

## Pool Systems/Newline Pool Products – Terms and Conditions

All sales of goods set out in a purchase order (the **goods**) by Pool Systems Pty Ltd trading as Pool Systems and Newline Pool Products (hereinafter referred to as **the Seller** to the purchaser who submitted the purchase order (**Purchaser**) are made subject to the following conditions (**conditions**):

### 1. QUOTATIONS

- 1.1 Quotations made by Pool Systems or Newline will not be construed as an offer or obligation to supply the goods in accordance with the quotation but merely an invitation to treat. The Seller reserves the right to accept or reject, at its discretion, any offer to purchase goods received by it. Only written acceptance by the Seller of the Purchaser's offer to purchase, or the provision of goods by the Seller will complete the contract.
- 1.2 Placement of an order, either verbally or in writing, will constitute acceptance of the Seller's offer and of these conditions. Orders are accepted in good faith and subject to the Seller's ability to supply. Any changes to orders and backorders requested by the Customer must be supplied by email to the email address provided by Pool Systems or Newline.
- 1.3 The Seller will not be bound by any other terms and conditions on the Purchaser's order or by purported acceptance of a sale, unless the Seller accepts such terms and conditions in writing expressly.

### 2. PAYMENT

- 2.1 For Purchasers without approved credit accounts, payment for goods is due prior to despatch.
- 2.2 For Purchasers with approved credit accounts, payment is due strictly as per account approval terms. In all cases payments made by credit card after the due date specified on the relevant tax invoice issued by the Seller will attract the following service fees: Visa & MasterCard — 1.5%. The Seller retains the right to charge interest on overdue accounts at a rate of 2% per month, calculated on a monthly basis from the month following due payment. The Seller may cancel credit facilities at any time without reason.
- 2.3 All money owing by the Purchaser to the Seller will be immediately due and payable to the Seller if:
- (a) any information supplied by the Purchaser in applying for credit is incorrect or misleading;
  - (b) there is a material adverse change in the financial position or credit worthiness of the Purchaser;
  - (c) any judgment, execution or other process of any court is issued against or levied upon the Purchaser and that judgment, execution or other process is not dismissed, or withdrawn within 7 days from the date of the judgment, or issue or levy of the execution or other process;
  - (d) any controller, voluntary administrator, provisional liquidator, liquidator, external administrator or trustee in bankruptcy is appointed to the Purchaser; or
  - (e) any application is made to court for an order that the Purchaser be made bankrupt or be wound up.

### 3. FREIGHT

- 3.1 For orders exceeding a total value of \$150 for metropolitan areas in Brisbane, Gold Coast, Sunshine Coast, Sydney, Melbourne and Adelaide, and \$250 for regional areas (excluding GST), and other than orders for products specified on the Seller's price list as "ex warehouse", the Seller will bear the freight cost to deliver the goods to the Purchaser. For orders for products specified on the Seller's price list as "ex warehouse", the Purchaser will be responsible for collecting the products from an address specified by the Seller. If the Purchaser requires delivery of orders of less than the specified minimum order value (excluding GST), they are subject to a freight charge of \$15.00 plus GST for Metro areas - . Regional Areas will be charged at freight cost incurred. These amounts are subject to change by the Seller at any time without further notice. Freight charges for deliveries outside these areas are at the Purchaser's expense or by special arrangement.
- 3.2 Requests for Express Post – If a customer requests express post and requested items are permitted and can fit into express post satchel, express post can be requested at a charge of \$25.00 + gst per bag (regardless of order value)
- 3.3 Products which are generally sold ex warehouse include bulk chemicals, salt, sand and media. These products can only be freighted with prior agreement and may incur additional freight charges. Products classified as Dangerous Goods will also incur additional freight surcharges (at freight cost incurred) if freight is requested.
- 3.4 Where tailgate delivery is required but not requested by the customer, the customer will incur a tailgate delivery surcharge, reflecting the freight cost incurred (nominally \$55 + GST)

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### 4. PRICES

- 4.1 All prices are listed exclusive of GST, and are subject to change without notice, though the Seller will use reasonable endeavours to notify a Purchaser of the change before despatch or collection. Prices charged are those at the date of delivery. The prices and delivery dates given in the Seller's quotations are for the quantity specified. Any deviation when ordering renders the quotation subject to revision.

