

## STANDARD TERMS AND CONDITIONS OF TRADE



The Customer agrees to be bound by the following Terms in respect of the sales of all Goods by Pentair to the Customer and for the provision of credit in relation to such sales. Any terms endorsed on any other document pertaining to any Order and, in particular, on any Order form produced by the Customer are expressly negated and do not form part of the contract between the parties unless Pentair has specifically accepted such Terms in writing.

### 1. Definitions

In these Terms, the following definitions shall apply:  
"Pentair" means 'Pentair Water' Australia Pty Ltd A.B.N. 27 004 856 204 or Onga (New Zealand) Limited I.R.D. 157 66 66. "Customer" means the party placing an Order for the purchase of Goods from Pentair and shall include a purchaser described in an Invoice of Pentair as a customer or the party to whom the Invoice is to be charged as defined in the Invoice (as the case may be). If the Customer is a trustee of a trust then the Customer shall be liable both in its own name and as trustee of the trust. "Delivery" means delivery to the Customer pursuant to an Order. "Goods" includes goods (including any reconditioned or repaired goods) or services (including installation) ordinarily sold or supplied by Pentair and includes any goods or services supplied by Pentair to the Customer as described in any Invoice of Pentair. "GST" means Goods and Services Tax, value added tax, consumption tax or other tax, impost or duty of a similar nature. "Invoice" shall include every invoice for Goods supplied by Pentair to the Customer as described therein at the Purchase Price described therein. "Order" refers to an order for Goods and/or a request for Pentair to supply Goods to the Customer irrespective of whether such order is in writing. "Purchase Price" means the price for Goods supplied by Pentair to the Customer as stated in the relevant Invoice to the Customer plus GST and the costs of the delivery of the Goods by Pentair to the Customer. "Terms" means these Terms and Conditions of Trade as amended from time to time.

### 2. Interpretation

- Singular includes the plural and vice versa;
- a document includes any variation or replacement of it;
- any law includes regulations or other instruments under it and amendments or replacements of any of them; and
- headings are used for convenience only.

### 3. Warranties

The Customer and each Director of the Customer warrant and declare that all information supplied by the Customer as part of these Terms is true and accurate in all respects. Any credit account approved by Pentair for the Customer relating to trading between Pentair and the Customer is granted by Pentair on the basis of information supplied by and representations made on behalf of the Customer and, in particular, on the information disclosed by the Customer in relation to the ownership of the Customer as set out in the application for that credit account.

### 4. Payment Terms

- Unless a credit account has been approved by Pentair for the Customer or unless a credit card authorisation has been completed by the Customer and provided to Pentair or unless otherwise agreed, the Customer shall pay for all Goods sold to the Customer by Pentair by cash before delivery.
- In the event Pentair approves a credit account for the Customer, the Customer must pay the whole of the Purchase Price for Goods supplied and delivered by Pentair within 30 days after the end of the month in which the invoice for such Goods is rendered by Pentair. Pentair may vary or withdraw a Customer's credit account at any time at its sole discretion.
- The Customer agrees that time is the essence in relation to the payment of money under these Terms.

### 5. Pricing & Specifications

- Unless otherwise agreed, the Purchase Price for Goods will include the then current price for those Goods as at the date of Delivery and all prices specified by Pentair may be varied by Pentair at any time without notice
- Unless otherwise specified, the Purchase Price specified on price lists are exclusive of any GST, Delivery costs and any other costs payable in respect of the supply of the Goods.
- Recommended and suggested resale or retail prices, wherever shown, are recommended resale or retail prices only and there is no obligation to comply with the recommendation or suggestion. Pentair quotations or price lists or price catalogues do not constitute any offer whatsoever. List or trade prices apply only to those who have approved accounts with Pentair for the relevant Goods.
- Pentair reserves the right to review and amend the Purchase Price provided to the Customer as part of a quotation or contract or as part of these Terms and the Customer agrees to pay such amended Purchase Price. If there is more than a 5% increase in the price of any parts or components or services required to supply Goods or otherwise complete an Order or other contract. Pentair agrees to give written notice of such increase in the Purchase Price as soon as practicable and shall not increase the Purchase Price by more than the actual increase of such parts or components or services.
- Notwithstanding anything herein contained, Pentair reserves its right to vary, without notice, Goods specifications, the range of goods, packed quantities and the prices set out in its price lists and price catalogues from time to time in its absolute discretion and any such variation will be effective from the date of such variation.
- The cost of any special packing and packing materials used in relation to the Goods shall be borne by the Customer, irrespective of whether such costs were included in any Order, contract or quotation.
- All specifications and drawings provided to the Customer by Pentair are approximate. Any differences between any specifications or drawings and the actual Goods shall not form grounds for any claim against Pentair. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising material do not form part of these Terms or the description applied to the Goods.
- Any performance figures given by Pentair are estimates only. Pentair shall not be liable for loss or damage suffered by the Customer or any third party for failure of the Goods to obtain or maintain such performance figures unless specifically guaranteed in writing. Any such written guarantees are subject to recognized tolerances as specified in the Australian Standard for the relevant Goods. Where no such Australian Standard applies, industry standard tolerances shall apply.

