

# TERMS & CONDITIONS



THIS AGREEMENT APPLIES TO ALL ORDERS FOR PRODUCTS PLACED THROUGH THIS WEBSITE AND CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

BY PLACING AN ORDER FOR PRODUCTS FROM THIS WEBSITE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT, AND YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS. YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THESE TERMS AND CONDITIONS.

YOU MAY NOT ORDER OR OBTAIN PRODUCTS FROM THIS WEBSITE IF YOU: (A) DO NOT AGREE TO THESE TERMS; (B) ARE NOT THE OLDER OF: (i) AT LEAST 18 YEARS OF AGE; OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH BATHE AGAIN INC. (WHICH MAY OPERATE UNDER THE BUSINESS STYLE 'QUICK TUB' OR OTHERWISE); OR (C) ARE PROHIBITED BY APPLICABLE LAW FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS OR PURCHASING ANY PRODUCTS.

## 1. PURCHASE AND PAYMENT

- A. This Online Terms and Conditions of Sale, which includes and incorporates the Order Summary and our Privacy Policy (available [here](#), and as updated from time to time) (collectively, the "Agreement"), constitutes the entire agreement for online purchases through our website store, available at [www.quicktub.com](http://www.quicktub.com) ("Website"), of caps, walk-thru inserts, adhesive, and kits identified in the Order Summary (collectively, the "Products") from Bathe Again Inc., ("Quick Tub", "we", "us", or "our") and apply to all purchases from Quick Tub by purchaser ("Purchaser", "you" or "your"). No additional or different terms or attempted exclusions or modifications (by way of purchase order, acceptance, confirmation, communication, course of performance or otherwise, collectively referred to as "Reply") shall be effective against Quick Tub in the absence of the express written consent of Quick Tub; any attempt by Purchaser to add, exclude, or modify the terms or conditions of this Agreement is objected to and will be of no force or effect. Neither the submissions of this Agreement nor anything contained herein shall be construed to be an acceptance or confirmation of any prior or subsequent Reply; this Agreement shall be a rejection and counter-offer with respect to any such Reply. This Agreement is subject to change by us without prior written notice at any time, in our sole discretion.
- B. Quick Tub hereby sells, and Purchaser hereby purchases the Products from Quick Tub. Prices posted on our Website may be different than prices offered by us at places other than our Website. All prices, discounts, and promotions posted on our Website are subject to change without notice. The price charged for a product will be the price in effect at the time the order is placed and will be set out in your order confirmation email. Price increases will only apply to orders placed after such changes.
- C. Terms of Payment: Full payment must be received by us before our acceptance of an order. We accept credit cards for all purchases. You represent and warrant that: (i) the credit card information you supply to us is true, correct and complete; (ii) you are duly authorized to use such credit card for the purchase; (iii) charges incurred by you will be honored by your credit card company; and (iv) you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on our Website at the time of your order. Unless otherwise agreed at the time of purchase: (a) all payments for orders shall be due upon placing an order; and (b) the purchase price is exclusive of all shipping and handling charges, sales, use, excise, Federal or Provincial VAT/HST, or other taxes or fees required by any governmental authority (collectively, "Taxes"), all of which shall be paid by Purchaser, unless stated otherwise in the Order Summary. Quick Tub's fulfillment of its obligations pursuant to the Order Summary is subject to Quick Tub's acceptance of the Order Summary, and payment of all charges.
- D. Returns: If a Product that you receive is damaged in shipping, do not refuse delivery. Accept the order and be sure to keep all packaging. If you contact us within fourteen (14) days of receipt, we will make the necessary arrangements to replace your order. Alternatively, end user Purchasers may return undamaged Product for a refund (less the original

shipping and handling costs) if sent within fourteen (14) days of receipt, for any reason, so long as it is unused and in the original packaging. Distributors may return undamaged Product for a refund or credit if sent within fourteen (14) days of receipt, for any reason, so long as it is unused and in the original packaging. To return Products, you must call 1-800-600-7842 or email our Returns Department at returns@quicktub.com to obtain a Return Merchandise Authorization ("RMA") number before shipping your product. No returns of any type will be accepted without an RMA number. Refunds will be credited back to the same payment method used to make the original purchase on the Website. WE OFFER NO REFUNDS ON ANY PRODUCTS DESIGNATED ON OUR WEBSITE AS NON-RETURNABLE.

- E. Unless specifically stated otherwise, risk of loss shall pass to Purchaser upon delivery of the Products to the transportation carrier by Quick Tub (i.e., FOB Quick Tub). Title to the goods sold under the Agreement passes to Purchaser upon delivery.

