

Terms and Conditions

Definitions:

The following definitions apply in these terms:

1. **Approval** means any licence, permit, consent, approval, determination, certificate or permission which is required from any Government Body or under any Law.
2. **Cost Recovery Fee** has the meaning given to it in Clause 2.9.
3. **Customer** means the entity listed as customer or client in any Quote or Order.
4. **Delivery Date** means the date the Goods are delivered to site.
5. **Dispatch Date** means the date the Goods leave from the Plungie factory.
6. **Equipment** means pool equipment including, but not limited to, pumps, cleaners, filtration equipment, heaters, covers and accessories.
7. **Goods** means any goods supplied to the Customer by Plungie including, but not limited to, a plunge pool or a plunge pool product or any Equipment.
8. **Government Body** means:
 - (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
 - (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
 - (c) any person deriving a power directly or indirectly from any other Government Body.
9. **Law** means state, federal or municipal government legislation including regulations, by-laws and other subordinate legislation.
10. **Load Out Fee** has the meaning given to it in clause 7.5
11. **Order** means a contract between Plungie and the Customer for the provision of Goods incorporating a Quote and these terms.
12. **Plungie** means each of:
Plungie USA Inc
13. **Quote** means a statement of work or quotation which sets out the Goods to be supplied by Plungie to the Customer, prices and delivery dates.
14. **Security Interest** means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

15. **Services** means the advisory services, goods delivery and installation of goods (where applicable).
16. **Site** means the location nominated by the Customer for the delivery of the Goods.
17. **Song-Beverly Warranty Act** means the Song Beverly Consumer Warranty Act as in effect in the State of California from time to time.
18. **Storage Fee** has the meaning given to it in clause 2.9.
19. **Transport Solutions** has the meaning given to it in clause 7.1.1.
20. **Warranty** means the Plungie Warranty attached as Annexure 1 to these terms and conditions.

1. GENERAL TERMS:

- 1.1. Plungie is a manufacturer. As such, once the Goods leave their manufacturing facility, they are at the customer's sole risk.
- 1.2. If the Customer requests Plungie to leave Goods outside Plungie's premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.
- 1.3. The Customer acknowledges that Goods provided may exhibit variations in shade, colour, texture, surface and finish and other variations due to the manufacturing process. Plungie will make every effort to match batches of product in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 1.4. The Customer warrants that the structure of the building/s or equipment in or upon which Goods are to be installed or erected is sound and will sustain the installation of the Goods and incidental services.
- 1.5. Plungie shall not be liable for any claims, demands, losses, damages, costs and expenses whatsoever caused or arising should the building/s or equipment be insufficient or unable to accommodate the installation.
- 1.6. The Customer must capture clear/definitive photographic evidence of the prepared site prior to installation to demonstrate correct installation process has been followed.
- 1.7. Unless Plungie has expressly agreed in writing to install the Goods, Plungie shall not be liable for any defect or damage resulting from any incorrect or faulty installation by the Customer or any third party that Customer appoints, including any 3rd party installer that Plungie introduces or recommends.
- 1.8. The Customer:
- 1.8.1. acknowledges that Plungie is only responsible for parts that are replaced/provided by Plungie and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure; and
 - 1.8.2. indemnifies and keeps indemnified Plungie against any loss or damage caused or contributed by components supplied by a third party other than Plungie;
- 1.9. Where the Customer has supplied materials for Plungie to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. Plungie shall not be responsible for any defects in



the Services, any loss or damage howsoever arising from the use of materials supplied by the Customer.

1.10. The Customer acknowledges and agrees:

- 1.10.1. the Customer has had the opportunity to examine the Goods and satisfy itself as to the condition, suitability and specifications of the Goods and the fitness of the Goods for the Customer's purposes;
- 1.10.2. to inspect the Goods and advise of any issues with the Goods within 48 hours of delivery, or Plungie will deem the Goods to have been accepted as per Clause 1.10.1;
- 1.10.3. the Customer has relied solely upon its own judgment in all matters relating to the selection of the Goods;
- 1.10.4. neither Plungie nor anyone on its behalf has given any warranty or made any representation to the Customer as to the quality, fitness for any particular purpose, PLUNGIE USA INC 3 of 17 Plungie Terms and Conditions suitability or condition of the Goods except as provided in these terms and conditions and the Warranty;
- 1.10.5. any advice, recommendation, information, assistance, or service provided by Plungie to the Customer in relation to the Goods is provided in good faith, is based on Plungie's own knowledge and experience and shall be accepted without liability on the part of Plungie;
- 1.10.6. the Customer purchases the Goods on its own name and account

