

Shark Shield Conditions of Sale

These Conditions of Sale ("**Conditions**") apply in respect of all offers to sell, quotations and other commercial transactions for the supply of goods to you by Shark Shield Pty Ltd ABN 87 099 782 091 (in these Conditions referred to as "we", "us" or "our"). This Agreement is subject to and incorporates all instructions, warnings and terms and conditions contained in the Manual and the terms and conditions of any distribution agreement executed by you and us (if applicable). By accepting Delivery of the Products, you indicate your acceptance of all the terms and conditions of this Agreement.

1. Interpretation

In these Conditions:

"**Agreement**" means the agreement for the sale and purchase of the Products comprising the Order Form, these Conditions, the Manual and (if applicable) any Distribution Agreement;

"**Delivery**" has the meaning described in condition 5;

"**Distribution Agreement**" means a distribution agreement (if any) executed by you and us pursuant to which we supply Products to you;

"**Manual**" means any and all written documentation and user instructions for the Products supplied by us with the Products;

"**Order Form**" means any order emailed or faxed is attached to these Conditions or provided by you to us under a Distribution Agreement;

"**Products**" means the products described on the Order Form or an Agreement;

"**Taxes**" means all governmental taxes (including any applicable consumption tax or goods and services tax), charges, duties or costs of any nature, and all applicable interest or penalties, imposed (directly or indirectly) on us in connection with the Products;

"**Warranty Certificate**" means the Manufacturer's Warranty Certificate contained in the Manual, including the Indemnity and purchaser undertakings.

2. Order and Agreement

2.1 An agreement binding on you and us for the supply of the Products specified on the Order Form ("**Agreement**") will come into existence on the date we accept the Order Form in accordance with these Conditions. The Agreement incorporates all instructions, warnings, and terms and conditions contained in the Manual and the terms of any Distribution Agreement.

2.2 If there is any conflict or inconsistency between the terms of a Distribution Agreement, the Manual, these Conditions or an Order Form, the terms of those documents in descending order will take precedence.

2.3 You are responsible for ensuring the accuracy of the details appearing on the Order Form.

3. Price of Products

3.1 The price of the Products will be set pursuant to any Distribution Agreement or if there is no Distribution Agreement, in accordance with a price list or a quotation we have provided. If a price is per our quotation, that price will be valid for 30 days only or until earlier acceptance by you, after which time a price may be altered by us without notice to you.

3.2 We reserve the right, by notice to you at any time before Delivery, to increase the price of the Products to reflect any increase in costs to us due to any factor beyond our reasonable control (including any change in Delivery dates, quantities or specifications for the Products which is requested by you or any delay caused by your instructions or your failure to give us adequate information or instructions).

3.3 Except as otherwise stated on the Order Form or as otherwise agreed between you and us in writing, all prices given by us do not include the cost of Delivery.

3.4 The amounts payable by you for, or in connection with, any supply of Products under an Agreement, do not include any Taxes.

3.5 You must pay us an additional amount on account of the Taxes (equal to the amount of the Taxes), at the same time and in the same manner as the other amounts payable by you are required to be paid to us.

4. Terms of Payment

4.1 Subject to any special payment terms shown on the Order Form or otherwise agreed in writing between you and us, we will be entitled to invoice you for the price of the Products prior to, at, or after Delivery of the Products and you must pay the price of the Products within the time period indicated on the invoice.

4.2 If you fail to make any payment by the due date, then without prejudice to any other right or remedy available to us, we may:

4.2.1 terminate the Agreement and suspend any further Deliveries to you;

4.2.2 appropriate any payment made by you to such of the Products as we may think; and

4.2.3 charge you interest on the unpaid amount at a rate of 10% per annum until payment is made in full.

5. Delivery

5.1 Delivery of the Products will be made by either:

5.1.1 us or our agent delivering the Products to your premises; or

5.1.2 you collecting the Products from our premises.

5.2 Any dates quoted for Delivery of the Products are approximate only and we will not be liable for any delay in Delivery of the Products however caused.

