

# Castle Aquatics

## Terms and Conditions of Sale

These Terms and Conditions of Sale (“**Terms**”) govern the sale of goods (“**Goods**” or “**Products**”) by Castle Aquatics to buyers (“**Buyers**”, and each, a “**Buyer**”). These Terms prevail over any Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

### Pricing and Payment Terms

- 1. Pricing:** Castle Aquatics publishes a catalog and price lists with Suggested Retail Prices (“**SRPs**”) for all Goods available to Buyers. The catalog and price list may be updated and the SRPs may change without notice from time to time at the sole discretion of Castle Aquatics. The Term Acceptance Letter you executed upon Castle Aquatics processing of your credit application sets forth your current pricing terms, which are subject to change at the discretion of Castle Aquatics. If you have any questions about your pricing terms you should consult a Castle Aquatics sales representative to determine Buyers’ costs.
- 2. Conditions of Sale:** Prior to any sales of Goods to a Buyer, Castle Aquatics requires that each Buyer review, approve, and execute Castle Aquatics’ Wholesale Account Application (“**Wholesale Account Application**”). Buyer has reviewed, approved, and executed the Wholesale Account Application and delivered a resale certificate to Castle Aquatics. The information provided by buyer in the Wholesale Account Application is complete, true, and accurate in all material respects, and Buyer shall at all times maintain current all information provided in the Wholesale Account Application and covenants to promptly update the Wholesale Account Application upon any changes in information provided therein. Possession of a Castle Aquatics catalog, price list, or sale flyer does not constitute an offer to sell, and Castle Aquatics reserves the right to refuse to sell its Products to Buyer at any time and for any reason.
- 3. Payment Terms:** All orders must be prepaid prior to shipment unless Open Credit terms (as set forth below) have been approved in writing by Castle Aquatics.
- 4. Open Credit:** Qualified Buyers may be eligible for credit terms with Castle Aquatics (“**Open Credit**”). Upon review of Buyer’s Wholesale Account Application, Castle Aquatics may, in its sole discretion approve Buyer for Open Credit. Buyers who have been approved for Open Credit shall at all times maintain a current account status by paying all invoices issued by Castle Aquatics by the due date noted on each Castle Aquatics invoice to Buyer. If any invoice becomes more than 15 days past due, Castle Aquatics will hold all shipments until payment has been made. If any invoice becomes more than 30 days past due, Castle Aquatics may, in its sole discretion, nullify any discounts any future orders and require that

future shipments will be shipped only after all invoices have been paid in full. All past due invoices due will incur finance charges on the delinquent amount as of the due date at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Castle Aquatics for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Castle Aquatics does not waive by the exercise of any rights hereunder), Castle Aquatics shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 60 following written notice thereof.

Castle Aquatics reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Castle Aquatics in the event of: (i) Buyer's insolvency, (ii) Buyer's filing of a voluntary petition in bankruptcy, (iii) the appointment of a receiver or trustee for Buyer or (iv) the execution by Buyer of an assignment for the benefit of creditors. Castle Aquatics reserves its right to suspend its performance until payment or adequate assurance of performance is received and also reserves its right to cancel Buyer's Open Credit at any time for any reason.

**5. Payment Methods:** Castle Aquatics offers the following payment options:

- a. Credit Card:** Buyers who choose to pay by credit card must have a credit card on file at Castle Aquatics or provide one at the time of placing an order. Credit cards will be charged on the day of shipment. Castle Aquatics reserves the right to charge a credit card processing fee and to preauthorize payments on credit cards.
- b. Check:** Buyers who choose to prepay by check shall deliver the check to Castle Aquatics promptly upon receipt of an invoice from Castle Aquatics. For Buyers who do not have Open Credit, ordered Goods will be shipped after the payment check has cleared. Bounced checks will incur in a \$25 Castle Aquatics fee plus all additional fees assessed by Castle Aquatics' bank. Castle Aquatics reserves the right to require check payments to be made by cashier's check or certified check only.
- c. Wire Transfer:** Buyers who choose to pay via wire transfer or ACH shall request wiring information from Castle Aquatics.