## 2. LIMITED WARRANTY

- A. **Limited Warranty:** Quick Tub will, at its election in its sole discretion, either repair or replace the Quick Tub® Cap ("Cap", which includes a "Seal"), adhesive ("Adhesive"), or Quick Tub® Walk-Thru Insert ("Insert") or issue a refund of the purchase price paid to Quick Tub for the same (the "Limited Warranty"), if the Product is found by Quick Tub to be defective in material or workmanship (or both) during the relevant Warranty Period set forth below. The Limited Warranty is subject to the exclusions and exceptions expressly set forth in Section 2.C.
- B. **Warranty Period:** The warranty period applicable to a Product (the "Warranty Period") begins on the date that the Product is shipped to the original Purchaser and extends as follows:
  - i. Cap, three (3) years,
  - ii. Seal, lifetime,
  - iii. Insert, five (5) years, and,
  - iv. Adhesive, Quick Tub hereby passes on and assigns to Purchaser any warranties provided by the manufacturer, but, Quick Tub does not provide its own warranty on Adhesive.
- C. **Warranty Exclusions**

THE LIMITED WARRANTY DOES NOT APPLY IN THE EVENT OF ANY OF THE FOLLOWING:

- i. Any defect in the Product or damages incurred in connection with the Product to the extent such defect or damages involve, relate to, or are caused in whole or in part by, any of the following:
    - (i.) any defect or damage arising from shipping, installation, alteration, or modification of any type; mishandling, tampering, improper use or operation, or modification of a Product; accidents, abuse, misuse, lack of proper maintenance (including failures to maintain caulking or other sealant) or cleaning; the use of harsh chemicals or cleaning solvents, whether caused by an installer, plumbing contractor, service company, the original Purchaser, or any other person; or
    - (ii.) the use of the Product for purposes other than those intended by Quick Tub or permitted in accordance with applicable Law; or
  - ii. Deterioration through normal wear and tear; or,
  - iii. Any act of God, fire, casualty, flood, earthquake, war, epidemic, riot, insurrection, act of terrorism or vandalism, epidemic, pandemic or other public health emergency, freezing, corrosion, adverse water conditions, or any other cause beyond the reasonable control of Quick Tub.
- D. Quick Tub shall not be responsible for shipping or handling costs incurred for the return of any Product for repairs or replacement under the Limited Warranty, or any labour or other cost incurred in connection with removal or installation under this Limited Warranty, all of which shall be the sole responsibility of the Purchaser.
  - E. In order to claim under the Limited Warranty, the Purchaser must promptly notify Quick Tub in writing within ten (10) days of discovery of a defect by email at hello@quicktub.com or as Quick Tub may otherwise advise through our Website from time to time. All such notices must include the date when the defect was discovered, a description of the defect, the name and address of the installer of the Product and evidence of the date of purchase. Please allow a reasonable time for commencement and completion of warranty repairs. No other company or person has any authority to make any warranties or representations on behalf of Quick Tub for the Product. The Limited Warranty does not affect the other statutory rights that may apply.

- F. The Limited Warranty only applies to the original Purchaser who purchases the Products for personal, family or household purposes and shall not be assignable nor apply to subsequent owners, transferees or users (and any attempted assignment shall be of no power or effect).
- G. Disclaimer of Implied Warranties
- i. For Purchasers Who Are End-User Consumers: For end user Purchasers of Products, other than the Limited Warranty expressly stated in this Agreement, the Products are provided "AS IS." QUICK TUB MAKES NO OTHER WARRANTIES OF ANY KIND, AND (FOR U.S. PURCHASERS ONLY OUTSIDE OF THE APPLICABLE WARRANTY PERIOD) AND QUICK TUB EXPRESSLY DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND SUITABILITY.
  - ii. For Purchasers Who Are Distributors: For distributors purchasing Products, other than the Limited Warranty set forth herein, Quick Tub MAKES NO OTHER WARRANTIES OF ANY KIND, AND EXPRESSLY DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COURSE OF DEALING, AND USAGE OF TRADE.
- H. Purchaser shall be solely responsible for the proper installation of all Products. While Quick Tub may provide contact information for local, third-party installers in the Purchaser's area, Quick Tub in no way recommends or endorses any particular installer, nor does Quick Tub represent or warrant that any installer is qualified to install the Products. The Purchaser shall be solely responsible for investigating an installer's qualifications and determining whether to hire a particular installer.

