



Q water Pty Ltd
ABN 68 009 465 347

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STANDARD TRADING TERMS & CONDITIONS OF SALE

(Rev1 - Nov 2012)

DEFINITIONS:

Contract - means the agreement made upon the purchaser's acceptance of the quotation and these Standard Trading Terms and Conditions of Sale, together with any special conditions agreed to by the parties in writing and identified as such.

Force Majeure Event - means a labour dispute, lockout, act of government, war, riot, civil disturbance, embargo, storm, tempest, fire, flood, earthquake, natural calamity or any other event beyond the reasonable control of Q water Pty Ltd.

Goods - means the goods which the purchaser has ordered from Q water and for which Q water has given the purchaser the quotation and, where specified in the quotation, any services which Q water has agreed to supply to the purchaser.

Intellectual Property - means any confidential information, manufacturing methods, know-how, processes, technology (whether patentable or not), illustrations, drawings and the specifications and any improvements thereto in relation to the deliverables which Q water Pty Ltd may provide to the purchaser.

Interest Rate - means the rate which is 3.5% per annum above the Westpac Banking Corporation Indicator Lending Rate published in the Australian Financial Review.

Payment Date - means the earlier of:

- (a) Where Q water supplies the goods within Australia, 30 days from the date on which Q water provides the purchaser with an invoice for the Goods.
- (b) Where Q water supplies the goods outside of Australia;
 - (i) 3 working days after the quotation is accepted by purchaser (upfront payment).

Purchaser - means the person set out in the quotation.

Purchase Price - means the purchase price amount set out in the quotation.

Q water - means the entity (Q water Pty Ltd) supplying goods under the quotation to the purchaser.

Quotation - means the quotation which Q water has provided the purchaser for the supply of goods and services and which accompany these terms and conditions subject to clause 2.

Standard Trading Terms & Conditions of Sale - means the terms and conditions set out herein, as amended by Q water from time to time.

Tools - means any tooling necessary for Q water to carry out the work in relation to a quotation and includes without limitation, dies, tools, moulds, cutters and jigs.



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1. SALE

Q water will sell and the purchaser will buy the goods for the purchase price on the terms and conditions set out herein.

2. QUOTATION

The quotation provided by Q water is incorporated into, and forms part of this contract and is subject to the following:

- (a) Unless otherwise provided in writing by Q water, Q water may withdraw or vary the quotation at any time prior to the purchaser communicating in writing its acceptance of the quotation.
- (b) Unless otherwise provided in writing by Q water the quotation is automatically withdrawn upon the expiry of 14 working days from purchaser's receipt of the quotation.
- (c) Where the quotation is for goods to be imported by Q water (whether directly or through another entity) for the purchaser, then;
 - (i) Unless otherwise provided in writing by Q water, the purchase price shall be calculated on the higher of:
 - (A) the Australian dollar rate of exchange applicable at the date of the quotation; or
 - (B) the Australian dollar exchange rate at the time of delivery of the goods.
 - (ii) Unless otherwise provided in writing by Q water, the purchase price includes carriage and insurance paid to the Australian port of discharge and is exclusive of all landing charges, wharfage, storage, customs clearance and entry, transport, insurance, and all customs duties, taxes and imposts of any kind which shall be to the account of the purchaser;
- (d) All prices for goods supplied by Q water are exclusive of any applicable taxes and levies, which shall be to the account of the purchaser.

3. THE PURCHASE PRICE

- (a) On or before the payment date, the purchaser must pay Q water the purchase price for the goods by;
 - (i) Cash.
 - (ii) Direct deposit into Q water's nominated bank account.
 - (iii) Bank cheque; or
 - (iv) In the case of an overseas purchaser, by way of an unconditional & irrevocable letter of credit on terms acceptable to Q water in its absolute discretion.
- (b) In addition to the purchase price payable by the purchaser, the purchaser shall pay any other costs Q water has incurred on behalf of and notified to the purchaser or which Q water is entitled to claim against the purchaser for the supply of goods under the terms and conditions stated herein.
- (c) Where Q water and the purchaser have agreed for Q water to deliver the goods in installments, deliveries of further installments is conditional upon the purchase price for each installment of goods being paid on the payment date.
- (d) Q water may in its discretion give approval in writing for the purchaser to pay the purchase price on a date other than the payment date.
- (e) Where the purchaser fails to pay the purchase price or any other payment due under this agreement on the payment date or any other date approved in writing by Q water then interest shall accrue on the unpaid amount at the Interest Rate, calculated on a daily basis, from the date of payment due until the purchase price is fully paid.

