

CATALINA SPAS LIMITED

A COMPANY REGISTERED IN ENGLAND AND WALES WITH NO. 3483434 WHOSE REGISTERED OFFICE IS AT ST. MARY'S HOUSE, NETHERHAMPTON, SALISBURY SP2 8PU

(INCLUDING CATALINA SPAS LIMITED TRADING AS AQUA DESIGN AND LEISURE) ("COMPANY")

STANDARD TERMS AND CONDITIONS OF SALE

INTRODUCTION

1. Unless otherwise agreed in writing, these terms and conditions of sale ("**Conditions**") apply exclusively to each transaction ("**Contract**") for the sale of goods and/or parts of goods and/or goods supplied as part of any services performed by the Company ("**Goods**") and/or the supply of services ("**Services**") by the Company to a buyer of Goods and/or Services ("**Buyer**").
2. No terms and conditions or contractual provisions specified or stipulated by the Buyer at any time, whether prior to or after the Conditions have been brought to the attention of the Buyer, shall be binding on the Company.
3. A Contract shall take effect once an order placed by the Buyer has been accepted by the Company in writing under the signature of a director of the Company (or such other person duly appointed by a director with such authority to bind the Company) or where the Buyer has counter-signed these Conditions agreeing that they will apply to any orders placed thereafter by it, provided that the delivery of Goods or the carrying out of Services shall in any event amount to the unequivocal and irrevocable acceptance of the Conditions by the Buyer.
4. Where there is reference in these Conditions to the Buyer being a consumer, a consumer is anyone who buys Goods from the Company but acts outside the course of their business, trade or profession. A trade customer is anyone who is buying Goods in the course of their business, trade or profession, such as a retailer of Goods purchased from the Company, including where a customer is purchasing Goods for their own use but purports to be purchasing them as a trade customer.

ORDERS, PRICE AND PAYMENT

5. No quotation given by the Company to the Buyer shall amount to an offer but shall constitute an invitation to treat.
6. If the Buyer is a trade customer, the Buyer is responsible for all orders placed by its employees, and the Company will not be bound by restrictions or order limits imposed by

the Buyer on its employees. Where a Contract is entered into with a trade customer through the medium of a limited company, partnership or limited liability partnership, the person placing the order on behalf of the Buyer agrees to be personally liable (on a joint and several basis with the Buyer) for payment of the Price.

7. The price of the Goods or for the Services ("**Price**") is the Company's quoted price and is unless stated otherwise exclusive of VAT, delivery, packaging, carriage and insurance.
8. The Company is entitled to increase the Price at any time before the Contract is accepted to reflect any increase in its costs because of any factor beyond its control or any changes in delivery dates, quantities or specifications requested by the Buyer or any delay caused by the Buyer's failure to provide adequate information, details of its requirements or other instructions.
9. If the Company agrees to install or commission the Goods at the Buyer's premises or site, there will be an addition to the Price, either as detailed in the Contract or at the Company's current rate then in force.
10. Unless the Company has agreed in advance that payment for Goods or Services shall be on credit terms (**such agreement being valid only where accompanied by the signature of a director of the Company**), delivery of Goods and/or the carrying out of Services will be made only after payment in full of the Price has been received by the Company.
11. Where credit terms have not been agreed, the Buyer will pay the Price upon ordering the Goods. However, in the event that the Buyer is a repeat customer of the Company, the default credit period shall be payment within 30 days of the date of the invoice raised in respect of the Goods or of the Services, unless the parties agree otherwise. In the absence of a director agreeing in writing to the application of credit terms, payment in accordance with Condition 10 is required.
12. The Company may at its option require the Buyer to pay a deposit of up to 50% of the Price, and the Company shall be under no obligation to proceed with an order until the deposit has been paid in cleared funds. The Company may then require the Buyer to pay the balance of the Price before undertaking delivery of the Goods or the carrying out of any Services. Cancellation of the Contract by the Buyer for whatever reason shall entitle to the Company to retain the deposit.
13. If the Price is not paid in full when due then, without affecting any of the Company's other rights or remedies, the Company may:
 - 13.1 cancel the Contract and/or suspend any further deliveries; and/or
 - 13.2 in the case of trade customers, charge interest on all unpaid amounts and recover costs,

