

**CATALINA SPAS LTD TERMS AND CONDITIONS OF TRADING**

**1. Terms and Conditions of Trading**

1.1 These are reproduced below, and shall apply to all goods, products and services supplied by Catalina Spas Ltd.

**2. Definitions**

Except where the context otherwise requires, the following expressions shall have the meaning shown against them:

'Company' Catalina Spas Ltd.

'Conditions' these Terms and conditions of Trading.

'Contract' an agreement between the Company and the Customer for the supply of Goods or Services.

'Customer' either the purchaser or end user of the Goods or Services.

'Delivery' includes 'procure to be delivered' and 'delivery' shall be construed accordingly.

'Goods' any Goods, equipment or other thing supplied (including where appropriate any part or component thereof) by the Company to the Customer.

'Dealer' a customer who offers company goods for resale.

'Services' any service provided by the Company at the Customer's request.

'Special Order' any order for Goods which do not form part of the current standard range of Goods being offered by the Company at the date of the order or which are customised at the request of the Customer.

'Writing' includes any communication effected by letter, telex, cable, facsimile, electronic mail or other comparable means of communication.

**3. Application**

3.1 Any supply of Goods or Services by the Company shall be subject to these Conditions.

3.2 No term or condition of the Customer's standard terms of trading contained or referred to in the Customer's order, acceptance or otherwise shall form part of any Contract and no such term or condition shall modify or amend these Conditions or any Contract.

3.3 No change to any Contract or any change to or waiver of these Conditions shall have any legal effect, unless agreed to in writing by a Director of the Company, provided the Company may amend these Conditions by notice in writing with regard to Contracts entered into after such notice.

3.4 The headings in these Conditions are for convenience only and shall not affect its interpretation.

**4. Orders, Quotations and Cancellation of Contract**

4.1 The Customer's order for Goods shall be made or confirmed by the Customer in writing but a Contract shall not be made until an order is accepted by the Company. The Company may communicate its acceptance to the Customer either in writing or by despatching (or procuring the despatch of) the Goods.

4.2 Any offer by the Company to sell Goods to the Customer shall be made in a written quotation. Any quotation made by the Company is given on condition a Contract shall not be formed until the Company has received the Customer's written acceptance thereof.

The Company may amend or withdraw a quotation at any time before it has received the Customer's acceptance.

4.3 The Customer may not return any Goods supplied in accordance with the Contract after the Contract has been made. The Company may, at its absolute discretion and following the Customer's prior written request, agree to the cancellation of an order and / or to the return of any Goods and it shall be a condition of the company exercising its discretion which:

(a) The Goods to be returned form part of the Company's normal stock holding.

(b) The Customer shall pay the Company a sum equal to the greater of 20% of the price of the Goods or £20 for each item comprising the Goods;

(c) Any Goods returned are in their original condition:

(d) The Customer shall, in addition, be liable for the costs of delivery or re-delivery.

**5. Prices**

5.1 Unless otherwise agreed in writing, all prices are ex-warehouse and exclude the cost of delivery.

5.2 Except where any quotation by the Company provides the price for Goods shall be fixed for a given period, the price for the Goods shall be the price prevailing when they are despatched.

5.3 The Company reserves the right to make additional charges when there is any delay in being supplied with delivery instructions or if prior to delivery the company incurs any additional costs.

5.4 Unless otherwise stated in writing the price for Goods is exclusive of VAT and all other taxes, fees, dues, duties or other assessments or charges.

## **6. Delivery and Risk**

- 6.1 Unless otherwise agreed, delivery of the Goods shall be at the Customer's premises at the address stated on the invoice.
- 6.2 Time of delivery shall not be of the essence of any Contract. The Customer shall allow a reasonable time for the Company to deliver the Goods and the Company will use its reasonable endeavours to meet any stated delivery dates but accepts no liability whatsoever for any failure to do so.
- 6.3 If the Customer fails to take delivery of any Goods in accordance with a Contract then the Company, at its option, shall:
- (a) Arrange for storage at the Customer's risk and cost (including the costs of transportation).
  - (b) At any time after the due date for delivery, terminate the Contract in accordance with clause 13.1.
- 6.4 Where delivery is made by instalments, if the Company fails to make delivery or makes defective delivery of any instalment, then such failure or defective delivery shall not affect the obligations of the Company and of the Customer as to the remaining instalments.
- 6.5 Except where risk in Goods would pass earlier in accordance with clause 6.3 or 6.6, risk in the goods shall pass from the Company to the Customer upon delivery.
- 6.6 Where the Company is unable to deliver Goods in accordance with the Contract for any reason other than the Company's default, the Company may either in its own name or as agent for the Customer, arrange for storage of the Goods. The Company shall be considered to have fulfilled the Contract immediately upon delivery being made to the place of storage and risk and all charges for storage and ultimate delivery shall be borne by the Customer.
- 6.7 Delivery, receipt and unloading of goods is at risk of the Customer unless agreed in writing. The Company does not accept liability for the safe delivery, unloading and or positioning of any goods unless contracted to do so.

