

Terms and conditions

These terms and conditions shall govern the supply of goods sold on the Website www.scubacool.co.uk which is owned and operated by ScubaCool Limited, a company registered in England and Wales under number 08115316 whose registered office address is at 11 Windmill Copse, Storrington, Pulborough, West Sussex, United Kingdom RH20 4HB.

These terms and conditions shall constitute the entire and only agreement between us in relation thereto.

The Customer's attention is drawn in particular to the provisions of clause 4, 7 and 8.

1. DEFINITIONS & INTERPRETATION

1.1 In these conditions, the following definitions shall apply:

- 1.1.1 **Business Day means** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.2 **Company means** ScubaCool Limited, a company registered in England and Wales under number 08115316 whose registered office address is at 11 Windmill Copse, Storrington, Pulborough, West Sussex, United Kingdom RH20 4HB.
- 1.1.3 **Customer and/or You means** the person or firm who purchases the Goods from the Company.
- 1.1.4 **Conditions** means the terms and conditions set out in this document.
- 1.1.5 **Contract** means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.1.6 **Force Majeure Event** has the meaning given in clause 7.
- 1.1.7 **Goods** means the ScubaCool (or any part of them) set out in the

Order.

- 1.1.8 **Personalised Goods** shall refer to a ScubaCool that consists of a design submitted by the Customer to be printed on the ScubaCool.
 - 1.1.9 **Order** means the Customer's order for the Goods, as set out on the Website.
 - 1.1.10 **ScubaCool** shall refer to a heat shrunk PVC sleeve with an encapsulated graphic.
 - 1.1.11 **Website** means the domain name www.scubacool.co.uk which is owned and operated by the Company.
- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction;
 - 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it;
 - 1.4 A reference to one gender includes a reference to the other gender.
 - 1.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - 1.6 A reference to **writing** or **written** includes faxes and e-mails.

2. THE CONTRACT BETWEEN US

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.3 The Customer will receive confirmation of their Order which shall only indicate that the Company has received the Order. It shall not indicate that the Company has accepted the Customers offer even if payment is taken.
- 2.4 The Order shall only be deemed to be accepted once the Company has despatched the Goods to the Customer, at which point the Contract shall come into existence unless the Company has notified the Customer that:
- 2.4.1. the Company does not accept the Order;
 - 2.4.2. deliveries cannot be made to the Customers area;
 - 2.4.3. the Goods are out of stock;
 - 2.4.4. the Goods the Customer ordered were listed at an incorrect price due to a typographical error or an error in the pricing information received by the Company from its suppliers; or
 - 2.4.5. the Customer has cancelled the contract in accordance with Section 6.
- 2.5 The Customer's Goods will not be despatched until full payment is received for the Goods.
- 2.6 In the event that the Order is refused, the Company will notify the Customer by e-mail and will refund the sum deducted by the Company from the Customers credit card as soon as possible within 28 days of the Order.

3. DELIVERY

- 3.1 The Company shall ensure that:
- 3.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Goods (including the

code number of the Goods, where applicable) and special storage instructions (if any); and

- 3.2 The Company shall use a third party Courier and/or Sub Contractor to deliver the Goods to the location set out in the Order.
- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods.
- 3.5 If the Company, Courier and/or Sub Contractor fails to deliver the Goods within 28 days from the time the Customer placed the Order, its liability shall be limited to the monetary total for the Order in question. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.6 If the Customer fails to accept delivery of the Goods when the Courier or Sub Contractor attempts to deliver the Goods, the Customer shall collect the Goods from their location at the Courier or Sub Contractor's depot.

4. APPLICATION OF THE SCUBACOOL

The Company cannot be held responsible for the application of the ScubaCool. The Customer warrants that it is their responsibility to ensure its safe application in accordance with the [Application Guidelines](http://www.scubacool.co.uk/how-it-works/) *http://www.scubacool.co.uk/how-it-works/*.

5. PRICES AND PAYMENT

- 5.1 The price of the Goods shall be the price set out at the checkout on the Website.
- 5.2 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

5.2.1 any factor beyond the Company's control (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and

increases in labour, materials and other manufacturing and printing costs);

5.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

5.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

5.3 Pursuant to Clause 5.2 above, a separate invoice containing the additional costs shall be sent to the Customer and the Company shall not be obliged to despatch the Goods until full payment is received.

5.4 The price of the Goods is inclusive of the costs and charges of packaging and transport of the Goods by standard second class signed delivery by Royal Mail, which shall be applied at the checkout.

5.5 For next day delivery and special delivery, additional charges will apply which will be presented as an option to the Customer prior to the checkout.