4. PROPERTY IN GOODS

- (a) Q water shall retain full title in the goods until the purchaser has paid Q water the purchase price and all other amounts owing under this contract in full.
- (b) Where the goods have been delivered to the purchaser and the purchase price has not been fully paid, then the purchaser must:
 - (i) Hold the goods as agent for Q water.
 - (ii) Receive any monies received from any on-sale of the goods to a third party on trust for Q water.
 - (iii) Keep the goods and any monies received from any on-sale of the goods to a third party separate and clearly identifiable.
 - (iv) Promptly pay to Q water any monies received from any on-sale of any goods, and such payment shall be a deduction from the purchase price.
 - (v) Where the contract is terminated without payment being made in full of the purchase price and any other money due under this agreement, return all goods to Q water or allow Q water reasonable access to the purchaser's premise to enable the goods to be recovered by Q water or its representative.
- (c) Where any goods have been on-sold by the purchaser to a third party before the purchase price is fully paid, then the purchaser must, if required by Q water, assign all rights to any claims it may have against such third parties to recover any unpaid amounts in respect of the goods on-sold.
- (d) Where for whatever reason the goods become mixed with other goods then title to such goods shall be assigned to Q water until full payment of the purchase price is received and the rights of Q water under this contract shall apply to such other goods.
- (e) Notwithstanding any other provision in this contract, where the purchaser has failed to pay the purchase price by the payment date or any other date approved in writing by Q water, then Q water shall be entitled to re-take possession of the goods from the purchaser in accordance with clause 5, notwithstanding the retention of title by Q water in clause 4.



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5. THE DELIVERY

- (a) Delivery of the Goods:
- (i) Will be deemed to take place upon the dispatch of the goods from a Q water warehouse or factory wherever situated whether or not the goods are supplied within Australia.
 - (ii) Unless otherwise stated, delivery will be at the cost of the purchaser, including without limitation, packaging, transportation, insurance, custom duties, port costs or charges, storage, taxes, surcharges and levies.
 - (iii) Unless the purchaser has given specific written instruction as to the delivery of the goods (including but not limited to any insurance required by the purchaser to be obtained in its name at its cost), will be effected by any means or mode of transport determined by Q water in its absolute discretion.
- (b) Q water reserves the right to deliver the goods by installments and any delay in delivering an installment of goods by a date specified by Q water for delivery shall not entitle the purchaser to rescind this contract.
- (c) Any timetable given for delivery of any goods are estimates only and the purchaser shall not be relieved of any obligation to accept the goods and pay the purchase price for any goods by reasons of any delay in delivery.

6. RETURNS

- (a) Goods not specifically tailored to the purchaser's requirements, and delivered under this contract, may not be returned by the purchaser, for credit, without Q water's express consent in writing.
- (b) The purchaser must make an application to Q water for return of any goods and such application must be received within fourteen (14) days from date of delivery.
- (c) Where approval is granted for return of any goods by the purchaser, Q water may charge a re-stocking fee of 25% of the invoiced value of the Goods which have been returned.

7. CANCELLATIONS

Any order placed and accepted by Q water shall not be cancelled by the purchaser except by:

- (a) Agreement in writing between both parties;
- (b) Reasonable compensation for any work done and for any costs and expense incurred or committed for the supply of goods including any cancellation charges that have been received by Q water from the purchaser; and
- (c) Upon any other reasonable terms as determined by Q water for the cancellation by the purchaser.

8. SET OFF

This section is intentionally left blank.

9. INTELLECTUAL PROPERTY

Where Q water provides the purchaser access to or the use of the goods, all title in the Intellectual Property shall remain the property of Q water and nothing in this contract shall be taken to be a deemed assignment or license of the Intellectual Property to the purchaser. The purchaser warrants to Q water that it will not modify, reverse engineer, improve or upgrade the goods.