2. INVOICING AND TIMING

- 2.1. The Customer will receive an initial Quote from Plungie valid for thirty (30) days from date of issuance unless otherwise specified in writing by Plungie.
- 2.2. To accept the quote the Customer will need to provide confirmation of acceptance, the internal finishing selection and a tentative date of delivery.
- 2.3. Once confirmation to proceed with the quote is received from the Customer, Plungie will issue the Customer with a proforma invoice for the total order. On receipt of 10% deposit payment of the invoice total, Plungie will commence manufacturing the Goods.
- 2.4. Failure to pay your deposit within 7 days of the proforma invoice issued will trigger your order to be cancelled.
- 2.5. The maximum amount of time that Plungie can hold an order for is 120 days from the date of deposit. Failure to proceed with dispatch or collection within this time frame will result in the Order and freight being quoted.
- 2.6. The balance invoice is due thirty (30) days prior to expected delivery date of the Goods. On receipt of full payment of the invoice Plungie will commence finishing the Goods.
- 2.7. Fourteen (14) days prior to expected delivery date of the Goods, Plungie will contact the Customer to confirm freight **Dispatch Date** and time.
- 2.8. In the event that the Customer experiences delays and requests to change the agreed **Dispatch Date**, the Customer must inform Plungie of a delay or postponement of the delivery of the Goods at or before 14 days of the scheduled delivery date.
- 2.9. If a change occurs within 14 days of the agreed Dispatch Date, this will incur a **Cost Recovery Fee** of \$1,100 and an ongoing **Storage Fee** of \$150 per week.
- 2.10. The Customer, when ready to take delivery of the pool, will contact the storage yard to re arrange a new delivery date and complete the payment of any outstanding invoices including the additional storage and delivery fees, prior to dispatch.

3. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS

- 3.1. In the event the Customer provides information relating to the provision of the Goods (including but not limited to plans, specifications, measurements, quantities and other information provided by the Customer), it is the Customer's responsibility to verify the accuracy of the information prior to either the Customer or Plungie placing an order based on the information. Plungie will not be responsible or accept any liability for any loss, damages, or costs resulting from the Customer's failure to comply with this clause;
- 3.2. The Customer acknowledges that Plungie may rely on the accuracy of any information provided by the Customer to Plungie under clause 3.1 in providing the Goods.

4. DIMENSIONS, PLANS AND SPECIFICATIONS

- 4.1. All industry tolerances shall apply to the dimensions, plans and measurements of the Goods, unless Plungie and the Customer agree otherwise in writing.
 - 4.2. The Customer will ensure that any and all engineering drawings, specification and advisory guidelines provided to the Customer by Plungie are adhered to, unless otherwise reviewed and approved by external professional parties or agreed to in writing by the parties.
 - 4.3. All engineering drawing provided in relation to site preparation are typical designs only and represent typical representations of site conditions. Additional engineering and assessment may be required in some circumstances at the Customers expense.
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5. COMPLIANCE AND CONSENTS

- 5.1. The Customer shall obtain (at the sole expense of the Customer) all necessary Approvals including but not limited to council permits, development approvals, building approvals and barrier protection guidelines in respect of the Goods.