- at the rate and in the sums permitted by the Commercial Debts (Interest) Act 1998 until the amount in question is paid in full; and/or
- 13.3 in respect of consumers, charge interest at 8% above the Bank of England base rate until the amount in question is paid in full; and/or
- 13.4 withdraw all credit facilities and require immediate payment of all outstanding invoices issued whether or not they were due for payment; and/or
- 13.5 cancel and withdraw any discount allowed on the Price.
14. If the Buyer is a trade customer, it may not withhold payment of any amount due to the Company by reason of any right of set off or counterclaim which the Buyer may have, or allege to have.
15. The Company shall be entitled at all times to set off against any sums the Company may owe the Buyer any debt or claim which the Company may have against the Buyer.

DELIVERY

16. Delivery dates quoted are approximate only, and the Company is not liable for any delay in the delivery of Goods or the carrying out of Services.
17. Delivery of Goods will, unless otherwise agreed by the Company, be made at the Company's premises when the Goods are handed over to the Buyer, its agent or its carrier.
18. If the Company agrees to deliver the Goods, or procure the delivery of the Goods, other than at its premises, the Buyer shall pay for carriage, insurance and delivery. Liability for the Goods after leaving the Company's premises vests in the Buyer, who shall be responsible for insuring the Goods and/or ensuring that the carrier has insured the Goods.
19. The carrying out of the Services will be at the location or site agreed in the Contract.
20. If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions then, without affecting any of the Company's other rights or remedies, the Company may store the Goods until actual delivery and charge for the reasonable costs (including insurance) of storage. The Company may, after 30 days, sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account for the excess over the Price or charge the Buyer the amount of any shortfall.

GOODS FOR EXPORT

21. Unless otherwise specified by the Buyer and agreed to by the Company (in which case Conditions 21 to 27 inclusive shall apply), Goods are intended for use in the United Kingdom only, and the Company cannot confirm that the Goods comply with any laws, regulations or other standards applicable outside the United Kingdom.
22. In Conditions 21 to 27 inclusive, "**Incoterms**" means the international rules for the

interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between Incoterms and these Conditions, the latter shall prevail.

23. Where any Goods are supplied for export from the United Kingdom, the provisions of Conditions 21 to 27 inclusive shall (subject to any special terms agreed in writing between the Company and the Buyer) apply notwithstanding any other provision of these Conditions
24. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
25. All Prices are ex-works.
26. The Buyer shall be responsible for arranging any testing and/or inspection of the Goods at the Company's premises prior to shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage to the Goods during transit.
27. Payment terms in respect of Goods to be exported are a deposit (to be specified by the Company prior to an order from the Buyer being accepted by the Company and then paid forthwith) and the full balance of the Price prior to collection and/or delivery of the Goods or their loading onto the carrier's vehicle.

CLAIMS

28. Any claim by the Buyer which is based on any failure of the Goods to correspond with specification or on non or incorrect delivery must (whether or not delivery is refused by the Buyer) be notified to the Company within 10 days from the date of delivery or (where there is non or incorrect delivery or the failure was not apparent on reasonable inspection) within a reasonable time after delivery should reasonably have been made or after discovery of the defect or failure (or after such defect or failure should have been discovered by a prudent purchaser).
29. If delivery is not refused, and the Buyer does not notify the Company as required in Condition 28, the Buyer is not entitled to reject the Goods.
30. Any claim by the Buyer which is based on any failure of the Services to correspond with specification must be notified to the Company within a reasonable time after discovery of the defect or failure (or after such defect or failure should have been discovered by a

prudent purchaser).

31. In the event of a claim against the Company and in the event that, having notified the Company in writing and allowed the Company a period of not less than 14 days to resolve any issues with the Goods or any services provided by the Company to the satisfaction of the Buyer, the issue remains unresolved, the parties shall be obliged to submit to commercial mediation in good faith before resorting to formal litigation.

RISK

32. Risk of damage to or loss of the Goods passes on delivery or, if the Buyer wrongfully fails to take delivery, at the time when delivery is tendered.