**6. Invoice Disputes:** If Buyer reasonably disputes any item in an invoice, it shall provide the Castle Aquatics with notice of the dispute, including an explanation of the reasons for such dispute, within three (3) days of Buyer's receipt of the disputed invoice and failure to initiate a claim shall be deemed acceptance of the invoice and amounts due thereunder by Buyer. If a dispute is initiated by Buyer, Buyer shall not be obliged to pay the disputed item until the parties have resolved the dispute; provided, that Castle Aquatics may stop all shipments of Goods to Buyer while the dispute remains unresolved. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth in these Terms.

7. **Collections**: Castle Aquatics reserves the right to refer any delinquent Buyer account to a third-party collection agency. Castle Aquatics shall be entitled to reasonable collection fees, attorney fees, and other expenses incurred to collect all charges on a Buyer's account.
8. **Credit Reporting**: Castle Aquatics reserves the right to report account activity and payment history to third party credit agencies.
9. **No Setoff**. All payments by Buyer shall be made without setoff or counterclaim and be free and clear and without any deductions or withholding for any taxes or fees of any nature whatsoever.
10. **Purchase Obligation**: A Buyer shall be contractually obligated to complete a purchase upon placing an order orally or in writing, including any purchase order transmitted orally via phone or in writing via facsimile, text email or submitted on the website.
11. **Title**: All Goods ordered and delivered shall remain the property of Castle Aquatics until the invoice for those items has been paid in full. Title and risk of loss passes to Buyer upon delivery of the ordered Goods at the delivery location designated by Buyer. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Castle Aquatics a lien on and security interest in and to all of the right, title and interest of customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.
12. **Minimum Pricing**: Castle Aquatics reserves the right to refuse orders from any Buyer who Castle Aquatics believes is violating any minimum advertised pricing policies set forth in Advertising and Reprint Policy below.

### **Freight and Delivery Terms**

1. **Delivery**: Castle Aquatics offers a prepaid freight program to qualified Buyer locations. Castle Aquatics reserves the right to determine if a Buyer's order is eligible for this program and to choose the carrier on applicable orders. Castle Aquatics also reserves the right to charge handling fees and/or fuel surcharges, whether or not an order qualifies for a prepaid freight program. Such charges may be added, changed, or increased at any time.
2. **Backorders**: Castle Aquatics will notify Buyers when a backordered items become available. If a Buyer wishes to purchase a backordered item, it will be treated as a new separate order, which will be subject to the freight fees or will need to meet the minimum for prepaid freight program.
3. **Extra Fees**: Buyers who require special delivery options such as lift gate delivery, non-commercial delivery, delivery appointment etc. will be responsible for all charges that may be assessed by the shipping company for such special delivery services.
4. **Drop Shipments**: Shipping and handling charges will be billed on all orders that are shipped directly to a third-party address. If a drop shipment is refused or postponed all redelivery and/or returned shipping charges will be billed upon resolution. Any Goods

returned to Castle Aquatics may incur a 15% restocking fee as described in the Returns Terms below. Note: This option is only available for delivery addresses within the 50 United States. Some items such as CA Brands (as defined in the Advertising and Reprint Policy) may not qualify for this service or may incur extra fees. Please consult a Castle Aquatics representative for further details.

5. **Expedited Delivery:** Buyers who require expedited delivery shall be responsible for the charges associated with this option.
6. **Special orders:** Some items listed in the catalog are designated as special order. Buyers may be responsible for inbound and/or outbound freight costs on these items. Buyers are responsible for all shipping and restocking fees if a special ordered item is refused at the time of delivery.
7. **Inspection.** Buyer shall inspect the Products promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). Failure by Buyer to provide Castle Aquatics with written notice of a claim within 10 days from the date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all claims with respect to such Products.
8. **Short shipments/ freight damage:** Buyers shall be responsible for counting and inspecting deliveries before signing for them. Castle Aquatics must be notified within two business days of the delivery of any shortages or damages have occurred. Short shipment and damage issues will be resolved according to the delivery company policies. Buyers have the option to contact Castle Aquatics if they have any questions prior to signing for a shipment. **Note: Delivery companies are released from any liability if a shipment is signed for in full and in good order. Castle Aquatics recommends that Buyers take photos of any damaged shipments prior to signing for them.**
9. **Address Changes:** Buyers shall notify Castle Aquatics if their delivery address has changed. If Castle Aquatics is not notified and the delivery company has to redirect the shipment, then the Buyer will be liable for a \$25 redirection fee payable to Castle Aquatics in addition to all fees assessed by the shipping company.
10. **Refused/Postponed Shipments:** Buyers shall be responsible for all freight charges and fees assessed by the delivery company for any shipment that is refused or postponed except in the case of damaged freight, in which case the damaged freight shall be handled under the damaged delivery policy above. Please notify Castle Aquatics of your operating hours to prevent missed deliveries.
11. **Variations:** Castle Aquatics may at its sole discretion change the terms of its freight policies from time to time.