6. Title and Risk

6.1 Risk of damage to or loss of the Products will pass to you in the case of Products delivered to your premises, at the time the Products are unloaded from our delivery vehicle or in the case of Products collected from our premises, at the time the Products are collected from us by you.

6.2 Notwithstanding Delivery and the passing of risk in the Products, the property and ownership of the Products will not pass to you until we have received in cleared funds, payment in full for all indebtedness including the price of the Products delivered and any other sums which are or may become outstanding under the Agreement or otherwise. We have a security interest in those Products which we may register on the Personal Property Security Register.

6.3 Until such time as full property and ownership in the Products passes to you in accordance with condition 6.2:

6.3.1 you must hold the Products as our fiduciary agent and bailee and must keep the Products separate from all other goods except as is expressly consented to by us in writing from time to time;

6.3.2 you must keep the Products properly stored, protected and identified as our property;

6.3.3 we may at any time require you to deliver up the unpaid Products to us and, if you fail to do so immediately, to enter your premises or any third party's premises where the Products are stored and repossess the Products; and

6.3.4 you agree that we are authorised to enter any premises where the Products are located and you will indemnify us against all claims, damages or other losses of whatever nature suffered as a consequence of recovering or attempting to recover the Products.

7. Your Obligations

7.1 You warrant that the Products will be used, maintained and stored by you strictly in accordance with the instructions, warnings and terms and conditions contained in the Manual.

7.2 If you have purchased the Products for resale, you agree to take all reasonable steps to procure a duly completed and signed Warranty Certificate from each purchaser of the Products.

7.3 You will indemnify us against all claims, damages or other losses of whatever nature suffered by us as a result of your failure to comply with condition 7.1 or condition 7.2.

8. No Warranty

8.1 No warranties except those expressly set out in these Conditions.

8.2 We expressly exclude all liability for any injury, loss or damage caused as a result of any unauthorised modification to or incorrect use of the Products, or any failure to use, maintain and store the Products strictly in accordance with the instructions, warnings and terms and conditions contained in the Manual.

8.3 We exclude:

8.3.1 all conditions, warranties and terms implied by statute, general law or custom except any implied condition or warranty which cannot be excluded under any applicable statute ("**Non Excludable Condition**");

8.3.2 all liability to you for consequential or indirect damages arising out of or in connection with an Agreement or the Products even if we knew they were possible or they were otherwise foreseeable, including, without limitation, lost profits and damages suffered as a result of claims by any third parties; and

8.3.3 all liability to you for our acts or omissions or those of our employees, agents or contractors arising out of or in connection with an Agreement or the Products.

8.4 Our liability for breach of any express provision of an Agreement or any Non Excludable Condition (except a Non Excludable Condition the limitation of which is prohibited by legislation) is limited at our option to one of supplying, replacing, repairing or refunding the price paid for the Products in respect of which the breach occurred.

8.5 You acknowledge that it is in the nature of the Products and the environment in which they are designed to operate that it is not possible for us to give and we do not give any undertaking or representation that the Products will be always effective to deter or prevent shark attack notwithstanding use of the Products.

8.6 Subject to this condition 8, you warrant that you have not relied on any representation made by us which has not been stated expressly in the Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.

8.7 You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in the Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation.

9. General

9.1 The Agreement is the entire agreement between the parties about its subject matter and supersedes all other contracts, arrangements and understandings relating to the supply and delivery of the Products. The Agreement will override any terms presented by you to us (whether with the Order Form or otherwise), which terms and conditions will be void and of no effect.

9.2 The Agreement is governed by and construed in accordance with the laws applicable in Western Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

9.3 No party is liable for any failure to perform, or delay in performance of, its obligations under the Agreement if the failure or delay is due to anything beyond that party's reasonable control. This condition does not apply to any obligation to pay money.

9.4 If part or all of any provision of the Agreement is illegal or unenforceable in any jurisdiction in which the Agreement applies, the relevant provision (or part thereof) may be severed from the Agreement in respect of that jurisdiction only, and the remaining provisions of the Agreement continue in force.