TITLE

33. Title in the Goods shall not pass to the Buyer until: either the Company has received in cleared funds full payment of the Price (plus VAT and other applicable charges) and all other sums due to the Company from the Buyer; or, the Goods have been delivered, whichever is the later.
34. Until title in the Goods passes to the Buyer, it will hold the Goods on the Company's behalf, and will keep the Goods separate from its other goods and those of third parties, properly stored, protected, insured and identified as the Company's property; and the Buyer shall not pledge or charge the Goods by way of security or otherwise. Breach of any of the provisions of this Condition will result in all monies owing by the Buyer to the Company (without prejudice to any other right or remedy) becoming immediately due and payable.
35. Before title in the Goods passes, the Company may require the Buyer to deliver up the Goods to it and, if the Buyer fails to do so, the Company may repossess the Goods.
36. The Buyer hereby grants the Company an irrevocable licence to enter, with or without vehicles, any premises for the purpose of inspecting or repossessing the Goods.

ACCESS AND SAFETY

37. If the Company agrees to perform the Services or install or commission the Goods at the Buyer's premises or site, the Buyer will at all times be responsible for the safety of all of the Company's personnel, representatives and subcontractors and will ensure that:
 - 37.1 full, free and safe access to all work areas and to all relevant information kept by the Buyer to enable the Company to carry out the installation or commissioning of the Goods or perform the Services; and
 - 37.2 the work area is in good order and repair, work can continue uninterrupted during normal working hours and all necessary facilities are provided on site.

38. In addition to any other action, the Company may be entitled to take, failure to ensure any of the requirements in Condition 37 will entitle the Company to charge an additional fee.

CANCELLATION AND SUSPENSION OF DELIVERIES

39. If the Buyer makes:

39.1 any voluntary arrangement with its creditors; or

39.2 (being an individual or firm) becomes bankrupt or enters into a creditor's voluntary arrangement; or

39.3 (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

39.4 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or

39.5 the Buyer ceases or threatens to cease to carry on business; or

39.6 the Company reasonably apprehends that any of the events mentioned in this Condition is about to occur (and notifies the Buyer accordingly),

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries without any liability on the part of the Company and, if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary. Where a deposit has been paid but the balance of the Price is still owing, without prejudice to its right to require immediate payment of the Price, the Company shall be entitled to retain such deposit.

WARRANTIES AND WARRANTY CLAIMS

40. The Company is of the reasonable opinion that the Goods are suitable for the purpose for which they are intended and supplied. All Goods are sold in accordance with the manufacturer's specifications and are subject to any warranties, qualifications, representations and instructions contained in the documentation associated with the Goods.

41. This warranty shall not apply in respect of any claims arising from or where:

41.1 failure to install, operate or maintain the Goods as instructed by the Company or set out in any operating manuals; or

41.2 fair wear and tear; or

41.3 modification, improper service or use of replacement parts not supplied by the Company;
or

- 41.4 use of the Goods other than for their intended purpose; or
- 41.5 any defect in the Goods arising from a design, drawing or specification supplied by the Buyer or by someone on the Buyer's behalf; or
- 41.6 the Company has not received the Price in full; or
- 41.7 the Buyer has failed to complete and return to the Company within 15 days of purchase the warranty card that was delivered with the Goods or which is available and can be downloaded from the Company's websites (www.catalinaspas.co.uk) (www.aquadesignandleisure.com)
42. The Company warrants that any Services or any installation or commissioning work carried out by the Company will be performed with reasonable skill and care, provided that the Company shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any materials, data, instructions or other information supplied by the Buyer which are incorrect, incomplete, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer.

43. All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

44. Where any valid warranty claim is made in respect of the Goods which is based on any defect in the materials or workmanship of the Goods or its failure to meet specification falling within the warranty set out in Condition 40, the Company can choose either to repair or replace the Goods (or the part in question) free of charge or grant credit to the Buyer or refund to the Buyer the Price (or a proportionate part of the Price) at the Company's absolute discretion, but the Company shall have no further liability to the Buyer under the warranty.
45. Where any valid warranty claim is made in respect of the Services or the installation or commissioning of Goods which is based on the failure of the Company to perform such Services, installation or commissioning with reasonable skill and care falling within the warranty set out in Condition 42, the Company can choose either to redo the work in question or carry out repairs or replace any Goods affected free of charge or grant credit to the Buyer or refund to the Buyer the Price (or a proportionate part of the Price) at the Company's absolute discretion, but the Company shall have no further liability to the Buyer under the warranty.