## **7. Collection and Risk**

- 7.1 Where the customer arranges collection of goods from the company's premises prior to collection the goods shall be inspected by the customer and any damage or failure of the goods should notify the company immediately. If the customer does not inspect the goods the customer shall have accepted that the goods were loaded and collected in a pristine and merchantable condition.
- 7.2 After collection the company will not accept liability for loss or damage to goods in transit when the carrier has been arranged and contracted by the customer.

## **8. Claims**

- 8.1 The Customer shall inspect the Goods immediately upon delivery.
- 8.2 (a) The Customer shall give written notice to the Company and any carrier with 24 hours of delivery, of any failure of the Goods to comply with the Contract.  
(b) Where the Customer has not received any Goods despatched by the Company, it shall give written notice to the Company within 14 days of having been notified of despatch.
- 8.3 Provided the Customer complies with clause 8.2, the Company will replace all Goods which have not been delivered.

## **9. Retention of Title**

- 9.1 Notwithstanding delivery and the passing of risk, the Company shall remain the sole legal and beneficial owner of goods which it supplies to the Customer pursuant to any contract until:
- (a) The Customer has paid for those goods in full, and also,
  - (b) The Customer has paid in full for all other goods supplied to the Customer by the Company, but not yet paid for in accordance with the Company's payment terms.
- 9.2 Notwithstanding any purported appropriation to the contrary, the Company shall be entitled to appropriate any payment or payments for Goods made by the Customer to the Company to such Goods and accounts as it shall deem fit.
- 9.3 The Customer shall insure all the Company's Goods to their full value against all risks and shall procure that a note of the Company's interest therein is endorsed on the certificate of insurance. The Customer shall indemnify the Company in respect of the loss or destruction of the Company's Goods or damage to them, and shall hold any insurance monies paid in respect of them in trust for the Company and account for such monies forthwith to the Company.
- 9.4 The Customer shall hold all the Company's Goods in a fiduciary capacity on behalf of the Company, shall keep them separate from goods which are its own property or the property of any third party; and shall store and label them in a manner which enables them readily to be identified as the property of the Company.
- 9.5 In the event that the Customer is supplied goods by a third party which are identical to Goods supplied hereunder then the Customer shall be obliged to sell the goods supplied by such third party before selling any identical Goods supplied hereunder.
- 9.6 In order to identify and recover Goods the Company or its representative are entitled to assume unless the contrary is shown to their satisfaction that the Customer has acted in accordance with the provisions of clause 8.5.
- 9.7 The Customer shall return all the Goods to the Company immediately on the Company's request. The Customer's rights of possession over the Goods may be revoked at any time by notice from the Company, and shall cease automatically and forthwith on the occurrence of any circumstance which would entitle an administrator or administrative receiver to take possession of any of the Customer's assets or would entitle any person to present a petition for the winding-up or bankruptcy of the Customer in or in connection with any such sale.
- 9.8 The Customer shall upon notice in writing from the Company, fully and effectively assign to the Company all rights which it may have against any customer or customers of the Customer in relation to a sale or sales of the Goods. Such an assignment shall be deemed to take place automatically and forthwith on the occurrence of any circumstance which would entitle an administrator or administrative receiver to take possession of any of the Customer's assets or entitle any person to present a petition for winding-up or the bankruptcy of the Customer.
- 9.9 The Customer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 10. Guarantee, Warranties and Limitation of Liability

10.1 All products offered for sale by the Company are in their opinion, suitable for the purpose for which they are supplied and are covered by the original manufacturer's guarantee, which is fully supported by the Company and does not limit the Customer's statutory rights in law.

10.2 The guarantee in clause 10.1 is made subject to the following Conditions:

- (a) The Goods must not have been neglected, modified, repaired by anyone other than the Company or its agents or otherwise improperly used in any manner whatsoever.
- (b) The Goods must be installed by suitably qualified personnel in accordance with the company's or manufacturer's installation instructions.
- (c) The Goods must have been properly maintained and serviced by suitably qualified personnel as recommended by the Company or manufacturer and only parts produced by the manufacturer of the Goods have been fitted to the Goods.
- (d) The guarantee does not apply to pipework or to equipment not supplied by the Company.
- (e) Any equipment, part or component repaired or replaced under this guarantee will be covered for the balance period of the original guarantee.
- (f) Any defect shall be notified to the Company in writing as soon as possible after it becomes apparent
- (g) The Goods must have been paid for in full.
- (h) For display spas the warranty will take effect from the original date of purchase from Catalina Spas. For stock spas the warranty will take effect from the date the spa is sold on to a customer.
- (i) The customer has completed and returned to the company either the warranty card or the on line warranty form found at [www.catalinaspas.co.uk](http://www.catalinaspas.co.uk) within 15 days of purchase

10.3 The guarantee may be transferred to a subsequent purchaser only with the prior written agreement of the Company.

10.4 The company reserves the right from time to time to contact the customer or end user who have freely provided their information with details of any services or updated information that the company feels will be of benefit to the customer or end user.

