

# Head Squared Aquatics Terms and Conditions

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement the following terms shall have the following meanings:
- 1.1.1 'the Chargeable Hours' means all hours or parts thereof, for which the Supplier or its employees, contractors and sub-contractors provide Services to the Customer during any period or time;
  - 1.1.2 'the Customer' means any person who obtains Goods and/or Services from the Supplier
  - 1.1.3 'Delivery' means delivery of the Goods and/or Services to such destination as the Customer shall notify to the Supplier;
  - 1.1.4 'the Goods' means all products manufactured or supplied by the Supplier to the Customer;
  - 1.1.5 'Hourly Rate' means the price per hour charged by the Supplier for the provision of the Services whether those Services are provided by the Supplier its employees or by any contractors and sub-contractors engaged by the Supplier to provide the Services;
  - 1.1.6 'Invoice Value' means the sum invoiced by the Supplier to the Customer in respect of the Goods and/or Services, including any VAT and any amount for transport or insurance;
  - 1.1.7 'the Services' means any services provided by or on behalf of the Supplier;
  - 1.1.8 'the Supplier' means Head Squared Aquatics (a trading name of Head Squared (Heating) Limited, its subsidiaries and parent companies and any associated companies or businesses;
  - 1.1.9 'the Parties' means the Customer and the Supplier;
  - 1.1.10 'VAT' means value added tax or any other sales tax.
- 1.2 Reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.
- 1.3 The headings contained in this agreement are for reference purposes only and shall not be incorporated into this agreement.

## 2 RIGHTS AND DUTIES OF THE SUPPLIER

- 2.1 Subject to clause 2.2, the Supplier agrees to supply the Goods and/or Services to the Customer in accordance with orders and/or requests received from the Customer, or from any person held out by the Customer of having the authority to make such an order and/or request, or from any person reasonably deemed to have the authority to make such an order and/or request on the Customer's behalf.
- 2.2 The Supplier shall be entitled to vary the Goods and/or Services provided under this agreement where the Supplier deems it reasonably necessary to (on the giving of reasonable notice to the Customer).

- 2.3 The Supplier will perform the Services with reasonable care and to the standards reasonably expected within the industry relating to the Services.

### **3 CUSTOMER'S OBLIGATIONS**

- 3.1 To enable the Supplier to perform its obligations under this Agreement, the Customer must:
- 3.1.1 Co-operate fully with the Supplier;
  - 3.1.2 Provide any information reasonably required by the Supplier;
  - 3.1.3 Obtain all necessary permissions permits approvals and the like required to allow the Services to be performed lawfully, prior to the commencement of the Services; and
  - 3.1.4 Comply with all other requirements and proposals agreed between the Parties whether they are agreed in writing or otherwise.

### **4 DELIVERY AND RISK**

- 4.1 Any delivery dates quoted whether verbally or otherwise are estimates only and in regard to any such date time shall not be of the essence.
- 4.2 Delivery of the Goods to the Customer's address or any other place stipulated by the Customer shall constitute delivery and the risk therein shall pass upon such delivery to the Customer.
- 4.3 The Company shall be entitled to make partial deliveries by instalments and this Agreement shall apply to each partial delivery.

### **5 LOSSES OR DAMAGE OF GOODS IN TRANSIT**

- 5.1 The Supplier will not be responsible for damage to any of the Goods or loss of the Goods or part thereof in transit unless the Customer gives written notice of a claim to the Supplier and to the carrier:
- 5.1.1 In the case of damage, within 3 days after having received the Goods, and
  - 5.1.2 In the case of loss or shortage of delivery, within 3 days of the date of delivery of the Goods under the relevant consignment.
- 5.2 The Customer will be asked to sign a copy of the Supplier's carrier's delivery manifest as acknowledgement of receipt of Goods. The Customer should inspect the Goods carefully, as an unqualified signature shall be deemed to signify the Customer's acceptance that the Goods are in good condition.

### **6 TITLE**

- 6.1 Full legal title in the Goods shall not pass to the Customer until the Supplier has received payment for the full Invoice Value (including any interest accruing and owing to the Supplier).

- 6.2 During such time as title in the Goods remains in the Supplier, the Supplier shall be entitled to inspect the Goods or repossess them at any time and may enter the premises where they are stored or are reasonably thought to be stored.

## **7 PAYMENT FOR THE GOODS AND/OR SERVICES**

- 7.1 In the absence of a separate agreement, the prices for all Services provided under this agreement shall be calculated by multiplying the Supplier's Hourly Rate (or such other rate as agreed between the Parties in writing) by the Chargeable Hours.
- 7.2 The prices for all Goods to be supplied under this agreement shall be the price notified to the Customer by the Supplier either orally or in writing (inclusive of packaging costs) less any allowances which may be agreed between the supplier and Customer from time to time. All prices are exclusive of any applicable VAT or delivery charges or costs, for which the Customer shall be additionally liable.
- 7.3 Subject to clause 7.4, the Supplier shall be entitled to submit an invoice to the Customer at regular intervals throughout any period of time where the Supplier is providing Goods and/or Services to the Customer.
- 7.4 On placing all orders for the Goods (if payment has not been made in full to the Supplier prior to delivery) the Customer shall be invoiced for the total invoice price including VAT upon delivery. The terms of payment for such invoices are 30 days from date of invoice.
- 7.5 If the Customer fails to pay the invoiced amount for any Goods and/or Services within 30 days after the invoice date, the Supplier may, without prejudice to any other right or remedy it may have, cancel or suspend any further delivery to the Customer under any order or sell or otherwise dispose of the Goods that are the subject of any order by the Customer and apply the proceeds of sale to the overdue payment.
- 7.6 The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 3% per annum above the base rate of the Bank of England in force from time to time.
- 7.7 Payments must be made in pounds sterling in cash to a bank account notified by the Supplier in writing to the Customer from time to time.

