



FLOAT INDUSTRIES AUSTRALIA PTY LTD
SUPPLY AGREEMENT



Table of Contents

1	Agreement to buy and sell	3
2.	Placement of Orders	4
3.	Acceptance of Orders	4
4.	Payment	5
5.	Additional Charges	6
6.	Delivery of Orders	6
7.	Rights in relation to goods	7
8.	Passing of risk	8
9.	Site preparation	8
10.	Access to Site	8
11.	Supply of Power	8
12.	Authority Approvals	9
13.	Buyer obligations for delivery and installation	9
14.	Third party contractors hired by the Buyer and required for installation	9
15.	Hershel Infrared Heater	9
16.	Training	9
17.	New and Refurbished Warranties	10
18.	Exclusion of Warranties	11
19.	On-Sale by the Buyer	11
20.	Buyer obligations regarding the use of the Goods	12
21	DISCLAIMER: Seller Information and Training	12
22	Statutory guarantees	13
23	WAIVER AND RELEASE	14
24	No liability	15
25	Limitation of Liability	16
26.	Indemnity	16
27.	Privacy	17
28.	Intellectual Property	17
29.	Force Majeure	17
30.	Dispute Resolution	17
31.	Termination	18
32.	General	18
	Execution	20

This Agreement is made between

FLOAT INDUSTRIES AUSTRALIA PTY LTD (ACN 12 621 017 472)

Email: trish@floatindustriesaustralia.com

(Seller)

and

THE BUYER'S DETAILS ARE ON PAGE 20 OF THIS AGREEMENT AND THE ORDER FORM

(Buyer)

BACKGROUND

- A. This Supply Agreement applies to all transactions between the Seller and Buyer relating to the provision of Apollo Float Tanks and Open Float Pools and associated float products (Goods) and the delivery and installation of the Goods, as well as the training that the Seller provides the Buyer with respect to the installation and use of the Goods (Services).
- B. The Seller is a supplier of the Goods and Services described in the Float Industries Australia Pty Ltd Order Form (Order Form).
- C. The Buyer wishes to buy Goods and or Services from the Seller described in the Order Form.
- D. The Seller has agreed to sell and the Buyer has agreed to buy the Goods and Services in the Order Form on the terms and conditions set out in this Supply Agreement (the Agreement).
- E. The Buyer acknowledges the Seller disclaimer in clause 21 of the Agreement that the Seller Information and Training is not legal, regulatory, medical, council, building, electrical, plumbing or other tradesperson advice, nor is it marketing, financial, business, information technology, or any other professional advice.
- F. The Buyer acknowledges the Waiver and Release in clause 23 of the Agreement, regarding the inherent risks and contraindications with respect to the use of the Goods.
- G. The Buyer acknowledges its obligations in respect of the installation and use of the Goods in clauses 9 to 13 and clause 20 of the Agreement
- H. The Operator Manual is supplied by the Seller to the Buyer and/or is available on the Seller's website in pdf format (Operator Manual).

OPERATIVE PROVISIONS

1. Agreement to buy and sell

In return for payment of the price specified in relation to each of the Goods and Services on

the Seller's Website and/or in the Order Form (Price), the Seller sells and the Buyer buys the Goods and/or Services on the terms of this Agreement.

2. Placement of orders

- (a) The Buyer must order Goods and/or Services from the Seller on the Order Form supplied by the Seller. The order must include:
 - (i) the date of the placement of the order;
 - (ii) the quantity and description of the Goods and/or Services ordered; and
 - (iii) a signed Buyer acknowledgement of the Seller's disclaimer (as outlined in clause 21)
 - (iv) a signed Buyer acknowledgement of the Waiver and Release regarding the use of the Goods (as outlined in clause 23)
 - (v) a signed Buyer acknowledgement of the Buyer's obligations regarding the installation and use of the Goods (as outlined in clauses 9-13 and clause 20); and that
 - (iv) a signed Buyer acknowledgement that the Buyer agrees to this Agreement.
- (b) The Buyer acknowledges that the actual delivery date may be later than the initial agreed delivery date due to delays in:
 - (i) the Buyer paying the Deposit and/or the Price;
 - (ii) the Buyer fails to return a signed and completed FIA Pre- Installation Checklist and Consent Form 7 business days prior to the delivery and installation date of the Apollo tank(s) and/or fails to return a signed DIY Pool Compliance Form 3 business days prior to the delivery date of the Apollo open float pool(s); or
 - (iii) because of the Seller experiencing manufacturing or supply or transport delays or other force majeure events that are beyond the Seller's reasonable control.
- (c) Placement of an order by an Order Form by the Buyer signifies acceptance by the Buyer of this Agreement.
- (d) Any costs incurred by the Seller in reliance on incorrect or inadequate information provided by the Buyer in an Order Form may result in the imposition of an Additional Charge.
- (e) The Buyer may make online purchases for associated float products on the Seller's website, under the Online Retail Terms of Sale.

3. Acceptance of orders

- (a) The Buyer's Order Form must be accompanied with a 50% deposit or a 100% payment before the Seller accepts the Order Form.
- (b) Even if payment is made by the Buyer, the Seller may decline any Order Form received from the Buyer by written notice to the Buyer within 7 days of receipt of the Order Form by the Seller and the Seller will refund any deposit paid by the Buyer.
- (c) The Seller may in its absolute discretion refuse to provide Goods or Services where:
 - (i) Goods or Services are unavailable for any reason whatsoever;
 - (ii) The Price stated is incorrect.
 - (iii) The deposit and/or the balance has not been paid by the Buyer in accordance with clause 4.
- (d) Once an Order which has been accepted in whole or in part by the Seller, an Order cannot be cancelled or varied by the Buyer without the prior written consent of the Seller, which it may refuse in its absolute discretion. If an Order is cancelled or varied, the Buyer indemnifies the Seller against any Losses incurred by the Seller as a result of the cancellation or variation of the Order in accordance with clause 26.

