

# Terms and Conditions

Aquacast Liner LLC  
100 Lake Drive Suite 200  
Newark, DE 19702

## I. GENERAL POLICIES

1. Purchase of any products sold by Aquacast Liner LLC (ACL) shall be subject to and expressly limited by the terms and conditions contained herein. These terms and conditions supersede all prior and contemporaneous oral and written representations, warranties, communications and agreements regarding the products. ACL reserves the right at any time to amend these terms and conditions. Additional special terms and conditions of ACL may not be applicable with respect to certain products.
2. Order acceptance. All orders are subject to acceptance at the corporate office of ACL at the address listed above, and shall not be binding until so accepted in writing or by actual shipment, whichever occurs first. No changes or cancellations may be made by the Buyer after an order has been accepted by ACL without written consent of ACL. ACL may terminate, cancel or refuse to fill any order or purchase order from Buyer at any time upon notice to Buyer.
3. Contingencies. ACL shall not be liable for any failure or delay in the fulfillment of any order due to events beyond its reasonable control, including but not limited to, Buyer's instructions or lack of instructions, strikes, shortage of material, accidents, fire, terrorist attacks, flood, or other acts of God.
4. Changes or Cancellations. All prices, sales policies, and conditions of sale are subject to change without notice. All quotations on "special make orders" and "bid business" automatically expire in thirty (30) days unless otherwise stated.
5. Warranties and Disclaimers. ACL WARRANTS TO BUYER THAT ALL PRODUCTS MANUFACTURED BY ACL AND FURNISHED HEREUNDER WILL BE MERCHANTABILITY OF GOOD MATERIAL AND WORKMANSHIP AND WILL BE MANUFACTURED AND SOLD IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS. BUYER WARRANTS THAT THE PRODUCTS MANUFACTURED BY ACL MEET BUYER'S SPECIFICATIONS. THE FOREGOING WARRANTIES DO NOT APPLY TO PRODUCTS WHICH HAVE BEEN MISUSED OR INADEQUATELY STORED. THE PRECEDING WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR STATEMENTS OF CONDITIONS, WHETHER ORAL, WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS SOLD, WHETHER AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. Limitations of Liability. Notwithstanding anything in any order, purchase order or document to the contrary, ACL will not under any circumstances, whether as a result of breach of contract, breach of warranty, tort or otherwise be liable to Buyer or any third party for indirect, consequential, incidental, special or exemplary damages, including, but not limited to loss of profits or revenues, loss of use or damage to any associated equipment, cost of capital, cost of substitute products, facilities, downtime costs or claims of Buyer's customers. For a period of one (1) year from the date of delivery of the goods or products, ACL's liability on any claim of any kind for any loss or damage arising out of, resulting from or concerning any aspect of this agreement or from the goods furnished hereunder shall not exceed the price of the specific products delivered pursuant to this agreement which gives rise to the claim.
7. Indemnification. Buyer shall indemnify, defend, hold harmless and reimburse ACL and its shareholders, officers, directors, employees, agents, representatives, successors and assigns for and against any loss, liability, claim, interest, cost, penalty, expense and damage of any kind (including, but not limited to, reasonable attorneys' fees) claimed by any third party for personal injury, including death, arising from or in connection with Buyer's negligence or intentional conduct of Buyer, its agents, employees, affiliates or

other representatives in any way relating to this agreement or the products sold hereunder.

8. **Governing Law/Jurisdiction/Venue.** This agreement shall be construed and governed in accordance with the internal laws of the State of Delaware, without regard to its conflicts of law provisions. ACL and Buyer agree that any litigation arising out of this agreement shall be brought only in federal and state courts sitting in New Castle County, Delaware and ACL and Buyer consent to the jurisdiction of said courts and each waive their right to transfer or change venue.

9. **Anti-Kickback.** If and to the extent any discount, credit, rebate or other purchase incentive is paid or applied by ACL with respect to the goods purchased hereunder, such discount, credit, rebate or other purchase incentive shall constitute a “discount or other reduction in price,” as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute, on the goods purchased by Buyer hereunder. ACL and Buyer agree to use their best efforts to comply with any and all requirements imposed on sellers and buyers, respectively, under 42 U.S.C. § 1320a-7b(b)(3)(A) and the “safe harbor” regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h). In this regard, Buyer may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the goods or services covered by these Terms and Conditions of Sale, the net cost actually paid by Buyer.

10. **Waiver of Jury Trial.** ACL AND BUYER EACH VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY IN ANY LITIGATION WITH REGARD TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, CUSTOMER’S FAILURE TO PAY THE PURCHASE PRICE THEREFOR.

11. **Attorneys Fees and Costs.** Buyer will be liable for and pay to ACL, upon demand, a sum equal to all attorney’s fees, court costs and expenses incurred by ACL as a result of Buyer’s breach or default of these terms and conditions, including, without limitation, Buyer’s failure to fully and timely pay the purchase price for goods and products.