6. TITLE

- 6.1. Customer agrees that title to the Goods shall not pass until:
- 6.1.1. the Customer has paid Plungie all amounts owing to Plungie pursuant to these terms; and
 - 6.1.2. the Customer has met all of their other obligations due by the Customer to Plungie in respect of all contracts, quotes and orders entered into between Plungie and the Customer.
- 6.2. It is further agreed that, until title to the Goods passes to the Customer in accordance with clause 6.1 above:
- 6.2.1. the Customer is to hold the Goods as Plungie's bailee and, unless the Goods have become fixtures, must return the Goods to Plungie on Plungie's request;
 - 6.2.2. the Customer will hold the benefit of the Customer's insurance of the Goods on trust for Plungie and must pay to Plungie the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - 6.2.3. the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for fair market value. If the Customer sells, disposes or parts with possession of the Goods, then the Customer must hold the proceeds of any such act on trust for Plungie and must pay or deliver the proceeds to Plungie on demand;
 - 6.2.4. the Customer must not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer must hold the resulting product on trust for the benefit of Plungie and must sell, dispose of or return the resulting product to Plungie as it so directs;
 - 6.2.5. unless the Goods have become fixtures, the Customer irrevocably authorises Plungie to enter any premises where Plungie believes the Goods are kept and recover possession of the Goods;
 - 6.2.6. Plungie may recover possession of any Goods in transit, whether or not the Goods have been delivered to the Customer;
 - 6.2.7. the Customer must not create any Security Interest over the Goods or allow any Security Interest to come into existence; and
 - 6.2.8. Plungie may commence proceedings to recover any outstanding monies owing by the Customer to Plungie notwithstanding that ownership of the Goods has not passed to the Customer.

7. Delivery

- 7.1. The Customer acknowledges and agrees:
- 7.1.1. Plungie's standard freight quotes are based on delivery from their facility to the address specified on the Quote using the following insured **Transport Solutions**:

- 7.1.1.1.a Semi-Trailer (unless otherwise specified or requested by the Customer at the time of placing an Order)
- 7.2. Plungie will ensure that the freight company is insured to carry the Goods and the benefit of the insurance will be held in trust for the Customer and must pay to the Customer the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- 7.3. The Customer will be contacted 14 days prior to expected delivery date of the Goods to confirm allocated **Dispatch Date**.
- 7.4. If the Customer informs Plungie at this time, or within the 14 days before completion, that the Customer cannot take delivery at the scheduled allocated **Dispatch Date**, a **Cost Recovery Fee** of \$1,100 plus tax will be added to the freight and cartage charge to cover the cost of transport to, crane loading, crane unloading and storage at, a third-party storage facility until the product can be received by the Customer.
- 7.5. If the Customer has arranged collection of their pool from a Plungie site using their own freight supplier, a **Load Out Fee** of \$165 plus tax per pool will be charged.
- 7.6. The Transport Solutions outlined in clause 7.1.1 (as the context requires) will allow for the successful delivery of the Goods;
- 7.7. If road and/or Site access will not allow for the Transport Solution referred to in clause 7.1.1 above, non-standard freight pricing will apply on a price on application basis.
- 7.8. Authority of access to the Site for successful delivery of the Goods is the Customer's responsibility;
- 7.9. Should transport and delivery be attempted to the Customer's nominated site utilising the Transport Solution and fail due to access or Site conditions, any and all additional charges relating to delays, alternate delivery Site requirements, or return costs will be at the Customer's sole responsibility and expense;
- 7.10. If the Goods being supplied by Plungie to the Customer includes or consists of a Plungie pool (**Pool**), then the Customer will be required to hire and pay for (at their own cost) a crane to assist with the delivery and installation of the Pool;
- 7.11. Delivery of the Goods does not include crane hire for placement of the Pool on the Customer's Site. Delivery will include transport up to the closest logistically possible position utilising the Transport Solution, at the Customer's specified Site but will not include any costs to hire a crane or associated equipment for the installation of the Pool or any other Goods at the Customer's nominated Site;
- 7.12. It is the Customer's responsibility to ensure the required crane is on-site at the time of delivery of the pool, as per the scheduled time agreed by Plungie and the Customer 14 days prior (refer to Clause 2.7), for the purposes of transporting the Pool from the delivery truck and placing the Pool onto the Customer's nominated Site;
- 7.13. Standard delivery includes an unload time allocation of one hour. Any delays beyond one hour will trigger additional charges to the Customer at a rate of \$250 plus tax per hour;
- 7.14. If the Customer's Site poses challenges for the standard Transport Solution, Plungie may (but is not obligated to) coordinate with the Customer's crane hire company to arrange delivery of the Pool to their depot for onward delivery on a more suitable delivery truck for the Customer's Site.
- 7.15. The Customer must ensure that their selected builder or installer coordinates with Plungie for access to the nominated Site and the delivery of the Pool prior to **Dispatch Date**.

- 7.16. Plungie accepts no liability for Goods damaged due to incorrect lifting or incorrect securing of load by the Customer's selected crane or transport provider. Goods must be lifted and installed within Plungie's provided specifications available at the time of purchase.

