughout the world relating to copyright, patents, trademarks, circuit layouts, trade secrets, know-how and other confidential information.

1.6 "**Contract**" means the contract for the provision of goods and services by AQUEA to the customer and/or consumer

1.7 **"Parties"** means the parties to the Agreement being AQUEA and the customer and their respective successors and permitted assigns, and 'Party' shall have a corresponding meaning;

1.8 In these Terms and Conditions, unless the contrary intention appears:

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

b) words importing one gender include the other genders; and

c) reference to a person includes a government, a body corporate, a Partnership, an unincorporated association and a natural person.

2. Product orders & delivery

2.1 AQUEA reserves the right to enforce a minimum order value and/or quantity.

2.2 AQUEA may in its discretion refuse to accept any order.

2.3 Quoted prices are ex-warehouse, and freight is charged additionally to all quoted fees, charges and product order totals.

2.4 AQUEA reserves the right to despatch partial and/or full orders by a carrier and method of its choosing. Export orders will be quoted individually.

2.5 Any period for delivery of goods stated by AQUEA is an estimate only and not a contractual commitment. AQUEA will make reasonable efforts to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the customer or any third party for failure to meet an estimated date. The customer indemnifies AQUEA against any loss or damage suffered by AQUEA, its subcontractors or employees as a result of delivery.

2.6 AQUEA will arrange for the delivery of goods to the customer at a nominated delivery address within Australia. If delivery is attempted and is unable to be completed, the customer is deemed to have taken delivery of the goods. The customer is liable for storage charges payable monthly on demand.

2.7 AQUEA may make part delivery of goods or provision of services. AQUEA may invoice the customer for the goods or services delivered.

2.8 If agreed that the customer will collect the goods:

a) the customer must collect the goods within 7 days of being advised they are ready;

b) if the customer does not collect the goods within this time, it is deemed to have taken delivery of the goods and is liable for storage charges payable weekly on demand.

2.9 The customer must notify AQUEA within 48 hours of delivery:

a) of the non-arrival of any or all of the goods;

b) if there is damage to the goods;

c) that the wrong goods have been received; or

d) that the quantity of goods is incorrect.

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3. Payment terms

3.1 Unless otherwise agreed in writing, payment for the goods or services must be made in full within 30 days of the date of AQUEA's invoice for approved accounts only.
3.2 AQUEA reserves the right to require payment in full prior to delivery of goods.
3.3 Payment options:
  a) Electronic Funds Transfer ("EFT") to AQUEA's nominated bank account.
  b) Credit Card (VISA / MasterCard) via AQUEA's online payment service
3.4 Payments via cheque are not accepted.
3.5 AQUEA reserves the right to require payment of a deposit.
3.6 Payment terms may be revoked or amended at AQUEA's sole discretion immediately upon giving the customer written or verbal notice.
3.7 All accounts exceeding thirty (30) days past due immediately revert to cash-on-delivery (C.O.D) basis.
3.8 Deliveries will cease to all accounts exceeding forty-five (45) days past due.
3.9 The time for payment is of the essence.
3.10 Statements will be issued on a monthly basis for all accounts with outstanding balances.
3.11 Payments must be made to AQUEA without set-off.

4. Payment Default

4.1 If the customer defaults in payment by the due date of any amount payable to AQUEA, then all money which would become payable by the customer to AQUEA at a later date on any account, becomes immediately due and payable without the requirement of any notice to the customer, and AQUEA may, without prejudice to any of its other accrued or contingent rights:
  a) charge the customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;
  b) charge the customer for, and the customer must indemnify AQUEA from all expenses and costs (including legal costs and expenses) arising from the default;
  c) cease or suspend supply of any further goods or services to the customer;
  d) by written notice to the customer, terminate any uncompleted contract with the customer.

4.2 Abovementioned Clauses 4.1c) and 4.1d) may also be relied upon, at AQUEA's option where the customer becomes bankrupt or insolvent or enters into any scheme of arrangement or with or for the benefit of its creditors.

5. Data protection

5.1 AQUEA respects the privacy and commercial & personal information of its customers, distributors, resellers and associates. AQUEA undertakes to take all reasonable steps to protect the confidentiality of personal & commercial information and related data collected during its normal online and offline activities.