LIMITATION OF LIABILITY

46. If the Buyer is a consumer, to the extent not prohibited by law, the Company accepts no

liability for any:

- 46.1 loss which is not foreseeable (loss is foreseeable if it was an obvious consequence of a breach by the Company or if it was contemplated by the Buyer and the Company at the time the Contract was formed);
 - 46.2 loss which arises when the Company is not at fault or in breach of the Conditions, including loss where the Buyer has selected the Goods without any involvement of the Company; and
 - 46.3 any business loss (which includes loss of profits, loss of business, contracts, goodwill, business opportunity and other similar losses, as well as business interruption).
47. If the Buyer is a trade customer and has purchased the Goods for supply and/or installation to its own customer, the Company will not be responsible to the Buyer or its customer for the selection, use or installation of the Goods, and in those circumstances the Buyer agrees to indemnify the Company against any liability associated with, any claim or allegation that the Company is responsible for any failings in the selection, installation or use of Goods supplied.
48. Except as provided in Condition 50, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for:
- 48.1 any loss of profit, business, contracts, opportunity, goodwill, revenues, anticipated savings, expenses, costs or similar loss; and/or
 - 48.2 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise); (whether caused by the negligence, breach of contract, tort, breach of statutory duty or the Company, its employees or agents or otherwise) which arise out of or in connection with the Contract.
49. Except as provided in Condition 50, any other liability of the Company to the Buyer in contract, tort, breach of statutory duty or howsoever arising out of or in connection with the Contract, shall be limited to:
- 49.1 in the case of damage to property, the amount recoverable from the Company's insurers;
 - 49.2 in the case of any other liability, the value of the Goods and/or Services out of which the liability arises;
 - 49.3 statutory product liability for a maximum period of one year after the date of sale.
50. Nothing in these Conditions:
- 50.1 is intended to affect the legal rights of the Buyer where it is a consumer;
 - 50.2 shall exclude or restrict the liability of the Company for breach of the statutory warranty as to title and quiet possession;

50.3 shall operate or be construed to operate so as to exclude or restrict the liability of the Company for fraud or fraudulent misrepresentation or for death or personal injury caused by reason of the negligence of the Company.

51. The Company shall not be under any liability for any delay or failure to perform any of its obligations under the Contract where it is prevented by reasons beyond its reasonable control including without limitation any act of God, war, riot, malicious damage, blockade, strike, lockout, industrial action, governmental action, accident, breakdown of machines, default of suppliers, storm, fire, flood, drought, tempest or similar event.

BUYER'S WARRANTIES

52. Where Goods are to be made or installed or the Services performed by the Company according to the Buyer's specification and/or design, the Buyer warrants to the Company that such manufacture, installation or performance of Services will not infringe the patent, copyright, design right, trade mark or other industrial or intellectual property right ("**IPR**") of any person. The Buyer undertakes to indemnify the Company against all loss, damages, costs and/or expenses (including legal fees) awarded against or incurred by the Company in connection with any claim for infringement of the IPR of any person as a result of use of the Buyer's specification and/or design.

53. Where the Buyer has purchased Goods for installation by a third party, the Buyer warrants that such third party shall have the skills and expertise needed to install the Goods. The Company shall have no liability to the Buyer for the inadequate, incorrect or faulty installation carried out by a third party and agrees to indemnify the Company against any liability associated with, any claim or allegation that the Company is responsible for any failings in the installation of the Goods.

COMPANY'S WEBSITE

54. Access to and use of the Company's website shall be in accordance with the terms of use and subject to the privacy policy displayed on the website from time to time.

55. The Company may permit certain Buyers (being trade customers who offer Goods for resale and known as "**Dealers**") to access the website for the purpose of placing orders for Goods and will provide the Dealer with an individual password to enable it to access the website. It is the sole responsibility of the Dealer to keep this password secure. The Company will not accept any responsibility for the misuse of the password, and the Dealer accepts full liability for orders placed when using the password.