### 5. SUPPLY

- 5.1 Indications as to date and time for delivery are made in good faith in the light of conditions and circumstances prevailing at the time. No order will be cancelled except with consent in writing of the Seller and on terms which will indemnify the Seller against all loss.

### 6. RETURNS

- 6.1 The Purchaser must inspect all goods upon delivery or collection.
- (a) The Purchaser must give written notice to the Seller of any deficiency, shortfall, discrepancy, dispute or any other claim (**Defect**) as soon as possible after delivery or collection of the goods. Short supply or damaged goods **MUST** be advised within 3 working days of receipt of goods, and proof of damage provided. No return will be accepted past the date of collection or delivery, which the Purchaser acknowledges and agrees, is reasonable. All goods returned must be accompanied with the Seller's return report (which may be requested from the Seller and provided at the Purchaser's cost, if any) with all relevant information completed.
- 6.2 The Purchaser must give the Seller reasonable opportunity to inspect the goods where notice of the Defect is given.
- 6.3 To the extent permitted by the Australian Consumer Law and at law, goods returned for credit will not be accepted without prior approval of the Seller and the goods returned must be in 'as new' condition.
- 6.4 Freight must be prepaid or the goods will either not be accepted or the amount of freight will be deducted from the credit total.
- 6.5 Subject to the Australian Consumer Law, goods returned for credit will be subject to a handling charge of the greater of \$10 or 15% of the invoice price plus GST.
- 6.6 Subject to the Australian Consumer Law, if the goods returned require repackaging or restocking, extra fees will apply at the discretion of the Seller.
- 6.7 If the return of goods reduces the original order to an amount less than an amount of \$150.00 (excluding GST), then the Purchaser acknowledges that the Seller may charge the Purchaser the freight amount for the delivery of remaining goods in that order.
- 6.8 Subject to the Australian Consumer Law, any fees or charges attaching to a refund will be deducted from the amount owing to the Purchaser from the return of the goods and will be set out in a credit note provided by the Seller.

### 7. WARRANTIES & INDEMNITY

- 7.1 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law. The Seller gives no warranties either express or implied as to merchantability, fitness for purpose or otherwise with respect to the goods other than as required by any applicable legislation.
- 7.2 Irrespective of clause 7.1, where the Purchaser is a consumer for the purposes of the Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("**the Australian Consumer Law**") the goods comes with guarantees that cannot be excluded. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Purchaser is 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.