- (e) If the Seller agrees in writing to a variation of an Order, the Seller reserves the right to vary the Order to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation. The Seller has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

4. Payment

- (a) Unless otherwise provided, all dollars amounts referred to in this Agreement and on the Seller's website, Order Form, quotations, price list or brochure are in Australian Dollars and exclude GST unless stated otherwise.
- (b) The Price (provided by way of the Order Form, quotation or a price list or brochure) is subject to change until the deposit has been paid by the Buyer, due to fluctuations in manufacturing and delivery costs.
- (c) If the Price by way of the Order Form or a quotation or price list, brochure or invoice is incorrect due to clerical error, the Seller reserves the right to amend the Price to the current advertised Price and advise the Buyer.
- (d) Upon receipt of the Buyer Order Form, the Seller will issue an invoice for either a 50% deposit or 100% payment in full for the Goods and Services, depending upon the selection of the Buyer on the Order Form, and including any other applicable fees or charges, such as delivery charges.
- (e) The Seller's invoice for the deposit will provide a payment date (the Deposit Due Date).
- (f) The Buyer must pay the 50% deposit or a 100% payment by the Deposit Due Date before the Seller accepts the Order.
- (g) The Seller asks that the Buyer please choose carefully before placing their Order, as the Seller does not normally give refunds for change of mind or making a wrong selection,
- (h) Subject to Australian Consumer Law and the Buyer's statutory rights as outlined in clause 17, the deposit is non-refundable if the Buyer changes its mind or makes a wrong selection, unless the Seller in its sole discretion agrees otherwise. The deposit covers the significant cost to the Seller in manufacturing the Goods made to order for the Buyer. Any refund that the Seller agrees to, will incur a 30% re-stocking fee to cover the Seller's reasonable costs incurred, including the release to the Buyer of valuable Intellectual Property in relation to the Goods.
- (i) If the Buyer requests to vary the Order Form and the Seller in its sole discretion agrees to the Order Form variations (including variations to specification, ordered quantity, or shipment changes) and such variations represent a price increase, the Buyer will notify of the Price increase and be given 5 business days to agree and pay the increased Price. If the Buyer does not agree and pay the Price increase in the 5 business days, the Order will proceed as it was originally ordered by the Buyer.
- (j) If there is a delay in the Buyer paying the deposit by the Deposit Due Date, the delivery date may be amended as specified by the Seller.
- (k) When the Goods are ready for delivery, the Seller will issue an invoice to the Buyer for the balance of the Price. The Seller's invoice for the balance due will provide a payment date (the Balance Due Date).
- (l) The Seller will not deliver the Goods and Services until the Seller has received payment in full for the Goods and Services.
- (m) If there is a delay in the Buyer paying the balance due, the delivery date may be amended as specified by the Seller.
- (n) The Seller accepts payment by EFT and as specified by the Seller on the Order Form and invoice. The Seller must receive full and cleared payment from the Buyer prior to Delivery. Please note that payment via EFT or direct bank deposit may take several days to be processed.
- (o) The Buyer may be charged interest on any outstanding amount not paid by Balance Due Date. Interest will be calculated on the basis of the Commonwealth Bank Australia Business Indicator Rate as published from time to time plus 2%. Interest will accrue daily from the Balance Due Date until the outstanding amount is paid in full.

- (p) If after 4 weeks of the Balance Due Date, the Buyer still has not made payment of the balance, subject to the requirements of the Personal Property Securities Act 2009 (Cth) (PPSA,) and Australian Consumer Law, the Seller may in its sole discretion, give 14 days' written notice to the Buyer that the Seller will terminate this Agreement. If the Seller sells the Goods to a third party, the Seller may refund the deposit paid by the Buyer, less the any penalty interest due as outlined in clause 4(k) and less either a 30% re-stocking fee, or less the cost of the Seller's manufacturing and holding costs for the period of time between the date of manufacture and the date that the Goods are sold to a third party.
- (q) The Buyer is not entitled to withhold the balance owing to the Seller because of a delay in the Delivery date of the Goods or Services. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a guarantee under the ACL.
- (r) The Buyer and the Seller agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

5. Additional Charges

- (a) The Seller may require the Buyer to pay additional charges in respect of costs incurred by the Seller as a result of reliance on inadequate or incorrect information or material provided by the Buyer, or due to a delay in the Buyer in paying the Balance due, or the Buyer fails to return a signed and completed FIA Pre- Installation Checklist and Consent Form 7 business days prior to the delivery and installation date of the Apollo tank(s) and/or fails to return a signed DIY Pool Compliance Form 3 business days prior to the delivery date of the Apollo float pool(s) (Additional Charges).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation or variation by the Buyer of an Order where cancellation or variation results in loss to the Seller;
 - (ii) The Buyer not providing a large enough access way for the Goods to be delivered to the location where the Goods will be installed on the Buyer's premises. In which case the Buyer can decide to either have the Goods left at the Buyer's door or the Seller takes the Goods back at an Additional Charge;
 - (iii) storage costs for Goods because the Buyer is not ready for Delivery;
 - (iv) cancelled accommodation or extra freight, packing or handling charges not included in the Order due to Buyer delays in meeting its obligations under this Agreement;
 - (v) taxes or charges not included in the Order;
 - (vi) additional work required by the Buyer or any other occurrence which causes the Seller to incur costs in respect of the Buyer's Order additional to the amount specified.
 - (vii) If the Buyer fails to return a signed and completed FIA Pre- Installation Checklist and Consent Form and complete an on-site video call 7 business days prior to the delivery and installation date of the Apollo tank(s) and/or if a Buyer fails to return a signed DIY Pool Compliance Form and complete an on-site video call 3 business days prior to the delivery date of the Apollo float pool(s), the Buyer will incur an Additional Charge of up to \$2000. The Buyer acknowledges that this is to cover the reasonable costs incurred by the Seller due to such Buyer delays and such Additional Charge is not a penalty.
 - (viii) Extra training is required that is not anticipated by this Agreement.