### 3. LIMITATION OF LIABILITY

- A. IN NO EVENT SHALL QUICK TUB BE LIABLE TO PURCHASER OR DISTRIBUTOR (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY DAMAGE TO PERSONS OR PROPERTY, DEATH OR INJURY (WHETHER PHYSICAL OR MENTAL) OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, CONTINGENT, LIQUIDATED, PUNITIVE, OR EXEMPLARY DAMAGES, LOSS OR CLAIM, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFIT, WATER DAMAGE OR MOLD INTRUSION, ARISING FROM OR IN CONNECTION WITH THE PRODUCTS, USE OR MISUSE OF THE PRODUCTS, OR THE INSTALLATION OF THE PRODUCTS, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED BY ANY ACT OR OMISSION ON THE PART OF QUICK TUB, AND WHETHER OR NOT THE SAME CONSTITUTES NEGLIGENCE, GROSS NEGLIGENCE OR FUNDAMENTAL BREACH, OR ANY ACTUAL OR ALLEGED MANUFACTURING DEFECTS IN THE PRODUCTS, EVEN IF QUICK TUB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND/OR IF THE LIKELIHOOD OF SUCH DAMAGES WAS FORESEEABLE. OUR SOLE AND ENTIRE MAXIMUM LIABILITY, FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY YOU FOR THE PRODUCTS YOU HAVE ORDERED THROUGH OUR WEBSITE.
- B. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN THIS SECTION 3 FOR CERTAIN DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

### 4. INDEMNIFICATION

- A. The Purchaser shall indemnify, defend, and hold harmless Quick Tub and its officers, directors, employees, shareholders, agents, successors, and assigns for any and all third-party claims for damages, expenses, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs, arising or resulting from any error or defect in, failure to comply with Quick Tub's instructions or guidelines regarding, or otherwise relating to the installation of the Products by Purchaser or any installer, the use or misuse of the Products by the Purchaser or any other person, or the alteration, removal, or other modification of warning labels provided by Quick Tub in connection with the Products. Quick Tub reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Purchaser, in which event Purchaser will cooperate with Quick Tub in asserting any available defenses.

### 5. GOODS NOT FOR RESALE OR EXPORT

- A. If you are an end-user Purchaser, you represent and warrant that you are buying Products from the Website for your own personal or household use only, and not for resale or export, unless you are a distributor authorized by us to sell our Products. You further represent and warrant that all purchases are intended for final delivery to locations within the country to which Product(s) is shipped. If you are a distributor, you represent, warrant, and agree that: (a) you operate at arms' length from Quick Tub; (b) you are not authorized to, and you shall not, provide any warranty on behalf of Quick Tub which exceeds the warranties set out in this Agreement; and, (c) you may not act as an agent for, and have no authority to represent or bind Quick Tub in any legal matter.

## 6. PRIVACY

- A. We respect your privacy and are committed to protecting it. Our Privacy Policy governs the processing of all personal data collected from you in connection with your purchase of Products through our Website, or any other method or location of collection.

## 7. DISPUTE RESOLUTION

- A. YOU AND WE AGREE THAT WE EACH GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.
- B. ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS THROUGH THE WEBSITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION AS SET FORTH BELOW.
- C. In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement, or the relationship that results from this Agreement (a "Dispute"), the parties hereto shall use their best efforts to settle the Dispute. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Purchaser shall give written notice to Quick Tub (at hello@quicktub.com) of any complaint or dispute.
- D. If the parties do not reach such solution within a period of thirty (30) days, then the Dispute shall be resolved by binding arbitration in Ontario, Canada, in accordance with the *Arbitration Act, 1991* (Ontario), subject to the limitations of this section.
- E. Either party (the "Initiating Party") may initiate an arbitration by written notice (the "Initiating Notice") to the other party (the "Responding Party") which notice shall set out at least two and up to five names of individuals who are independent of all of the parties, and are either lawyers duly qualified to practice in the Province of Ontario or have had significant relevant commercial arbitration experience during the preceding five years. Within fourteen (14) days after the Initiating Notice is given, the Responding Party shall by written notice to the Responding Party, designate one of the Persons whose name was set out in the Initiating Notice as an arbitrator. If the Responding Party fails to appoint an arbitrator and deliver notice thereof to the Initiating Party within such time period, then the arbitration shall proceed before an arbitrator appointed by the Initiating Party, from the list set out in the Initiating Notice, who shall act as sole arbitrator.
- F. Unless otherwise agreed between the parties, the arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario).
- G. The arbitrator shall determine all matters of procedure for the arbitration and may set out a timetable or schedule of times within which steps must be taken and shall have the jurisdiction to determine any question relevant to the Dispute or the arbitration including, without limitation, any question of fact or law, any question as to the arbitrator's own jurisdiction and shall have the authority to make any interim or final order which the arbitrator considers to be appropriate in the circumstances.
- H. The arbitrator's award shall be final and binding on the parties and shall not be subject to any appeal or review procedure whatsoever and the parties consent to the award of the arbitrator being entered in any court having jurisdiction for the purposes of enforcement.