### 6. Orders

- In relation to Goods the subject of an Order, the Customer warrants that the Goods are to be used by the Customer wholly or predominantly for business purposes (not for internet re-sale, not private or domestic use) and/or shall be intended for resupply in the ordinary course of the Customer's business. The Customer acknowledges and agrees that Pentair is relying upon this warranty in agreeing to supply the Goods to the Customer. Pentair will enter into separate on-line internet trading agreements with customers who have made separate application and met selection criteria to become Authorised Pentair on-line distributors.
- Each Order submitted by the Customer is subject to acceptance by Pentair. Pentair may refuse to supply Goods to a Customer and shall not be required to give reasons for such decision.
- All Goods supplied by Pentair to a Customer shall be deemed to have been supplied pursuant to an Order accepted by Pentair. The Customer acknowledges that each Order must be of a certain minimum value as determined by Pentair from time to time and shall attract at least that minimum cost.
- No Order for Goods shall be cancelled or varied by the Customer without the written consent of Pentair. Min order value is \$100.00 + gst. A \$20.00 surcharge applies for all orders under the minimum order value. In the event the Customer purports to cancel or vary any Order, such attempt may at Pentair's election be construed as a repudiation of the contract between the parties and the Customer shall pay to Pentair all losses, damages, costs, interest fees, charges including handling charges payable to both Pentair and its suppliers (if any) and the expenses incurred or suffered by Pentair as a result of the repudiation of the contract.
- All Goods to be supplied by Pentair to the Customer are as described in the Order approved by Pentair and such Order shall prevail over all other descriptions, including any specifications of the Customer.

### 7. Delivery of Goods

- The means of delivering Goods shall be at Pentair's discretion. Pentair shall be permitted to deliver any of the Goods in an Order by installments and shall be entitled to invoice each installment and be paid for the same in accordance with these Terms. The Customer cannot refuse to accept Delivery on the basis that the Goods are to be delivered in installments.
- Pentair shall not be required by the Customer at any time to deliver Goods to any party other than the Customer.
- Unless otherwise agreed by Pentair in writing, Pentair shall not be liable for loss or damage suffered directly or indirectly to the Goods or equipment or any part thereof (either owned by the Customer or not) during carriage handling and/or storage. The Customer acknowledges that it is responsible for arranging insurance and payment of any insurance premiums, in addition to the Purchase Price.
- Should Pentair Water be prevented from delivering Goods by reason of delay by suppliers to Pentair (if any), lockouts, strikes, riots, fire, inclement weather, delays, loss or damage in transit, war, civil commotion, government action, failure of utilities to supply gas, water or electricity or unexpected or exceptional circumstances beyond Pentair's control, Pentair may do any one or more of the following in its absolute discretion:
  - extend the time for delivery of Goods until the operation of the cause or causes preventing delivery has ceased; or
  - cancel the Order without any penalty or expenses to or claims against Pentair; or
  - deliver such part of the Goods as Pentair is able to deliver and the Customer shall accept those Goods and Pentair shall be entitled to invoice the Customer for those Goods pursuant to the Order of the Customer.
- No delay or failure to fulfill any part of an Order shall entitle the Customer to cancel or vary the Order or reduce any payment.
- Pentair shall not be liable for any loss or damage incurred or suffered by the Customer as a result of any delay in Delivery of failure to fulfill any part of an Order.
- Freight will be charged in accordance with PWA/NZ freight Schedule.

