

# Terms and Conditions

## Annexure I: Warranty

10 year Plungie Product warranty  
10 year ecoFINISH warranty  
Equipment: Refer to manufacturer



## Terms and Conditions

### Definitions:

The following definitions apply in these terms:

1. **ACL** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
2. **Approval** means any licence, permit, consent, approval, determination, certificate or permission which is required from any Government Body or under any Law.
3. **Cost Recovery Fee** has the meaning given to it in Clause 2.9.
4. **Customer** means the entity listed as customer or client in any Quote or Order.
5. **Delivery Date** means the date the Goods are delivered to site.
6. **Dispatch Date** means the date the Goods leave from the Plungie factory.
7. **Equipment** means pool equipment including, but not limited to, pumps, cleaners, filtration equipment, heaters, covers and accessories.
8. **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.
9. **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.
10. **Law** means Commonwealth, State or Local government legislation including regulations, by-laws and other subordinate legislation, the common law and Approvals (including any condition or requirement under them).
11. **Load Out Fee** has the meaning given to it in clause 7.5
12. **Order** means a contract between Plungie and the Customer for the provision of Goods incorporating a Quote and these terms.
13. **Plungie** means each of:
  - (a) Plungie Production Pty Ltd ACN 648 273 670; and
  - (b) Plungie Pty Ltd ACN 624 305 559
14. **PPS Act** means the *Personal Property Securities Act 2009* (Cth).
15. **PPSR** means the Personal Property Securities Register established under section 147 of the PPS Act.
16. **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.

17. **Security Interest** has the meaning given to that term under the PPS Act.
18. **Services** means the advisory services, goods delivery and installation of goods (where applicable).
19. **Site** means the location nominated by the Customer for the delivery of the Goods.
20. **Storage Fee** has the meaning given to it in clause 2.9.
21. **Transport Solutions** has the meaning given to it in clause 7.1.1.
22. **Warranty** means the Plungie Warranty attached as Annexure 1 to these terms and conditions.

**23. WHS Law;**

**(In Qld only)** means the *Work Health and Safety Act 2011 (Qld)*, the *Work Health and Safety Regulations 2011 (Qld)*,

**(In NSW only)** means the *Work Health and Safety Act 2011 (NSW)*, the *Work Health and Safety Regulations 2017 (NSW)*,

**(In Vic only)** means the *Occupational Health & Safety Act 2004 (Vic)*, the *Occupational Health and Safety Act 2017 (Vic)*,

**(In ACT only)** means the *Work Health and Safety Act 2011 (ACT)*, the *Work Health and Safety Regulations 2011 (ACT)*,

**(In Tas only)** means the *Work Health and Safety Act 2012 (Tas)*, the *Work Health and Safety Regulations 2012 (Tas)*,

**(In NT only)** means the *Work Health and Safety (National Uniform Legislation) Act (2011) (NT)* and the *Work Health and Safety (National Uniform Legislation) Regulations (2011) (NT)*,

**(In WA only)** means the *Occupational Safety and Health Act 1984 (WA)*, the *Occupational Safety and Health Regulations 1996 (WA)*,

**(In SA only)** means the *Work Health and Safety Act 2012 (SA)*, the *Work Health and Safety Regulations 2012 (SA)*,

and all other applicable occupational health and safety legislation, regulations, rules, Codes of Practice and Australian Standards in the relevant jurisdiction of the Site as amended from time to time.



## 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 installed 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.
- 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,

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.

## 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 30% 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 requoted.
- 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 \$1,100.00 including GST and an ongoing **Storage Fee** of \$150.00 including GST 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.