10. CONFIDENTIALITY

- (a) The purchaser must:
- (i) Keep this contract and the Intellectual Property strictly confidential.
 - (ii) Not disclose confidential information or the Intellectual Property unless;
 - (A) Required by law.
 - (B) It is already generally available in the public domain.
 - (C) To its employees, agents and consultants on a need-to-know basis and must ensure that such persons also observe the confidentiality attaching to the confidential information or Intellectual Property.
 - (iii) If reasonably required by Q water, enter into any document required to protect Q water's right, title and interest in the Intellectual Property or to maintain the confidentiality of the Intellectual Property.
 - (iv) Sign any document required by Q water to assign to Q water any right, title or interest in any improvements to the Intellectual Property which have been made by the purchaser or its employees, agents or consultants including procuring where the context requires its employees, agents and consultants to sign such document.
 - (v) Return the Intellectual Property or and any copies thereof to Q water, or to deal with Intellectual Property strictly in accordance with Q water's instructions.
 - (vi) Comply immediately and strictly with Q water's direction in regards to dealing with Intellectual Property, including without limitation, upon written request, the return of any Intellectual Property to Q water, or to destroy or delete from the purchaser's records and systems of any Intellectual Property or copies thereof.



11. DESIGN & MATERIALS

- (a) Any Goods to be acquired by the purchaser from Q water under this contract shall be manufactured:
- (i) In accordance with Q water's design and specifications for any goods ordered by the purchaser current at the date of the quotation.
 - (ii) Using standard materials which are available or from the most suitable alternative where the standard materials are not available.
- (b) Where Q water manufactures any goods ordered by the purchaser in accordance with the design, manufacture methodology, specification, materials or otherwise as required by the purchaser ("Purchaser's Specifications"), such purchaser's specifications shall be at the purchaser's cost and Q water will not accept responsibility or liability (including to a third party) for any performance, accuracy, suitability or reliability of such purchaser's specifications or any goods manufactured in compliance with the purchaser's specifications.
- (c) The Purchaser must:
- (i) Not make any representations or give any warranties to third party purchasers of the goods from the purchaser which binds Q water in relation to the fitness for purpose of any goods manufactured by Q water in accordance with the purchaser's specifications.
 - (ii) In the event that the purchaser does give the representations or warranties in clause 11(c)(i), indemnify and keep indemnified Q water against any and all claims, losses or damages incurred by Q water as a result of such representations or warranties by the purchaser.

12. TOOLING

- (a) Where Q water and the purchaser have entered into this contract for Q water to manufacture goods which are not standard items of its production, or are in accordance with the purchaser's specifications, requiring the establishment by Q water of Tools, then the purchaser will be responsible for the total cost of the Tools or a portion thereof as is reasonably attributable to the extent of the purchaser's specifications ("Purchaser's Tooling Cost"). Agreeing to the amount of purchaser's tooling cost shall be a precondition to the quotation and is in addition to the purchase price set out in the quotation provided (unless otherwise expressly indicated in the quotation).
- (b) Unless otherwise agreed in writing, all tools manufactured or supplied by Q water:
- (i) Shall be the property of Q water.
 - (ii) Q water may sell any of the tools to the purchaser at prices set out in the quotation.
- (c) Where, in the opinion of Q water, the condition of the tools renders the tools unusable due to fair wear and tear, or additional tools are required to account for increased demand, then part of the cost of new tools will be to the purchaser's account for an amount signed by the parties.
- (d) If the purchaser supplies any tools:
- (i) Q water will take reasonable care to ensure that they remain in good working condition subject to fair wear and tear in the circumstances but no responsibility is accepted by Q water for any loss or damage to any tools supplied by the purchaser.
 - (ii) Maintenance and repair of the tools supplied by the purchaser required under normal usage will be to the purchaser's account, as will be the cost of any modification necessary to adapt to Q water's plant or production processes.
- (e) All tools will be considered obsolete if no further orders have been placed by the purchaser for production within 1 year of the date of last supply by Q water to the purchaser, and Q water will not accept any responsibility for their continued existence, usability or disposal after such period.