### 8. Returns & Limitation of Pentair's Liability

- The Customer shall inspect all Goods delivered by Pentair to the Customer immediately upon Delivery or collection of the Goods. Any claim by the Customer relating to any defect in manufacture of Goods or any shortage or other nonconformity to an Order for Goods shall be made in writing addressed to Pentair within 2 days of Delivery of the Goods or for collection of the Goods. Unless such written notification of such claim is received by Pentair within the specified period, the Customer shall be deemed to have accepted the condition of the Goods and conformity of the Goods to the Order. All Goods, the subject of the claim, must be returned unused, in saleable condition and in their original packaging showing the references used for identification purposes and accompanied by such documentation as is necessary to properly identify the matter complained of and including the relevant invoice and delivery docket. All Goods being returned require a Returned Goods Authorization number (RGA) issued from our Customer Service Dept prior to the return.
- Unless otherwise agreed by Pentair in writing, Goods must be returned to the address nominated by Pentair from time to time, at the Customer's cost.
- Notwithstanding that a claim has been made by the Customer, the Customer shall pay for the Goods pending determination of the claim by Pentair.
- The Customer agrees to pay a restocking fee equal to 20% of the invoice value of any Goods returned to and accepted by Pentair.
- Subject to any express written warranty otherwise given by Pentair, and subject to any statutory warranties express or implied, including under Division 2 Part V of the Australian Consumer Law (Australia) and equivalent provisions in the Consumer Guarantee Act 1993 (New Zealand) and Fair Trading Act 1986 (New Zealand) or other applicable legislation which by law cannot be excluded, all warranties conditions and representations whether express or implied are expressly negated. Where a warranty or condition is implied by law, Pentair's liability to the extent that same can be so limited is limited to:
  - in the case of goods one or more of the following at the election of Pentair:
    - Replacement of Goods or supply of equivalent Goods;
    - Repair of Goods;
    - Payment of costs of replacing the Goods or acquiring equivalent Goods; or
    - Payment of the cost of having the Goods repaired.
  - in the case of services one of the following at the election of Pentair:
    - Resupply of the services; or
    - Payment of the cost of supplying the service again
- RGA will be valid for 30 days from the date of issue.
- No Goods are returnable after 7 Days.
- Spare Parts under the value of \$50.00 will not be accepted unless error occurred by PWZ/NZ.

## 9. Default

- (a) If the Customer does not pay for Goods in accordance with these Terms, Pentair may do any one or more of the following in its absolute discretion:
- charge and debit to the Customer's account together with interest on the outstanding balance from the due date for payment until the date of payment at the rate of 20 percent per annum compounded monthly from the date of the default in payment;
  - engage a collection agency or lawyer to commence debt recovery proceedings and charge and debit to the Customer's account all costs and disbursements incurred in so doing on an indemnity basis;
  - revoke, suspend or vary any credit account and require any further transactions with the Customer to be on a cash before delivery basis;
  - require that all amounts owing to Pentair to become immediately due and payable without deduction or adjustment, notwithstanding any previous deduction or adjustment previously offered;
  - rescind all discounted quotations or rates and recalculate outstanding charges;
  - exercise its right to repossess Goods in accordance with clause 11;
  - withhold delivery of Goods that have been ordered by but not delivered to the Customer; and/or
  - cancel any Orders for Goods that have been ordered by but not delivered to the Customer and recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to Pentair and its suppliers) and all expenses incurred and suffered by Pentair as a result of the Customer's default and the subsequent cancellation.

## 10. Application of Payments

Payments made by or on behalf of a Customer shall be applied firstly towards any costs and disbursements incurred under clause 9(ii), secondly towards interest charged to the Customer's account under clause 9(i) and finally in reduction of the sums owing for the supply of Goods commencing with the oldest outstanding invoice. The Customer hereby charges in favour of Pentair all of his, her or its estate and interest in any freehold land or personal property which he, she or it owns with payment of all money required to be made to Pentair under these Terms or any other money which the Customer may now or in the future become liable to pay Pentair.