8. DELAYS AND STORAGE

- 8.1. As per clause 2.4, when the Customer has completed payment for the balance owing (30 days prior to the scheduled delivery date) they are committed to the agreed **Dispatch Date**.
- 8.2. In the event that the Customer experiences delays and requests to change the agreed Dispatch Date, the Customer must inform Plungie of a delay or postponement of the delivery of the Goods at or before 14 days of the scheduled delivery date.
- 8.3. If a change occurs within 14 days of the agreed **Dispatch Date**, this will incur a fee of \$1,100.00 (**Cost Recovery Fee**) and an ongoing fee of \$150.00 per week (**Storage Fee**).
- 8.4. An invoice for the Storage Fee will be raised on the initial **Dispatch Date** and the pool will be dispatched to a designated storage yard.
- 8.5. The Customer, when ready to take delivery of the pool, will contact the designated storage yard to re-arrange a new delivery date and complete the payment of any outstanding invoices including the additional storage and delivery fees, prior to dispatch.

9. UNIFORM COMMERCIAL CODE, ARTICLE 9 ("UCC")

- 9.1. In this clause 9, the terms financing statement and security agreement have the respective meanings ascribed thereto by the UCC, Article 9.
- 9.2. Upon assenting to these terms, the Customer acknowledges and agrees that these terms constitute a security agreement for the purposes of the UCC and creates a Security Interest in:
- 9.2.1. all Goods previously provided, and to be provided in the future, by Plungie to the Customer;
 - 9.2.2. all the Customer's present and after acquired property, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a Security Interest in for the purposes of securing repayment of all monetary obligations of the Customer to Plungie for Goods – that have previously been provided and that will be provided in the future by Plungie to the Customer.
- 9.3. The Customer undertakes to:
- 9.3.1. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Plungie may reasonably require to;
 - 9.3.1.1. file a UCC-1 financing statement in relation to a Security Interest with the Texas Office of the Secretary of State;
 - 9.3.1.2. file any other document necessary or otherwise desired in order to create, perfect or protect a Security Interest; or
 - 9.3.1.3. file a UCC-3 in order to correct a defect in a statement referred to in clause 9.3.1.1 or clause 9.3.1.2.
 - 9.3.2. indemnify, keep indemnified and upon demand reimburse, Plungie for all expenses incurred in filing, amending or terminating a financing statement or releasing any subject collateral;

- 9.3.3. not file a financing change statement in respect of a Security Interest without the prior written consent of Plungie;
- 9.3.4. not file, or permit to be filed, a financing statement or an amendment to a financing statement in relation to any Goods in favour of a third party without the prior written consent of Plungie;
- 9.3.5. immediately advise Plungie of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales; and
- 9.3.6. in each case, to the extent not prohibited by applicable Law, (i) waive its right to receive notice under, and any other rights in respect to, Sections 9-611, 9-620(e), 9-621 and 9-623 of the UCC; (ii) waive any right to object to the sale, transfer, conveyance or surrender of the Goods; (c) waive any obligation of Plungie to dispose of the Goods under the UCC or otherwise; (d) waives any other right, whether legal or equitable, which the Customer may possess in and to the Goods; (e) agree that the transactions contemplated herein have been effected and negotiated in a commercially reasonable manner; and (f) agrees that Plungie has acted in, and has effected and negotiated the transactions contemplated herein, in good faith. The Customer acknowledges and agrees that the waivers set forth in this Section 9.3.6 and elsewhere in these terms and conditions each constitute material consideration for the agreement of Plungie to comply with its obligations under these terms and conditions.

