

## TERMS AND CONDITIONS OF SALE

### YOUR ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 8.1 AND 10

**These terms and conditions apply to sales by Swimovate Limited. Full contact details are set out below.**

Please read these terms and conditions carefully before proceeding to place an order. Acceptance of the terms and conditions constitutes agreement to abide by the terms and conditions and a legally binding Contract may be entered into between you and the Supplier if your order is accepted. By declining to accept these terms and conditions you will be unable to proceed to place an order. These terms and conditions may be stored and reproduced by you for your future reference.

#### 1. INTERPRETATION

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**1.1** In these terms and conditions the following words have the following meanings:

**Contract:** any Contract between the Supplier and you for the sale and purchase of the Goods. Please note that the Supplier may file this Contract;

**Goods:** any Goods agreed in the Contract to be supplied to you by the Supplier (including any part or parts of them);

**Supplier:** Swimovate Limited.

**1.2** In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

**1.3** In these conditions references to the masculine include the feminine and the neutered and references to the singular include the plural and vice versa as the context admits or requires.

**1.4** In these conditions headings will not affect the construction of these conditions.

#### 2. APPLICATION OF TERMS AND CONDITIONS

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**2.1** The Contract will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation email, specification or other document or transmission). Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Supplier.

#### 3. OFFER

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**3.1** The invitation to you to order Goods from the Supplier is not an offer by the Supplier to sell the Goods to you. Your order for Goods is an offer to the Supplier to purchase Goods from the Supplier subject to these terms and conditions.

**3.2** Wherever possible the Supplier will accept your order to purchase the Goods by email (the "confirmation email"). On receipt of the confirmation email or (if earlier) where the Supplier delivers the Goods to you there will be a concluded Contract between you and the Supplier.

**3.3** The confirmation email will be deemed to have been received when you are able to access the confirmation email.

**3.4** Where applicable, if the Goods ordered are unavailable the Supplier reserves the right to provide you with alternative Goods of equivalent quality and price. Where it is not possible to provide you with alternative Goods of equivalent quality and price, we will advise you by email and you may cancel your order without penalty and receive a refund or credit for any sum that has been paid by you for the Goods within 30 days.

#### **4. PAYMENT**

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**4.1** Payment for the Goods is due immediately upon the placing of the order. To place an order you will be directed to the check out page of the Supplier's web site. Should you wish to place an order online, you will require completing an order form and paying by credit/debit card or paypal. You will require inserting your credit card details on this form. Alternatively, you may order Goods by contacting the Supplier by telephone.

**4.2** No payment shall be deemed to have been received and no delivery will take place until the Supplier receives cleared funds.

**4.3** Time for payment shall be of the essence.

**4.4** You shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring that an amount equal to such deduction be paid by the Supplier to you.

**4.5** In the event of your failure to make timeous payment of the price, the Supplier may cancel this Contract.

**4.6** Notwithstanding clause 4.5 above if you fail to pay the Supplier any sum due pursuant to the Contract you will be liable to pay interest to the Supplier on the outstanding sum as at the due date of payment, from the due date of payment until payment is made in full at the rate of 4% per annum above the base lending rate of the HSBC Bank plc from time to time.

#### **5. DESCRIPTION AND PRICE**

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**5.1** The description and price of the Goods shall be as shown on the Supplier's website at the time you place your order. Every effort is made by the Supplier to ensure the accuracy of

the description and price of the Goods. If an error is found in the accuracy of the description or the price of Goods supplied to you the Supplier will inform you of this. The Supplier reserves the right to cancel orders resulting from typographical errors in respect of the description or price of Goods ordered.

**5.2** Prices shown will be inclusive of VAT. Delivery costs may be payable in addition.

## **6. PERFORMANCE AND DELIVERY**

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**6.1** Time for delivery shall not be of the essence.

**6.3.1** Where an order is placed for a product the Supplier will use reasonable endeavour to deliver the Goods to you within 7 days of receipt of your order, but in any event within 30 days from the day after you sent your order to the Supplier.

**6.3.2** Where the Supplier is unable to deliver the product to you within 30 days from the day after you sent your order to the Supplier, the Supplier will advise you by email of the reason for the delay and provide a revised date for delivery of the product.

**6.4** If you are unhappy with the revised date of delivery provided pursuant to clauses 6.2.2 and 6.2.3, you may cancel the Contract and receive a refund or re-credit for any sum that has been paid by you for the Goods within 30 days of cancellation.

**6.5** Orders placed during business hours shall be deemed to have been received on that business day or if not within business hours, at the opening of business hours at its destination on the next business day. "**business hours**" means 10am-6pm on business days and "**business day**" means the days between Monday and Friday inclusive on which banks in England are open for a full range of business.

**6.6** If for any reason you will not accept delivery of any of the Goods or the Supplier is unable to deliver the Goods on time because you have not provided appropriate instructions:

**6.6.1** The Supplier may store the Goods until delivery whereupon you will be liable for all reasonable related costs and expenses (including, without limitation, storage and insurance).

**6.6.2** If you do not accept delivery of any of the Goods because you have cancelled the Contract pursuant to clause 8.1 you will receive a refund or re-credit for any sum that has been paid by you for the Goods within 30 days of cancellation including delivery costs.

