

Aqualyte[®]

Hydration Health Performance

TERMS AND CONDITIONS OF SALE

- 1 These Terms and Conditions apply to any goods supplied by Aqualyte Pty Ltd ("the Company") to the Customer except where they are varied by notice in writing by the Company to the Customer prior to the supply of any goods.
- 2 Definitions In the following Terms and conditions of Sale the "Company" shall mean the Company selling the goods whose name appears on the first page of this document and the "Customer" shall mean the entity purchasing the goods the subject of these terms and conditions of sale. "Goods" means the goods sold to the Customer by the Company.
3. Binding Terms and Conditions
- 3.1 The "Contract means any contract between the Company and the Customer for the supply of goods (which contract will include these Terms and conditions) and must be in writing and accepted by the Company.
- 3.2 The only contractual terms which are binding upon the Company are those set forth herein or otherwise agreed to in writing by the Company and those, if any, which are imposed by law and which cannot be excluded by these terms and conditions.
- 3.3 These terms and conditions and any contract including them shall be governed by the law of the State or Territory in which the goods are sold and the Company and the Customer submit to the jurisdiction of the Courts of that State or Territory.
4. Status of Price List
- 4.1 All prices shown are exclusive of the Goods and Services Tax.
- 4.2 The Price List shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
5. Price Change The prices shown in the Price List are subject to alteration without notice.
6. Delivery Charges
- 6.1 Delivery charges on order required by overnight transport air freight or other special delivery shall be for the account of the Customer, delivered within Australia by the Company's appointed carrier.
- 6.2 Delivery charges shall apply to back orders unless agreed to in writing and signed by the Company.
- 6.3 Delivery charges shall apply to shipment of goods shipped directly from the Company to a third party under instructions from the Customer. These delivery charges will vary according to the cost to the Company.
7. Time of Essence
In respect of the Customer's obligation to make payment for goods sold by the Company to the Customer, time shall be of the essence for the entire contract.
8. Payment Terms
- 8.1 Payment for the goods sold by the Company to the Customer shall be tendered no later than the expiration of 30 days from the end of the month sold.
- 8.2 All payment terms are based on the date of the invoice and not the date goods are received.
- 8.3 Any variation etc of these Payment Terms shall be in writing and signed on behalf of the Company by a partner of the Company.
9. Timing of Payment
Payment shall be deemed to have been made:
- 9.1 if cash is tendered - on the date it is tendered; and
- 9.2 if a cheque (bank or otherwise) or other negotiable instrument is tendered - on the date upon which such cheque or other negotiable instrument is negotiated and cleared by the Company's bankers.
10. Application of Payments
Any payments tendered by the Customer to the Company shall be applied as follows:
- 10.1 firstly as reimbursement for any collection costs incurred by the Company in accordance with clause 14.2 thereof;
- 10.2 secondly in payment of any interest charged to the customer in accordance with clause 14.2 hereof; and
- 10.3 thirdly in satisfaction or part satisfaction of the oldest portion of the Customer's account.
11. Returns
- 11.1 All returns of goods or cancellations of orders must be approved by the Company.
- 11.2 Upon approval by the Company all returns of goods must be made within seven (7) days.
- 11.3 Authorised returns must be freight prepaid. The Company will credit returned goods only if they are in saleable condition.
- 11.4 The Company preserves the right to impose a handling charge equivalent to 10% of the price of goods returned unless the Customer is a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation.
- 11.5 The Customer will reimburse and indemnify the Company for all losses in excess of 10% including freight, bank charge or other expenses.
12. Retention of Title
- 12.1 All goods delivered to the Customer by the Company remain the property of the Company until all debts owing by the Customer have been paid, and notwithstanding that payments may be made for the purpose of settlement of specifically designated claims. Until payment of all debts owing the Company as aforesaid, have been paid by the Customer, the Customer may sell the goods only in the ordinary course of business and as the Company'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.
- 12.2 If the goods are in the Customer's possession, the Customer holds the goods as trustees for the Company and must store the goods so that they are identifiable as the property of the Company and maintain a record of the Company's goods held by the Customer.
- 12.3 The Customer shall in no way represent that it is acting for the Company and the Company will not be bound by the contracts with third parties to which the customer is a party.