6. Pricing & G.S.T. (Goods & Services Tax)

6.1 Pricing is subject to change without notice. GST is additional and applicable to all quoted prices, fees, freight, labour and services. Export shipments are not subject to GST.
6.2 All prices are quoted in Australian Dollars unless otherwise stated.
6.3 If the customer requests any variation to the order and/or contract, AQUEA may vary the price to account for the variation.
6.4 Where there is any change in the costs incurred by AQUEA in relation to goods or services, AQUEA may seek to vary its price for the goods or services to take account of any such change, by notifying the customer.

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7. Defects and damage

7.1 AQUEA will not be liable for any shortages or non-compliance with the specifications in these Terms and Conditions unless the customer notifies AQUEA with full details and description within 10 working days of delivery to the customer.

7.2 Where any shortages, claim for damaged goods or non-compliance with the agreement specifications is accepted by AQUEA, AQUEA may, at its option, repair or replace the goods or refund or credit the portion of the purchase price.

7.3 AQUEA will not under any circumstances accept goods for return that have been specifically produced, imported or acquired to fulfil the agreement, that are discontinued goods or no longer stocked by AQUEA, that have been altered in any way, that have been used, or that are not in their original condition and packaging.

7.4 If the customer is a consumer, nothing in this clause limits any remedy available for a failure of the statutory guarantees in the ACL.

8. Credit Information

8.1 AQUEA may seek consumer credit information (section 18K(1)(b), Privacy Act 1988). If AQUEA considers it relevant to assessing the customer's application for commercial credit the customer agrees to AQUEA obtaining from a credit reporting agency a credit report containing personal credit information about the customer and to conducting a search of the Personal Property Securities Register for the purpose of assessing the customer's application for commercial credit.

8.2 Exchanging information with other credit providers (Section 18N(1)(b), Privacy Act 1988). The customer agrees to AQUEA obtaining personal information about the customer from other credit providers whose names the customer may have provided for AQUEA or that may be named in a credit report, and from the Personal Property Securities Register, for the purpose of assessing the customer's application for commercial credit.

8.3 Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit (Section 18K(1)(h) Privacy Act 1988). The customer agrees that AQUEA may obtain a consumer credit report about the customer from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by the customer.

9. Title retention

9.1 Until AQUEA receives full payment in cleared funds for all goods supplied by it to the customer, as well as all other amounts owing to AQUEA by the customer:

a) title and property in all goods remain vested in AQUEA and does not pass to the customer;

b) the customer must hold the goods as fiduciary bailee and agent for AQUEA;

c) the customer must keep the goods separate from its own goods and maintain AQUEA's labelling and packaging;

d) the customer must hold the proceeds of sale of the goods on trust for AQUEA in a separate account with a bank to whom the customer has not given security however failure to do so will not affect the customer's obligation as trustee;

e) in addition to its rights under the Personal Property Securities Act 2009 (Cth) ("PPSA"), AQUEA may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of AQUEA, and for this purpose the customer irrevocably licences AQUEA to enter such premises and also indemnifies AQUEA from and against all costs, claims, demands or actions by any party arising from such action.

9.2 The customer warrants that it is not insolvent at the time of placing an order for goods or services and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.

9.3 If any of these retention of title provisions is construed to be invalid or not enforceable in accordance with their terms all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.

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10. Personal Properties Securities Act

10.1 Notwithstanding anything to the contrary contained in these Terms and Conditions, the PPSA applies to these Terms and Conditions. For the purposes of the PPSA:
- a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
- b) these Terms and Conditions are a security agreement and AQUEA has a Purchase Money Security Interest in all present and future goods supplied by AQUEA to the customer and the proceeds of the goods;
- c) the security interest is a continuing interest irrespective of whether there are monies or obligation owing by the customer at any particular time; and
- d) the customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by AQUEA on the Personal Property Securities Register.

10.2 The security interest arising under this clause attaches to the goods when the goods are collected or dispatched from AQUEA's premises and not at any later time.

10.3 Where permitted by the PPSA, the customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

10.4 AQUEA and the customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms and Conditions.

10.5 To the extent permitted by the PPSA, the customer agrees that:
- a) the provisions of Chapter 4 of the PPSA which are for the benefit of the customer or which place obligations on AQUEA will apply only to the extent that they are mandatory or AQUEA agrees to their application in writing; and
- b) where AQUEA has rights in addition to those in Chapter 4 of the PPSA, those rights will continue and apply.