5.6 The price of the Goods is inclusive of amounts in respect of value added tax (**VAT**).

5.7 The Company reserves the right to withdraw the use of Voucher Codes without notice at any time.

6. CANCELLATION, WARRANTY AND RETURNS POLICY

- 6.1 The Customer may cancel their Order and receive a refund for goods that are not Personalised Goods at any time up until the end of the seventh (7) working day from the date the Customer received delivery of the Goods.
- 6.2 The Customer shall not be entitled to cancel their Order and receive a refund for Personalised Goods that are free of defects in material and/or workmanship. This is due to the Company carrying out work in order to provide the Goods to the Customers own unique specification.
- 6.3 The Company warrants to the original purchaser only, that the ScubaCool will be free of defects in material and/or workmanship, under normal use and service conditions and in terms of the correct application, for a period of twenty-eight (28) days as from date of purchase ("Warranty Term").
- 6.4 The Company's sole obligation in terms of the warranty shall be, in the event of any defects in material and/or workmanship arising within the Warranty Term to, in its sole discretion, replace the ScubaCool, without charge to the Customer, within a reasonable time period, subject to the following conditions:
 - 6.4.1. Any claim under this warranty must be made as soon as the Customer becomes aware of the defect which must become apparent within the Warranty Term: Failure to notify the Company or its duly authorised agents of any alleged defect, within the Warranty Term, will render the warranty void;
 - 6.4.2. The Customer must return the defective ScubaCool to the Company or its duly authorised agents free of charge within the Warranty Term and provide satisfactory proof of purchase of the ScubaCool to the Company or its duly authorised agents;
 - 6.4.3. The warranty on the replaced ScubaCool shall extend for a further 28 days from the date of replacement of the defective ScubaCool;
 - 6.4.4. The Customer can notify the Company and return the ScubaCool by the following means:
 - 6.4.4.1. By our [contact form](https://www.scubacool.co.uk/contact-us/) [https://www.scubacool.co.uk/contact-us/] on our Website.

6.4.4.2. By post: Scuba Cool, 11 Windmill Copse, Storrington, Pulborough, West Sussex, United Kingdom RH20 4HB;

6.4.4.3. By email: customerservice@scubacool.co.uk.

- 6.5 This warranty is void if failure of the ScubaCool has resulted from abuse or neglect; improper use/misapplication (including incorrect heat shrinkage methods, application of ScubaCool to applications other than those intended by ScubaCool); tipping over, use of chemicals; excessive or abnormal wear and tear during the Warranty Term (including commercial use) use in an application with additional or non-standard extras; environmental conditions or any other damage arising from, inter alia, accident/collision, fire, explosion, freezing, theft, civil commotion, labour/political unrest or rioting, Acts of God, government wars, embargoes or shortages or delays/damages or loss during transit or where the Company reasonably determines that the ScubaCool has been repaired or altered by any third party other than the Company or its duly authorised agents;
- 6.6 The Company shall not be liable under this warranty where the ScubaCool is used in conditions whose specifications require material or workmanship above or below the suggested conditions as specified in the ScubaCool application or usage guidelines, or in the case of original equipment installed by a manufacturer, not according to their official specified usage guidelines;
- 6.7 This warranty shall not apply where the ScubaCool is used other than for the purpose of normal recreational diving and for which this ScubaCool was designed;
- 6.8 This warranty is in lieu of any warranties (express or implied) or conditions implied by law, which are hereby specifically excluded and no warranties, representations or undertakings of whatever nature have been made or given by ScubaCool or on its behalf other than stated herein;
- 6.9 The Company and its duly authorised agents shall not be liable for and the Customer shall not be entitled to claim from the Company or its duly authorised agents for damages, losses, penalties, injuries, expenses or costs (whether direct, indirect, consequential, incidental or other nature) howsoever suffered and by whomsoever suffered from whatsoever cause arising unless specifically accepted by ScubaCool in writing.
- 6.10 This warranty shall extend to the United Kingdom and EU countries only and is covered by English Law in accordance with these Terms and Conditions.

7. LIMITATION OF LIABILITY

7.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

7.1.1 personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

7.1.2 fraud or fraudulent misrepresentation;

7.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

7.1.4 defective products under the Consumer Protection Act 1987; or

7.1.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

7.2 Subject to clause 7.1:

7.2.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

7.2.2 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

8. CUSTOMER WARRANTIES AND INDEMNITY

- 8.1 The Customer warrants that to the best of their knowledge, information and belief:
- 8.1.1 All information supplied to the Company before and during the term of this Agreement will be accurate and not in any way contrary to any applicable law; and
 - 8.1.2 The designs supplied by the Customer for Personalised Goods and all Intellectual Property Rights within them are owned by the Customer; and
 - 8.1.3 The designs supplied by the Customer for Personalised Goods do not infringe any Intellectual Property Rights of any third party.
- 8.2 The Customer shall accept full legal responsibility in respect of any designs for Personalised Goods submitted by the Customer for print and will indemnify the Company and hold harmless against any loss or liability, costs or damages incurred as a result of any use of the Services by the Customer.
- 8.3 The Customer shall indemnify the Company, keep the Company indemnified and hold the Company, its Directors, Officers, Employee's and Agents harmless in respect of all costs, claims, liabilities and costs to which the Company may be subject as a result of any claim that any of the Personalised Goods supplied by the Company results in defamatory matter or infringes any Intellectual Property Rights of any third party.
- 8.4 The Customer shall indemnify the Company against any liability which shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal expenses and other fees incurred or suffered as a result of the Customer's breach or non fulfilment of the Terms of this Agreement.
- 8.5 It is the Customers sole obligation and not the Company's obligation to ensure these conditions are satisfied.

9. FORCE MAJEURE

- 9.1 Neither party or sub contractor shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or

delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. SEVERANCE

10.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11. WAIVER

11.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Company to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12. THIRD PARTY RIGHTS

12.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

13. VARIATION

13.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.

14. ENTIRE AGREEMENT

14.1 This Agreement shall set out the whole of our agreement relating to the supply of Goods by the Company to the Customer.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be referred to an independent arbitrator and governed by and construed in accordance with English law.

15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that cannot be resolved by an independent arbitrator.