#### 5. COMPLIANCE AND CONSENTS

- 5.1. The Customer and Plungie shall comply with the provisions of all Law that may be applicable to the Goods, including any WHS Laws relating to building/construction sites and any other relevant safety standards or legislation.
- 5.2. 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.
- 5.3. At the request of the Customer or the Customer's nominated builder or installer, a representative, agent or employee from Plungie may, in Plungie's sole discretion and without being under any obligation to do so, attend the nominated Site.
- 5.4. Where Plungie elects to attend the nominated Site, at the request of the Customer or the Customer's nominated builder or installer:
  - a. and the Site is in Queensland, the Customer acknowledges that Plungie:
    - i. does not hold a licence under the *Queensland Building and Construction Commission Act 1991 (Qld)* ('QBCC Act');
    - ii. will not and is not permitted to undertake or carry out any building work (as those terms are defined in the QBCC Act);
  - b. Plungie shall only access and use the nominated Site in accordance with:
    - i. the Customer's or the Customer's nominated builder's or installer's reasonable directions and/or instructions, policies, or procedures; and
    - ii. all WHS Law;
  - c. the Customer:
    - i. shall not be entitled to rely on and will forever hold Plungie harmless for any advice or information provided by Plungie to the Customer (or to the Customer's nominated builder or installer) while in attendance at the nominated Site;
    - ii. before acting on any advice or information provided by Plungie (or its representatives, employees or agents) must seek or must cause its nominated builder or installer to seek additional engineering and/or building advice and assessment to ensure the advice or information is appropriate for the conditions of the nominated Site; and
    - iii. to the extent permitted by Law, indemnifies and must keep Plungie, its representatives, employees and agents indemnified against any action, claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with Plungie's attendance at the nominated Site (including arising out of or in connection with advice or information

given by its representatives, employees or agents while in attendance at the nominate Site).

## 6. TITLE

- 6.1. Plungie and the Customer agree that Plungie's obligations to the Customer for the provision of the Goods shall not cease and 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 12T Flatbed Body Truck (unless otherwise specified or requested by the Customer at the time of placing an Order)

- 7.1.1.2. 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 (including GST) 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** per pool will be charged depending on the collection location. This will be quoted at time of order.
- 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 (including GST) per hour;
- 7.14. If the Customer's Site poses challenges for the standard Transport Solution, Plungie may (but is not obligated to) liaise 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 nominated builder or installer liaises 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 nominated 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 including GST (**Cost Recovery Fee**) and an ongoing fee of \$150.00 including GST 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. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- 9.1. In this clause 9, the terms financing statement, financing change statement, security agreement, and security interest has meaning given to it by the PPS Act.
- 9.2. Upon assenting to these terms, the Customer acknowledges and agrees that these terms constitute a security agreement for the purposes of the PPS Act 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 being a charge, 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. register a financing statement or financing change statement in relation to a security interest on the PPSR;
- 9.3.1.2. register any other document required to be registered by the PPS Act; or
- 9.3.1.3. 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 registering a financing statement or financing change statement on the PPSR or releasing any registration made thereby;

- 9.3.3. not register a financing change statement in respect of a security interest without the prior written consent of Plungie;
- 9.3.4. not register, or permit to be registered, a financing statement or a financing change 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.
- 9.4. Other than as outlined below, Plungie and the Customer agree that sections 96, 115 and 125 of the PPS Act do not apply to the security agreement created by these terms.
- 9.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPS Act.
- 9.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7. Unless otherwise agreed to in writing by Plungie, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPS Act.
- 9.8. The Customer must unconditionally ratify any actions taken by Plungie under clauses 9.4 to 9.7 above.
- 9.9. Subject to any express provisions to the contrary nothing in these terms is intended to have the effect of contracting out of any of the provisions of the PPS Act.

## **10. SECURITY AND CHARGE**

- 10.1. In consideration of Plungie agreeing to provide the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms (including, but not limited to, the payment of any money).
- 10.2. The Customer indemnifies Plungie from and against all Plungie's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Plungie's rights under this clause.
- 10.3. The Customer irrevocably appoints Plungie (and each director of Plungie) as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

## **11. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010 (CCA)**

- 11.1. 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 Services received by the Customer pursuant to these terms.
- 11.2. 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.