## 11. Retention of Title

- (a) All risk in relation to the Goods supplied by Pentair to the Customer shall pass to the Customer immediately upon the Goods being dispatched from Pentair to the customer. The Goods remain the property of Pentair until all debts owing by the Customer to Pentair have been paid in full and notwithstanding that payments may be made for the purpose of settlement of specifically designated claims or Orders.
- (b) Until payment of all debts owing as aforesaid, the Customer may sell the Goods in the ordinary course of business, as Pentair's fiduciary and agent (but the Customer shall not hold itself out as such), and may for the purpose of any such sale part with possession of the Goods. The Customer shall not otherwise in any way part with possession or dispose of the Goods until payment has been received by Pentair for those Goods.
- (c) In respect of Goods which have not been on-sold by the Customer as aforesaid, the Customer shall hold such Goods as bailee for Pentair. If the Customer sells the Goods to a third party prior to paying Pentair the relevant Purchase Price Pentair shall be entitled to and be paid so much of the price paid by that third party as is necessary to satisfy all monies owing to Pentair.
- (d) All Goods supplied by Pentair to the Customer shall be at the risk of the Customer upon them being dispatched to the Customer by Pentair.
- (e) The Customer shall at all times keep the Goods insured for their full insurable or replacement value (whichever is the higher) based on the Customer's possessory interest and its liability as bailee.
- (f) The Customer must maintain the Goods in a safe and marketable condition and in a manner so that the Goods are readily identifiable.
- (g) In the event the Customer defaults in payment of any monies owing to Pentair or any term hereof or any contract between the parties, or any credit account is terminated by Pentair, or the Customer enters into liquidation, administration, has a receiver, receiver and manager or mortgagee in possession appointed or becomes insolvent, Pentair shall be entitled, at its election, to the immediate return of the Goods and shall have the right to enter, and is hereby expressly authorised to enter, upon the premises of the Customer or any other premises at which the Goods are stored to re-possess any of the Goods supplied by Pentair. In the event the permission of any third party is required for access to repossess the Goods the Customer shall obtain that permission at its own expense. Upon the repossession of the Goods by Pentair, Pentair shall be entitled to re-sell the Goods for the best price it can obtain in the short term. Pentair must credit or debit the Customer's account the price obtained on the re-sale of the said Goods less the costs incurred by Pentair in connection with the repossession and/or return of the Goods and holding the Goods pending re-sale. The Customer shall have no claim against Pentair for any damages or other monies whatsoever if Pentair repossesses or attempts to repossess the Goods.
- (h) The Customer agrees and acknowledges that, under this clause, it grants to Pentair a security interest under the Personal Property Securities Act 2009 "PPS Act" in all Goods held at any time by the Customer, all proceeds from the sale by the Customer of Goods and all receivables that arise from the sale of Goods by the Customer. Terms in this clause that are defined in the PPS Act have the same meaning as in the PPS Act. The Customer agrees and acknowledges that Pentair may register its security interest in the Register, including register its security interest in the Goods held by the Customer as a purchase money security interest. The Customer waives the right to receive a verification statement or financing change statement in relation to Pentair's security interest and its rights under sections 95, 121(4), 130, 135, to the extent that those sections require a notice to be given and sections 96, 125, 132(3)(d), 132(4), 142 and 143 of the PPS Act.

## 12. Customer Details and Changes

- (a) Unless otherwise previously advised in writing to Pentair, the Customer and each director of the Customer warrant and represent to Pentair that within the last five years no proprietor, director or shareholder of the Customer has been subject to bankruptcy proceedings or been associated as a proprietor, director, shareholder or manager of a business or company which has failed or was subjected to a form of insolvency, including receivership, voluntary administration, administrator or controller appointed, or liquidation.
- (b) The Customer shall forthwith give notice to Pentair of the change of address, telephone number, facsimile numbers, email addresses or address for Delivery to the Customer.
- (c) The Customer must inform Pentair of any changes in the ownership of the Customer (whether total or partial) by forwarding to Pentair notice, in writing, of that change and must procure the signing of the then current application for credit by the new owner of the Customer if required by Pentair. Until such notice is received by Pentair and until the new owners are approved by Pentair the Customer and if it is a company or trustee, each of the Directors shall hold Pentair indemnified, against all losses, unpaid accounts, interest, damages, costs, charges, fees and

expenses of whatsoever nature incurred or suffered by Pentair in trading with any person, company (including the same company but with a different shareholder or shareholders) or other entity (including a trust) which may have purchased the Customer's business or any interest therein or any of the shares in the Customer and used the Customer's previously approved credit account for trading.

## 13. Privacy Act Authority

The Customer and each Director of the Customer agrees that Pentair may obtain, retain and use personal information relating to the Customer and its officers, shareholders and employees in accordance with its privacy policy statement set out on the Pentair website, as amended from time to time, including but not limited to obtaining, whenever it considers necessary, a consumer credit report and a commercial credit report about the Customer and if it is a Company, its Directors or shareholders from a credit reporting agency for the purpose of receiving, giving or exchanging credit information to, from and with credit reporting agencies, credit providers, bankers and such persons or entities as thought fit for the purpose of assessing this Application or collecting overdue payments relating to commercial credit owed by the Customer or dealing with any breach of Pentair's Terms. The Customer and each Director of the Customer agree that Pentair may give a credit reporting agency personal information about the Customer and each Director of the Customer to enable Pentair to obtain a customer credit report about the Customer or each Director of the Customer, or to allow the agency to create or maintain a credit information file about the Customer and each Director of the Customer. In addition to the items set out in Pentair's privacy policy the Customer and each Director of the Customer authorises Pentair to give personal and sensitive information, which may include identity particulars including name and address, date of birth, sex, employer and driver's license number, the fact that the Customer has applied for credit and the amount, the fact Pentair is a credit provider to the Customer, payments which are overdue, advice about payments that are no longer overdue, cheques drawn by the Customer which have been dishonoured and Pentair's opinion that the Customer has committed a serious credit infringement.