56. Orders placed by Buyers on the Company's website are governed by these Conditions, and normal payment terms and the Company's standard conditions below relating to the return

of Goods will apply.

57. The Buyer is responsible for the accuracy of any orders for Goods that are placed through the website, and the Company will not accept any liability for incorrect descriptions or specifications or for orders containing inaccurate information.
58. The Company reserves the right to change, withdraw or suspend any Goods (including Goods displayed on the website) and to alter or discontinue any part of the website. Access to the website may be denied at any time at the sole discretion of the Company.
59. All IPR in connection with the website are owned by the Company. The Buyer may reproduce, copy or print material contained on the website only for the purpose of ordering Goods from the Company. Any other use, reproduction or copying of or from the website is prohibited without the express written consent of the Company.
60. The Company does make and expressly disclaims to the fullest extent permitted by law any and all representations or warranties of any kind with respect to its website and the content thereof including without limitation completeness, fitness, accuracy or suitability for any purpose.
61. The Company will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect the Buyer's computer equipment, computer programs, data or other proprietary material due to their use of the Company's website or to the Buyer's downloading of any material posted on the Company's website or on any website to which it is linked.
62. The Company, its directors, employees and other agents shall not be liable for damages of any kind, including, without limitation, direct, indirect, special or consequential damages, loss of income or profits, loss of or corruption of data, loss of or damage to property or claims of third parties, arising out of or in connection with the Buyer's access to or use of the Company's website.
63. Where the relevant law so applies (and the Company gives no representation as to whether such law shall apply to all purchases of Goods from or through its website), a Buyer who purchases Goods as a consumer through the Company's website may have the option to notify the Company of their intention to return unwanted goods within 7 days of the purchase/receipt of goods (whichever is longer) in exchange for a full refund, with no penalty.
64. If the Goods have already been dispatched to the Buyer, and the Buyer's decision to return the Goods is simply a 'change of heart' on the part of the Buyer, then the Customer will be liable for the return delivery costs.
65. The Company hereby asserts its rights in respect of copyright, trademarks and all other

intellectual property rights in respect of its products, its marketing materials and its websites and any images or copy therein.

CONFIDENTIALITY

66. All quotations, information, drawings, specifications, documents, design material and all other data which the Company has imparted to the Buyer is proprietary to the Company and confidential. The Buyer agrees that it will not disclose such information to third parties, whether directly or indirectly, without the Company's prior written consent.

RIGHTS OF AND AGAINST THIRD PARTIES

67. Each Contract will only confer rights and benefits on the Buyer, and no third party is able to acquire rights or benefits under the Contract or these Conditions. The Contracts (Rights of Third Parties) Act 1989 shall not apply to any sales made under the Contract.
68. The Goods are provided with a manufacturer's guarantee and statutory product liability insurance, further details and terms of which are contained in the manufacturer's guarantee documentation supplied with the Goods. Where the Buyer is a consumer, the manufacturer's guarantee exists in addition to any legal rights the Buyer may have. Where the Buyer is a trade customer, its rights in respect of any failure of the Goods to meet their specification shall be against the manufacturer in accordance with its guarantee.

NOTICES

69. Any notice given under these Conditions must be in writing, addressed to the registered office or principal place of business of the addressee or any other address as may have been notified as the correct address for service of documents.
70. Any notice must be given by hand or sent by first class (airmail if overseas).
71. Email is not effective notice.
72. Notices may be faxed provided they are also sent in accordance with this Condition.

ASSIGNMENT

73. The Contract may not be assigned by the Buyer, but the Company may assign or sub-contract all or any of its rights or obligations.

WAIVER

74. Any waiver by the Company of any breach of the Contract by the Buyer will not be treated as waiving any subsequent breach of the same or any other provision.

ENTIRE AGREEMENT

75. These Conditions and the documents referred to in them contain the entire agreement

between the parties, and no other agreements, representations, warranties, promises or understandings express or implied will bind the parties or form part of a Contract unless expressly accepted in writing by a person authorised to sign on the Company's behalf.

LAW AND JURISDICTION

76. These Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
77. Any dispute, controversy, proceedings or claim between the parties relating to these Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.