## II. PRICE, PAYMENT AND DELIVERY TERMS

1. **Price terms.** Prices in effect at time of order will apply.

2. **Payment terms.** Credit Card orders will be billed, and credit cards charged, at time of order acceptance. Orders on account with ACL will be invoiced upon order shipment with payment terms Net 30, unless otherwise stated on face of invoice. If a credit card or other fee-based, third-party payment method is used to settle invoices, cash discount terms will not be allowed. **INTEREST PAYABLE:** Should you fail to pay the amount owing within a period of 30 days from statement date, you agree to pay interest on the outstanding balance at the rate of 1.5% per month from the date of invoice.

3. **Taxes.** Prices quoted do not include sales, use, excise, or other taxes. All such taxes will be added as separate items to our invoices and paid by the customer. ACL reserves the right to add such taxes if appropriate exemption certificates are not on file at ACL Headquarters. ACL reserves the right to charge customers for back taxes if an exemption was improperly used. Whether or not such taxes appear on this invoice, Buyer is responsible for payment of all taxes imposed on the sale of goods or products.

4. **Incoterms.** All shipments are FOB origin, freight collect, unless otherwise specified per agreement with Buyer. Extra freight charges may be added to invoice if expediting or extra handling is required unless ACL has not fulfilled its part of the specified agreement. These charges will not apply if special delivery is a result of ACL error as determined by an ACL Customer Service Representative.

5. **Title/Security Interest.** Title to goods shipped shall pass to the customer upon payment in full for such goods to ACL by Buyer. Until ownership in the goods has passed to you, you must ensure that the goods are kept and maintained in good condition, are stored separately or marked so that they may be readily identified as the property of ACL, are not the subject of any pledge or lien, and are insured for their full replacement value against all risks.

6. No Offsets. Buyer cannot set-off, offset or contra any amounts due ACL for any reason, including, without limitation, Buyer's belief it is entitled to credit for alleged unsatisfactory or non-conforming goods or products.

### III. CREDIT AND RETURNS

1. Returns Authorization. All returns must have prior authorization from a ACL Sales or Customer Service Representative, who will advise Buyer of the proper mode of transportation for the return shipment. Authorization will be valid for thirty (30) days. ACL will authorize the return of all products in salable condition with the following exceptions:

- Products not purchased from ACL.
- Products purchased more than three (3) months prior to the return request.
- Special or custom products made to customer specifications.
- Products returned in defaced or other than original packaging.

2. Returns Information. Each return must include the following:

- Purchaser name and address.
- ACL invoice number.
- Purchaser purchase order number.
- Quantity, catalog number and description of item(s).
- Reason for return.

3. Restocking fee. All returns not due to ACL error (as determined by an ACL Customer Service Representative) will be subject to a minimum of 15% restocking/handling fee.

4. Credit. Full credit is issued only when due to ACL error (as determined by an ACL Customer Service Representative). Requests for such must be made within sixty (60) days of invoice date. The following limitations apply:

- NO CREDIT will be issued for unauthorized returns or for product that has deteriorated due to excessive shelf life or mishandling, or that is unsalable due to damage by transportation company.
- Credit will be issued only for product as sold, in full case only and in original packaging.
- Credit will be issued by credit memo once authorized return is received and condition assessed.

5. SHORTAGES AND DEFECTS: All goods which we sell to you are sold VOETSTOOTS and are deemed to be supplied in good condition and free of any defects. You will not have any claim against us for a shortage in the quantity of, or defect in, the goods delivered to you unless you notify us in writing of the shortage or defect within 3 business days after the date when the goods were delivered to you. We are not liable for any defects of any nature in any goods which you have cut, processed or treated in any way or which are sold to you as substandard, rejects or seconds. You may not withhold payment in respect of any goods which you claim are defective.

### IV. SPECIAL CONTRACTS

1. Notwithstanding Paragraph I, 1 above, all of the terms above are secondary to terms under special contract.

**GOVERNING LAW:** In the event of litigation both parties agree that the Law of the State of business registration of AquaCast Liner shall apply and both parties shall consent to the jurisdiction of said State's courts, or in the event of diversity of citizenship, the United States District Court for the (District). Both parties expressly waive a trial by jury.

**MISCELLANEOUS:** The Terms and Conditions constitute the entire agreement between you and AquaCast Liner. The Terms and Conditions supercede all prior or contemporaneous communications and proposals, whether electronic, oral or written between you and AquaCast Liner. No modification of the Terms and Conditions shall be effective unless it is authorized by AquaCast Liner. If any provision of the Terms and Conditions is found to be contrary to law, then such provision(s) shall be constructed in a manner to closely reflect, as much as possible, the intentions of the parties, with the other provisions remaining in full force and effect.