6. Delivery of orders

- (a) The Seller will use its best endeavours to deliver the Goods on or before the delivery date agreed by the parties. However, the Buyer acknowledges that the delivery date indicated by the Seller is an estimate only and the Seller accepts no liability for delay

in delivery of the Goods. Subject to Australian Consumer Law, neither is the Buyer relieved of any obligation to accept or pay for Goods by reason of any reasonable delay in delivery or because of the Seller experiencing manufacturing or supply delays beyond the Seller's reasonable control or due to force majeure events.

- (b) Only upon full payment of the Goods by the Buyer and the Buyer returning a validly signed and completed Pre- Installation Checklist and Consent form for tank(s) (residential or commercial as the case may be) and/or a signed Compliance Form for DIY open float pool(s), as well as an on-site video sign off call respectively, will the Seller deliver the Goods.
- (c) Any delays caused by the Buyer in paying the Price in full, or signing and completing the Seller's Pre-Installation Checklist and Consent Form for tanks (7 days prior to the delivery date together with an on-site video call sign) or Compliance Form for DIY open float pools (3 business days prior to the delivery date together with an on-site video call sign off), will result in the delivery date being placed on hold. The new delivery date will be advised by the Seller. Any such delay caused by the Buyer will incur Additional Charges as specified in clause 5 to cover the Seller's reasonable costs caused by Buyer delays.
- (d) The Buyer warrants that it will read and adhere to the DIY Open Float Pool Installation Guide and DIY Delivery and/or the Compliance Form for DIY Open Float Pools, and/or the Pre installation Checklist and Consent Form for tanks. The Buyer indemnifies the Seller against any losses incurred by the Seller as a result of the Buyer not adhering to DIY Open Float Pool Installation Guide or Compliance Form for DIY Open Float Pools, and/or Pre installation Checklist and Consent form for tanks, as the case may be, as outlined in clause 26.
- (e) The Goods will be delivered to the Buyer's premises or the Buyer will pick up the Goods from the Seller's warehouse as specified in the Order Form and confirmed by the Seller.
- (f) If the Seller is to arrange for delivery, the Seller must use its best endeavours to deliver the Order to the Buyer's agreed premises by the agreed delivery date.
- (g) If the Buyer is to arrange pick up from the Seller's warehouse, the Seller must use its best endeavours to prepare the Order for collection at the Seller's premises by the Buyer or an agent or courier of the Buyer prior to the delivery date. As soon as the Order is ready for collection, the Seller must notify the Buyer in writing. Within [5] days of receiving notification that an Order is ready for collection, the Buyer must pick up the Goods from the Seller's premises.
- (h) The Buyer must arrange for DIY pick up in accordance with the DIY collection instructions provided by the Seller.
- (i) Risk in accepting the Goods passes on delivery to the Buyer.
- (j) If the Buyer cannot accept delivery of Goods, the Buyer will pay for a weekly storage fee from the date the Goods are ready for collection from the Seller's warehouse.
- (k) If the Buyer visits any place where the Goods are stored to collect the Goods, the Buyer must comply with:
 - (i) any law relating to occupational health and safety; and
 - (ii) any directions or warnings we have given about the Goods; and
 - (iii) any directions or warnings given to you by us or anyone authorised by us when inspecting, collecting, or removing any Goods from any location.
- (l) If the Buyer visits any place where the Goods are stored, the Buyer acknowledges that it does so at its own risk.

7. Rights in relation to Goods

- (a) Property and title in Goods do not pass to the Buyer until all money (including money owing in respect of other transactions between the Seller and the Buyer) due and payable to the Seller by the Buyer have been fully paid.
- (b) The Seller reserves the rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid. These are rights to ownership of the Goods and subject to, and in accordance with, the Personal Property Securities Act 2009 (Cth) (PPSA) and Australian Consumer Law, to keep or resell any Goods.

- (c) Prior to title in the Goods passing to the Buyer under the terms of this Agreement, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Buyer or any third party.
- (d) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Seller's security interest in the Goods or of this Agreement:
 - (i) any requirement for the Seller to give the Buyer a notice of removal of accession;
 - (ii) (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the Goods;
 - (iii) (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (iv) (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
 - (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
 - (vi) any right the Buyer has to reinstate this Agreement before the Seller exercises a right of disposal of the Goods.

8. Passing of risk

- (a) Risk of loss or damage to the Goods will pass to the Buyer upon Delivery to the Buyer or collection of that order by the Buyer or Buyer's agent or courier as the case may be.
- (b) From the date of delivery, the Buyer must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business.
- (c) The Buyer will arrange for freight insurance for the Goods from the Seller's premises to the Buyer's premises or property.

9. Site preparation

- (a) The Buyer will prepare the delivery site in accordance with the Seller's Pre-Installation Checklist and Consent Form for tanks and/or the DIY Float Pool Pre-Installation Guide and DIY Open Float Pool Compliance Form, the Hershel Infrared Heater Compliance form provided by the Hershel specifier as outlined in clause 14, or otherwise as directed by the Seller.
- (b) The Buyer will fully indemnify the Seller for direct or indirect costs arising out of a delay or damage caused by the Buyer failing to meet its obligations under clause 9(a), as outlined in clause 26.

10. Access to Site

The Buyer will give or procure for the Seller access to the Buyer's premises or any site at which the Goods and/or Services are to be delivered and the site will be presented to the Seller in a clean and safe and accessible state as outlined in clause 5(b)(ii).

11. Supply of Power

The Buyer must arrange for a licensed electrician (preferably with experience in spa installation) to be in charge of supply of power. If the supply of power is not connected when Training is done, the Buyer must pay an Additional Charge as per clause 5.

12. Authority Approvals

The obtaining of any Council or Authority Approvals is the sole responsibility of the Buyer and the Seller accepts no liability or responsibility for claims, loss or damage arising from or in any way related to a failure of Council or Authority Approvals being sought, obtained or granted in relation to the Goods.

