

Terms & Conditions of Sale

Payment

1. The Client will make payment for all Goods or services supplied upon delivery of the Goods and/or completion of the services provided by Splashed Out Pools.
2. Variation of payment terms may only be by written agreement between Splashed Out Pools and the Client.
3. Where Goods or services are provided on credit, payment must be made within the time agreed between Splashed Out Pools and the Client. Where a payment is overdue, the balance outstanding may be charged interest at the rate of 18% per annum.
4. If the Client pays by American Express or Diners Club credit card a service charge of 1.8% will be applied to the payment.
5. If Splashed Out Pools needs to engage the services of a mercantile agent, debt collector or solicitor for collection of outstanding monetary amounts, the Client will be liable for all costs associated with the debt collection.
6. In the event of non-payment of any Goods or Services provided by Splashed Out Pools to the Client, Splashed Out Pools is entitled to recover all monies owed to it whether other monies owed are outstanding at the time of non-payment.
7. Should monies become due, owing and outstanding the Client and the Guarantor both agree that its real property, present, future or contingent can be charged by Splashed Out Pools as security for the non-payment.
8. The Guarantor indemnifies Splashed Out Pools of all monies owed to Splashed Out Pools by the Client in the event of non-payment and/or default. These monies include but are not limited to the cost of Goods and Services, collection costs, legal costs, administration costs and interest owed on the owed monies.

Warranty for Products

9. All implied conditions and warranties in relation to the Goods to be supplied by Splashed Out Pools are excluded to the maximum extent permitted by law, to the extent that so far as legally possible these Conditions will comprise the entirety of both Splashed Out Pools' and the Clients' rights and obligations.
10. Subject to any non-excludable rights conferred on the Client by law, if the Client wishes to make a claim in respect of a warranty or any other claim in respect of the Goods, the Client must give written notice of the claim to Splashed Out Pools

within 14 days of delivery of the Goods, time being of the essence. Splashed Out Pools is not liable for any claim if the Client does not comply with this time limit.

11. Splashed Out Pools assigns all of its interest or benefit in any manufacturers warranty in respect of the Goods to the Client upon receipt of full payment for the product.

Limitation of liability

12. To the maximum extent permitted by law, Splashed Out Pools excludes, for itself and for any supplier all liability for all claims, expenses, losses, damages and costs made against or incurred or suffered by the Client directly or indirectly (including without limitation lost costs and profits) arising out of:
 - a. the Client's use or misuse of any Goods supplied;
 - b. the negligence of Splashed Out Pools, its servants or agents and any supplier of Goods in the supply of Goods and services to the Client.
13. Splashed Out Pools' liability to arising from the delivery of any defective Goods or Goods which do not comply with any warranty implied by law, or any other claim is limited to any one or more of the following (at Splashed Out Pools' option):
 - a. replacement of the Goods or the supply of equivalent goods;
 - b. payment in lieu of replacing the goods or acquiring equivalent goods;
 - c. repair of the Goods; or
 - d. payment in lieu of having the Goods repaired.
14. In any event, Splashed Out Pools will not be liable for any claim for loss of profits or consequential damages.
15. The liability of Splashed Out Pools to the Client for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the Client caused or contributed to that loss or damage.

Purchase of chlorinator - Possible rusting of pool structure

16. Splashed Out Pools expressly discloses and the Client confirms receiving prior notice from Splashed Out Pools that in some instances chlorinators have caused rusting of the pool structure. The Client acknowledges that rusting occurs for reasons completely beyond the control of Splashed Out Pools.

17. Purchase of the chlorinator is made by the Client on the express understanding that Splashed Out Pools will not be responsible for any rusting of the pool structure which subsequently may occur and the Client releases Splashed Out Pools from any loss or damage or claim arising out of or in relation to the rusting of the Client's pool caused by the chlorinator purchased.

Risk and ownership of Goods

18. Risk in all Goods supplied passes to the Client when Goods are delivered to the Client.

19. Ownership of all Goods delivered to the Client remains with Splashed Out Pools until payment is made for the Goods. The Client holds all Goods delivered to the Client as fiduciary bailee.

Repossession of Goods where full payment has not been received

20. If the Client fails to pay for the Goods on the due date, the Client irrevocably authorises Splashed Out Pools to enter the Client's premises (or any other premises under the Client's control if the Goods are stored at such premises) and use reasonable force to retake possession of the Goods without liability for trespass or any resulting damage.

21. The Client agrees to indemnify Splashed Out Pools and keep Splashed Out Pools harmless for all claims by causes of action which may arise by Splashed Out Pools retaking possession and the Client agrees to pay Splashed Out Pools' costs of retaking possession. Splashed Out Pools will be entitled but not obligated to resell any Goods repossessed pursuant to the provisions of this clause.

Re-performance of service

22. If the Client is not satisfied with the service performed by Splashed Out Pools and notifies Splashed Out Pools within 7 days of the service being performed, Splashed Out Pools will repeat the service at no additional cost to the Client.

Personal Property Securities Act 2009 (PPSA)

23. The Client acknowledges that these Conditions constitute a security agreement for the purposes of Section 10 of the PPSA which creates a security interest in favour of Splashed Out Pools in all the Goods previously supplied (if any) and all Goods supplied thereafter by Splashed Out Pools to the Client to secure the payment from time to time and of all money owing by the Client to Splashed Out Pools.

24. The Client acknowledges and agrees:

- a. that by agreeing to these conditions, the Client agrees to grant a security interest (by virtue of the retention of title clause) to Splashed Out Pools in respect of all Goods previously supplied (if any) and all Goods supplied thereafter by Splashed Out Pools to the Client and these conditions will apply notwithstanding anything express or implied to the contrary contained in the any other agreement or document.
- b. the Client agrees that the security interest granted to Splashed Out Pools is a “purchase money security interest”, as that term is defined in the PPSA.

25. The Client undertakes to:

- a. sign any further documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) which Splashed Out Pools may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register (PPSR);
- b. not register a financing change statement as defined in Section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without Splashed Out Pools’ prior written consent;
- c. give Splashed Out Pools not less than 14 days prior written notice of any proposed change in the Client’s name and/or any other changes in the details (including but not limited to facsimile number, email address, trading name or business practice);
- d. pay all costs enforcing or attempting to enforce the security interest created by these conditions including executing subordination agreements; and
- e. do all things necessary to assist Splashed Out Pools in perfecting its security interest.

26. Pursuant to Section 157 of the PPSA, unless otherwise agreed in writing by Splashed Out Pools, the Client waives the right to receive a verification

statement in respect of any financing statement or financing change statement relating to the security interest.

27. To the maximum extent permitted by law, the Client waives the Client's rights under sections 95, 96, 125, 121(4), 130 (1)(a), 132(1), 132(3)(d), 132(4), 134(2)(a), 135, 140(2)(f), 142 and 143 of the PPSA.
28. For the purposes of section 125 of the PPSA the Client agrees that a "reasonable period" will not mean less than 12 months regardless of the circumstances.
29. All terms used in clauses 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, unless otherwise provided, have the same meaning as given to those terms in the PPSA

Definitions

Client shall mean any party who orders and acquires Goods and Services from Splashed Out Pools.

Conditions means these terms and conditions of sale including any amendment or variation.

Goods means goods supplied by Splashed Out Pools to the Client.

Guarantor shall mean the party who has executed the guarantee and guarantee the performance of the Client in accordance with these terms and conditions.

Services shall mean all services provided by Splashed Out Pools to the Client.

Installation by Splashed Out Pools