10. DEFECTS, WARRANTIES AND RETURNS, Song-Beverly Warranty Act

- 10.1. To the maximum extent permitted by law and except as expressly provided to the contrary in these terms including the Warranty, any liability of Plungie for any loss or damage, however caused (including by negligence of Plungie), suffered by the Customer in connection with the Goods is limited to the amounts paid by the Customer to Plungie for the Goods and Services received by the Customer pursuant to these terms.
- 10.2. The Customer must inspect the Goods on delivery or receipt of the Goods and must within twenty-four (24) hours of delivery or receipt of the Goods notify Plungie in writing of any evident defect/damage, error or omission (including Plungie's workmanship), shortage in quantity, or failure to comply with the description or quotation. If requested by Plungie, the Customer will provide photographic reports to Plungie to help clearly identify the proposed defect. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Plungie to inspect/review the Goods at a date and time nominated by Plungie.
- 10.3. Under the Song-Beverly Warranty Act, certain representations and warranties may be implied in these terms or apply to the Goods ("**Non-Excluded Guarantees**").
- 10.4. Plungie acknowledges that nothing in these terms purports to modify or exclude the Non Excluded Guarantees.
- 10.5. Except for the Non-Excluded Guarantees and as otherwise expressly set out in these terms and conditions and the Warranty, Plungie makes no warranties or other representations under these terms including, but not limited to, the quality or suitability of the Goods, and Plungie's liability in respect of these warranties is limited to the fullest extent permitted by Law.



- 10.6. If Plungie is required to rectify, re-provide, or pay the cost of re-providing the Goods under this clause, but is unable to do so, then Plungie may refund any money the Customer has paid to Plungie for the Goods but only to the extent that such refund shall take into account the value of Goods which have been provided to the Customer which were not defective.
- 10.7. Plungie's liability for any defect or damage in the Goods is:
- 10.7.1. limited to the Warranty; and
 - 10.7.2. limited to any warranty to which Plungie is entitled (if Plungie did not manufacture the Goods);
 - 10.7.3. otherwise negated absolutely.
- 10.8. Subject to this clause 10.8, Goods for return will only be accepted by Plungie provided that:
- 10.8.1. the Customer has complied with their obligations under these terms, all contracts, Quotes and Orders entered into between Plungie and the customer and that Plungie has agreed that the Goods are defective; and
 - 10.8.2. the Goods are returned:
 - 10.8.2.1. within a reasonable time and no later than 7 days after the delivery of receipt of the Goods by the Customer; and
 - 10.8.2.2. at the Customer's cost.
 - 10.8.3. the Goods are returned in as close a condition to that in which they were delivered or received by the Customer as is possible.
- 10.9. Plungie shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 10.9.1. the Customer failing to provide proper maintenance, or storage or security of any Goods;
 - 10.9.2. the Customer using any Goods for any purpose other than that for which they were designed;
 - 10.9.3. the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 10.9.4. the Customer failing to follow any instructions or guidelines provided by Plungie;
 - 10.9.5. the Customer's installation of the Goods by any party other than Plungie;
 - 10.9.6. fair wear and tear, any accident, or act of God including major weather events such as flash flooding, fire and storm events.
- 10.10. In the case of second-hand Goods, the Customer acknowledges that it has had full opportunity to inspect the Goods prior to delivery, and accepts them as is and with all faults, and that, to the maximum extent permitted under Section 1792.5 of the Song-Beverly Warranty Act, no warranty is given by Plungie as to the quality or suitability for any purpose, and any implied warranty, statutory or otherwise, is expressly excluded and effectively waived. The Customer acknowledges and agrees that (i) Plungie has agreed to provide the Customer with the Goods, and calculated the price thereof, in reliance upon this clause 10.10; (ii) the entire risk as to the quality and performance of any such second-hand Goods is with the Customer; and (iii) should any such second-hand Goods prove defective following their purchase, the Customer and not Plungie assumes the entire cost of all necessary servicing or repair.
- 10.11. Plungie may (in its absolute discretion) accept non-defective Goods for return, in which case Plungie may require the Customer to pay a handling and restocking fee of up to fifty percent (50%) of the value of the returned Goods, plus any freight costs.

- 10.12. Notwithstanding anything contained in this clause, if Plungie is required by Law to accept a return of Goods, then Plungie will only accept a return of the Goods on the conditions imposed by that Law.

11. INTELLECTUAL PROPERTY

- 11.1. Where Plungie has designed, drawn or developed Goods for the Customer, then the copyright in any designs, specifications, drawings, other technical information or documents shall remain the property of Plungie.
- 11.2. The Customer warrants that all designs, specifications or instructions given to Plungie will not cause Plungie to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify and keep indemnified Plungie against any action taken by a third party against Plungie in respect of any such infringement.
- 11.3. The Customer agrees that Plungie may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods (or digital media thereof) which Plungie has created for or on behalf of the Customer.
- 11.4. The Customer will not use, share or publish any Plungie documents including images, logos, videos and plans without the express written consent and authorisation of Plungie.

