

Maytronics Australia Pty Ltd

Dealer Terms and Conditions

1. DEFINITIONS

1.1 In these Conditions:

Agreement has the meaning given to that term in clause 2.1.

Amounts Owing means all amounts owed, but not paid, by You pursuant to these Conditions, including, without limitation, any accrued interest, fees or expenses agreed to be paid by You pursuant to these Conditions and references to **Amount Owing** have a corresponding meaning.

Authorised Dealer means a party entitled to describe itself publicly as an authorised distributor of the Products.

Brand Guidelines means any guidelines provided to You regarding the use, display and publication of the Maytronics Material and Maytronics Marks, as amended from time to time.

Business Day means any day except a Saturday, Sunday or public holiday in Brisbane, Queensland.

Clients means customers who purchase Products from You who are reasonably expected to be the end-users of those Products.

Conditions means these dealer terms and conditions.

Consequential Loss means loss of bargain, loss of revenue, loss of reputation, indirect loss, loss of profit, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties), loss or damage in connection with claims against a party by third parties or loss or corruption of data.

Dealer Material means all documents, material and information made available by You to Us.

Defect means the failure of a Product to meet the Product Specifications or the requirements of these Conditions, but excludes failures that are caused or contributed to by any modification to that Product made or authorised by You, Your Personnel or Your Clients that We have not authorised in writing, and references to **Defective** have a corresponding meaning.

Extended Warranty Period means an additional 12 month warranty to the Warranty Period for Products purchased by Clients through Authorised Dealers.

Good Industry Practice means the servicing and repair of Products to a high quality, in a professional manner and to the standard ordinarily expected of distributors and retailers of pool equipment in Australia.

Insolvency Event means an event where:

- (a) an order is made or a resolution is effectively passed for Your winding-up or dissolution (except for the purpose of solvent reconstruction or amalgamation for which We have given prior written approval);
- (b) You go into liquidation or make an assignment for the benefit of, or enter into an arrangement, composition or compromise with Your creditors, or any class of creditors;
- (c) a receiver and manager, controller, administrator, trustee or similar officer is appointed over all or any part of Your assets or an application or order for such appointment is made;
- (d) execution is levied against You and is not discharged within 30 Business Days;
- (e) You are unable to pay Your debts as and when they fall due, or You are deemed unable to pay Your debts according to applicable Law or Authorisation (other than because of a failure to pay a debt or claim the subject of a good faith dispute);
- (f) You (being an individual) become bankrupt, or commit an act of bankruptcy; or

- (g) anything analogous or having similar effect to anything referred to in paragraphs (a) to (f) of this definition occurs to You.

Intellectual Property Rights means all registered and unregistered intellectual property rights, including (without limitation) in any patents, trade marks, service marks, rights in designs, trade names, copyrights, utility models, eligible layout rights and topography rights, inventions, discoveries, trade secrets, know how, software and improvements, goodwill, applications or rights to apply for any of the foregoing and all other intellectual property as defined in article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*.

Internet Policy has the meaning ascribed to that term in clause 8.2.

Law or Authorisation means any act of parliament, any subordinate legislation, rules, regulations, standards or by-laws made pursuant to the relevant act, any common law or principles of equity or any form of authorisation, approval, certification or consent from any government authority or professional or industry body.

Loss means any costs, damages, loss, demands, legal proceedings, claims, actions, fines, penalties, obligations, liabilities or expenses of any nature, including, without limitation, the costs of Our mercantile agents and the costs of any matter being referred out to a collection agent and/or solicitor for recovery.

Maytronics means Maytronics Australia Pty Ltd ACN 148 058 495.

Maytronics Ltd means Maytronics Limited, a company domiciled at Kibbutz Yizre'el 19350, Israel.

Maytronics Marks means all trademarks, service marks, brand names, badges, statements, marks, names or other identifying features, whether registered or not, or capable of registration or not, that are used by Maytronics or Maytronics Ltd in relation to the Products.

Maytronics Material means any documents or material (including physical or electronic), including, without limitation, all Product Specifications, Standards and Procedures, Brand Guidelines marketing material and any other documents or materials provided or made available to You by Us from time to time.

Order means a written request for the provision of Products to You, including via the Ordering System, on the terms and conditions contained in these Conditions and references to the term **Ordering** have a corresponding meaning.

Ordering System means an ordering system which We may direct, or have directed, You to utilise for the purposes of Ordering.

Personnel means, of a party, that party's employees, officers, contractors, Related Entities (as that term is defined in the *Corporations Act 2001* (Cth)) and subcontractors, and employees, officers, contractors and Related Entities of those subcontractors.

Primary Dealership Location means Your primary location for the sale of the Products.

Product Specifications means the specifications provided by Us, or at Our direction, pertaining to the Products.

Products means any goods supplied to You pursuant to these Conditions.