13. Buyer obligations for delivery and installation

- (a) The Buyer warrants that for delivery and installation of the Goods, it will:
 - (i) Provide a clean and safe delivery site and working environment in accordance with Work Health and Safety laws and regulations;
 - (ii) Provide the Seller with all reasonable assistance and access to the delivery site and facilities to enable the Seller to deliver the Goods to the correct location;
 - (iii) Provide a clear and safe path and passage way for the Goods to be delivered to the correct location on the Buyer's premises;
 - (iv) Provide a safe, secure, non-slip surface on which the Goods will be placed and installed;
 - (v) Ensure third party tradespersons (including electricians, plumbers and carpenters and joiners) that the Buyer hires for the fit out and installation are qualified to carry out the work required and preferably have experience in the installation of an equivalent portable or built in spa pool;
 - (vi) Ensure its third-party tradespersons have the necessary insurance to carry out the installation work;
 - (vii) Meet all local council and regulatory requirements with respect to equivalent spa pool installation;
 - (viii) Ensure that all the third-party tradesperson contractors' work meets building code, local council requirements and all other regulatory requirements for the safe installation of an equivalent portable or built in spa pool;
 - (ix) Ensure that it (and its personnel) read the Operator Manual.
- (b) The Buyer indemnifies the Seller against any losses incurred by the Seller as a result of a breach of this clause 12, as outlined in clause 26.

14. Third party contractors hired by the Buyer and required for installation

- (a) The Buyer is solely responsible for the work carried out by both the Buyer and its third-party contractors and tradespeople for the installation of the Goods and any fit out, including the work of its electricians, plumbers and carpenters and joiners.
- (b) The Buyer indemnifies the Seller against any losses incurred by the Seller as a result of work carried out by the Buyer or the Buyer's third-party contractors and tradespersons in respect of the installation and use of the Goods as outlined in clause 26.

15. Hershel Infrared Heater

If the Buyer orders a Hershel Infrared Heater from FIA, the Hershel specifier will send the Buyer the compliance requirements for the installation of the Hershel Infrared Heater and the Hershel specifier will arrange installation directly with the Buyer.

16. Training

- (a) The Buyer acknowledges that the Seller will provide the following Training materials: Operator Manual, Pre-Installation Checklist and Consent form for tanks (Commercial or residential as the case may be), DIY Open Float Pool Pre installation Guide and DIY

- collection form and/or the DIY Open Float Pool Compliance form, information contained on the Seller's website, on site in person and via email, phone or video communication via virtual installation support and virtual team training as the case may be (the Training) depending upon the Goods and Services that the Buyer has purchased.
- (b) The Seller will provide the Buyer with Training in both the installation and use of the Goods, subject to the disclaimer contained in clause 21.
 - (c) The Training will be on site or virtual depending on the Goods and Services purchased in the Order Form.
 - (d) The Buyer may purchase Virtual Installation Support (for 3 hours) or Virtual Training (for 4 hours).
 - (e) The Training will be extended to the Buyer and the Buyer's personnel and third-party contractors and tradespersons, subject to the disclaimer contained in clause 21.
 - (f) Onsite or virtual Training will take place within an agreed period of time, at a date and time agreed between the parties, usually on the delivery date or close to the delivery date.
 - (g) The time allowed for the Training with the Goods' installation is specified in the Order Form or Apollo Brochure. If the Services take longer than the hours specified, then Seller's additional time will be charged on a per hour basis at the Seller's current hourly rate in accordance with clause 5.
 - (h) Upon completion of onsite installation assistance services, the Seller will test the Goods and ensure the Goods' operation conforms with the operating specifications described in the Operator Manual. The Buyer will sign and date the Compliance Form supplied by the Seller on site that the Goods have been tested for operation and leak tested.
 - (i) For DIY installation and virtual training, the Seller will test and video the DIY pool to ensure that it is in working order. The Buyer will sign and date the Compliance Form supplied by the Seller that the Goods have been tested for operation and leak tested.
 - (j) If the Goods are not functioning due to a Buyer or third-party contractor tradesperson issue, it will be the Buyer's sole financial responsibility to resolve the issue with its respective third-party contractor tradesperson(s) as the case may be.

17. New and Refurbished Warranties

- (a) The Seller warrants that the Goods are newly manufactured or refurbished, depending on the option selected by the Buyer in the Order Form.
- (b) The 24-Month Warranty is for new Apollo Float Tanks and Open Float Pools (New Warranty)
- (c) The 12-month Warranty terms for the refurbished Apollo Float Tanks and Open Float Pools (Refurbished Warranty),
- (d) The New Warranty and Refurbished Warranty forms must be signed by the Buyer and returned to the Seller by email or in person. The Warranty period starts from the date of delivery (not the date of installation) and only once the Buyer has returned a signed Warranty form to the Seller.
- (e) Neither the New or Refurbished Warranty is transferable if the Buyer on-sells their Apollo Float Tank.
- (f) The Seller will not be liable for defects resulting from improper use of the Goods, whether by the Buyer or by a third party.
- (g) The Goods come with guarantees that cannot be excluded under Australian Consumer Law. The Buyer is entitled to choose a refund or replacement for major failures with the Goods. If a failure with the Goods does amount to major failure, the Buyer is entitled to have the failure rectified in a reasonable time. If this is not done, the Buyer is entitled to a refund for the Goods. The Buyer is also entitled to reimbursement for any other reasonably foreseeable loss or damage from a failure in the Goods.
- (h) The New Warranty and Refurbished Warranty given to the Buyer under this Agreement are in addition to any other statutory rights, remedies, conditions, or warranties, and nothing in this Agreement excludes the application of those statutory rights, remedies, conditions, or warranties.
- (i) The Seller warrants that the Goods:
 - (i) matches the description provided by the Seller;