12. DEFAULT AND CONSEQUENCES OF DEFAULT

- 12.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month, and at Plungie's sole discretion such interest shall compound monthly at such a rate (after as well as before any judgment).
- 12.2. If the Customer owes Plungie any money the Customer shall indemnify Plungie from and against all costs and disbursements incurred by Plungie in recovering the debt (including but not limited to internal administration fees, attorney's fees and expenses, court costs, and bank dishonour fees).
- 12.3. Further to any other rights or remedies Plungie may have under these terms, if the Customer has made payment to Plungie by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Plungie under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under these terms.
- 12.4. Without prejudice to Plungie's other remedies at Law, Plungie shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Plungie shall, whether or not due for payment, become immediately payable if:
- 12.4.1. any money payable to Plungie becomes overdue, or in Plungie's opinion the Customer will be unable to make a payment when it falls due; or
 - 12.4.2. the Customer has exceeded any applicable credit limit provided by Plungie; or
 - 12.4.3. the Customer becomes insolvent, convenes a meeting with its creditors, proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or
 - 12.4.4. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. CANCELLATION



- 13.1. Without prejudice to any other remedies Plungie may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms, Plungie may suspend or terminate the provision of Goods to the Customer and Plungie will not be liable to the Customer for any loss or damage the Customer suffers arising from Plungie exercising its rights under this clause;
- 13.2. Plungie, in its absolute discretion, may cancel any contract to which these terms apply, or cancel provision of the Goods at any time before the Goods have been delivered, by giving written notice to the Customer. On giving such notice, Plungie shall repay to the Customer any money paid by the Customer for the Goods. Plungie shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3. In the event that the Customer cancels an Order or Quote for the provision of the Goods, the Customer shall be liable for liquidated damages arising from their cancellation in the amount of ten percent (10%) of the total purchase price for the subject Order or Quote.
- 13.4. Such amount shall be retained by us from any refund otherwise due to the Customer due to their cancellation.
- 13.5. The Customer acknowledges and agrees that liquidated damages as described in the preceding Section 14.3 are a genuine estimate of our foreseeable damages and sole remedy for such cancellation.
- 13.6. Notwithstanding the foregoing refund provision, no cancellation will be accepted, and no refund will be due to the Customer, after production has commenced for an Order which has been placed by the Customer for any Orders for Goods made to the Customer's specifications, including but are not limited to add-ons such as ferrules and waterline tile provisions, and other non-stocked items.

14. CONSUMER PRIVACY LAW.

The Customer is hereby directed to their State Privacy Disclosures page for additional regional disclosures for residents of certain U.S. states, including California.

<https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>

15. UNPAID SELLER'S RIGHTS

- 15.1. Where the Customer has left any Goods or other items with Plungie for repair, modification, exchange, or for Plungie to perform any other service in relation to the Goods or other items, and Plungie has not received or been tendered the whole of any monies owing to it by the Customer, Plungie shall have, until all monies owing to Plungie by the Customer are paid in full:
 - 15.1.1. a lien on the Goods or other items; and
 - 15.1.2. the right to retain or sell the Goods or items, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 15.2. The lien of Plungie shall continue despite the commencement of proceedings, or judgment for any moneys owing to Plungie having been obtained against the Customer.

16. SERVICE OF NOTICES

- 16.1. Any written notice given under this contract shall be deemed to have been given and received:
 - 16.1.1. by handing the notice to the other party, in person;

- 16.1.2. by leaving it at the address of the other party as stated in this contract;
 - 16.1.3. by sending it by registered post to the address of the other party as stated in this contract;
 - 16.1.4. if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - 16.1.5. if sent by email to the other party's last known email address.
- 16.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

