

# TERMS & CONDITIONS

## Buy Outright & Rent to Buy

### 1. WARRANTIES

- 1.1 Water bottle and float valve must be cleaned monthly.
- 1.2 Filter replacement is required every 6 months.
- 1.3 Filters to be purchased only from Awesome Water Mackay. Purchasing from any other supplier will void warranty.
- 1.4 Excludes accidental damage, wilful damage, negligence and damage caused by pests and vermin.
- 1.5 Cooler must remain vertical at all times.
- 1.6 Warranties are not transferable.
- 1.7 Freight cost incurred in honouring warranty not included if outside designated service area.

### 2. PAYMENT

- 2.1 Deposit or Payment in Full is required upon delivery.
- 2.2 Future payments are to be made on due dates as per agreement on reverse side of this page.
- 2.3 Any failed payments may be re-submitted at any time.
- 2.4 Goods remain the property of Awesome Water Mackay until full payment has been received.
- 2.5 Until payment has been received in full, the applicant is to inform Awesome Water Mackay of any change in contact details, address or credit card details.
- 2.6 If any payments are more than 30 days in arrears all future payments become due and payable.
- 2.7 Failure to make payment will entitle Awesome Water Mackay to take repossession of the goods.
- 2.8 To allow this, you grant Awesome Water Mackay an irrevocable right to enter at any time any premises where the goods are held, or thought to be held, and to remove said goods
- 2.9 In case of repossession any payments made to date will not be refundable.
- 2.10 Repossessed goods will be held for customer return for a period of 30 days awaiting full payment. Thereafter all rights to goods by the customer are revoked.

### 3. CREDITS / RETURNS

- 3.1 Goods supplied in accordance with a customer order cannot be returned for credit.
- 3.2 Goods are supplied on a firm sale basis only, NOT on approval.
- 3.3 Acceptance of delivery of any goods by you will be deemed to be your acceptance of these Conditions, notwithstanding anything that may be stated to the contrary in your enquiries or on your order.

### 4. RETENTION OF SALES

Notwithstanding delivery of the goods, title in goods (legally and equitably) will remain with Awesome Water Mackay until the goods are sold in the normal course of business or until the customer has paid in full all amounts owing pursuant to any invoice issued by Awesome Water Mackay in relation to such goods, including all GST owing and other taxes, duties and levies. The buyer acknowledges that the buyer is in possession of such goods as Bailee for Awesome Water Mackay pending payment in full.

### 5. PASSING OF TITLE

Title to Goods constituting an order shall pass only upon payment and shall not pass to the buyer on receipt of the relevant order or upon delivery of the Goods to the buyer, its nominated distributor, customer agent or courier, as the case may be.

### 6. PASSING OF RISK

Risk in each order passes to the buyer upon delivery of that order to the buyer or collection of that order by the buyer's nominated distributor, customer agent or courier as the case may be.

### 7. COST

If the buyer defaults in performing it's/their obligations under these Conditions and Awesome Water Mackay incurs expenses in enforcing its rights under these terms (for example and without limitation, expenses incurred by Awesome in recovering of any moneys owed to Awesome Water Mackay), the buyer must pay those expenses to Awesome Water Mackay on demand (including all legal costs on a full indemnity basis).

### 8. GOVERNING LAW

These terms of trade will be governed by and construed according to the law of Queensland and the parties agree to submit to the jurisdiction of the courts and tribunals of that state.

### 9. LIABILITY

The Trade Practices Act 1974 (Cth) and similar laws may confer rights and remedies on you in relation to the provision by Awesome Water Mackay of goods or services ordered by you which cannot be excluded, restricted or modified (Non-excludable Rights). Awesome Water Mackay does not exclude any Non-excludable Right but does exclude all other conditions and warranties implied by custom, law or statute. Except as provided for by the Non-excludable Rights.

- a) All goods and services ordered by the buyer are provided without warranties other than those expressly set in these terms of trade;
- b) Awesome Water Mackay does not warrant that those goods and services will be complete or free from all defects;
- c) Awesome Water Mackay does not warrant that it will continue to supply goods of the kind purchased or that filters or other products used in relation to the supply of water products will continue to be available to Awesome Water Mackay to enable Awesome Water Mackay to keep those goods and services up-to-date. Subject to this clause under no circumstances (including but not limited to any act or omission on the part of Awesome Water Mackay) will Awesome Water Mackay be liable for any loss or damages (including, without limitation, indirect, incidental, special or consequential or punitive damages and damages for loss of profits) whatsoever which result from any use or any inability to use Awesome Water Mackay goods or services. To the fullest extent permitted by law, Awesome Water Mackay's liability for breach of any implied warranty or condition which cannot be excluded is limited at the option of Awesome Water Mackay to supply of the good or service ordered by you again or paying for their resupply.

# TERMS & CONDITIONS

## Rental Agreement

### SECTION ONE – TERM

The term of this lease is for a minimum of twelve months and commences on the date the equipment described is delivered to the lessee's premises. At the end of the twelve month period the lease will continue in place until a one month notice period to remove the goods is given to the lessor.

### SECTION TWO - RENT

Lessee shall pay the rent payments shown above, the first of which shall be due on the commencement date of this lease, and subsequent payments shall be due each period thereafter on a billing date established by lessor. Rent payments shall be due whether or not lessee has received any notice that such payments are due.