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- 7.3 For the purposes of clause 7.3, if the Purchaser is a consumer within the meaning of that term in the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law, The Seller makes each guarantee required of a supplier to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the goods and the nature of the Purchaser.
- 7.4 To the extent permitted by law, and subject to clause 7.4, the Seller's liability to the Purchaser whether for a breach of these conditions or otherwise, will at the discretion of the Purchaser, be limited to the supply of equivalent goods or the replacement of the goods supplied to the Purchaser.
- 7.5 To the maximum extent permitted by law, the Purchaser indemnifies and agrees to hold the Seller, its officers and employees (**Those Indemnified**) harmless against and from all Claims which may arise as a result of or in connection with the Seller's supply of the goods. The Seller holds the benefit of this indemnity on trust for Those Indemnified and Those Indemnified will be entitled to rely on the indemnity and have the Purchaser pay for all costs (including but not limited to legal costs on a solicitor and own client or indemnity basis) prior to Those Indemnified having incurred and paid such costs.
- 7.6 For the purpose of these conditions, Claim means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- 8. RISK AND INSURANCE**
- 8.1 Claims for damages, loss, incorrect supply, short deliveries or any other non-conformity to the description will only be recognised if notified by the Purchaser to within 3 working days of despatch of the goods, which the Purchaser agrees is a reasonable period of time.
- 8.2 Risk of damage to or loss of the goods will pass to the Purchaser at the time of delivery to the carrier or the Purchaser whichever occurs first.
- 8.3 Insurance will be at the cost and responsibility of the Purchaser.
- 9. TRANSFER OF OWNERSHIP**
- 9.1 Property in and title to the goods will not pass to the Purchaser until:
- in respect of goods listed on an invoice given to the Purchaser, the invoice has been paid for in full; and
  - the goods and all other goods supplied by the Seller to the Purchaser have been paid for in full; and
  - any moneys owing to the Seller by the Purchaser have been paid by the Purchaser and received by the Seller in full ("**Debts**").
- 9.2 If the goods are resold, or products manufactured using the goods are sold by the Purchaser, the Purchaser will hold such part of the proceeds of any sale as represents the invoice price of goods sold or used in the manufacture of the goods sold in separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller is entitled to maintain an action against the Purchaser for the purchase price and the risk of goods shall pass to the Purchaser upon delivery, who must therefore be insured accordingly.
- 9.3 Until the Debts have been paid and received by the Seller in full:
- the Purchaser agrees that property and title in the goods will not pass to the Purchaser and that the Seller retains legal and equitable title in those goods supplied and not yet sold;
  - the Purchaser has the right to resell goods, but only as trustee, fiduciary, agent and bailee for the Seller by way of bona fide sale at full market value and in the ordinary course of its business;
  - the Purchaser's indebtedness to the Seller, whether in full or in part, will not be discharged by the operation of clause 9.2(g) unless and until the Proceeds held on trust are remitted to the Seller;
  - the Purchaser must take custody of the goods as trustee, fiduciary, agent, and bailee for the Seller;
  - the Purchaser must keep the Seller's goods separate from any other goods, including goods supplied on a separate invoice, and properly marked, stored, protected and insured;
  - the Purchaser must at its expense store the goods in such a manner as to clearly show that they are the property of the Seller;
  - the Purchaser must hold all of the money it receives ("**Proceeds**"):ol type="i">  - from the sale of any property into which goods supplied by the Seller have been incorporated;
  - for the sale of goods or provision of services including the goods and services supplied by the Seller;
  - as bailee, fiduciary, agent and trustee for the Seller, but the Purchaser need not hold on trust any money exceeding the amount of the Debts at the time the money is received. Receipt by the Purchaser of payment will be treated as conclusive evidence that it has received Proceeds.
- The Purchaser expressly acknowledges that it is bound by fiduciary obligations created in subclauses 9.2(a)-(g) of this clause and acknowledges that:
  - it must hold the Proceeds on trust for the Seller;
  - it must place the whole of the Proceeds in an account separate from its own moneys;
  - it must maintain the separate account at all times;
  - it must maintain proper records for the separate account;
  - it must not assign or encumber any book debts arising from sales or do any other acts in derogation of the Seller's legal or beneficial interests;
  - it must account to the Seller on demand for all moneys standing to the credit of the separate account;
  - The Seller may appropriate payments as it thinks fit, notwithstanding any contrary appropriation by the Purchaser;
  - for the purposes of identification of different consignments of goods purchased from the Seller and receipt of Proceeds, the Purchaser agrees that the principle of "First In, First Out" shall be applied to any items that cannot be distinguished; and
  - the Seller may trace the Proceeds in equity.
- The Seller may at any time, without notice to the Purchaser and without prejudice to any other rights which it may have against the Purchaser, terminate any contract connected with the goods and enter upon any premises owned or occupied by the Purchaser where the Seller reasonably believes the goods may be stored, repossess the goods without liability for any damage caused, and subsequently dispose of the goods at the Seller's discretion if:
  - The Debts are not paid in accordance with these conditions and any other contract or arrangement between the Seller and the Purchaser;
  - The Seller receives notice of or reasonably believes that:
    - the Purchaser may be insolvent (within the meaning of the *Corporations Act 2001* (Cth)); or
    - the Purchaser has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- If after repossession under paragraph 9.3(i) the Seller sells the goods, the Seller will account to the Purchaser for any excess of the proceeds of sale (less expenses of repossession and sale) over the costs of the goods.
- If any goods belonging to the Seller are disposed of by the Purchaser or an insurance claim is made in respect of them, the Seller shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by the Purchaser in a separate bank account on trust for the Seller.
- 9.4 For the avoidance of doubt, the Seller's interest in goods supplied but not yet paid for in full constitutes a Purchase Money Security Interest.
- 10. PPSA**
- 10.1 All terms defined in the *Personal Properties and Security Act 2009* (Cth) ("**PPSA**") have the same meaning where capitalized in these terms and conditions.
- 10.2 The Purchaser agrees and acknowledges that:
- these conditions constitute a security agreement for the purposes of the PPSA and that a Security Interest (as defined in the *Personal Properties and Security Act 2009* (Cth)) exists in all goods previously supplied by the Seller to the Purchaser and their

