

# TERMS & CONDITIONS

## Wholesale Terms & Conditions for the Supply of Goods & Services.

These terms and conditions ('Terms') apply to the supply of goods and services by Sunbather Pty Ltd ACN 004 898 631 or any of its related bodies corporate ('us', 'we' or 'our') to the customer named in the quote or purchase order ('you' or 'your'). By ordering or accepting goods or services from us, you agree to be bound by these Terms.

### 1. Contract

- 1.1 These Terms and our quote form the contract between you and us for the supply of the goods and services set out in an order we have accepted. These terms take precedence over any inconsistent terms in our quote and exclude any terms included in your order or other document you may submit.
- 1.2 We may vary these Terms at any time by written notice to you. These terms, as varied, will apply to orders placed after the date of notice.

### 2. Resale

- 2.1 Goods are supplied to you for the sole purpose of resale to an end user provided that goods must not be resold online via your website or any other website, except with our prior written consent (which we may give and withdraw at our absolute discretion).
- 2.2 You must not make any warranty in respect of goods you resell other than the warranty referred to in clause 12, unless we have given prior written approval.
- 2.3 If we agree, you may use our trade marks in promoting our goods and services. Use of our trade marks must be in accordance with any usage guidelines we give to you from time to time.
- 2.4 You warrant that: (a) you and your personnel have the necessary skills and qualifications to resell and install our goods; and (b) you and your personnel will carry out installation and other work diligently, to a high standard and in accordance with any instructions, guidelines, manuals or specifications we provide from time to time.
- 2.5 You indemnify us against any harm, loss, damage, claim, demand, action (including, without limitation, any indirect or consequential loss or damage) we suffer arising from (a) your breach of the warranty in clause 2 or otherwise in connection with your resale or installation of our goods.

### 3. Orders

- 3.1 Orders for goods and / or services are not binding on us until we accept them. We may accept orders: (a) in writing; or (b) by supplying the goods or services ordered.

### 4. Variation

- 4.1 Any request by you to vary: (a) goods; (b) services; or (c) the date or location of delivery or installation, is subject to our written agreement. We may invoice additional charges for variations.

### 5. Delivery

- 5.1 Unless we agree otherwise in writing, we will arrange for delivery of your order but you are responsible for all delivery costs, including freight, insurance and any other associated charges.
- 5.2 Delivery times are estimates only and late delivery does not affect your obligation to accept or pay for goods.
- 5.3 We may: (a) deliver orders by instalments and invoice you for goods delivered by instalment; and (b) substitute the goods specified in your order with other goods of equivalent and performance.

### 6. Services

- 6.1 Unless we otherwise agree in writing: (a) services will be provided between 8.00 am and 5.00 pm Monday to Friday except public holidays ('business hours'); and (b) do not include any building or structural work or clearing of obstructions ('additional services'). We may invoice additional charges for additional services and services provided outside business hours.
- 6.2 If we determine that we are unable to properly provide services due to a site defect (e.g. damage, faults, movement or weaknesses at the site), we will notify you and we will not be required to provide services until the site defect has been remedied to our satisfaction.
- 6.3 If site defects have not been remedied within 14 days, we may cancel this contract. If we cancel a contract, you must still pay for goods supplied and services provided before cancellation.

### 7. Title and Risk

- 7.1 Title in goods passes to you only when you have paid all amounts you owe us. Until then, the goods are our property and must be stored in a manner that allows them to be identified as our goods.
- 7.2 Risk of loss of or damage to goods passes to you when the goods leave our warehouse.
- 7.3 If you sell goods before title has passed to you: (a) the amount you owe us for the goods is held by you on trust as our fiduciary agent; and (b) you must pay us the amount owed immediately without demand.

### 8. Price

- 8.1 The price for goods and services is set out in our quote and is valid for 30 days. If, due to no fault of ours, we are unable to deliver the goods or complete the services within 90 days of the date your order is accepted, we may adjust the price to take into account any variations in the cost of materials, equipment or labour.