### **Warranty/Returns Terms**

1. **Manufacturer Warranty; No Express or Implied Warranty:** All products not manufactured by Castle Aquatics are sold only with the warranties provided by the manufacturer of products, if any. Except for any manufacturer warranties that may be applicable, Castle Aquatics MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO

ANY GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Castle Aquatics will assist Buyers with manufacturers' warranty claims for all Products purchased from Castle Aquatics. Every manufacturer has a different warranty policy and procedure so please consult the warranty included in Product packaging or contact Castle Aquatics at 866-422-9445 during normal business hours (M-F, 7:30-4:30 PST) for further details.

## **2. Limitation of Liability:**

**IN NO EVENT SHALL CASTLE AQUATICS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DAMAGE TO LANDSCAPING, ANY OTHER PART OF A WATER GARDEN, POND, WATER FEATURE SYSTEM, STRUCTURE OR THE CONTENTS OF ANY STRUCTURE WHERE THE PRODUCT IS LOCATED OR USED, CONSTRUCTION OR PART OF THE CONSTRUCTION WHERE THE PRODUCT IS LOCATED OR USED, OR HARM TO FISH, ANIMALS OR WATER PLANTS IN, AROUND OR SURROUNDING A WATER GARDEN, POND OR WATER FEATURE SYSTEM, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**IN NO EVENT CASTLE AQUATICS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY TRANSACTIONS RELATED TO THESE TERMS AND CONDITIONS BY AND BETWEEN CASTLE AQUATICS AND BUYER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CASTLE AQUATICS FOR THE GOODS SOLD BY CASTLE AQUATICS TO BUYER.**

The limitation of liability set forth above shall not apply to (i) liability resulting from Castle Aquatics gross negligence or willful misconduct.

Buyer acknowledges and agrees that the price quoted for Goods is consideration for the limited liability Castle Aquatics.

## **3. Conditions:** Most manufacturer warranties do not cover failure or problems relating to:

- a.** Improper or incorrect installation of the Product (refer to the instructions of use regarding proper installation).
- b.** Modification of the Product in any way including attempts to repair the Product.

- c. Normal wear and tear (including, but not limited to, wear and tear related to pump impellers, filter mats and filter media in filters, bulbs in lights, UV lamps and quartz sleeves)
  - d. Failure to observe or follow safety, care and maintenance instructions as outlined in the instructions for use or as set forth by the manufacturer in the owner's manual.
  - e. Defects resulting from improper treatment or acts of God.
  - f. Defects and damage resulting from Product misuse (including, but not limited to, non-observance of the instructions for use).
4. **Returns:** Requests for returns of any purchased Goods must follow the procedure set forth in the Warranty Procedure section above (Section 2 above). All Goods must be purchased less than one (1) year prior to the return date and be in new and resalable condition (as determined in the reasonable discretion of Castle Aquatics). All returns are subject to a 15% restocking fee.
5. **Refund:** All refunds will be in the form of Castle Aquatics credit.
6. **Terms:** If items were purchased on a credit account and the account is past due, then any refund will be applied to the oldest past due invoice.