## **8 TERMINATION**

- 8.1 The Supplier may terminate this agreement summarily by notice in writing to the Customer if:
- 8.1.1 the Customer commits any material breach of any of the provisions of this agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 8.1.2. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 8.1.3 the Customer is declared bankrupt or insolvent;
- 8.1.4 the Customer goes into liquidation, except for the purposes of amalgamation or reconstruction;

- 8.1.5 a receiver is appointed over any of the property or assets of the other party.
- 8.2 For the purposes of clause 8.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance provided that time of performance is not of the essence.
- 8.3 The Supplier shall be entitled to terminate this agreement by giving not less than 30 days' written notice to the Customer if there is at any time a material change in the management, ownership or control of the Customer.

## **9 TERMINATION CONSEQUENCES**

- 9.1 On the expiry or other termination of this agreement:
  - 9.1.1 all outstanding invoices shall become immediately payable by the Customer;
  - 9.1.2 any invoices not yet submitted for Goods or Services, or both, ordered before termination shall become immediately payable on receipt of invoice; and
  - 9.1.3 the Supplier shall be entitled to keep any deposit paid by or on behalf of the Customer.

## **10 WARRANTY**

- 10.1 Subject to clause 10.2, the Supplier warrants that the Goods are of a satisfactory quality and reasonably fit for their normal purpose. The Supplier gives no other warranties in respect of the Goods, their condition or delivery, and any warranties implied by statute are excluded to the fullest extent permissible under law.
- 10.2 The Supplier does not offer any warranties as to the accuracy or completeness of the information contained in any of the Goods.
- 10.3 This Agreement does not affect any statutory rights the Customer may have.
- 10.4 Due to the complex ecosystems present in water features ponds and the like, the Supplier does not warrant that where the Goods and/or Services relate to water systems in any way that the water feature or any part thereof will be clear, or free from debris weeds or any other animal plant or other living organism, or that any fish or other animals or plants living in the water feature will become, or remain healthy.

## **10 EXCLUSION OF LIABILITY**

- 10.1 The Supplier has no liability other than the duty to exercise the reasonable skill and care of a competent pond designer and/or consultant. The Supplier accepts no liability for indirect or consequential loss, such as loss of profits, business, costs, expenses (unless such losses were reasonably foreseeable to both of us when this contract was entered into) or any other form of economic loss.
- 10.2 Nothing in this Agreement shall exclude or restrict the liability of either party for:
  - 10.2.1 death or personal injury resulting from that party's negligence; or
  - 10.2.2 fraud or fraudulent misrepresentation.

- 10.3 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

**11 ASSIGNMENT**

- 11.1 The Supplier shall be entitled to assign the rights and obligations under this Agreement at any time to any other party by notice in writing to the Customer.
- 11.2 The Customer may not assign the rights and obligations under this agreement without the prior written consent of the Supplier.

**12 ENTIRE AGREEMENT**

This agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this agreement, this agreement may be varied only by a document signed by both parties.

**13 WAIVER**

Failure by the Supplier to enforce at any time or for any period any one or more of the rights conferred under this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all or any of the rights hereunder.

**14 SEVERABILITY**

If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

**15 FORCE MAJEURE**

This agreement shall be suspended in the event of national emergency, act of war (whether declared or undeclared), prohibitive governmental regulations, breakdown of plant machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, Act of God, inclement weather, fire or if any other cause beyond the reasonable control of the parties renders performance of this agreement impossible. If such period of suspension exceeds 100 days, then the Supplier may upon giving written notice to the Customer require that this agreement be terminated forthwith, and all money due to the Supplier must be paid immediately.

**16 THIRD PARTY RIGHTS**

The parties to this agreement do not intend that any term of it shall be enforceable by a third party as defined in the Contracts (Rights of Third Parties) Act 1999 under the provisions of that Act.

## **17 NOTICES**

- 17.1 Any notice required to be given under this Agreement shall be in writing and signed by the person giving it and may be delivered personally or sent by facsimile transmission or other electronic means or by first class post to the address set out above in respect of each of the parties or to such other address as may otherwise be notified by either party to the other as being an alternative address for service.
- 17.2 Any notice so served shall be deemed to be received:
- 17.2.1 if delivered personally, on the day of delivery;
- 17.2.2 if sent by facsimile transmission or other electronic means, on the day of transmission provided it is sent during business hours on a business day and if not on the next business day; and
- 17.2.3 if sent by post, 48 hours after the date of posting.

## **18 GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

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