Quotation means a quotation that includes the price of requested Products, which may be provided (at our sole discretion) by way of email or may be accessed via the Ordering System.

Sales and Advertising Policy means specifications regarding the marketing, sales and promotion of the Products that are provided by, or at the direction of, Us (from time to time).

Standards and Procedures means all standards, procedures, guidelines and specifications regarding, or relating to, the Products or Your position as an Authorised Dealer (as amended

from time to time), including, without limitation, the Sales and Advertising Policy.

Tax means a tax, GST rate, levy, impost or duty and any interest, penalty, fine or expense relating to any of the foregoing or other withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Warranty Period means, in respect of any given Product, the applicable warranty period applying to that Product, as specified in the relevant warranty certificate issued by Maytronics as at the date of purchase.

Website means <https://www.maytronics.com.au/>.

We/ Us/ Our means Maytronics, for and on behalf of itself and, where applicable, as agent for Maytronics Ltd.

You/ Your means the entity set out in the account application with Us and/or the credit application with Us.

2. AGREEMENT

- 2.1 This Agreement consists of the account application and/or credit application executed by You and accepted by Us and these Conditions (**Agreement**).
- 2.2 If there is any inconsistency between the documents forming part of this Agreement, then the account application and/or credit application (including any "special conditions" therein) accepted by Us prevails to the extent of that inconsistency.
- 2.3 The Agreement commences on the date that We give You written notice that We have accepted Your account application and/or credit application and:
- (a) continues for an initial period of 12 months (**Initial Period**); and
 - (b) automatically renews for successive periods of 12 months (each period being a **Subsequent Period**), unless either party provides the other party with written notice of their intention not to renew the Agreement of not less than one month prior to the expiration of the Initial Period or the then-current Subsequent Period (as applicable),
- (**Term**).

3. ORDERING

- 3.1 You may Order Products from Us either by:
- (a) the Ordering System; or
 - (b) in writing, delivered to Maytronics' email address for Orders as specified on the Website at the time the Order is placed.
- 3.2 If You are provided with a Quotation:
- (a) the Quotation shall remain valid for acceptance by You for 14 days after the date of the Quotation; and
 - (b) if a deposit for the Products referred to in that Quotation is required, details of the required deposit will appear in the Quotation, which must be paid in full as a condition to Our acceptance of the Order.
- 3.3 You acknowledge and agree that:
- (a) in entering into the Agreement, Maytronics does so on its own behalf and as agent for, and on behalf of, Maytronics Ltd;
 - (b) by submitting an Order, you are irrevocably and unconditionally offering to acquire the relevant Product(s) the subject of Your Order, which cannot be varied, cancelled or revoked without Our consent (which We may, in Our sole discretion, withhold or provide subject to such conditions as We see fit);
 - (c) if We do agree to the variation or cancellation of any Order, We may, at our option, charge You a fee equal to any costs incurred by Us in doing so and:
 - (1) if You request that an Order for Product(s) be cancelled more than 24 hours after submitting the Order to us, we may charge You a cancellation fee of an amount equal to 20% of the purchase price(s) for those Product(s) cancelled; and

- (2) if You wish to vary the date of delivery of any Product(s) that have been Ordered by You, we may charge You a holding fee of an amount equal to 20% of the purchase price(s) for those Product(s) for which you have requested a variation to the scheduled delivery date;

- (d) all monies payable by You to Us for the purchase of Products is payable in the currency specified in the relevant Quotation for those Products.

4. TITLE AND DELIVERY

- 4.1 You acknowledge that there is a minimum:
- (a) two week lead time for any pallet order of Products; and
 - (b) 10 week lead time for a container order of Products (based on 11 pallets per container),
- from the date of Your Order.
- 4.2 While We will use reasonable endeavours to procure delivery of the Products that have been Ordered by You within any timeframe provided to You in the Quotation, which is indicative only. We are not liable in any way for any Loss arising from any delay in delivery.
- 4.3 Title to each Product will not pass from Us to You until We have received (in cleared funds) the full purchase price for that Product.
- 4.4 The risk in each Product Ordered shall pass from Us to You when that Product is delivered to the place specified in the relevant Order.

5. RETURN OF PRODUCTS

- 5.1 You must thoroughly inspect all Products, including to identify any Defects, promptly upon delivery, and in any event within 10 Business Days of delivery, notify Us in writing if there is any error in the Products received or You wish to return any Product for any reason.
- 5.2 We may, at Our sole and absolute discretion, agree in writing to accept the return of Products requested by You, in which case, the Products must be:
- (a) returned with the original packaging, in unsoiled, undamaged and resalable condition; and
 - (b) returned to Our nominated premises, at Your expense.
- 5.3 You acknowledge and agree that if We agree to the return of any Product, other than a Defective Product, We may, at Our sole discretion, charge a handling/ restocking fee of an amount up to 20% of the price of the Product charged to You, payable by You prior to Us accepting delivery of the returned Product.