### **Advertising and Reprint Terms**

1. **Advertising Policy.** Castle Aquatics has adopted these Advertising and Reprint Terms ("**Advertising Policy**") to protect its intellectual property and reputation of its brands and the brands it has licensed from its licensors ("**Licensors**") and to preserve the ability of Buyers to compete in the marketplace and not be undercut by other retailers. Castle Aquatics brands currently include Teton® and PondMAX® but may include additional brands and trademarks either developed by Castle Aquatics or licensed to Castle Aquatics by Licensors (collectively, "**CA Brands**").
- a. Buyers agree to advertise and represent all Store Brands Goods as premium-quality products.
  - b. Buyers shall at all times maintain and display up-to-date educational materials directly relating to the Store Brand Goods.
  - c. Buyers shall provide contact information to all end-users, in the case that Product information is needed.
  - d. All advertising/marketing materials prepared by Buyer or any third party other than Castle Aquatics shall be pre-authorized in writing by a Castle Aquatics representative and shall not misrepresent the Store Brands or Products or be misleading in any way.
2. **Minimum Advertised Pricing:** The SRP for all Store Brand Products is established unilaterally by Castle Aquatics and published in the Castle Aquatics catalogue. The SRP is the lowest price a Buyer may advertise in any marketing materials, including in print, emails, radio, television, and on websites. Website features such as "Click for price," automated "bounce-back" pricing emails, pre-formatted email response, forms, automatic

price display for any items prior to being placed in a customer's shopping cart, and other similar features are considered to be communications initiated by the Buyer (rather than by the customer) and such communication shall constitute "advertising" under this Advertising Policy. This Advertising Policy applies to any activity that Castle Aquatics determines, in its sole reasonable discretion, is designed or intended to circumvent the intent of this Advertising Policy, such as solicitations for "group purchases."

3. **Web Advertising:** CA Brand Products may be advertised on a Buyer website only if the listed price is at least the SRP and any product images displayed are official watermarked Store Brand images. Buyer may not use third party online marketplaces (i.e., eBay, Amazon, Wayfair, Walmart.com, Facebook Marketplace etc.) to advertise any Store Brand Products.
  - a. Any URL's, including subdomains, utilized by Buyer shall not impersonate Castle Aquatics or the Store Brands and shall not contain any copyrighted/trademarked terms related to Store Brands or any alternative spellings/forms or misspellings thereof (e.g., [www.tetondynamics-products.com](http://www.tetondynamics-products.com)). Buyer shall not use any copyrighted/trademarked terms as part of social media or directory site listings (e.g., [www.diggs.com/tetondynamics](http://www.diggs.com/tetondynamics)).
  - b. Buyers shall not advertise or post any links, tags, etc. on Castle Aquatics' or its Licensors' social media pages (including Facebook, LinkedIn or YouTube pages), including use of Facebook tags and similar devices contrived to drive traffic from copyrighted site(s) to another site.
  - c. All internet ad landing pages must comply with the terms of this Advertising Policy.
4. **Product Images:** Product images for Store Brands are available from Castle Aquatics upon written request. Product image requests must include the website and URLs of all sites where the images will be used. The Store Brand images may be used for advertising purposes only. The images are copyrighted and shall bear its respective owner's watermark. Any misuse of Store Brands' trade dress or copyrighted product names, logos, or images will result in legal action.
5. **Trademarks:** Castle Aquatics is licensed to use Teton®, a registered trademark of CMT Group LLC. Castle Aquatics is licensed to use PondMAX®, a registered trademark of CMT Group LLC in the USA & Canada and a registered trademark of PondMAX International in all other countries. No trademark or trade dress may be sold, given, gifted, loaned, rented, transmitted to, or stored by, any third party without written permission from Castle Aquatics.

Upon prior written approval of Castle Aquatics, Buyer may be authorized to use Trademarks and Castle Aquatics copyrighted information (including Castle Aquatics website content, including images, text, and logos) in connection with advertising, promoting, or reselling the Goods and refer to and advertise itself as an authorized distributor of the Goods. Castle Aquatics encourages this practice because it provides well-presented, accurate information to educate customers/consumers about the Store Brands

and Goods; however, Castle Aquatics reserves the right to direct Buyer to cease using improperly used Trademarks or advertising materials.

Online links within content are not permitted, with the exception of a link to the original content on [www.tetondynamics.com](http://www.tetondynamics.com), [www.tetonus.com](http://www.tetonus.com), [www.pondmax.com](http://www.pondmax.com) or [www.pondmaxusa.com](http://www.pondmaxusa.com).