13. INSPECTION-SHORTAGES & DAMAGED GOODS

- (a) Where the purchaser requires special tests on goods whether attended by the purchaser, its representative or not, such tests, unless otherwise agreed, shall be made at Q water's premises, or any other location which Q water considers appropriate, at the cost of the purchaser.
- (b) In the event of any delay on the part of the purchaser or its representative in attending such special tests, after seven days' notice of the goods being available for testing, the tests will be held in the purchaser's absence, and will be deemed to have accepted the goods and to have waived any claims in relation to the goods.

14. QUANTITY TOLERANCES

Where Q water has contracted to manufacture goods which are other than its standard items, Q water reserves the right to vary the quantity delivered by a margin up to 10 percent (10%) in excess of the quantity ordered by the purchaser and to charge for this variation in quantity on a pro-rata basis.

15. PERFORMANCE

- (a) All figures or data supplied by Q water for performance of the goods are intended to be a bona fide and a reasonable estimate of the performance of the goods expected under appropriate conditions and within certain defined parameters and tolerance limits at time of testing.
- (b) Subject to clause 15(c), Q water may specifically guarantee in writing, performance figures within certain defined parameters, conditions and specific tolerance limits.
- (c) Where performance figures are not specifically guaranteed in writing, Q water does not accept responsibility for failure of any goods to meet stated performance figures.
- (d) Any statement as to performance figures, whether in writing or otherwise, will not constitute a condition, warranty or representation.



16. REPLACEMENT GUARANTEE

- (a) Q water guarantees that any goods which, within a period of 12 months from delivery and upon examination by an authorized Q water representative, are found to be defective in workmanship, material or design whereby they are unsuitable, under proper usage and service for the purpose for which they are intended and under proper maintenance in accordance with Q water's specifications and/or materials, will be at Q water's sole discretion to:
- (i) Replaced free of charge; or
 - (ii) Repair or be rectified by Q water either in-situ or at a site nominated by Q water; or
 - (iii) If agreed in writing by and under direction of Q water, replaced, repaired or rectified by a third party of Q water, the purchaser shall be responsible for all costs in relation to site disconnection, removal, transportation to Q water's nominated repair facility and then the removal from the repair facility and return transportation to the purchaser's site, reconnection and commissioning. Where assistance is required by Q water on site, suitable daily costs shall be negotiated separately as a new contract with the purchaser and invoiced for payment by the purchaser at the agreed rate and terms set by both parties and as laid out herein Q water's standard trading terms and conditions of sale.
- (b) This guarantee does not apply where:
- (i) Goods are not put to proper usage, application or service, or goods are put to use in conditions outside of the defined or specified parameters, conditions and tolerance limits for manufacture.
 - (ii) A defect results from the purchaser's specifications (if supplied).
 - (iii) A defect results or arises from careless or improper handling by the purchaser or user, incorrect fitting, non-observance of operating maintenance or installation instructions, by repair or attempted repair by the purchaser or a third party without the consent of Q water in writing.
 - (iv) Where it is due to fair wear and tear.
- (c) This guarantee does not apply to any goods which, in accordance with the quotation are second-hand.
- (d) This guarantee does not apply to any goods, components thereof or accessories, which are not manufactured by Q water.
- (e) Except as set out in this clause 16, Q water shall not be under any liability to the purchaser for any loss, injury or damage, whether direct, indirect or consequential, suffered by the purchaser, or for loss of profits, or to give to the purchaser contribution or indemnity, or otherwise, in respect of any loss, injury or damage arising from, or attributable to, any such defect in the goods.

17. LIMITATION ON LIABILITY

- (a) Q water disclaims any and all liability, and makes no warranties or guarantees, and gives no indemnities, in relation to times quoted for delivery which are estimates only. Q water will not be liable for any loss or damage, direct or consequential, arising from failure to deliver or delay in delivery attributable to any cause beyond its reasonable control.
- (b) Q water will not be liable to the purchaser in conjunction with this contract, or under contract, tort (including negligence), breach of statute or any other cause of action at law or in equity, for any of the following:
- (i) Any cost, expense, loss or damage of an indirect or consequential nature.
 - (ii) Loss of profits, loss of contract, loss of opportunity, loss of goodwill, loss of business reputation, loss of revenue, loss of use of property or loss of production.
 - (iii) Increased costs of working or labor costs.
 - (iv) Costs of capital.
 - (v) Costs of business interruption; or
 - (vi) Costs, expenses, loss or damage that are not a direct and immediate consequence of the breach; Suffered by the purchaser however arising due to any causes including but not limited to the default or sole or concurrent negligence of Q water or its duly authorized representatives and whether or not foreseeable at the date of this contract.
- (c) Q water liability in respect of express warranties will be limited to the remedies set out in clause 16 and in respect of implied warranties, will be limited to the remedies set out in clause 21(b).
- (d) Notwithstanding any provision to the contrary, Q water's total aggregate liability including costs and liability in contract, tort, breach of statute or otherwise, shall not, under any circumstances, exceed the amount of the purchase price received by Q water.
- (e) This clause 17 will survive the termination of the contract.