## 14. Provision of Advertising & Display Material

Pentair Advertising and Display material is supplied to the Customer for promotion of Pentair business and shall not be distributed to the public. The material remains the property of Pentair and shall be returned on request.

## 15. No Internet Sales Unless Authorised in Writing by Pentair

The Customer acknowledges that:

- Pentair Goods are complex and potentially hazardous to the end user if installed incorrectly;
- incorrect installation may compromise the end user's ability to make a warranty claim; and
- the end user requires competent professional technical assistance to install and commission a Good.

The Customer acknowledges and agrees it will not sell Goods:

- via an internet sales channel; or
- to a person who the Customer considers, acting reasonably, is likely to sell, distribute or otherwise supply the Goods via an internet sales channel.

The Customer agrees to notify Pentair immediately upon becoming aware that a person is selling Goods via an internet sales channel.

## 16. Miscellaneous

- In the event the Customer provides to Pentair any name, monogram, trade mark or other identification to be affixed on or to Goods or equipment, the Customer warrants that the Customer is entitled to use such name, monogram, identification, trade mark or transfer and indemnifies Pentair against any claim which may be made against Pentair by any other party arising out of the use of that name, monogram, identification, trade mark or transfer.
- Any credit account granted by Pentair to the Customer shall continue until terminated by Pentair at its sole discretion. Termination by Pentair of any credit account may be either orally or in writing.
- The legal costs, stamp duty and other expenses incurred by Pentair in respect of any application for a credit account, any written agreement with Pentair of whatsoever nature, any guarantee, security documents or other documentation required for the trading between the parties or other costs incidental thereto shall be paid by the Customer upon invoicing by Pentair or on such other terms as are agreed to by the parties.
- If requested by the Customer, Pentair shall be entitled to charge the Customer for a Proof of Delivery (POD) at a fee determined by Pentair from time to time.
- The Customer agrees that Pentair may alter the Terms upon which it sells Goods to the Customer at its absolute discretion and that Pentair may give notice of the amended Terms in any manner, in its absolute discretion, including but not limited to posting such amended Terms on the website. The Customer acknowledges its responsibility to keep itself informed as to the applicable Terms. The amended Terms will be effective on and from the date on which notice is given, in accordance with clause 15(k). The amended Terms shall apply to all Orders received from and/or all Goods delivered to the Customer after the date of notice.
- If there is more than one Customer or Guarantor named herein, their obligations to Pentair shall be joint and several.
- If any terms or condition in these Terms shall be found to be void, voidable or unenforceable they shall be severed and the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.
- All contracts between Pentair and the Customer for the sale of Goods shall be governed by the laws of the State of Victoria. All litigation arising out of or relating to the supply of Goods by Pentair to the Customer must, to the exclusion of all other jurisdictions, be commenced in the Courts of Victoria or the Victorian District Registry of the Federal Court of Australia.
- None of the following circumstances will preclude Pentair from insisting upon strict compliance with the provisions of these Terms:
  - failure to take advantage of any default or breach of these Terms;
  - any custom or practice which may develop between the parties;
  - the waiver of a particular default or breach;
  - acceptance of money when there are breaches of these Terms.
- An attempt by Pentair to mitigate its loss will not surrender any of their rights or be considered a waiver of the default or breach.
- Any notice given under these Terms shall be deemed to have been properly given if such notice is either:
  - posted by pre-paid postage to the last known business address of the party ("the addressee") (in which case receipt of the notice shall be deemed to be two (2) business days after posting by the other party); or
  - transmitting such notice by facsimile to the last known facsimile number of the party (in which case receipt of the notice shall be deemed to be the date of such transmission); or
  - personal delivery to the last known address of the addressee (in which case receipt of the notice shall be deemed to be the date of such delivery); or
  - posting on the Pentair Water website (in which case the notice shall be deemed to be effective on the date on which the relevant document, notice or information was posted).