- (ii) is fit for the purpose as described by the Seller; or
 - (iii) is of merchantable quality.
- (j) The period during the above warranty will be in effect will depend on the Goods purchased and will commence from the date that the Goods are delivered to the Buyer.
- (k) If the Buyer wishes to make a claim for the breach of any warranty, including any breach of any additional warranty, the Buyer must notify the Seller in writing. Following a receipt for a Buyer claim under this warranty, the Seller will assess the Buyer's claim and if the Seller determines that the Buyer's claim is valid:
- if the Goods can be repaired and the failure to comply with the warranty is not a major failure, the Seller will, at its discretion, either repair the defect, replace any defective part of the defective Goods, or replace the defective Goods; and
 - if the Goods cannot be repaired or the failure to comply with the warranty is a major failure, the Buyer may reject the products, and at the Buyer's election, seek the replacement of the Goods, the repair of the Goods, or a refund of the money that the Buyer has paid for the Goods.
- (l) If, in accordance with the warranty under this Agreement, a repair is approved for the Goods and that repair may be effected by the simple replacement of a particular part or component of the Goods, then the Seller may, at its discretion, send the Buyer the replacement part or component to repair the Goods, at the Seller's own cost.
- (m) If any Goods are returned to the Seller for refund, repair, or replacement, the Buyer must cooperate with the Seller regarding the best way to return the Goods to the Seller return it to the Seller.
- (n) If, after examining or assessing the Goods, the Seller determines that there has been no breach of the Seller's warranty, the Seller reserves the right to charge the Buyer for any reasonable costs incurred in the examination or assessment of any Goods, including but not limited to any costs incurred in picking up or sending an on-site technician to examine or assess the Goods; and the Seller reserves the right to charge the Buyer for any re-delivery costs incurred to return the Goods to you.

18. Exclusion of Warranties

- (a) To the extent permitted by law, the warranties provided in clause 17 do not apply where the Goods have been:
- (i) Modified, added to or otherwise altered by the Buyer (or any other third party) in anyway, either in the fit out of the Buyer's premises or otherwise;
 - (ii) Not been used or maintained in accordance with the Operator Manual or Seller's directions;
 - (iii) Subjected to misuse, abuse, neglect, or accident;
 - (iv) Subjected to damage or malfunction due to normal use or fair wear and tear, such as the discolouration or colour fading;
 - (v) Subjected to direct UV light or sunlight exposure or excessive heat;
 - (vi) Subjected to incorrect chemical use;
 - (vii) Used or treated in a way that is excluded in the New Warranty and Refurbished Warranty, as the case may be.

19. On- Sale by the Buyer

The Buyer agrees that upon the on-sale of any Goods to third parties, it will:

- (i) inform any such third party of this Agreement;
- (ii) inform any such third party that the New Warranty or Refurbished Warranty, as the case may be, is not transferred upon the sale of the Goods to such third party;
- (iii) provide the Operator Manual; and
- (iv) not make any misrepresentations to third parties about the Goods.

20. Buyer obligations regarding its use of the Goods

(a) The Buyer warrants that with respect to the use of the Goods, it will:

- (i) Adhere to safety procedures with respect to customers and persons' use of the Goods contained in the Operator Manual, including:
 - non-slip floors and surfaces clean and dry
 - surfaces pre and post use of the Goods
 - customers' hair is tied back
 - no mobile phone or other electrical equipment use whilst floating
 - appropriate parental, carer, guardian or family support where required;
 - test of panic buttons and voice intercom services prior to use of the Goods;
 - Check on customers and users at timed intervals during their float;
 - When not in use, lock all doors to the open float rooms and float tanks to prevent unauthorized use and to maintain child and pet safety;
 - Undertake all hygiene measure as outlined in the Operator manual.
 - Undertake all other safety, hygiene and maintenance procedures outlined in the Operator Manual.
- Ensure that the Goods are only used by customers and persons who are over 18 years and are of legal capacity to provide informed consent.
- (ii) Customers or persons over 18 years old with legal capacity must be given time to carefully read a risk waiver (prepared by the Buyer's lawyer) with all risks and contraindications outlined, prior to the person or customer's purchase and use of the Goods. Please refer in this regard to NSQHS Standards Australian Commission on Safety and Quality in Health Care "Fact Sheet for clinician- Informed Consent in Health Care".
- (iii) Discharge its duty of care in respect of vulnerable customers and other persons' use of the Goods, including elderly persons, sight or hearing-impaired persons, persons with difficulty speaking or reading English, mentally or physically disabled persons, pregnant women, people with health issues, children and persons who require a carer, family member, parent, guardian or interpreter or doctor to give informed consent and/or medical clearance, as well as ensuring the appropriate assistance is provided to the vulnerable person whilst getting in and out and whilst using the Goods. Please refer in this regard to NSQHS Standards Australian Commission on Safety and Quality in Health Care "Fact Sheet for clinician- Informed Consent in Health Care."
- (iv) Obtain and maintain comprehensive product and public liability insurance in respect of the Buyer's customers and other persons' use of the Goods.
Use and maintain the Goods in accordance with the Operator Manual and procedures outlined by the Seller.
- (v) The Buyer indemnifies the Seller against any Losses incurred by the Seller as a result of the Buyer breaching any of these warranties in clause 20, as outlined in clause 26.
- (vi)
- (vii)

21. DISCLAIMER: Seller Information and Training

- (a) The Buyer acknowledges that the Goods and Services provided by the Seller, and all information contained in the Seller's training and marketing materials, including the Operator Manual, Pre-Installation Checklist and Consent Form, the DIY Open Float Pool Compliance Form, the DIY Open Float Pre Installation Guide and DIY Delivery, FIA and Apollo brochures and all training and information provided by the Seller, either in verbal and/or written form, in hard copy, soft copy and/or on the Seller's website and/or by email, phone or video call or in person (Seller Information and Training) does not constitute, and should not be relied on as, legal, regulatory, medical, council, building, tradesperson, marketing, business, financial, insurance or information technology advice.