### SECTION THREE - MAINTENANCE

This rental agreement provides for the lessor to fully maintain the cooler with regular services and filter changes every six months. The Lessee will not restrict the Lessors access to the equipment in any way that will inconvenience the Lessor in his attendances to service and maintain the equipment. The amount payable per year is determined in part by the services per year specified and therefore any additional services over and above the number specified may be invoiced separately by the lessor. Any repairs during the rental period are to be undertaken by the Lessor at no charge provided they are not caused by misuse, wilful damage or neglect of the equipment. The Lessee will maintain the equipment in a clean, healthy and hygienic condition and will not tamper with, damage or remove the equipment from the nominated premises.

### SECTION FOUR - INDEMNITY

Lessee shall indemnify lessor against, and hold lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including reasonable attorney fees arising out of, connected with, or resulting from the property subject to this lease, including, but not limited to the manufacture, selection, delivery, use, operation, or return of such property. The Lessee will be liable for any injury, loss or damage to any person or property arising out of or in any way connected with the use of the equipment at all times whilst the equipment is located on the premises of the Lessee. The lessee hereby indemnifies the Lessor in respect of any claim, action or proceeding made or taken against the Lessor in connection with or arising out of, or in any way incidental to injury, loss or damage connected with the use of the equipment irrespective of any negligence of the Lessor.

### SECTION FIVE - LOSS OR DAMAGE

Lessee assumes and shall bear the entire risk of loss, theft, destruction, or damage of or to any part of the equipment ("loss or damage") from any cause whatsoever, whether or not covered by insurance, and no such loss shall release lessee of its obligation under this agreement in the event of loss or damage.

Lessee, at the sole option of lessor, shall

- (a) at lessee's expense, repair the equipment to the satisfaction of lessor; or
- (b) at lessee's expense, and to the satisfaction of lessor, replace the equipment with similar or like equipment in good condition and repair and of comparable value, with clear title thereto in lessor; or
- (c) make payment to lessor the total of the amounts specified below:

A) All rental payments past due or currently owed to lessor under this lease, including unpaid taxes; and

B) All future rental payments that would accrue over the remaining term of this lease.

On lessor's receipt of the payment specified by subsections (1) and (2) above, lessee shall be entitled to whatever interest lessor may have in such equipment, as is, where is, without warranty express or implied. The parties agree that the sum of the amount required by subsections (1) and (2) will equal the total amount payable to lessor in the event of "loss or damage."

### SECTION SIX - INSURANCE

Lessee shall provide, maintain, and pay for insurance against the loss or theft of or damage to the equipment, for its full replacement value, naming

lessor as a loss payee and public liability and property damage insurance naming lessor as an additional insured.

### SECTION SEVEN - ASSIGNABILITY

Without lessor's prior written consent, lessee shall not

- (a) assign, transfer, pledge, or otherwise dispose of this lease, the equipment, or any interest therein or
- (b) sublet or lend the equipment or permit it to be used by anyone other than lessee or lessee's employees / family / friends.

### SECTION EIGHT - LOCATION

At lessee's own risk, lessee shall use or permit the use of the equipment solely at the location specified in this lease, or if none is specified, at lessee's billing address set forth above, and such equipment shall not be moved without lessor's prior written consent.

### SECTION NINE - TITLE; PERSONAL PROPERTY

The equipment is, and shall at all times remain, property of lessor, and lessee shall have no right, title, or interest except as expressly set forth in this lease. The equipment is and shall at all times be and remain personal property although the equipment or any part of it may now be or hereafter become in any manner affixed or attached to real property or any improvements.

### SECTION TEN - DEFAULT AND REMEDIES

A) Lessee shall be in default under this lease if lessee shall:

- 1) Fail to pay any rent, the payments on any other lease or indebtedness of lessee to lessor arising independently of this lease, or other amount required in this lease within 14 days after the rent becomes due and payable;
- 2) Fail to perform or observe according to its terms any covenant contained in this lease, or any other instrument or document executed in connection with this lease;
- 3) Become insolvent (however defined), cease business as a going concern, make an assignment for the benefit of creditors, or cause a petition for receiver or in bankruptcy to be filed by or against lessee (including a petition for reorganization or an arrangement); or
- 4) Commit or fail to commit any act that results in jeopardising the rights of lessor or causes lessor to deem itself insecure as to its rights.

B) If lessee is in default under this lease, lessor, with or without notice to lessee, shall have the right to exercise concurrently or separately, and without any election of remedies to be deemed made, the following remedies:

- 1) Elect that the rental payments due be accelerated and the entire amount of rental be due immediately;
- 2) Terminate this lease;
- 3) Enter on lessee's premises and without any court order or other process of law repossess and remove the equipment, whether with or without notice to lessee; any such repossession shall not constitute a termination of this lease unless lessor so notifies lessee in writing, and lessor shall have the right, at its option, to lease the equipment to any other person or persons on such terms and conditions as lessor shall determine; or
- 4) Sell the equipment to the highest bidder at public or private sale, at which sale lessor may be the purchaser.

In the event either sub-section 3 or 4 is exercised, there shall be due from lessee, and lessee will immediately pay to lessor, the difference between the total amount of rentals to be received from any third person or the purchase price at such sale, as the case may be, and the total unpaid rental provided to be paid, together with the estimated fair market value of the equipment for the original lease termination date, plus all costs and expenses of lessor in repossessing, releasing, transporting, repairing, selling, or otherwise handling the equipment.

### SECTION ELEVEN - NOTICES AND DEMANDS

Service of all notices under this agreement shall be sent by Australian regular mail addressed to the party involved at its respective address set forth above or to such other address as the parties may hereafter substitute by written notice.