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CONDITIONS 10.5 to 10.8**

10.5 **The guarantee does not cover any costs incidental to the replacement or repair of the Goods, including without limitation the cost to the Customer of returning Goods to the Company, the delivery to the Customer and installation of replacement Goods, or in relation to any pipework.**

10.6 **Except as provided in these Conditions all warranties, Conditions (except as to the Company's title to sell Goods) and statements, express or implied, statutory or otherwise or contained in any literature concerning the Goods, are excluded.**

10.7 **Except as provided in this clause 10 the Company shall not be liable for any loss or damage whatsoever, whether in contract, (including negligence) or otherwise and including, without limitation, loss or damage caused by or arising out of any failure or any defect in the Goods, or for any loss or damage caused by or arising out of the use of the Goods.**

10.8 **The Company, its directors or employees shall not in any event be liable or responsible for any indirect, incidental or consequential loss or damage including loss of use, revenue, goodwill, or profit, loss or damage to property, however caused.**

10.9 The limitations and exclusions contained in clauses 10.6 and 10.7 shall not apply to:

- (a) Death and / or personal injury caused by negligence and / or
- (b) Damage caused by any defect in the Goods (and 'damage' and 'defect' shall have the same meaning as in the Consumer Protection Act 1987).

## 11. Accounts

11.1 Account terms are available subject to status.

11.2 Representation of cheques will be charged at £20 per presentation.

11.3 The Company reserves the right to charge a 3% surcharge for purchases using a credit card.

## 12. Payment

12.1 Subject to any special terms agreed in writing between the company and the customer, payment for the goods shall be made in cash net or cleared funds with order, and delivery shall not be made until payment has been received in full by the company

12.2 Any grant of credit must be agreed in advance in writing by an authorised representative of the company. Full payment is then due 30 days after the date of delivery

12.3 All sums not paid by the due date will become liable for interest charged at 8% above the Bank of England base rate until paid in full.

12.4 Timely payment shall be of the essence of the Contract and in the event of any failure or delay by the Customer to pay for Goods, the Company shall have the rights set out in clause 13.

12.5 Payment for Goods is immediately due and payable upon commencement of any event referred to in clause 13.

12.6 The Company shall have a right of set-off and the Customer hereby authorises the Company to apply any money owed by it to the Customer against any monies which may be due from the Customer to the Company.

12.7 For Special Orders, the order must be accompanied by a payment of 50% of the price of the Goods ordered plus VAT. The balance of 50% is due for payment immediately on notification by the Company that the Goods are ready for delivery.

12.8 All service and warranty works must be paid prior to undertaking the works at the rate as described on the warranty agreement originally supplied with the product.

### **13. Termination**

If any payment or instalment falls due and is not paid in full within 7 days, the Company may without prejudice to any other rights, suspend performance of any of its obligations under these Conditions or terminate the Contract and / or any other Contract for sale of Goods by notice in writing with immediate effect.

- 13.1 If the Customer becomes insolvent or enters into liquidation, whether compulsory or voluntary (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors generally or has a receiver, administrator, administrative receiver or liquidator appointed over all or any of its assets, or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due or fails to perform any obligation required to be performed by it hereunder for a period of 30 days after receipt of notice from the Company of such failure the Company may, without prejudice to any of its rights, terminate the Contract forthwith by notice to the Customer.

### **14. Export Terms**

- 14.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms if the International Chamber of Commerce as in force at the date when the contract is made. Unless the contract requires, any term or expression which is defined in or given a particular meaning by the provision of 'Incoterms' shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.
- 14.2 Where any goods are supplied for export from the United Kingdom, the provisions of this clause 14 shall (subject to any special terms agreed in writing between the company and the customer) apply notwithstanding any other provision of these conditions
- 14.3 The customer 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.
- 14.4 All prices are ex-works
- 14.5 If required the customer shall be responsible for arranging any testing and or inspection of the goods at the companies premises before 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 during transit.
- 14.6 Our export payment terms are deposit prepayment with order and full balance prior to loading or collection.