- (b) The Seller recommends that the Buyer seeks advice from qualified professional advisers on the legal, regulatory, medical, insurance, IT, council, building or tradesperson issues regarding the installation and use of the Goods.
- (c) Buyers will be responsible for making their own assessment of the Seller's Information and Training and should verify all relevant representations, statements and information with their own professional advisers.
- (d) While the Seller tries to ensure that the content of Seller's Information and Training is accurate, adequate or complete, it does not represent or warrant its accuracy, adequacy or completeness. The Seller is not responsible for any loss suffered as a result of or in relation to the use of the Seller's Information and Training. To the extent permitted by law, the Seller excludes any liability, including any liability for negligence, for any loss, including indirect or consequential damages arising from or in relation to the use of Seller's Information and Training.
- (e) Furthermore, whilst the Seller's Information and Training is considered to be true and correct at the date of publication, changes in circumstances after the time of publication may impact upon the accuracy of the training, assistance and/or material. The Seller's Information and Training may change without notice and the Seller is not in any way liable for the accuracy of any information printed and stored by a Buyer. Changes are periodically added to the Seller's Information and Training and the Seller may make improvements and/or changes in the material and/or the Seller's website at any time.
- (f) The Seller takes no responsibility for the accuracy, currency, reliability and correctness of any information included in the material provided by third parties nor for the accuracy, currency, reliability and correctness of links or references to information sources (including internet sites) outside of the Seller's website. In addition to the material, the website provides links to and from other internet sites. These external information sources are outside the control of the Seller and it is therefore the responsibility of the Buyer and internet users to make their own decisions about the accuracy, reliability and correctness of information found on those external internet links.
- (g) The Seller does not make any terms, guarantees, warranties, representations, or conditions regarding the Goods and Services, except as provided for in this Agreement.
- (h) The Seller cannot and does not guarantee the Buyer's ability to obtain specific results in connection with the Goods and Services.
- (i) The Seller expressly disclaims any claims arising from representations, whether express or implied, or reliance upon any representations made regarding the Seller's recommendations or information supplied to the Buyer.
- (j) Any testimonials or examples of the Goods and Services, whether published online or in print, are not to be taken as a guarantee that the Buyer (or the Buyer's customers, personnel or persons on the Buyer's premises or property) will achieve the same or similar results.

22. Statutory guarantees

- (a) ACL: The Australian Consumer Law (ACL) contained in the Competition and Consumer Act 2010 (Cth) (CCA) provides statutory guarantees that the Seller must comply with.
- (b) Permitted exclusion: However, the CCA permits a supplier of recreational services to ask the Buyer and user of the Goods to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, the Buyer acknowledges and agrees that the Seller excludes all liability to the Buyer for death or injury resulting from a failure by the Seller to comply with any statutory guarantee.
- (c) In the previous sentence, "injury" means:
 - (i) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
 - (ii) the contraction, aggravation or acceleration of a disease; or

- (iii) the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to the Buyer and/or users of the Goods that is or may be harmful or disadvantageous to the Buyer and/or users of the Goods or the community, or that may result in harm or disadvantage to the Buyer, and/or users of the Goods or the community.
- (d) Reckless conduct: This exclusion of liability does not apply if the Buyer or users of the Goods have suffered any significant personal injury that is caused by the Seller's reckless conduct (within the meaning given to those terms by the CCA).
- (e) General exclusions: Please note that nothing in this Agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.
- (f) Otherwise, and except as expressly included in this Agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this Agreement. In particular, but subject to the preceding paragraph, the Seller is not liable for negligence or breach of terms implied that the Goods and Services will be provided with reasonable care and skill, at common law, that in either case results in your death or injury (as defined in paragraph (c) above) in connection with or under this Agreement, but to avoid doubt we do not exclude liability for our reckless conduct.

23. WAIVER AND RELEASE: Buyer Acknowledgement that the Use of the Goods has Risks

- (a) In accordance with ACL, the Buyer acknowledges, agrees and represents that the Buyer understands that the use of the Goods has inherent risks as outlined in the Operator Manual. These include slipping, drowning, electrocution if using charging electrical devices whilst floating, hair catching in the tank or pool jets, claustrophobia, anxiety or panic attacks, skin irritation, skin rashes, skin or ear infections, other bodily infections, contagious or infectious skin diseases and all other risks communicated by the Seller.
- (b) In accordance with ACL, the Buyer acknowledges, agrees and represents that the Buyer has read and fully understands that the use of the Goods should not be used by the following persons as outlined in the Operator Manual "Contraindications":
 - (i) People with severe mental illness, as floating can induce hallucinations
 - (ii) People with epilepsy
 - (iii) People suffering with incontinence
 - (iv) People with unmanaged blood pressure issues
 - (v) People with contagious or infectious conditions or diseases
 - (vi) People who are under Psychiatric care that do not have medical clearance for Float Therapy
 - (vii) People under 18, unless with informed parental consent and parental supervision;
 - (viii) Elderly, unless with medical clearance, informed consent and with a carer or family supervision
 - (ix) People who are Mentally or Physically Disabled, unless with medical clearance, informed consent and with carer or family supervision
 - (x) Pregnant women, unless with medical clearance, informed consent and with the assistance of or family member getting in and out of the float tank or pool
 - (xi) Parents with babies and toddlers floating together, unless with informed consent and the baby or toddler is under the parent's supervision at all times.
- (c) The Buyer hereby WAIVES AND RELEASES, indemnifies, hold harmless and forever discharges the Seller and it's agents, employees, officers, directors, affiliates, successors and assigns, coaches, teachers and trustees of and from any and all claims, demands, debts,

contracts, expenses, cause of action, lawsuits, damages, and liabilities, of every kind of nature, whether known or unknown, in law or equity, that the Buyer ever had or may have, arising from or in any way from the Buyer's use of the Goods (or from the use of the goods by the Buyer's personnel, customers or persons on the Buyer's premises or property), provided that this waiver of liability does not apply to any acts of gross negligence, or intentional, wilful or wanton misconduct by the Seller.