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## 9. Additional charges

9.1 Before we do anything that incurs additional charges, we will seek your approval. If you do not agree, we are not obliged to provide the goods or services relating to the additional charges.

## 10. Payment

10.1 If you do not have a credit facility with us, we may require you to: (a) pay a deposit; and / or (b) pay for goods in full on or prior to delivery. You must pay for services and any additional charges when we invoice you those charges.

10.2 If you have a credit facility with us, we will invoice you the price and any additional charges. You must pay all invoices in full within 30 days of the date of the invoice (or such other period that we agree in writing).

## 11. Default

11.1 If you fail to pay an amount when due: (a) we may charge interest at the rate of 2.5% per month on the unpaid amount; (b) we may withhold delivery of any of your future orders until payment is made; (c) all amounts invoiced but unpaid are immediately due and payable; (d) we may retake possession of goods (and you authorise us to enter your property for this purpose); and (e) you indemnify us against any loss or expense (including legal expenses) we incur in recovering overdue payments, retaking possession of goods and otherwise arising from your failure to pay on time.

## 12. Returns

12.1 Goods may only be returned if: (a) we agree; (b) they are returned within 14 days of delivery; (c) you provide us with a tax invoice or other acceptable proof of purchase; (d) they are unused and in as-new condition (including packaging, manuals and accessories); and (e) they have not been manufactured or altered to your individual requirements.

12.2 You must pay all freight charges associated with the return of goods.

12.3 You will receive a credit for returned goods equal to the price of the goods less a 15% handling and restocking fee.

## 13. Warranties

13.1 Subject to clause 12.1, (a) the only warranty given by Sunbather in respect of goods is set out in the installation and operating instructions supplied with the goods and on our website at [www.Sunbather.com.au](http://www.Sunbather.com.au) as well as in our price list ('standard warranty'); (b) the standard warranty is for the sole and exclusive benefit of the ultimate end user of goods (and is not transferable); and (c) all other warranties, terms, conditions, rights and remedies in respect of goods and services are excluded.

13.2 If we determine (at our absolute discretion) that an end user warranty claim is due to an incorrect installation, failure to adhere to our installation manuals and specifications or any other act or omission by you, you must pay our labour, inspection and travel costs at the prevailing SPASA rates for pool servicemen or such other rate as we reasonably determine.

13.3 To the extent permitted by law, our liability for conditions and warranties that cannot be excluded is limited to: (a) in relation to goods – their replacement, repair, resupply or payment of the cost of having them resupplied; and (b) in relation to services – their resupply or payment of the cost of having them resupplied.

13.4 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund and compensation for any other foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 14. Insurance and liability

14.1 Some laws – particularly the Trade Practices Act 1974 – may give you rights and remedies that cannot be modified or excluded. These Terms are subject to those laws.

14.2 To the extent permitted by law, we are not liable to you for, and your release us from and indemnify us against, any harm, loss, damage, claim, demand, action (including, without limitation, any indirect or consequential loss or damage) that you or anyone else may suffer or be entitled to make or bring in connection with or arising out of the goods or services or the supply or failure to supply goods and services, including (without limitation) by virtue of breach of contract or negligence by us or anyone for whose acts and omissions we are vicariously responsible. 14.3 You must take out and maintain at your cost all insurances (including workers' compensation insurance) that a reasonable and prudent person in the industry would take out and maintain.

## 15. Force majeure

15.1 We will not be liable for any delay or for breach of these Terms to the extent that this is due to circumstances beyond our reasonable control.

## 16. Governing law and jurisdiction

16.1 These Terms and the supply of goods and services under it is governed by the law of Victoria.

16.2 The parties submit to the exclusive jurisdiction of the courts of that state and waive any claim or objection based on absence of jurisdiction or inconvenient forum.