10.6 The customer must immediately upon AQUEA's request:
- a) do all things and execute all documents necessary to give effect to the security interest created under these Terms and Conditions; and
- b) procure from any person considered by AQUEA to be relevant to its security position such agreements and waivers (including as equivalent to those above) as AQUEA may at any time require.

10.7 AQUEA may allocate amounts received from the customer in any manner AQUEA determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by AQUEA.

11. Credits / Returns

11.1 Except to the extent of any liability imposed by the ACL, authorisation must be obtained before returning goods for credit.

11.2 No goods will be accepted for credit that are correctly supplied and invoiced if not returned freight paid within 14 days and delivery freight will be charged.

11.3 A 15% restocking fee will be charged for any goods supplied correctly.

11.4 Goods forwarded in error will be replaced no charge freight paid.

11.5 Goods incorrectly sent must be held by the customer pending AQUEA's further instruction. Please contact AQUEA's customer service team for the credit/return procedure.

12. Indemnity

12.1 The Customer indemnifies and keeps indemnified AQUEA, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which AQUEA is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms and conditions including.

12.2 This includes, but is not limited to, any legal costs incurred by AQUEA in relation to meeting any claim or demand or any party/party legal costs for which AQUEA is liable in connection with any such claim or demand.

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13. Warranties

13.1 All products are warranted against defects in materials and workmanship for a period of twelve (12) months from date of delivery to customer. This warranty is subject to AQUEA's Warranty Policy.

13.2 For additional Warranty information, including how to make a warranty claim, please see AQUEA's Warranty policy at www.aquea.com.au/pages/warranty

14. Information and drawings

14.1 All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by AQUEA or otherwise contained in catalogues, price lists and other advertising matter of the AQUEA are approximate only and are intended to be by way of general description of the goods and shall not form part of the contract unless certified by AQUEA in writing, in which case, they shall be subject to recognised tolerances.

14.2 AQUEA is not deemed to have agreed to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced by AQUEA prior to the delivery of goods and signed by AQUEA.

15. Liability

15.1 Except as these Terms and Conditions specifically state, these Terms and Conditions do not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

15.2 If the customer is a consumer nothing in these Terms and Conditions restricts, limits or modifies the customer's rights or remedies against AQUEA for failure of a statutory guarantee under the ACL.

15.3 If the customer on-supplies the goods to a consumer:

a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of AQUEA's liability to the customer;

b) if the goods are of a kind ordinarily acquired for personal, domestic of household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of AQUEA's liability to the customer howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the customer or any third party.

15.4 If clause 15.2 or 15.3 does not apply, then other than as stated in these Terms and Conditions AQUEA is not liable to the customer in any way howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the customer or any third party.

15.5 AQUEA is not liable for any indirect or consequential losses or expenses suffered by the customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

15.6 The customer acknowledges that:

a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by AQUEA in relation to the goods or their use or application;

b) it has not made known, either expressly or by implication, to AQUEA any purpose for which it requires the goods and it has the sole responsibility of satisfying itself that the goods are suitable for the use of the customer.

15.7 Nothing in these Terms and Conditions is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be so excluded, restricted or modified.

16. Risk and Insurance

16.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the customer immediately from the point at which the goods are dispatched from AQUEA's premises and/or authorised third-party, or otherwise taken from AQUEA's premises by the customer.

16.2 The customer assumes all risk and liability for loss, damage or injury to persons or to property of the customer, or third parties, arising out of the installation, possession or use of the goods or services sold by AQUEA, unless recoverable from AQUEA on failure of any statutory guarantee under the ACL.

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17. Notices

17.1 Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Terms & Conditions must be legible writing and in English addressed as shown at Item 1.1 of this agreement or such other address as a party has specified to the sender of the notice.

18. Waiver

18.1 Failure by either Party at any time to enforce a provision of these Terms & Conditions shall not be construed as a waiver by that Party of that provision or in any way affect the validity of these Terms & Conditions or any part of it.

18.2 None of the provisions of these Terms & Conditions are to be waived, varied, discharged or released unless both Parties agree in writing signed respectively by their duly authorised representatives.

19. Entire Agreement

19.1 These Terms & Conditions constitutes the entire Agreement between the Parties on the subject matter and shall supersede all prior communications, negotiations, representations, arrangements and agreements either oral or written, between the Parties on the subject matter.