## 8. CLASS ACTION WAIVER

- A. Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor we will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity, and each party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under this Agreement or any disputes between the parties. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

## 9. LIMITATION OF TIME TO FILE CLAIMS

- A. Any action, claim or dispute Purchaser has against Quick Tub must be filed within twelve (12) months from the date the claim arose. To the extent permitted by Law, any claim or dispute under this Agreement must be filed within twelve (12) months pursuant to the dispute resolution provisions herein. The twelve-month period begins when

the claim or notice of dispute first could be filed. If a claim or dispute is not filed within twelve (12) months, it is permanently barred.

## 10. GENERAL

- A. Unless otherwise agreed in writing, Purchaser has no right to use or license others to use Quick Tub's trademarks alone or in combination with other words, letters, numbers, logos or symbols, as part of its company name, company trademark, domain name, internet website or internet address or that of any subsidiary or affiliate. Purchaser shall not attempt to appropriate or adopt any of Quick Tub's trademarks or trade names as its own or act in any other way that might result in public deception or confusion as to the fact that Quick Tub is the source of the Products and that Quick Tub and Purchaser are separate entities. The preceding shall not prevent authorized installers to market the installation of the Products, including use of Quick Tub's brochures and logo for such purpose but only where authorized by Quick Tub.
  - B. Failure by either party to insist upon strict performance or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of this Agreement shall not be construed thereafter, as waiving any such terms, conditions, provisions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.
  - C. The Purchaser does not acquire hereby any intellectual property or other proprietary rights, including patents, designs, trademarks, copyright or rights in any confidential information or trade secrets, in or relating to the Products or any part thereof.
  - D. This Agreement constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no representations, warranties or other agreements, whether oral or written, between the parties in connection with the subject matter hereof except as specifically set out herein.
  - E. This Agreement shall be construed in accordance with the laws of the Province of Ontario (other than Ontario principles of conflicts of law) and the laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract. All disputes arising out of, in connection with, or in relation to, this Agreement shall be submitted to the jurisdiction of the courts of the province of Ontario which shall have exclusive jurisdiction over any such dispute. Each of the parties irrevocably agrees to the exclusive personal and subject matter jurisdiction of the courts of the Province of Ontario.
  - F. "Law" means all laws, statutes, ordinances, regulations, by-laws, directions, orders, orders-in-council, rules, requirements and guidelines of all federal, provincial, states, municipal, judicial and other governmental authorities, departments, boards and agencies having or claiming jurisdiction over the parties or the subject matter of this Agreement, existing as of the effective date of this Agreement and as amended or implemented thereafter.
  - G. This Agreement may not be assigned, transferred, or conveyed, in whole or in part, by the Purchaser. Any assignment in violation hereof shall be of no power or effect.
  - H. The application of the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is hereby expressly excluded. If any provision of this Agreement or any part of any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision or part shall not affect the validity, legality or enforceability of any other provision of this Agreement or the balance of any provision of this Agreement absent such part and such invalid, illegal or unenforceable provision or part shall be deemed to be severed from this Agreement and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision or part had never been included in this Agreement. The acceptance of a Product by the original Purchaser shall constitute acceptance of all terms and conditions stated in this Agreement.
  - I. Except as otherwise expressly provided in this Agreement, all notices required to be given pursuant to this Agreement shall be given in writing to the party (if to Quick Tub, at the address or email stated below, and if to Purchaser, at the address or email address provided by the Purchaser at the time of placement of Purchaser's order) and delivered by hand, certified first class mail, overnight delivery service, or email, addressed to the receiving party. Each party will provide written notice to the other party in the event of a change in the contact information below. Notice shall be deemed given (i) on the date when delivered by hand; (ii) three (3) days after mailing by certified first class mail; (iii) one (1) day after delivering to a recognized overnight delivery service; or, (iv) on the date sent by email, provided that confirmation is sent by one of the other foregoing methods.
11. **Contact Us.** Our contact information is: email: [hello@quicktub.com](mailto:hello@quicktub.com); phone: 1-800-600-7842; mail: 862 Norsan Court, Newmarket, Ontario, L3X 1K9, Canada.

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