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- proceeds (if any); in all future goods that may be supplied by the Seller (and their proceeds) and in all products into which the goods are incorporated, processed or comingled (and their proceeds);
- (b) the Purchaser contracts out of and waives its rights under the following provisions of the PPSA, to the extent permitted, sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, 143 and the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded;
  - (c) until ownership of the goods passes, the Purchaser must not give the Seller a written demand or allow any other person to give the Seller a written demand requiring the Seller to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA;
  - (d) it has received value as at the date of first delivery or collection of the goods and has not agreed to postpone the time for attachment of the Security Interest granted to the Seller under these terms and conditions;
  - (e) the Purchaser irrevocably grants to the Seller the right to enter upon the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if the Seller has cause to exercise any of the Seller's rights under sections 123 and/or 128 of the PPSA, and the Purchaser agrees to indemnify the Seller from any claims made by any third party as a result of the Seller exercising such right;
  - (f) pursuant to section 275(6) of the PPSA, the Purchaser agrees it will not disclose to an interested person any of the matters described in section 275(1) of the PPSA without prior approval of the Seller; and
  - (g) if the Purchaser defaults in the performance of any obligation owed to the Seller, the Seller may enforce its Security Interest in any goods by exercising all or any of its right under these Terms and Conditions, or the PPSA.
- 10.3 The Purchaser agrees that where the Seller has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
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- 11. CANCELLATION & DEFAULT**
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- 11.1 The Seller reserves the right to immediately cancel any order for the supply of goods or suspend any such supply without incurring any liability to the Purchaser in any of the following circumstances (each an "Event of Default"):
- (a) the Purchaser is overdue with any payment or otherwise in breach of these conditions;
  - (b) the Purchaser enters into bankruptcy, liquidation or a composition with its creditors, has a receiver, manager or administrator appointed over all or any part of its assets or becomes insolvent; or
  - (c) contractual performance is delayed or prevented due to any cause or circumstances, other than Force Majeure.
- 11.2 For the purpose of these conditions Force Majeure event means circumstances beyond the reasonable control of a party which results in that party being unable to perform an obligation of these conditions on time or at all, and includes but is not limited to acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any other natural disasters, acts of war, acts of public enemies, terrorism, riots, civil commotion and sabotage; and strikes or other industrial action or disputes not involving employees, members or participants of the party seeking to rely on the Force Majeure event.
- 11.3 It is an Event of Default if any of the following occur:
- (a) the Purchaser fails to pay any moneys payable or fails to comply with any of its obligations under these conditions when due for payment;
  - (b) any event occurs which in the Seller's opinion renders performance of the Purchaser's obligations under these conditions impracticable, including but not limited to the insolvency of the Purchaser; and
  - (c) the Purchaser makes any false, inaccurate or misleading statement to the Seller in its dealings in relation to these conditions and the purchase of the goods.
- 11.4 If an Event of Default occurs, and without limiting any other remedies available to the Seller under these conditions:
- (a) the Seller may charge interest calculated on a daily basis on the overdue amount at an interest rate of 2% per month;
  - (b) the balance of any moneys owing by the Purchaser to the Seller will immediately become due and payable without demand;
  - (c) the Seller may suspend credit to the Purchaser;
  - (d) the Seller may terminate any agreement with the Purchaser, without prejudice to any of its other rights at law; and
  - (e) the Seller may withhold the delivery of goods already ordered.
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- 12. COSTS**
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- 12.1 The Purchaser must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Purchaser.