- 12.4 In the event that the Customer sells the goods, all moneys resulting from the sale are to be specifically accounted for as funds relating to that sale and placed into a separate account, either in the Customer's Bank account or the Bank account of the Customer's agent, until payment in full to the Company under the contract.
- 12.5 The Customer will invoice the sales of goods supplied by the Company separately and maintain a record of debtors outstanding in relation to the sale of goods supplied by the Company to the Customer.
- 12.6 These provisions apply notwithstanding any arrangement under which the Company provides credit to the Customer to the extent there is any inconsistency, these provisions prevail.
- 12.7 The Company may recover the price of the goods by such action as it considers appropriate including proceedings to appoint a liquidator to the customer, if the goods are not paid for within the Company's usual credit terms, or any separate arrangement for credit made by the Company with the Customer, notwithstanding that property in the goods has passed to the Customer.
- 12.8 Until payment of all debts owing to the Company, the Company may, without prejudice to any of its other rights, without prior notice, re-take and resume possession of any goods which remain the Company's property and, by its servants and agents, enter upon the Customer's premises, or any other place where the goods may be, for the purpose if:
- 12.8.1 there is any breach of any contract between the Company and the Customer; or
- 12.8.2 the Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager, or a voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, taken possession of the Customer's undertaking or property or any part thereof; or
- 12.8.3 the Customer parts with possession of the goods or any of them otherwise than by way of sale to a customer in the ordinary course of business.
13. Cancellation
- 13.1 Orders accepted by the Company cannot be countermanded or delivery deferred, or goods returned except with the written consent of the Company and upon terms that reimburse and indemnify the Company against all loss including cartage, bank charges and other incidental expenses or any part of the order that is cancelled.
- 13.2 Where the Company agrees to accept goods for return a re-stocking charge of 10% of the price of the goods returned will be made.
14. Personal Properties and Securities Act 2009 (Cth) ("PPSA")
- 14.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 14.2 The Seller and the Company acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchas Money Security Interest (PMSI) in favour of the Company over the Goods supplied or to be supplied to the Grantor pursuant to these Terms and Conditions.
- 14.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 14.4 The Company and the Customer acknowledge that the Company, as Secured Party, is entitled to register its interest in the Goods supplied or t be supplied to the Customer, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.
- 14.5 To the extent permissible at law, the Customer:
- (a) waives it's right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to the Company.
- (b) agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the.
- (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and
- (ii) enforcement or attempted enforcement of any Security Interest granted to the Company by the Customer
- (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to these Terms or the Security under these Terms.
- (d) agrees to waive its right to do any of the following under the PPSA:
- (i) receive notice of removal of an Accession under section 95.
- (ii) receive notice of an intention to seize Collateral under section 123.
- (iii) object to the purchase of the Collateral by the Secured Party under section 129.
- (iv) receive notice of disposal of Collateral under section 130.
- (v) receive a Statement of Account if there is no disposal under section 130(4).
- (vi) receive a Statement of Account under section 132(30)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (vii) receive notice of retention of Collateral under sections 135.
- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.
15. Risk and Insurance
- 15.1 Upon delivery to the Customer or into the Customer's custody (whichever is the sooner) the goods shall be at the risk of the Customer and the customer shall, at its own cost, insure the goods (in its name) against all risks for which a prudent owner would insure his goods and for their full replacement value.
- 15.2 This shall also apply to any partial delivery of goods. The Customer shall upon request provide a copy of the insurance policy to the Company.
16. Sanctions for Late Payment
- 16.1 If the Customer defaults in making payment to the Company in accordance with these terms and conditions the Company may in its absolute discretion:
- 16.1.1 charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the rate of 2% per month from the date on which such default arose; and