- (d) The Buyer understands that the use of the Goods may cause serious or grievous injuries, including bodily injury and/or death to the Buyer or to Buyer's personnel, customers or persons on the Buyer's premises or property, as outlined in (a) paragraph above and in the Operator Manual. On behalf of the Buyer, and its heirs, assigns, administrators, executors and next of kin, the Buyer waives all claims of damage, injuries and death sustained to the Buyer (or the Buyer's personnel, customers or persons on the Buyer's premises or property) that the Buyer may have against the Seller in relation to the use of the Goods, including claims in tort, contract, equity or otherwise.
- (e) The Buyer acknowledges, agrees and represent that the Buyer's use of the Goods is solely at its own risk. The Buyer understands and acknowledge that the Seller makes no claims as to the safety, results or the appropriateness of the use of the Goods for any particular individual.
- (f) The Buyer understands that before use of the Goods by the Buyer (or the Buyer's personnel, customers or persons on the Buyer's premises or property) that the Buyer (and Buyer's personnel, customers or persons on the Buyer's premises or property) should consult their physician and in the event the Buyer's health condition (or Buyer's personnel, customers or persons on the Buyer's premises or property's health condition) changes while using the Goods, the Buyer (or Buyer's personnel, customers or persons on the Buyer's premises or property) will consult with their physician prior to resuming use of the Goods.
- (g) The Buyer understands and agrees that all suggestions and/or instruction regarding the Buyer's use of the Goods (or the use of the Goods by the Buyer's personnel, customers or persons on the Buyer's premises or property) is neither medical, diagnostic nor prescriptive and that the Buyer and its personnel or customers or persons on its premises or property should verify the same with their physician and evaluate such instructions and/or suggestions independently.
- (h) This WAIVER AND RELEASE contains the entire Agreement between parties, and supersedes any prior written or oral Agreements between them concerning the subject matter of this WAIVER AND RELEASE.
- (i) The provision of this WAIVER AND RELEASE will continue in full force and effect even after the termination of this Agreement.
- (j) The Buyer has read, understood and fully agrees to the term of this WAIVER AND RELEASE. The Buyer understands and confirms that by signing this this Agreement containing this WAIVER AND RELEASE, the Buyer has given up considerable future legal rights.
- (k) The Buyer acknowledges that it has signed this Agreement containing the WAIVER and RELEASE freely, voluntarily, under no duress or threat of duress, without inducement, promise or guarantee being communicated to the Buyer. The Buyer's signature to this Agreement is proof of the Buyer's intention to execute a complete and unconditional WAIVER AND RELEASE of all liability to the full extent of the law.

24. No Liability

The Seller will not be responsible for;

- (i) any delay because of the Buyer has not obtained the necessary approvals from its local Council and/or authorities;
- (ii) all documentation including but not limited to those related to local council and authority approvals;
- (iii) modifications of any sort to the Goods by the Buyer or the Buyer's third-party contractors or tradespersons;

- (iv) damages to existing surrounds (including but not limited to walls, floors, ceilings, fencing, paving, retaining walls) during installation of the Goods; damages to existing water pipes,
- (v) power lines, gas or phone if the pipes, lines or anything else by the Buyer's third-party contractors and tradespersons pre, during or post installation; any issues in relation to existing structural and non-structural property of the Buyer (e.g. floors, walls, ceilings, retaining walls, fences, paving etc);
- (viii) inaccurate measuring by the Buyer (or the Buyer's or third-party contractors and tradespeople) of the site or fit out where the Goods will be installed;
- (vi) The Buyer indemnifies the Seller against any losses incurred by the Seller as a result of any of the issues outlined in this clause 24, as outlined in clause 26.
- (vii)

25. Limitation of Liability

(a) To the fullest extent permitted by law, the Buyer expressly understands and agrees that the Seller shall not be liable to the Buyer for any direct, indirect, incidental, special, consequential, tort (including negligence), or economic damages which may be incurred by the Buyer in connection with this Agreement, the Goods and/or the Services (whether or not due to any defects therein), however caused and under any theory of liability. For the avoidance of any doubt, according to the terms of this Agreement, the Seller limits its liability to the furthest extent permissible at law. Where legal liability cannot be excluded due to the applicable law, the Seller's liability is limited in accordance with clause 25(b).

(b) If for whatever reason the Seller is liable to the Buyer, the Seller's total liability in connection with this Agreement, the Goods and/or Services whether arising in contract, in tort (including negligence) in equity, by operation of law or otherwise, is limited to a payment of the amount paid (if any) by the Buyer to the Seller under the relevant Buyer's Order Form; or alternatively to the replacement of the Goods and Services which the Seller provided to the Buyer in the relevant Buyer's Order Form prior to the act that gave rise to the liability. The Seller reserves its absolute discretion with respect to which abovementioned option will be selected.

(c) If the Buyer has registered an "Authority to Leave" with either the Seller or the Seller's delivery person, the Seller will not be liable for any loss, expenses, costs or any special, incidental, or consequential damages arising out of the Seller's compliance with the Buyer's instructions contained on that "Authority to Leave".

(d) The Seller will not be liable for any loss, expenses, losses, costs, consequential losses, or direct or indirect damage suffered by the Buyer where the Buyer's credit card has been fraudulently used or has been used in an unauthorised manner.

(e) The Seller will compensate the Buyer for any loss or damage the Buyer may suffer if the Seller fails to carry out duties imposed on the Seller by law (including if the Seller causes the death or personal injury of the Buyer by the Seller's negligence) unless and to the extent that failure is attributable to:

- (i) The Buyer's own fault or the Buyer's personnel or customer's fault;
- (ii) a third party unconnected with the provision of the Goods and Services under this Agreement; or
- (iv) events which could not have foreseen or forestalled even if the Seller had taken all reasonable care.

26. Indemnity

- (a) The Buyer indemnifies the Seller against any liability, claim, loss, expense or damage of any nature, including financial loss and all legal costs and expenses on a full indemnity basis suffered or incurred by the Seller arising out of or in connection any breach of this Agreement by the Buyer, its personnel, representatives or the Buyer's contractor tradespersons, or a breach of any following clauses and/or events caused by the Buyer or

- its personnel (employee or contractor as the case may be) or any wilful, unlawful or negligent act or omission of the Buyer, its personnel or contractors.
- (b) The indemnity in this clause 26 will be reduced proportionally to the extent that an act or omission of the Seller caused or contributed to the claim, loss, expense or damage.