17. GENERAL

- 17.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2. These terms and conditions, and any contract to which they apply, shall be governed by the laws of the State of Texas, United States. The Customer agrees that the state or federal courts located in Dallas, Texas shall have exclusive jurisdiction to hear and determine any claims or disputes between Plungie and the Customer pertaining to these terms and conditions or to any matter arising out of or relating to these terms and conditions. The Customer expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and hereby waives any objection which the Customer may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens*.
- 17.3. Subject to clause 13, Plungie shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Plungie of these terms and conditions (alternatively Plungie's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 17.4. The Customer shall not, without the prior written consent of Plungie, be entitled to set off against, or deduct from the price payable in respect of the Goods (by way or counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Customer by Plungie, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5. Neither party may assign, transfer or novate all or any part of its rights or obligations under or relating to these terms without the written consent of the other party.
- 17.6. Plungie may elect to subcontract out any services to be provided in respect of the Goods, including transport services. The Customer agrees and understands that they have no authority to give any instruction to any of Plungie's subcontractors without the authority of Plungie.
- 17.7. The Customer agrees that Plungie may amend these terms by notifying the Customer in writing. Any variations to these terms shall be deemed to take effect from the date on which the Customer accepts such variations, or otherwise at such time as the Customer makes a further request for Plungie to provide Goods to the Customer.

- 17.8. Except for payment obligations, neither party will be responsible for any failure or delay in the performance of its obligations under these terms, any Quote or Order due to causes beyond its reasonable control, including, but not limited to, pandemics, acts of God, war, riot, terrorism, embargoes, the act of any government or competent authority, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. Both parties warrant that they have the power to enter into these terms and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that these terms create binding and valid legal obligations on them.

Schedule 1 Plungie Warranty

Warranty

1. STATUTORY WARRANTIES

- 1.1. PLUNGIE USA, INC., A DELAWARE CORPORATION (Plungie) acknowledges that nothing in this warranty shall be interpreted as excluding or restricting certain statutorily implied representations and warranties applicable under the Song-Beverly Warranty Act and shall be read and interpreted subject thereto.

2. WHERE GOODS ACQUIRED AS A CONSUMER

- 2.1. The Goods come with certain implied representations and warranties that cannot be excluded under the Song-Beverly Act. As more fully set forth therein and subject thereto, the Customer is entitled to repair, buyback or replacement of defective Goods. Plungie reserves all of its options available thereunder.
- 2.2. This warranty is in addition to and not in substitution of any applicable Statutory Guarantees.

3. LIMITATION OF LIABILITY

- 3.1. To the maximum extent permitted by law, Plungie will not be liable for indirect loss or damage that is not reasonably foreseeable loss or damage from a failure in the Goods

4. PLUNGIE PRODUCTS WARRANTY

- 4.1. In addition to any applicable Statutory Guarantees or other rights and remedies available under law, Plungie warrants that:
- a. the Plungie Products are of merchantable quality; and
 - b. the Plungie Products comply with all applicable laws including regulations, mandatory industry codes and applicable standards.

5. ECOFINISH WARRANTY

- 5.1. In addition to any applicable Statutory Guarantees or other rights and remedies available under law, Plungie warrants that:
- the ecoFINISH interior of the product is of merchantable quality; and
 - the ecoFINISH interior of the products complies with all applicable laws including regulations, mandatory industry codes and applicable standards.

6. EQUIPMENT WARRANTY

- 6.1. In addition to any applicable Statutory Guarantees or other rights and remedies available under law, Plungie warrants that the Equipment is warranted on the terms and for the period specified in the manufacturer's warranty for each specific item of the Equipment.

7. WARRANTY TERMS AND DURATION

- 7.1. Apart from transfer to a purchaser of the real property in which the Plungie Product has been fully installed and is operational, this warranty is not transferable. This warranty applies only to Plungie Products installed and operational at the original installation site address.
- 7.2. This warranty does not cover faults which arise from negligent use or accident or misuse or damage or normal wear and tear or the use of the product for any purpose not intended by Plungie.
- 7.3. The duration of the **Plungie Products Warranty** is for a period of 10 years from the date of delivery to the original purchaser.
- 7.4. The duration of the **ecoFINISH Warranty** is for a period of 10 years from the date of delivery to the original purchaser.
- 7.5. The duration of the **Equipment Warranty** is for the period specified in the manufacturer's warranty for each specific item of the Equipment from the date of delivery to the original purchaser.
- 7.6. If there is a warranted defect under the Plungie Products Warranty, the ecoFINISH Warranty or the Equipment Warranty, within the relevant warranty period, then Plungie will, at Plungie's sole option:
- repair or replace the products or any part of them that is defective; or
 - provide again or rectify any services or part of them that are defective; or
 - wholly or partly recompense you if they are defective.