- 16.1.2 require the Customer to reimburse the Company for all collection costs incurred by the Company calculated on a solicitor and own client basis as a consequence of the Company instructing its solicitor to provide advice to it in connection with each default and/or to institute such recovery process as shall in the absolute discretion of the Company be appropriate in the circumstances.
- 16.2 The whole sum then owing by the Customer to the Company for all goods sold by the Company to the Customer, shall immediately become due and payable and the Customer shall not thereafter be entitled to purchase goods on credit from the Company unless the Company has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement the payment obligations contained herein shall apply.
- 16.3 If upon retaking possession of goods, the Company shall within a reasonable time inspect those goods and credit the Customer's account with such sum as the Company in its absolute discretion considers to be fair and reasonable value of the said goods, after making due allowance for the price which those goods were sold to be Customer, the condition of the goods at the time of repossession and the costs incurred by the Company in connection with the repossession sorting and examination of the goods.
17. Claims
- 17.1 The Company shall not be obligated to recognise, nor shall it be responsible in law or in equity for any credit claims for short delivery or claims for damaged goods, unless the Customer has given written notice to the Company within seven days of the date on which the goods in question were delivered to or collected by the Customer. If a claim is made within this time limit, acknowledgement and payment of the claim shall be at the complete discretion of the Company.
- 17.2 Should the Customer consider that it has any claim (other than claims of the nature referred to in clause 6 above) having regard to these conditions it is entitled to make, it shall:
- 17.2.1 immediately upon becoming aware of the circumstances giving rise to such a claim, notify the Company of the nature of the claim; and
- 17.2.2 allow the Company, its servants or agents full and free access to the goods in relation to which the claim is made (or the place where the goods have been applied or used) for the purpose of conducting such tests and examinations as the Company may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 17.3 The Customer acknowledges and agrees with the Company that:
- 17.3.1 use of the goods supplied are beyond the control of the Company.
- 17.3.2 any advice, recommendation, information or services provided by the Company, its employees, servants or agents regarding the goods sold and their use shall not be construed as contractual conditions or warranties; and
- 17.3.3 The Company shall not, subject to the warranties incorporated pursuant to clause 9 of the Contract, be liable to the Customer for any loss or damage sustained by the Customer as a consequence of any incorrect advice, recommendation, information or services provided by the Company, its employees, servants or agents regarding the goods sold or the methods or conditions of applications and use of the goods sold whether such loss was caused by any act of negligence, act or recklessness or any breach of any duty of care which may be owed to the Customer by the Company, its employees, servants or agents.
- 17.4 Subject to the warranties incorporated in clause 9 of the Contract, the total liability of the Company, its employees, servants and agents is limited to one or the other of the following at the option of the Company:
- 17.4.1 the replacement of the goods supplied or the supply of equivalent goods; or
- 17.4.2 the payment of the cost of replacing the goods or of acquiring equivalent goods; and does not extend to consequential loss or damage.
18. Orders
- 18.1 Any quotation made by the Company to the Customer from time to time, shall not be construed as an offer or obligation to sell but shall be an invitation to treat only, and the Company reserves the right to accept or reject in its absolute discretion any order which may be received by it from the Customer.
- 18.2 Until such time as the Company accepts in writing a written order submitted by the Customer, it shall not be obliged to supply to the Customer the goods so ordered PROVIDED ALWAYS that if at any time the Customer defaults in respect of its payment obligations under these conditions, the Company may cancel or suspend any uncompleted order that has been accepted by the Company, without being liable to the Customer in any way whatsoever.
- 18.3 The Company shall not be obliged to sell goods to the Customer if:
- 18.3.1 the Customer defaults in its payment obligations hereunder; and/or
- 18.3.2 the Customer becomes bankrupt or goes into liquidation or goes into voluntary administration or is unable to pay its debts as they fall due.
- 18.4 The Company shall not be responsible to the customer if it is unable to supply any goods due to reasons beyond its reasonable control (including but without limited to acts of God, acts of any government, war or other hostility, national or international disaster, the elements, fire, explosion, flood, power failure, equipment failure, strikes or lockouts, inability to obtain necessary supplies and raw materials, transportation delay, inability to obtain government or quasi-government approvals, permits or licenses and the like and other "force majeure" occurrences).
- 18.5 If the Company is unable to supply the Customer's total order these terms and conditions will apply to the supply of all or part of the order.
19. Back Orders
Back orders will be supplied to the Customer on the terms and conditions applying at the time the original order is accepted by the Company.
20. Acceptance
- 20.1 The Customer shall inspect the goods forthwith upon delivery and shall within 7 days from the date of delivery give written notice to the Company of any matter or thing by reason whereof the customer alleges that the goods are not in accordance with the contract.
- 20.2 If the Customer fails to give such notice then to the extent permitted by statute the goods shall be deemed to have been accepted by the Customer and the Customer shall pay for the goods in accordance with the provisions hereof.
21. Waiver
- 21.1 No waiver by the Company of any one breach of these conditions shall operate as a waiver of another breach of