- 12.2 The Purchaser will also pay as a liquidated debt the Seller's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy against the Purchaser, which the Purchaser acknowledges is a genuine pre-estimate of the costs the Seller will incur.
- 12.3 The Purchaser acknowledges and agrees that the Seller is entitled to apply or appropriate any money received from or on behalf of the Purchaser towards the satisfaction of any liability or obligation of the Purchaser.
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- 13. LIMITATION OF LIABILITY**
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- 13.1 To the maximum extent permitted by law, the Seller's maximum aggregate liability for all claims under or relating to these conditions, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on breach or on any other basis, is limited to amount paid to the Seller for the supply of the goods in the order.
- 13.2 To the maximum extent permitted by law, the Seller is not liable for (under any circumstances):
- (a) special, indirect, consequential, incidental or punitive damages; or
  - (b) damages for loss of profits, revenue, goodwill, bargain, anticipated savings or loss, personal injury, death, the costs arising from the loss of use of the goods and the costs of any substitute and the costs of any substitute goods which the Purchaser obtains.
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- 14. CONFIDENTIAL INFORMATION**
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- 14.1 The Seller's price list is confidential to the Purchaser, and may not be copied or shared in whole or part without the written permission of the Seller.
- 14.2 Each party undertakes that it will not without the prior written consent of the other party, either during the term of any agreement formed pursuant to these conditions or at any time thereafter (except in the proper course of its duties under these conditions or as required by law or by the other party), disclose or allow its related bodies corporate, employees, agents and contractors to disclose to any person any confidential information of or relating to the other party of which it has become possessed as a result of or in relation to the supply of goods pursuant to these conditions.
- 14.3 Nothing in these conditions prohibits disclosure of information which:
- (a) is in the public domain;
  - (b) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;
  - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this agreement; or
  - (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party.
- 14.4 The obligations under this clause 14 survive termination of any contract formed pursuant to these conditions.
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- 15. GENERAL**
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- 15.1 These conditions and any agreement formed pursuant to them will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the Courts of Queensland.
- 15.2 These conditions govern the entire agreement between the Seller and the Purchaser and supersede all prior representations, agreements, statements and understandings between the Seller and the Purchaser.
- 15.3 The Purchaser agrees that these conditions may be varied, added to, or amended by an authorised officer of the Seller at any time by written notice to the Purchaser. Any proposed variation to these conditions by the Purchaser must be requested in writing. The Seller may refuse

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- any such request without providing reasons, either orally or in writing. If the Purchaser orders any goods after receiving notice of the variation, this will be deemed to constitute acknowledgement and acceptance of the varied conditions.
- 15.4 An obligation of two or more persons under these conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this Agreement will take effect for the benefit of those persons jointly and severally.
- 15.5 To the extent of any inconsistency between these conditions and any conditions as may be set out in an attachment, annexure or schedule, then these conditions prevail to the extent of any such inconsistency.
- 15.6 the Seller's rights, remedies and powers under these conditions are in addition to any rights, remedies and powers provided by law.
- 15.7 The failure of a party to any agreement formed pursuant to these conditions to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.
- 15.8 If any provision of these conditions is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 15.9 The Purchaser agrees to accept service of any document required to be served, including any notice under these conditions or the PPSA or any court document, by prepaid post at any address nominated in this application or any other address later notified to the Seller by the Purchaser or the Purchaser's authorised representative.