27. Privacy

- (a) The Seller's privacy policy is available on its website and the Seller will use all reasonable efforts to ensure that any information or data collected from the Buyer is stored and used in accordance with this privacy policy.
- (b) By placing an Order for Goods and Services, the Buyer agrees that the Seller may store, process, and use any information or data collected from the Buyer in accordance with the Seller's privacy policy.
- (c) To the extent that that the Seller is required to access or otherwise hold personal information which is under the Buyer's control, it is the Buyer's responsibility to ensure that the Seller is authorised by the relevant individual to access or hold such information, and the Buyer will defend and indemnify the Seller in respect of any proceedings instituted by a third party asserting that the Seller's involvement contravenes an applicable privacy law.

28. Intellectual Property

- (a) The Seller reserves all intellectual property rights including but not limited to designs, know-how, trade secrets, trade marks and copyright material in respect of the Goods and/or Services provided to the Buyer.
- (b) The Buyer warrants that it will not reverse engineer or copy, or attempt to reverse engineer or copy the unique and proprietary design of Apollo Float Tank or Open Float Pool.
- (c) Nothing in this Agreement permits the Buyer or gives the Buyer any rights to use any of the Seller's marketing materials, copyrighted material, trade marks, business names, logos, photographs, or domain names, designs or know how, except with the Seller's prior written consent and for a specific and specified purpose only.
- (d) Any trade marks used on the Seller's website or materials belonging to third parties are used with permission and remain the intellectual property of such third party.
- (e) The Buyer indemnifies the Seller against any Losses incurred by the Seller as a result of the Buyer breaching any of these warranties or terms in this clause 28.
- (f) If the Seller receives intellectual property from the Buyer in order to customize a float tank(s) or open float pool(s), the Buyer warrants that the intellectual property supplied by the Buyer to the Seller does not infringe third party intellectual property rights.

29. Force majeure

- (a) The Seller will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any force majeure event or caused by circumstances beyond the Seller's reasonable control such as manufacturing, supply or transport delays or bad weather.
- (b) If the force majeure event affects the capacity of the Seller to complete its obligations under this Agreement in a timely manner, the Seller may by notice to the Buyer terminate this Agreement without any liability whatsoever on its part arising from that termination, other than to refund the deposit paid by the Buyer.

30. Dispute resolution

- (a) A party claiming that a dispute, controversy or claim (Dispute) has arisen must notify the other party in writing giving details of the Dispute (Notice).

- (b) The parties must negotiate in good faith to settle, as soon as possible, any Dispute after Notice has been given.
- (c) If the parties are unable to resolve the Dispute within 20 days of the Notice referred to in clause 30(a), the parties must appoint a mediator or refer the Dispute to a mediator nominated by the Australian Mediation Association.
- (d) Unless the parties otherwise agree, any mediation will take place in the capital city of New South Wales in accordance with any mediation rules or guidelines of the Australian Mediation Association then in force.
- (e) The parties will share equally the mediator's fees and disbursements and all other costs of the mediations. Otherwise, each party will meet its own costs of and in connection with the mediation.
- (f) Nothing in this clause prevents a party to the Agreement from seeking urgent injunctive relief or similar interim relief from a court.
- (g) This clause will remain operative after the contract has been performed and despite its termination.

31. Termination

- (a) This Agreement will automatically terminate if:
 - (i) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
 - (ii) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
 - (iii) the merger with or the takeover of either party by another person, company or entity.
- (b) The Seller may terminate the Agreement for failure of the Buyer to pay the Balance Due in accordance with clause 4(p), or if the Buyer refuses to sign or complete the DIY Open Float Pool Compliance Form and/or sign and complete the Pre- Installation Checklist and Consent Form prior to delivery, and the Seller has given the Buyer 42 days' written notice of its intention to terminate and the Buyer fails to remedy the issue.
- (c) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this Agreement, subject where applicable to any cap on, or exclusion of, liability set out in this Agreement.
- (d) The obligations of the parties that by their nature could reasonably be construed as being intended to continue to apply beyond the termination of this Agreement will continue to apply.

General

32. Entire Agreement

This Agreement supersedes all prior Agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to the Goods or Services. No addition to or modification or variation of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

33. Notices

All notices which are required to be given under this Agreement must be in writing and must be sent to the email address of the recipient set out in this Agreement. or such other address or

email address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand, or by prepaid letter or email. Any such notice will be deemed to have been served when delivered (if delivered by hand) or if sent by prepaid post within Australia to an Australian address, 2 business days after the date posting or (if sent by email and unless agreed otherwise), when the email is sent by the sender and does not receive a transmission failure notice within one Business Day after that transmission.

34. Assignment

Neither party will assign, whether in whole or part, the benefit of this Agreement or any rights or obligations under this Agreement, without the prior written consent of the other party.

35. Law

This Agreement will be governed by and construed in accordance with the laws for the time being in force in New South Wales, Australia and the parties agree to submit to the exclusive jurisdiction of the courts and tribunals of New South Wales, Australia.

36. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach

37. Severability

Should any part of this Agreement be or become invalid, that part will be severed from this Agreement. Such invalidity will not affect the validity of the remaining provisions of the Agreement.

38. Confidentiality

The Seller and the Buyer agree that this Agreement and all related information and documents are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted or required by law.

39. Legal Capacity

- (a) This Agreement and the Order Form must be signed by an authorized representative of the Buyer and in accordance with Australian corporate, trust or power of attorney law, as the case may be. If the Buyer is an individual, the Buyer must be able to form legally
- (b) binding contracts to both order and/or use the Goods and Services, and the Buyer must be over the age of 18 years and of legal capacity. If Buyer is the trustee of a trust (whether disclosed to the Seller or not), Customer warrants to the Seller that:

(c)

- The Buyer enters into this Agreement in both its capacity as trustee and in its personal capacity
- The Buyer has the right to be indemnified out of trust assets;
- The Buyer has the power under the trust deed to enter into this Agreement; and
- The Buyer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Seller.