the same or of any other conditions of sale and the doing and/or omission of any act, matter or thing whatsoever by the Company, its servants or agents (which but for this clause ought or might amount to a waiver of the Company's rights in respect of any such breach or default), shall not operate nor be deemed to be a waiver in any way of the Company's rights and powers in respect of such breach or default any rule of law or equity to the contrary notwithstanding.

- 21.2 These conditions and any warranties implied by law which are not capable of being excluded or modified, embody the entire understanding and the whole agreement between the Company and the Customer relevant to the subject matter hereof, subject to express written terms to the contrary on any written customer order and written acceptance of it (which shall only apply to that particular order), all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Customer and the Company or the intentions of either of the parties otherwise, are excluded and cancelled.
22. Exclusion of Implied Conditions and Warranties
- 22.1 The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the goods supplied by it to the Customer and/or in respect of advice, recommendation(s), information or services supplied by it, its employees, servants or agents to the Customer regarding the goods, their use and application are those imposed and required to be binding by statute (including the Trade Practices Act 1974 or the Competition and Consumer Act 2010) and to the extent permitted thereby the liability if any of the Company arising from the breach of such conditions or warranties shall, at the Company option, be limited to and completely discharged in the case of the goods by either the supply by the Company of equivalent goods or the replacement by the Company of the goods supplied to the Customer and in the case of further advice, recommendation(s), information or services and otherwise by the supplying of the advice, recommendation(s), information or services again and otherwise all other conditions and warranties be binding whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this clause be binding and on the Company are hereby expressly excluded and negated.
- 22.2 Except to the extent provided in this clause 21 the Company shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person in relation to the goods and/or advice, recommendation(s), information or services and without limiting the generality thereof in particular any loss or damage consequential or otherwise howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind of or in the goods/or advice, recommendation(s), information or services.
23. Privacy Act Authority The Customer irrevocably authorized the Company, its employees and agents to make such enquiries as the Company deems necessary to investigate the credit worthiness of the Customer (in addition to those outlined in Part F hereof) from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Customer or any other credit providers (collectively) "the information sources") and the Customer hereby authorizes the information sources to disclose to the Company such information concerning the Customer which is within their possession and which is requested by the Company.
24. Vienna Sales Convention The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to goods supplied by the Company to the Customer under any contract nor do any terms or conditions express or implied by the Vienna Sales Convention form part of the contract.
25. Manufacturer The Company will use its reasonable endeavors to obtain for the Customer the benefit of any warranty from the manufacturer of any goods that the Company supplies to the Customer. This provision does not require the Company to commence legal proceedings or incur legal costs.
26. Limitation of Liability
- (a) The Company's liability in respect of a breach of a consumer guarantee for any service of Goods not of a kind ordinarily acquired for personal, domestic or household use is limited to, to the extent permissible by law and at the Company's option:
- (i) in relation to the Goods:
- (A) the replacement of the products or the supply of equivalent products;
- (B) the repair of the products;
- (C) the payment of the cost of replacing the products or of acquiring equivalent products; or
- (D) the payment of the cost of having the products repaired.
- (ii) in relation to the services:
- (A) the supply of the services again; or
- (B) the payment of the cost of having the services supplied again.
- (b) To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- (i) any increased costs or expenses;
- (ii) any loss of profit, revenue, business, contracts or anticipated savings;
- (iii) any loss or expense resulting from a claim by a third party; or
- (iv) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods.
- Consequential Damage in these Terms and Conditions includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against the Customer by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage.
27. Insurance it is the Customer's responsibility to effect whatever insurance cover he requires at his own expense.
28. Clerical Errors Clerical errors in computation, typing or otherwise of price list, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note, adjustment note or specification of Company shall be subject to correction. The Company may complete any blanks on any relevant document, on the Customer's behalf.
29. Government Laws The law governing these Terms and Conditions shall be the law of Victoria and the Customer submits to the non-exclusive jurisdiction of the Courts operating in Victoria.