

## AquaGenesis International, Inc. Terms and Conditions of Sale

### TERMS AND CONDITIONS OF SALE

AQUAGENESIS INTERNATIONAL, INC. is hereinafter referred to as the "Seller". The party receiving these Terms and Conditions of Sale is hereinafter referred to as the "Buyer".

1. **TAXES.** Prices are exclusive of all city, state and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Buyer.
2. **PAYMENT TERMS.** Full payment is required upon receipt of order by MasterCard, VISA or \_\_\_\_\_.
3. **DELIVERY TERMS.** Shipping dates are approximate only, and Seller shall not be liable for any loss, cost or expense incurred by Buyer if Seller fails to meet the estimated delivery schedule due to unavoidable production or other delays.
4. **TITLE AND SHIPMENT.** All domestic (U.S.) shipments shall be delivered F.O.B. Seller's premises, freight prepaid, and in either event title and liability for loss, damage or delay shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer. Any loss, damage or delay thereafter shall not relieve Buyer of any obligation hereunder. For international orders, shipping terms are FCA Seller's premises. Delivery of an order may require prior approval of an export license by the United States Government, and Seller's obligation to fulfill an order is expressly made subject thereto.
5. **WARRANTIES.** AquaGenesis International Inc., ("AquaGenesis") warrants RoboSnail (see exclusions below) to the original purchaser against defective material and workmanship that occurs under normal use for a period of (1) year from the date of original purchase, so long as the product is installed and used properly and consistent with the Quick Start Guide. If RoboSnail develops a covered defect within the one-year period, AquaGenesis will, at its option, either repair or replace the RoboSnail without charge, provided that the RoboSnail is returned during the warranty period. No cash refunds will be given. The AquaGenesis warranty applies only to a product that is manufactured by or for AquaGenesis and identified by the AquaGenesis trademark, trade name or product identification logo affixed to the product.

**Exclusions:** RoboSnail is a highly engineered Robotic device designed with sensitive electronic internal components that make the product small and efficient and fragile.

- The AquaGenesis warranty shall not apply to any of the following:
- RoboSnail damage due to accident, misuse, neglect, alteration, acts of God, improper handling, improper transport, improper storage, improper use or application, improper installation, or unauthorized repair;
- RoboSnail damage where the motor and/or drive unit or docking station have been exposed to water;
- Cosmetic problems or defects that result from normal wear and tear under ordinary use, that do not affect the performance or use of RoboSnail and/or;
- Transfer of RoboSnail to someone other than the original purchaser.

AQUAGENESIS DISCLAIMS ALL OTHER WARRANTIES WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. NO IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY SHALL APPLY EXCEPT AS REQUIRED BY APPLICABLE LAW. AQUAGENESIS DOES NOT AUTHORIZE ANY PERSON OR BUSINESS ENTITY, INCLUDING ITS AUTHORIZED DEALERS, TO CREATE FOR IT ANY OBLIGATIONS, LIABILITIES, OR OTHER WARRANTIES IN CONNECTION WITH THIS PRODUCT.

THE SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH ROBOSNAIL, WHETHER MADE OR SUFFERED BY YOU OR ANOTHER PERSON AND WHETHER BASED IN CONTRACT OR TORT, SHALL BE REPAIR OR REPLACEMENT OF THE PRODUCT. NEITHER AQUAGENESIS OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, VICARIOUS LIABILITY, CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, DAMAGE TO YOUR AQUARIUM OR ANY AQUARIUM INHABITANTS OR ANY OTHER LOSS,) ARISING OUT OF THE USE OF OR INABILITY TO USE ROBOSNAIL, OR FROM ANY BREACH OF WARRANTY, EVEN IF AQUAGENESIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL AQUAGENESIS' LIABILITY EXCEED THE AMOUNT YOU PAID FOR ROBOSNAIL. THIS WRITING CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF; NO WAIVER OR AMENDMENT SHALL BE VALID UNLESS IN WRITING, SIGNED BY AQUAGENESIS. IF YOU DISAGREE WITH THESE TERMS AND CONDITIONS DO NOT PURCHASE OR USE ROBOSNAIL.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusions may not apply to you. AquaGenesis' warranty is governed by the laws of the State of California, excluding its conflict of laws principles and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.

6. **INTELLECTUAL PROPERTY.** Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under these Terms and Conditions in any Goods shall vest in and be the exclusive property of Supplier.

No right or license is granted to Buyer in respect of the existing or future Intellectual Property Rights of Supplier, except the right to use the Goods (excluding Software, if any, which may only be sublicensed). Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, if any, except to the extent permitted by law. If the Software is subject to a separate license agreement between Buyer and Supplier, then the terms of such separate license agreement shall supersede the terms of any Contract insofar as they explicitly relate to the licensing of such Software.

7. **FORCE MAJEURE.** Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Seller, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, act of terrorism,

insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, failure of Seller's suppliers to meet scheduled delivery, act of any government or agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and delivery among Seller's customers when it reasonably believes any of the aforementioned contingencies may make such action necessary.

8. **DAMAGES; EXCLUSIVE REMEDIES.** Without limiting the effect of Section 5 hereof or the second sentence of this Section 8, Seller's maximum liability, if any, for damages shall not exceed the purchase price paid by Buyer for the product. NEITHER PARTY SHALL BE LIABLE TO THE OTHER HEREUNDER OR UNDER ANY AGREEMENT OR CONTRACT ARISING HEREFROM OR IN CONNECTION HEREWITH FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, RESULTING FROM OR IN ANY MANNER RELATED TO THE PRODUCTS SOLD BY SELLER, THEIR DELIVERY, NON-DELIVERY, MANUFACTURE, DESIGN, INSTALLATION, SERVICE, USE, OR ANY INABILITY TO USE THE SAME, WHETHER SUCH DAMAGES BE CLAIMED UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **GOVERNING LAW; VENUE; JURY TRIAL WAIVER.** This quotation and all orders and acknowledgments issued in connection herewith, and the rights and obligations of Buyer and Seller thereunder, shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. Buyer hereby submits itself for the sole purpose of this quotation and any controversy arising hereunder to the exclusive jurisdiction of the state and federal courts in the State of California and agrees that all claims in respect of such controversy shall be heard and determined only in and by any of said courts. Furthermore, Buyer hereby irrevocably waives and agrees not to assert any claim that Buyer is not personally subject to the jurisdiction of said courts, that such action or proceeding is brought in an inconvenient forum, that the venue of such action or proceeding is improper, or that the terms hereof may not be enforced in or by such courts. BUYER AND SELLER EACH HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS QUOTATION OR ANY OTHER DEALINGS BETWEEN BUYER AND SELLER RELATING TO THE SUBJECT MATTER HEREOF.

10. **NON-WAIVER.** The failure of either party to insist or enforce in any instance strict performance of any of the terms of the contract arising herefrom or in connection herewith or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

11. **SEVERABILITY.** Any provision contained herein that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

12. **BINDING EFFECT.** The agreement between Buyer and Seller for the sale of Seller's products to Buyer shall inure to the benefit of and be binding upon Buyer and Seller and their successors and permitted assigns. Buyer may not assign either said agreement or any of its rights, duties, or obligations thereunder without the prior written consent of Seller, which consent may be withheld for any reason or no reason.