- 11.3. Under the ACL, certain rights and guarantees may be implied in these terms or apply to the Goods ("**Non-Excluded Guarantees**").
- 11.4. Plungie acknowledges that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
- 11.5. Except as expressly set out in these terms and conditions and the Warranty or in respect of the Non-Excluded Guarantees, Plungie makes no warranties or other representations under these terms including, but not limited to, the quality or suitability of the Goods, Plungie's liability in respect of these warranties is limited to the fullest extent permitted by Law.
- 11.6. If the Customer is a consumer within the meaning of the ACL, Plungie's liability is limited to the extent permitted by section 64A of Schedule 2 of the ACL.
- 11.7. If Plungie is required to rectify, re-provide, or pay the cost of re-providing the Goods under this clause or the ACL, 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.
- 11.8. If the Customer is not a consumer within meaning of the ACL, Plungie's liability for any defect or damage in the Goods is:
  - 11.8.1. limited to the Warranty; and
  - 11.8.2. limited to any warranty to which Plungie is entitled (if Plungie did not manufacture the Goods);
  - 11.8.3. otherwise negated absolutely.
- 11.9. Subject to this clause 11.9, Goods for return will only be accepted by Plungie provided that:
  - 11.9.1. 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
  - 11.9.2. the Goods are returned:
    - 11.9.2.1. within a reasonable time and no later than 7 days after the delivery of receipt of the Goods by the Customer; and
    - 11.9.2.2. at the Customer's cost up to a maximum amount of \$5,000.00; and
  - 11.9.3. the Goods are returned in as close a condition to that in which they were delivered or received by the Customer as is possible.
- 11.10. Notwithstanding clauses 11.1 to 11.8 but subject to the ACL, Plungie shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - 11.10.1. the Customer failing to provide proper maintenance, or storage or security of any Goods;

- 11.10.2. the Customer using any Goods for any purpose other than that for which they were designed;
  - 11.10.3. 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;
  - 11.10.4. the Customer failing to follow any instructions or guidelines provided by Plungie;
  - 11.10.5. fair wear and tear, any accident, or act of God including major weather events such as flash flooding, fire and storm events.
- 11.11. In the case of second-hand Goods, unless the Customer is a consumer under the ACL, the Customer acknowledges that it has had full opportunity to inspect the Goods prior to delivery, and accepts them as is with all faults, and that, to the extent permitted by Law, 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. The Customer acknowledges and agrees that Plungie has agreed to provide the Customer with the Goods, and calculated the price thereof, in reliance of this clause 11.1.
- 11.12. 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 twenty percent (20%) of the value of the returned Goods, plus any freight costs.
- 11.13. 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.

## 12. INTELLECTUAL PROPERTY

- 12.1. 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.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.

## 13. DEFAULT AND CONSEQUENCES OF DEFAULT

- 13.1. 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).

- 13.2. 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, legal costs on a solicitor and own client basis, Plungie's contract default fee, and bank dishonour fees).
- 13.3. 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 13 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.
- 13.4. 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:
  - 13.4.1. 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
  - 13.4.2. the Customer has exceeded any applicable credit limit provided by Plungie; or
  - 13.4.3. 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
  - 13.4.4. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **14. CANCELLATION**

- 14.1. 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;
- 14.2. 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.
- 14.3. In the event that the Customer cancels an Order or Quote for the provision of the Goods, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Plungie as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4. If Plungie (in its absolute discretion) grants a refund to the Customer, any such refund will incur a 10%+ restocking fee of the total order value. In addition, all costs incurred or recovered will be deducted from the refund amount.
- 14.5. Cancellation of certain Orders for Goods made to the Customer's specifications, including but not limited to add-ons such as ferrules and waterline tile provisions, or for non-stockist items, will not be accepted once production has commenced, or an Order has been placed by the Customer.