### **15. Assignment**

No Contract shall be assigned or transferred in whole or in part by the Customer directly or indirectly without prior written consent of the Company.

### **16. Trademarks and Trade Names**

- 16.1 Nothing in these Conditions shall be deemed to confer any right upon the Customer to apply any trademark, trade names, colour schemes or design rights owned by the Company or the Company's manufacturers or suppliers.
- 16.2 The only trademarks or trade names which may be displayed in advertising Goods supplied hereunder shall be those expressly authorised by the Company or its manufacturers or suppliers and the Customer shall comply with the Company's express instructions relating to the context, scale and manner of use of such trademarks or trade names in all such advertising.
- 16.3 The trademarks, trade names, colour schemes or design rights of the Company or its manufacturers or suppliers shall not, without the Company's prior written consent, be used on or in relation to any Goods supplied hereunder which the Customer in any way adds to re-packs or otherwise alters and the Customer shall remove or permanently obliterate any such trademarks, trade names, colour schemes or designs of the Company or its manufacturers or suppliers from any Goods so added to, re-packed or otherwise altered.

### **17. Company website**

- 17.1 The company will provide the dealer with an individual password to access the company website. It is the sole responsibility of the customer to keep this password secure. The company will not accept any responsibility for the misuse of the password and the customer accepts full liability for orders placed when using their password.
- 17.2 Orders placed on the company website are governed by these terms and conditions and the customer's normal payment terms and our normal conditions and returns procedures will apply.
- 17.3 The customer is responsible for the accuracy of any orders they place and the company will not accept any liability for incorrect orders.
- 17.4 The company reserves the right to change, withdraw or suspend any products or part of the website. Access may be denied at the sole discretion of the company to any customer who breaches these terms and conditions.
- 17.5 All rights for the design and information on the website are owned by the company. The customer may only reproduce or print the material for the purpose of ordering goods from the company. Any other use or copying of the company website is prohibited without the express written consent of the company.
- 17.6 The company website and its content are provided to the customer on an "as is" and "as available" basis. 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 this website and its content including without limitations its completeness, fitness, accuracy or suitability for any purpose or freedom from viruses
- 17.7 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 you use of this website
- 17.8 **Returns Policy.** Under the Consumer Protection (Distance Selling) Regulations (2000) any purchases made on the company web site the customer (consumer) has the option to notify Catalina of their intention to return unwanted goods within 7 days of purchase/receipt of goods (whichever is longer), in exchange for a full refund, with no penalty.  
If the goods have already been dispatched and it is simply a 'change of heart' then the Customer will be liable for the return delivery costs. If however there is a fault with the goods, the return delivery costs will met by Catalina Spas Ltd

**18. Severability**

If any part of these Conditions or any other term or condition of the Contract is judged by any competent court to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

**19. Forbearance**

Any neglect forbearance or indulgence on the part of the Company, relating to rights under these Conditions shall in no way be deemed a waiver, implied or otherwise, of such rights.

**20. Notices**

Notice will be in writing and will, for all purposes, be deemed to have been fully given and received when actually received and will be sent by registered or recorded delivery mail, postage pre-paid (unless otherwise provided), properly addressed to the parties at their registered office or at such other address for either party as may be specified by such party for such purpose, or by fax transmission.

**21. Force Majeure**

Except with respect to the payment of money, neither party shall be liable for failure to perform its obligations under these Conditions if such failure results from circumstances beyond such party's reasonable control

**22. Miscellaneous**

- 22.1 Should a change in the company number occur then the liability will remain with the company originating that order.
- 22.2 The company shall not be under any liability in any respect of specification, colour variants, illustrations or other matters in relation to goods contained in any material such as brochure, advertising and trade publications. We reserve the right to modify , wholly or in part the features or specifications including the information contained herein without prior notice
- 22.3 The company may at its sole discretion sub contract any or all of its obligations hereunder without the prior consent of the customer
- 22.4 The customer shall not assign or delegate any duties hereunder

**23. Law and Jurisdiction**

The construction, validity and performance of these Conditions and any Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection therewith shall be subject to the exclusive jurisdiction of the English courts.

**INFORMATION ABOUT CATALINA SPAS LTD**

Catalina Spas Ltd is a company registered in England and Wales (company registration number 3483434) whose registered office is at St. Mary's House, Netherhampton, Salisbury, SP2 8PU. Our registered VAT number is 711759043. If you want to ask us anything (whether about our products and services, website, any of our terms and conditions or otherwise), then please [click here to contact us](#) or call 01980 611555

I, Name:_____
Of Company Name:_____
Address:_____
_____
Signed:_____
Date:_____
Agree with Terms and Conditions as stated