## **7. RISK/TITLE**

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**7.1** The Goods are at the risk of you from the time of delivery to you.

**7.2** Ownership of the Goods shall not pass to you until the Supplier has received in full all sums due to it for the Goods.

**7.3** The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods have not passed to you.

## **8. CANCELLATION**

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**8.1** Except as detailed below, you have the right to cancel the Contract at any time before the expiry of a period of 7 business days beginning with the day after the day on which you receive the Goods. You may cancel by giving the Supplier notice in writing to the Supplier's business address or by sending an e-mail. A telephone call is not enough. The notice shall operate to cancel the Contract between you and the Supplier.

**8.2** Once the Supplier has received notice of your cancellation, the Supplier will refund or credit you for any sum that has been paid by you for the Goods within 30 days of cancellation including delivery costs.

**8.3** If you cancel the Contract after delivery of the Goods to you, you are under a duty to return the Goods to the Supplier at the Supplier's business address at your own expense. Until you have returned the Goods to the Supplier you are under a duty to retain possession of the Goods and take reasonable care of them. If you fail to return the Goods the Supplier may charge you the direct costs of recovering the Goods. The direct cost may be deducted from any sum that has been paid by you for the Goods if you do not return the Goods within a reasonable time of cancellation.

The Supplier requires that all Goods returned are securely packed and suitably boxed in a manner consistent to the nature of the Goods. The Supplier recommends that the original packaging be used. You are responsible for ensuring that Goods are properly addressed and adequate postage is paid. The Supplier reserves the right to refuse the return of the Goods where they have been used or are not of saleable quality or where you have failed to follow the oral or written instructions as to storage, use or maintenance of the Goods. You will be responsible for any damage caused to the Goods in transit, to the extent that such damage has been caused by your negligence or failure to ensure the return of the Goods in a manner and within a time period suitable to the nature of the Goods.

**8.5** The Supplier reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of Goods ordered by you (without liability to you) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 6 weeks, you shall be entitled to cancel the Contract.

## **9. QUALITY**

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**9.1** The Supplier warrants that (subject to the other provisions of these conditions) upon delivery and for a period of maximum period of [12] months from the date of delivery the Goods will be of a satisfactory quality within the meaning of the Sale of Goods Act 1994.

**9.2** Supplier shall not be liable for a breach of any of the warranties in clause 9.1 unless:

**9.2.1** You give written notice of the defect to the Supplier, and (if the defect is as a result of damage in transit) to the carrier, within 2 business days of the time when you discovers or ought to have discovered the defect; and

**9.2.2** The Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and you (if asked to do so by the Supplier) return such Goods to the Supplier's business address at the Supplier's cost for the examination to take place there.

**9.3** The Supplier shall not be liable for a breach of any of the warranties in clause 9.1 if:

**9.3.1** You make any further use of such Goods after giving such notice; or

**9.3.2** The defect arises because you failed to follow the oral or written instructions as to the storage, use or maintenance of the Goods; or

**9.3.3** You alter such Goods without the written consent of the Supplier.

**9.4** Subject to clauses 9.2 and 9.3, if any of the Goods do not conform to any of the warranties in clause 9.1 you will have the option to cancel the Contract and receive a refund or credit for any sum that has been paid by you for the Goods or you may receive a replacement. If the Supplier so requests, you shall, at the Supplier's expense, return the Goods or the part of such Goods, which is defective to the Supplier.

**9.5** If the Supplier complies with clause 9.4 it shall have no further liability for a breach of any of the warranties in clause 9.1 in respect of such Goods.

**9.6** Any Goods replaced will belong to the Supplier and any replacement Goods will be guaranteed on these terms for the unexpired portion of the applicable warranty period.

## **10. LIMITATION OF LIABILITY**

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**10.1** You and the Supplier shall only be liable under this Contract for losses, which are a reasonably foreseeable consequence of the relevant breach of Contract.

**10.2** Subject to clauses 10.3 and 10.4:

**10.2.1** the Supplier's total liability in Contract (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall not exceed 3 times the amount of the price paid by you for the Goods; and

**10.2.2** The Supplier shall not be liable to you for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**10.3** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

**10.4** Nothing in these conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or fraudulent misrepresentation.

## **11. ASSIGNMENT**

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You shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier. The Supplier may assign the Contract or any part of it to any person, firm or Supplier.

## **13. COMPLAINTS**

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If you have any queries, comments or complaints in regard to any aspect of the Contract or the contents of this web site then contact the Supplier by telephone or write to the Supplier at the Supplier's business address.

## **14. GENERAL**

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**14.1** Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

**14.2** If any of these terms and conditions is deemed to be invalid or unenforceable the remaining terms and conditions shall not be affected by such invalidity or unenforceability and shall remain in full force and effect.

**14.3** Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by you will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

**14.4** The parties to this Contract do not intend that any term of this Contract will be enforceable by operation of the ius quaesitum tertio or otherwise by any person that is not a party to it.

**14.5** These terms and conditions are governed by and construed in accordance with English law. Any dispute arising in regard to these terms and conditions and the content of the web site shall be submitted to the non-exclusive jurisdiction of the English Courts.

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**Swimovate Limited is a company incorporated under the Companies Acts (company number 06431903).**

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