

1. PRELIMINARY

Envirotec Bathing Limited, whose registered office address is at Engine Lane, Shafton, Barnsley, S72 8SP ("the Company"), contracts with all its customers ("the Customer") subject to and upon the following terms and conditions (the "General Conditions of Sale"), which shall govern the sale of all the Company's goods ("Goods", which expression shall include the provision of any services to be rendered in connection with the Goods) exclusively, notwithstanding any terms or conditions (whether oral or written) or purported variations contained on any order, confirmation of order, specification, correspondence or any other document submitted by the Customer to the Company unless same are accepted in writing by a duly authorised officer of the Company. Any acceptance by the Company of a Customer's offer order for Goods shall create a contract, herein referred to as a "Contract".

2. STATUTORY RIGHTS AND DESCRIPTION OF GOODS

All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3. DELIVERY, NON DELIVERY AND SUB-CONTRACTING

- (i) The Company shall endeavour to keep to any stated despatch, delivery, installation or completion date, but no liability for loss, damage or expense resulting from any delay in same, whether such delay shall be caused by circumstances over which the Company has control or otherwise. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence in this regard. If no dates are so specified, delivery shall be within a reasonable time. On leaving the premises of the Company all risk, whether insurable or otherwise relating to the Goods, shall pass to the Customer, notwithstanding the provisions of Clause 6 ("Reservation of Title") hereafter and irrespective of whether or not the cost of transportation of the Goods is payable by the Customer, unless otherwise agreed in writing or unless the circumstances described in Clause 3(ii) apply. Insurance shall be effected and the cost thereof shall be borne by the Customer as and from the date of delivery.
- (ii) Notwithstanding the provisions relating to the passing of risk found in Clause 3(i) above, the Company may undertake to deliver the Goods itself or by or through an agent. In such circumstances risk relating to the Goods shall pass to the Customer upon delivery (and prior to installation, if any) to the place named by the Customer or, in the event of no such place being named, to the Customer's premises or works.
- (iii) Subject to the other provisions of these General Conditions of Sale the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days. In the event of delay exceeding 180 days, termination or rescission by the Customer may only be effected by notice in writing to the Company
- (iv) Each part-delivery or instalment of the Goods shall be deemed to be sold under a separate Contract and no default by the Company in respect of any part delivery or instalment shall entitle the Customer to treat the Contract as repudiated in regard to any balance or instalment remaining deliverable. Where the Goods are to be commissioned or installed at the Customer's premises the Customer shall provide the Company with all necessary access and services which may be necessary for the completion of same. The Company reserves the right to sub-contract in fulfilment of any Customer's order or any part thereof or in the provision of any services in relation to the Goods.
- (v) If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Goods shall be deemed to have been delivered and the Company may store the Goods until removed by the Customer whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and no liability whatsoever shall attach to the Company in respect of the quality or the condition of any Goods which the Customer shall not have removed within a reasonable period.
- (vi) The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- (vii) The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- (viii) Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

4. CANCELLATION

The Company may in some circumstances and upon the Customer's request but always at its, the Company's, sole discretion agree to the cancellation of a Contract. In any circumstances, however, where Goods are modified at the Customer's request or are otherwise bespoke by the Customer, no cancellation or rescission of a Contract will be agreed to by the Company and the Customer shall be liable in full for payment in respect of the modified or bespoke Goods once the Contract has been made.

5. TERMS OF PAYMENT

- (i) Payment by the Customer of the price for the Goods is due in pounds sterling (GBP) on or before the expiry of 30 days from the date on which the Goods are despatched together with VAT at the appropriate rate, unless otherwise expressly agreed in writing. The Company reserves the right at any time in its absolute discretion to revoke or vary any credit extended to the Customer including the credit period referred to above.
- (ii) Time for payment of the price shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
- (iii) Upon contravention of the agreed payment terms, the Customer shall be liable to the Company for interest on overdue balances at the annual rate of four per cent (4%) above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- (iv) The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

- (v) without prejudice to the foregoing the Customer shall bear all other taxes and assessments which may be levied upon or against the Goods in respect of the sale thereof, from the date on which the Goods are despatched, even though the title thereto still remains vested in the Company as provided in Schedule 6 "Reservations of Title" hereafter.