20. Cancellation of order

20.1 In the event of the cancellation of any order, the customer shall be required to accept and pay all charges and costs incurred by AQUEA related to the cancelled order up to the time of receipt of written cancellation.

20.2 AQUEA shall be entitled to terminate the Agreement by written notice of termination to the customer:

a) if the customer is in breach of the Agreement and fails, within fourteen (14) days after receipt of written notice from AQUEA, to remedy such breach; or

b) if the customer goes into liquidation, becomes insolvent, has a receiver or receiver and manager, or mortgagee's, or chargee's agent appointed, becomes bankrupt, or enters into a scheme of arrangement with creditors.

20.3 Termination of the Agreement by either Party shall be without prejudice to any claim which either Party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of termination.

21. Copyright

21.1 All documents, manuals, pricelists, physical, online and/or electronic media produced and published by AQUEA is owned by AQUEA and is protected by copyright, and all rights are reserved.

21.2 Any physical or electronic publication produced, published and/or distributed by AQUEA or its approved agents, distributors and resellers may only be reproduced with AQUEA's express written consent.

21.3 No part of AQUEA's copyright materials may be reproduced, copied, adapted, translated, distributed or modified, in any form or by any means without prior written consent from AQUEA. Any third-party content is expressly excluded from any granted permission and/or consent.

21.4 You may not alter, remove or suppress in any manner any copyright, trademark or other notices displayed by AQUEA's materials. You may not license, rent, sell, loan, lease, pledge, offer as security, transfer or assign AQUEA's materials on a stand-alone basis, or any of the rights granted to you hereunder to any other person.

22. Internet / Online

22.1 AQUEA wishes to support and grow Australia's pool trade industry and pool-product innovation by building strong customer relationships – including builders, distributors, retailers and end-users. To this end, this clause is intended to provide the necessary framework and expectations for all of AQUEA's customers.

22.2 Customers will not publish images or pricing for AQUEA's products online, or offer our products for sale online on any distributor / dealer / retailer and/or third-party websites and/or sponsored feeds without AQUEA's prior written approval.

22.3 AQUEA's products must not be offered for sale via online marketplaces including (but not limited to) websites such as eBay, Amazon, Gumtree, GraysOnline and/or Facebook Marketplace.

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22.4 Customers will notify their own customers of this policy and will ensure compliance at all times.
22.5 All promotional imagery and advertising materials used to support and on-sell AQUEA's products must be requested and approved in writing by AQUEA.
22.6 Short-term promotional and campaign materials may be reviewed and approved by AQUEA.
22.7 Failure to comply with this clause may result in cessation of supply, account cancellation and/or other remedies that ensure AQUEA's brand, reputation and the commercial viability of AQUEA's sales & distribution network are protected.

23. Product Enquiries and Sales

23.1 AQUEA is the manufacturer and not a retailer, wholesaler or distributor.
23.2 In most instances, product sales are not available directly from AQUEA.
23.3 Sales enquiries received by AQUEA (via verbal, written and/or online channels) will be referred in the first instance to AQUEA's nearest Distributor.
23.4 If an acceptable Distributor cannot be found for a customer, AQUEA reserves the right to sell directly to that customer. "Acceptable" in this sub-clause means within a convenient geographic proximity of the customer and/or as a result of any other limitation or reason(s) expressed by the customer.
23.5 To assist in AQUEA's ongoing marketing and sales initiatives, data may be collected from inbound sales enquiries and stored for future reference, irrespective of whether any subsequent product sales are completed by AQUEA or via nominated distributors.
23.6 Further to Clause 23.5, AQUEA will observe all statutory requirements regarding data-collection and privacy (as per Clause 5) and thus may not be obligated to share or distribute any/all information collected from sales-leads, except for the express purpose of referring in-bound customer enquiries to approved Distributors.

For a list of current AQUEA distributors and stockists, see www.aquea.com.au/pages/store-locator

24. Other enquiries

24.1 For all other enquiries, frequently asked questions ("FAQ") and product information, please visit www.aquea.com.au or contact us at hello@aquea.com.au
24.2 Mailing address:
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Factory 12, 22-24 Redland Drive
Mitcham VIC 3132
AUSTRALIA

The above terms and conditions are effective from 13th November 2026.

E&OE

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