6. WARRANTY

- 6.1 You must notify Us in writing as soon reasonably practicable upon becoming aware of, and must not sell, any Products which You consider to be Defective (**Defect Notice**).
- 6.2 If You provide a Defect Notice to Us, We may inspect the relevant Product to determine whether it is Defective (acting reasonably).
- 6.3 If any Product, or part of a Product, purchased by You is determined to be Defective, We will, at our option, replace or procure the replacement of the relevant Product, or relevant part of the Product, refund to You the purchase price for that Product, provide You with a suitable alternative Product or provide You with a credit against future Product purchases, provided that:
- (a) You have complied with all of Your obligations in these Conditions and have provided to us a Defect Notice in respect of the relevant Product, or part thereof, within the Warranty Period;
 - (b) You have provided Us with a reasonable opportunity to inspect the relevant Product;
 - (c) the Defect is not caused by any assembly, construction, alteration, modification, adjustment, operation, servicing, repair, maintenance or storage of the Products which is in a manner contrary to the terms of these Conditions, the

Standards and Procedures, including the Sales and Advertising Policy, or Good Industry Practice; and

- (d) You have complied with all reasonable directions We provide to You regarding the return or destruction of the relevant Products (or parts thereof) which are, or are alleged to be, Defective.

6.4 You may offer an Extended Warranty Period for Products to Clients.

7. GENERAL RIGHTS AND OBLIGATIONS

7.1 You acknowledge and agree that:

- (a) Your appointment as an Authorised Dealer is:
- (1) on a non-exclusive basis and that nothing in these Conditions limits the rights of Maytronics or Maytronics Ltd to market, distribute, offer to sell, service or repair the Products or appoint other dealers or licensees for that purpose, or entitle You to compensation on account of any of the foregoing; and
 - (2) does not in any way restrict or limit the operation of Maytronics or Maytronics Ltd's businesses or future operations and that Maytronics or Maytronics Ltd may cease manufacturing or offering for sale any Product, or change any Product in any way whatsoever (including, without limitation, a Product's design, appearance, functionality, components and branding) without notice to You;
- (b) You are solely responsible, and We shall not assume any liability for obtaining, and the assessment of, all relevant data and information about Your Client's requirements or the suitability or adequacy of the Products for their needs and any and all advice that You provide to Clients;
- (c) You are solely responsible for the assembly, construction, service and repair of all Products You sell and that You will do so in accordance with Good Industry Practice;
- (d) We may, from time to time, provide You with Maytronics Material or advice relating to the Products, however:
- (1) We are under no obligation to provide such Maytronics Material or advice and, to the maximum extent permitted by law, We assume no liability for its accuracy, completeness or suitability;
 - (2) any Maytronics Material will be provided to You at Your expense, unless agreed otherwise by Us in writing; and
 - (3) all Maytronics Material remains Our property (or, if applicable, that of Our licensors) and must be returned to Us or destroyed upon expiry or termination of these Conditions or Our earlier written request.

7.2 You must, and must ensure that each of Your Personnel:

- (a) create and maintain accurate records of all sales and servicing of all Products by You, or on Your behalf, and promptly provide Us with such copies as We may reasonably request from time to time;
- (b) subject to clauses 7.3(b) and 7.3(c), sell the Products in the same condition as they are delivered, without alteration or modification in any way, unless otherwise agreed in writing by Us; and
- (c) promptly inform Us in writing of the existence and nature of any customer complaint or dispute regarding the Products including, without limitation, any purported Defect or error in any servicing or repair, comply with Our reasonable directions regarding that complaint or dispute and not make any admission or statement in regards to that complaint or dispute without Our prior written consent.

7.3 Without limiting any other clause, You undertake not to, directly or indirectly, whether alone or jointly in any capacity with any other person or entity, without our prior written consent:

- (a) make any representation or warranty regarding the use, suitability, performance or fitness for purpose of the

Products which are inconsistent with the Product Specifications;

- (b) sell any Product which is, or is reasonably likely to be, Defective;
- (c) sell the Products to any third party who is not reasonably expected to be the Client of the Products; or
- (d) repackage any of the Products or otherwise remove or conceal any Maytronics Marks affixed to the Products or any Maytronics Material.

8. INTERNET SALES

8.1 You must not, and You must ensure that the Products are not sold online.

8.2 Without limitation, You acknowledge and undertake to Us to not:

- (a) sell Products via any website or social media page controlled or operated by You, or via any third party website; or
- (b) supply Products to any person or organisation who You know or reasonably suspects to re-sell the Products online,

(Internet Policy).

8.3 For the avoidance of doubt, You are permitted to advertise and promote Products online, provided You comply with the Brand Guidelines.