8. EXCLUSIONS

- 8.1. Under this warranty, Plungie will only replace, repair or pay for the costs of a product defect itself and is not responsible for paying anything further beyond the product itself, including (but not limited to) additional installation costs, other repairs, damage to surrounds, site dumping, travel costs, additional cramage, transport and freight costs, including costs for the removal and disposal of the original defective product, except that Plungie will pay for return freight of a product to you after repair or replacement.
- 8.2. Each warranty does not cover:
- any products which are modified in any way by any person other than a person authorized by Plungie, including, but not restricted to, products tampered with, altered, modified, repaired, or not installed in accordance with Plungie's installation

instructions;

b. damage caused by or resulting from:

- i. negligent use or misuse of the products;
- ii. lack of maintenance of the products;
- iii. normal wear and tear of the products;
- iv. modification or alteration of the products;
- v. negligent or faulty transportation of the products where that transportation has not been arranged by Plungie;
- vi. storage or installation of the products once they have been delivered;
- vii. crane lifting of the products;
- viii. tree root damage, decking, fencing, surrounding concreting, geotechnical faults and conditions, downpipes, or water chemical levels;
- ix. general flooding;
- x. wall structures that are not constructed pursuant to all applicable local building codes or governing agency rules;
- xi. normal deterioration, scratches, any abuse to the finish or wear of the products that was caused by any person post-installation by moving or dragging equipment, fittings, furniture, or any other physical item over the surface of the product;
- xii. any matter happening post installation such as weather conditions, animals, pests, vermin or similar;
- xiii. use or any failure or defect of structures upon or in which the products have been applied;
- xiv. acts of God, lightning or natural disasters or other cause beyond the direct control of Plungie including without limitation indirect and consequential losses or expenses suffered by the purchaser;
- xv. over sanitation of the water including poor water chemistry maintenance which may bleach fade or damage the interior coating of the pool;
- xvi. freeze/thaw, which can lead to cracking or other adverse consequences to the product. Products may be particularly susceptible to freeze/thaw damage in locations that experience freezing temperatures; or.
- xvii. extreme heating for a prolonged period of time above 93 degrees Fahrenheit.

c. personal injury, property damage or economic loss, however caused;

d. claims relating to pool safety rules, regulations or legislation, including claims relating to fencing;

e. claims that would have been paid by an insurer, through no fault of Plungie, where reasonable home warranty insurance had been taken out;

f. claims relating to electrical work completed in relation to the products that has not been completed by Plungie;

g. consequential losses or expenses suffered by you or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party;

h. claims of warranty made outside two months from the purchaser becoming aware of the defect or material damage or from when a reasonable person should have become aware of the defect or material damage. This enables Plungie to promptly act and avoids further damage; or

i. claims not accompanied by appropriate documentation evidencing the date of purchase, site preparation, council approvals, delivery and installation of the product, the invoice number, the customer name and address and the alleged defect/damage.

8.3. Plungie accepts no responsibility for repairs made other than by Plungie or its authorized agents.

9. WARRANTY SERVICE

- 9.1. Warranty service may be obtained as follows:

Website: <https://plungie.com/en-us/more-info/warranty>

Phone: 1-800-758-644

10. GOVERNING LAW & JURISDICTION; SEVERABILITY

- 10.1. This Agreement shall be governed by, and construed in accordance with, the laws of the State of TEXAS applicable to contracts entered into and to be performed entirely within the state. Each party agrees that the state or federal courts located in DALLAS, TEXAS shall have exclusive jurisdiction to hear and determine any claims or disputes between or among any of the parties hereto pertaining to this Agreement or to any matter arising out of or relating to this Agreement. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue or forum non convenient.
- 10.2. The provisions of this warranty shall be severable in the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

11. DEFINITIONS AND INTERPRETATION

- 11.1. In this agreement:

ecoFINISH means the ecoFINISH pool coating applied to the concrete parts of the Plungie Products.

Equipment means equipment other than the concrete shell and parts included within that concrete shell supplied to you by Plungie but manufactured by third parties other than Plungie including without limitation pool pumps, chlorinators, heaters and filter units (and other associated pool items and plumbing).

Plungie Products means the concrete pool shell and any plumbing (including the skimmer box) that is contained within the concrete pool shell only.