## **15. PRIVACY ACT 1988**



- 15.1. The Customer agrees for Plungie to obtain from a credit reporting body (**CRB**) a credit report containing personal credit information (including but not limited to name, address, date of birth, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Plungie.
- 15.2. The Customer agrees that Plungie may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
  - 15.2.1. to assess an application by the Customer; and/or
  - 15.2.2. to notify other credit providers of a default by the Customer; and/or
  - 15.2.3. to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - 15.2.4. to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 15.3. The Customer consents to Plungie being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4. The Customer agrees that personal credit information provided may be used and retained by Plungie for the following purposes (and for other agreed purposes or required by):
  - 15.4.1. the provision of Services; and/or
  - 15.4.2. analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
  - 15.4.3. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - 15.4.4. enabling the collection of amounts outstanding in relation to the Services.
- 15.5. Plungie may give information about the Customer to a CRB for the following purposes:
  - 15.5.1. to obtain a consumer credit report.
  - 15.5.2. allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.6. The information given to the CRB may include:
  - 15.6.1. personal information as outlined in clause 15.1 above.
  - 15.6.2. name of the credit provider and that Plungie is a current credit provider to the Customer.
  - 15.6.3. whether the credit provider is a licensee.
  - 15.6.4. type of consumer credit.
  - 15.6.5. details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/ termination of the credit account and the amount requested);
  - 15.6.6. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Plungie has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- 15.6.7. information that, in the opinion of Plungie, the Customer has committed a serious credit infringement;
- 15.6.8. advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150.00).
- 15.7. The Customer shall have the right to request (by email) from Plungie:
  - 15.7.1. a copy of the information about the Customer retained by Plungie and the right to request that Plungie correct any incorrect information; and
  - 15.7.2. that Plungie does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8. Plungie will destroy personal information upon the Customer's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the Law.
- 15.9. The Customer can make a privacy complaint by contacting Plungie via email at [accounts@plungie.com](mailto:accounts@plungie.com). Plungie will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 16. UNPAID SELLER'S RIGHTS

- 16.1. 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:
  - 16.1.1. a lien on the Goods or other items; and
  - 16.1.2. 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.
- 16.2. 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.

## 17. SERVICE OF NOTICES

- 17.1. Any written notice given under this contract shall be deemed to have been given and received:
  - 17.1.1. by handing the notice to the other party, in person;
  - 17.1.2. by leaving it at the address of the other party as stated in this contract;
  - 17.1.3. by sending it by registered post to the address of the other party as stated in this contract;
  - 17.1.4. 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;
  - 17.1.5. if sent by email to the other party's last known email address.

- 17.2. 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.

## 18. GENERAL

- 18.1. 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.
- 18.2. These terms and conditions, and any contract to which they apply, shall be governed by the laws of Queensland, the State in which Plungie has its principal place of business and are subject to the jurisdiction of the Courts.
- 18.3. Subject to clause 14, 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).
- 18.4. 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.
- 18.5. 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.
- 18.6. 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.
- 18.7. 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.
- 18.8. 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, 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 creates binding and valid legal obligations on them.

## **Annexure 1 – Warranty**

### **1. STATUTORY GUARANTEES**

- 1.1. Plungie Pty Ltd (ACN 624 305 559) (Plungie) acknowledges that nothing in this warranty shall be interpreted as excluding or restricting certain statutory guarantees and warranties applicable under the Australian Consumer Law and shall be read subject to the provisions of the Competition and Consumer Act 2010 (Cth) (Statutory Guarantees).

### **2. WHERE GOODS ACQUIRED AS A CONSUMER**

- 2.1. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For non-major failures, Plungie reserves all of its options.
- 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 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. In relation to any defect for goods covered by section 64A of the Australian Consumer Law, Plungie reserves all of its options.

### **4. PLUNGIE PRODUCTS WARRANTY**

- 4.1. In addition to any applicable Statutory Guarantees or other rights and remedies available under law, Plungie warrants that:
  - d. the Plungie Products are of merchantable quality; and
  - e. 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:
  - a. the ecoFINISH interior of the product is of merchantable quality; and
  - b. 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:
  - a. repair or replace the products or any part of them that is defective; or
  - b. provide again or rectify any services or part of them that are defective; or
  - c. 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 craneage, 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:
  - a. any products which are modified in any way by any person other than a person authorised 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.
  - xvii. extreme heating for a prolonged period of time above 34 degrees.
- 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, except to the extent of liability imposed by the Australian Consumer Law;
  - 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 authorised agents.

## **9. WARRANTY SERVICE**

- 9.1. Warranty service may be obtained by contacting Plungie:

Phone: 1800 758 644

Address: Plungie Pty Ltd

1037 Kingsford Smith Drive, Pinkenba, QLD 4008, Australia

Email: [info@plungie.com](mailto:info@plungie.com)

## **10. SEVERABILITY**

- 10.1. This warranty is governed by and is to be construed in accordance with the laws applicable in the state of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.
- 10.2. Any provision in this warranty, which is unenforceable or partly unenforceable, is to be severed where possible to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of the terms of the warranty.

## 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.