9. PAYMENT AND TAXES

9.1 You must pay to Us, in full and without deduction:

- (a) the purchase price payable for all Products that are Ordered by You, together with any applicable delivery fees (if any); and
- (b) any and all Taxes imposed or assessed in relation to the sale of any Products to You.

9.2 At the end of each calendar month (**Billing Period**), We will provide a statement of all transactions pertaining to this Contract which occur during that Billing Period and, unless We agree to such other date, You agree to pay all funds owing to Us, in full and without deduction, within fourteen (14) days after We have issued an invoice for that Billing Period (**Debit Date**).

9.3 You acknowledge and agree that, notwithstanding any other clause, We may at any time cease to provide Products and/or Services to You and/or require that You submit a new Credit Application, including in, but not limited to, circumstances where:

- (a) Your nominated payment method is invalid, has expired or where there are insufficient funds to satisfy an Amount Owing as at the Debit Date;
- (b) You do not place a request for Products with Us for a period of three (3) consecutive months or more; or
- (c) You have undergone a Change in Control.

9.4 We may charge default interest on all Amounts Owing at the rate of 9% per annum on and from the date when such Amounts Owing became due for payment up to, and including, the date that such Amounts Owing have been paid (in full).

9.5 We may set off against any amounts payable by Us to You against any Amounts Owing to Us.

10. TERMINATION

10.1 The Agreement may be terminated:

- (a) by either party, at any time, for convenience, by providing the other party with at least three (3) months' written notice;
- (b) by either party, on 30 days' written notice to the other party, if the other party breaches an essential term of the Agreement, including, in Your case, a breach of clause 7.3, which:

- (1) is incapable of remedy; or

(2) if capable of remedy, is not remedied within 14 days of the other party receiving written notice requiring the breach to be remedied; and

(c) by either party, immediately upon notice to the other party, if the other party suffers an Insolvency Event.

10.2 The termination or expiration of the Agreement, however caused:

(a) is without prejudice to any rights or obligations of the parties which have accrued prior to that termination or expiration (as applicable); and

(b) shall not affect clauses 10, 11.1, 12, and 13 which shall survive such termination or expiry

10.3 Upon the termination or expiration of the Agreement for any reason, We may, at Our election, choose not to fulfil the delivery of any Orders for Products that have already been accepted by Us prior to the date of termination and, instead, provide a refund for any deposit paid (if any) by You in respect of those Products.

11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

11.1 We grant to You a non-exclusive, revocable, licence to exercise the Intellectual Property Rights existing in:

(a) the Maytronics Marks; and

(b) the Maytronics Material,

for the duration of the Term, to the extent necessary to market, offer for sale, distribute, sell, assemble, construct, service and repair the Products.

11.2 You acknowledge and agree that Your marketing of the Products must be in accordance, and your use of the Maytronics Marks must not be inconsistent, with the Brand Guidelines and the Internet Policy.

12. WARRANTIES AND LIABILITIES

12.1 You represent and warrant, for the benefit of Maytronics and Maytronics Ltd, that:

(a) all information provided to Us by You, or at Your direction, is accurate in all respects and not misleading, whether by omission or otherwise;

(b) You will comply with all applicable Laws or Authorisations in relation to the sale, assembly, construction, servicing and maintenance of the Products; and

(c) where You enter into the Agreement as the trustee of any trust, You warrant that you have full power and authority to do so and that You shall be bound by the Agreement in Your own capacity and in Your capacity as the trustee of that trust.

12.2 Subject to clause 12.3, You shall be responsible for, and indemnify and hold Us and each of Our Personnel (each, an **Indemnified Person**) harmless from and against, any Loss caused or incurred by any breach of the Agreement or any assembly, modification, construction, maintenance, installation, servicing or repair of any Products performed by You or Your Personnel.

12.3 You are not liable pursuant to clause 12.2 to the extent that the Loss was caused by an Indemnified Person or constitutes Consequential Loss.

12.4 Notwithstanding any other clause, We will not be liable to You or Your Personnel for any Consequential Loss (save for fraud, dishonesty or wilful misconduct), howsoever caused, suffered or incurred in connection with this Agreement.

13. MISCELLANEOUS

13.1 Relationship

The relationship between the parties established pursuant to the Agreement does not constitute a franchise, partnership, joint venture, employment relationship or give rise to any form of fiduciary relationship.

13.2 Severability and Waiver

Any provision of these Conditions which is prohibited or unenforceable will be read down to the extent necessary to be

valid and, if it cannot be read down, severed from these Conditions.

13.3 Entire agreement

The Agreement records the entire agreement between the parties, and supersedes all previous agreements, in respect of its subject matter.

13.4 Governing Law

These Conditions shall be governed by the laws of the State of Queensland, Australia, and You irrevocably submit to the exclusive jurisdiction of the courts of Queensland, and of all courts competent to hear appeals from them.