6. **Promotions; Sales:** Castle Aquatics may periodically offer promotions, such as temporary price reduction or manufacturer's rebates (collectively, "**Manufacturer's Sale Price**"). During such promotions, Buyer may advertise the Store Brand Goods with the Manufacturer's Sale Price as specified by Castle Aquatics, and such advertisement shall not be considered a violation of this Advertising Policy.
7. **Compliance:** Any violation of the Advertising Policy shall be deemed a breach by Buyer of any agreements by and between Buyer and Castle Aquatics. Upon Buyer's violation of the Advertising Policy, Castle Aquatics may send Buyer a notice of violation. Castle Aquatics reserves the right, in its unilateral discretion, to take other action with respect to any Buyer that violates this Advertising Policy, including stopping sale of items or brands out of compliance with this Advertising Policy or immediately terminating its business with the Buyer. The termination of business with Buyer due to the Buyer's violation of this Advertising Policy shall not be considered a breach by Castle Aquatics of any supply or distribution agreement between Castle Aquatics and Buyer.

### **General Terms**

1. **Consent to Electronic Communications.** You agree that we may send the following to you by email or by posting them on our website and any related products and services: legal disclosures; these Terms, changes to any of the above; and other notices, policies, communications or disclosures and information related to the Products. You consent to receive such communications electronically. You agree to update your contact information to ensure accuracy. If you decide that you do not want to receive certain communications electronically, please send an email to [info@castleaquatics.com](mailto:info@castleaquatics.com). You may also opt out of certain electronic communications through your account or by following the unsubscribe instructions in in our Privacy Policy (available at <https://castleaquatics.com/privacy-policy-2/>). Your withdrawal of consent will be effective within a reasonable time after we receive your withdrawal notice described above.
2. **Insurance:** At all times, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Castle Aquatics request, Buyer shall provide Castle Aquatics with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Castle Aquatics with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Castle Aquatics' insurers and Castle Aquatics.
3. **Compliance with Law:** Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations,



consents, and permits that it needs to carry out its obligations under agreements with Castle Aquatics.

4. **Applicability of Terms and Conditions:** These Terms are subject to change at any time without prior written notice by Castle Aquatics. The most recent version of these Terms shall be posted for your review at any time on the Castle Aquatics website. Please review these Terms in their entirety prior to engaging in any transaction with Castle Aquatics. Your continued purchase of Goods from Castle Aquatics after any posting of updated Terms (which shall be dated as of their most recent update) shall constitute Buyer's acceptance of and agreement to any Term changes or updates.
5. **Partial Invalidity:** In the event that any part or portion of these Terms is deemed to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect.
6. **Delays or Omissions:** No delay or omission to exercise any right, power, or remedy accruing to Castle Aquatics, upon any breach or default of Buyer, shall impair any such right, power, or remedy of Castle Aquatics; nor shall it be construed to be a waiver of, or an acquiescence in, any such breach or default or any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of Castle Aquatics of any breach or default under these Terms, or any waiver on the part of Castle Aquatics of any provisions or conditions of these Terms, must be made in writing and shall be effective only to the extent specifically set forth in such writing.
7. **Force Majeure:** Castle Aquatics shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached any of its obligations to Buyer, for any failure or delay in fulfilling or performing any term of an agreement between the parties when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Castle Aquatics including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
8. **Governing Law; Venue:** Regardless of any other place of actual signing of any agreements related to the transactions between Castle Aquatics and Buyer, these Terms and all agreements between the parties related to the sale of Goods have been made and executed, and shall be deemed to have been made and executed, and to be primarily performed, in the County of Alameda, State of California, and shall be construed and governed under the laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. All disputes and controversies arising out of or in connection with these Terms shall be resolved exclusively by the state and federal courts located in the City of Oakland and County of Alameda in the



State of California, and each party agrees to submit to the exclusive jurisdiction of said courts and agrees that venue shall lie exclusively with such courts

**9. Company Contact:**

If you have questions regarding the Castle Aquatics Terms, please contact:

Castle Aquatics  
2285 Davis Court  
Hayward, CA 94545  
P. 866.422.9445  
F. 510.481.1405  
E. [info@castleaquatics.com](mailto:info@castleaquatics.com)