6. RESERVATIONS OF TITLE

All Goods supplied by the Company to the Customer shall, notwithstanding delivery, remain the property of the Company until the entire of the purchase price (including the cost of delivery where appropriate and any interest charges incurred in relation to the Goods) payable by the Customer has been paid in full without any reduction or deferment on account of any dispute or counterclaim whatsoever and until such full payment the Customer shall hold the Goods and all goods incorporating the same on a fiduciary basis as the Company's bailee. If any amount owing by the Customer to the Company is overdue, the Company may, without prejudice to any of its other rights or remedies, repossess and resell any or all of such Goods and may enter upon the Customer's premises for that purpose. Nothing herein contained shall entitle the Customer to refuse or delay payment or to require the Company to accept the return of the Goods on the grounds that the property in the Goods supplied is reserved to the Company as aforesaid. The Customer shall not be entitled to pledge or create any lien or charge over the Goods but, subject as aforesaid, may deal with the Goods in the ordinary course of trade unless or until the Company takes any steps to repossess some or any part thereof pursuant to the provisions of this Clause. Where the Customer sells the Goods or otherwise deals with them (whether or not in the ordinary course of trade) before the full price of the Goods has been paid to the Company, the Customer shall hold the proceeds of sale thereof and/or anything else of value received in exchange for the Goods in trust for the Company. The Company may without prejudice to the foregoing and as part of the consideration for the sale herein, require the Customer to assign any claim which the Customer may have against any third party who may have purchased the Goods whether in respect of the proceeds of sale thereof or otherwise. In the event of the Customer having a receiver or liquidator appointed, the benefit of the aforesaid claim, shall be deemed to have been assigned to the Company immediately prior to such appointment and such receiver or liquidator shall pay into a separate bank account for the sole benefit of the Company any sums paid or payable by third parties who may have purchased the goods, whether in respect of the proceeds of sale or otherwise. In the event of any sums being paid to the Company pursuant to the provisions hereof being in excess of all amounts due to it by the Customer the balance, if any, shall be refunded by the Company to the Customer. The Customer's right to possession of the Goods shall terminate immediately if:

- (i) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

7. CLAIMS

As a condition precedent to recovery for total or partial loss of or defects or a shortage in or damage to any Goods supplied hereunder every claim for same must be made in writing by the Customer as soon as possible and in any event within three days after the receipt of such Goods by or on behalf of the Customer and the Customer must also preserve whatever rights of action it may have against third parties in respect thereof.

Signature at point of receipt of goods shall be deemed as proof that goods were received in perfect condition and no claim will be agreed thereafter.

8. MANUAL HANDLING

The Company will not be responsible in any way, shape or form for any personal injury or damage to property caused during the handling or installation of the Company's products. The customer must ensure that all of the Company's goods are handled following correct Manual Handling procedures. The customer must ensure that all insurances for injury and damage to person or property during handling are up to date and suitable. All injury and damage liabilities are with the customer even if the goods are being handled or installed by the Company.

9. WARRANTY

Subject as hereinafter provided, the Company warrants that all new Goods supplied by it hereunder are at the date of despatch free from defects in material and workmanship, its liability under such warranty being limited to making good, at a factory to be nominated by it, any part or parts which shall within the period specified below, be returned to the Company or its duly authorised representative provided it is clearly established that the part or parts were in fact defective in material or workmanship at the date aforesaid and the Company shall be the sole judge of the existence of any defect in the Goods or any part or parts thereof complained of. The warranty period shall be calculated from the date when the Goods are despatched to the Customer and shall be for a period of 10 years in respect of new goods or at such time and for such period, if any, as the Company may, in its absolute discretion, determine at any time in respect of spare or replacement parts provided:

- (a) The Company gives no warranty whatever in respect of second-hand Goods save to such extent, if any, as it may be obliged to do so by law or unless otherwise expressly agreed in writing; and
- (b) This warranty does not cover products or proprietary goods, articles, accessories or parts manufactured or supplied by persons or firms other than the Company; the warranty, if any, on same is as provided by the manufacturer thereof and no such warranty whatever is given by the Company in respect of such items; and
- (c) The Customer shall be responsible for any expenses of transportation, installation, labour or other costs which may be involved in relation to any claim hereunder save to such extent as the Company may agree in writing in any particular case; and
- (d) The foregoing warranty does not extend to any Goods from which the Company's identification number or plates have been removed or which have been accidentally damaged or which have been repaired, altered, neglected or used in any way so as to affect adversely their reliability or quality or uses under abnormal conditions; and
- (e) The Company gives no warranty whatever in respect of its Goods except for foregoing warranty which is given expressly in lieu of and, subject to the provisions of Clause 2 hereof, excludes all other conditions, warranties or representations as to quality, fitness or suitability whether express, implied, collateral

or statutory; and

- (f) In the event of there being any dispute as to whether or not any returned part was defective at the date of despatch or as to the cause of any defect the Company shall be entitled to apply or have applied such tests as may be necessary but the Company shall not be responsible for any loss occurring or for any damage to such part occasioned by or in the course of such tests; and
- (g) Where a claim arises under this warranty the Customer shall furnish without delay and in any event within five days thereof all details of the claim to the Company by prepaid registered post addressed to the Company's General Manager/Managing Director at the address specified on the face of the invoice and every claim shall specify the date and place of purchase, the date on which the Goods were despatched, the circumstances in which the alleged defect(s) became apparent and such further details as may be relevant to the claim.

10. LIMITATION OF LIABILITY

- (i) Subject as otherwise provided to the contrary by these General Conditions of Sale, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of these General Conditions of Sale, any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- (ii) Subject as provided to the contrary hereby, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price and the Company shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. FORCE MAJEURE

The Company shall not be liable to the Customer for any loss, damage, injury or expense, whatsoever arising or resulting from acts of God, government orders, strikes, lockouts or other industrial action, inability to secure labour, materials or supplies at commercially justifiable rates, accidents, plant breakdowns, war, civil commotion, or any other circumstances, whether of the foregoing class or not, beyond the control of the Company and every contract with the Customer is subject to cancellation, variation or suspension by the Company as may be necessary due to force majeure.

12. INDEMNITY

The Customer shall at all times keep the Company indemnified against any claims for loss, damage, expense, injury or death to third parties arising out of or connected with the subject matter of the contract herein contained with the Customer or the Goods or services supplied hereunder.

13. WAIVER

A waiver (whether express or implied) by one of the Parties of any of the provisions of these Terms or of any breach of or default by any other Party in performing any of those provisions, will not constitute a continuing waiver and that waiver will not prevent the waiving Party from subsequently enforcing any of the provisions of these Terms not waived or from acting on any subsequent breach of or default by any other Party under any of the provisions of these Terms.

14. SEVERABILITY

The provisions contained in each clause and sub-clause of these Terms is enforceable independently of each of the others and its validity will not be affected if any of the others is invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid.

15. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No Third Party may enforce any of the terms contained in these Terms under the Contracts (Rights of Third Parties) Act 1999.

16. ASSIGNMENT

- (i) The Company may assign the contract consisting of these Terms or any part of them to any person, firm or company.
- (ii) The Customer shall not be entitled to assign the contract consisting of these Terms or any part of them without the prior written consent of the Company.

17. SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided in these Terms, these Terms are binding on the Parties' successors and permitted assignees. Each Party's successors and permitted assignees will be fully bound by these Terms.

18. VARIATION

No amendment of these Terms shall be binding on the Parties unless set out in writing, expressed to amend these Terms and signed by authorised representatives of each of the Parties.

19. WHOLE AGREEMENT

These Terms contain the whole agreement between the Parties relating to the subject matter contemplated by these Terms.

20. LAWS

These General Conditions of Sale and all other express terms of every agreement between the Company and the Customer concerning the supply of Goods or services shall be governed by and construed in all respects in accordance with the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English Courts in relation to any matter arising in dispute. If any provision of these General Conditions of Sale (or any part of any such provision) shall be determined by a Court of competent jurisdiction to be void or unenforceable the other terms and conditions thereof (or part thereof as the case may be) shall remain unaffected and enforceable.

GENERAL TERMS OF SALE

Envirotec Bathing Limited, Terms 2012

Company Reg No. 7882192 Registered in UK