18. INDEMNITIES BY PURCHASER

The purchaser indemnifies and shall keep indemnified Q water against loss, damage, costs, expenses, penalties, fines or claims suffered by Q water as a result of:

- (a) Q water exercising its rights under this contract in relation to goods for which the purchase price has not been paid by the payment date or a date otherwise approved in writing by Q water.
- (b) An infringement of any patent, trademark, registered design, copyright or common law right in any design, sample or instruction given to Q water by the purchaser.

19. INSOLVENCY OF PURCHASER

- (a) Q water shall have the right to terminate the contract immediately at its option if the purchaser:
- (i) Becomes bankrupt or insolvent.
 - (ii) Makes any arrangement with its creditors.
 - (iii) Suffers a receiver to be appointed; or
 - (iv) Being a body corporate enters into liquidation.

And the price for all goods delivered and in the course of manufacture, shall immediately become due and payable.

- (b) The purchaser must give Q water written notice as soon as the purchaser anticipates that an event in paragraph (a) will occur or has occurred.
- (c) Termination of this contract under this clause does not affect any rights accruing or which have accrued to Q water.

20. DISPUTE RESOLUTION

- (a) If any dispute arises in relation to this Contract ("Dispute"), then either party may give the other party a written notice setting out the nature of the dispute ("Notice of Dispute").
- (b) Each party's senior representative(s) must meet within 21 days after the date of receipt of the Notice of the Dispute to seek to resolve the dispute in good faith.
- (c) Where the dispute is not resolved under clause 20(b) within 21 days of it being referred for resolution, the dispute must be dealt with under the provisions of paragraph 20(d) herein.
- (d) Except as provided in paragraph 20(c) herein, all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, with however the place of arbitration being in Brisbane, Queensland, Australia.
- (e) This clause shall not preclude a party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- (f) The parties shall share the costs of dispute resolution under this clause equally unless the arbitrator or expert gives a certificate that the conduct of a party is such that it should bear all or a major portion of the costs.
- (g) Nothing in this clause shall prevent a party from applying to a court of competent jurisdiction for an injunction or other equitable relief.

21. IMPLIED TERMS

- (a) Subject to paragraph 21(b), any condition or warranty which would otherwise be implied in this contract is hereby excluded.
- (b) Where legislation implies in this contract any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this contract. However the liability of Q water for any breach of such condition or warranty shall be limited, at the option of Q water, to one or more of the following:
- (i) If the breach relates to the goods;
 - (A) The replacement of the goods or the supply of equivalent goods.
 - (B) The repair of the goods.
 - (C) The payment of the goods or of acquiring equivalent goods; or
 - (D) The payment of the cost of having the goods repaired.
 - (ii) If the breach relates to services;
 - (A) The supplying of the services again; or
 - (B) The payment of the cost of having the services supplied again.

22. FORCE MAJEURE

- (a) If the occurrence of a Force Majeure event prevents or is likely to prevent the supply of the goods in accordance with the contract, Q water may give the purchaser written notice of the Force Majeure event.
- (b) Q water must use its reasonable endeavors to remove the effect of each Force Majeure Event affecting its performance of the contract and the purchaser must provide all assistance reasonably requested by Q water to remove that effect.
- (c) The obligations of Q water under this contract will be suspended, to the extent they are affected by the Force Majeure Event, from the date Q water gives a suspension notice in respect of that Force Majeure Event until the cessation of the Force Majeure Event but the maximum period of suspension of obligations under this clause is nine (9) months per event from the date of occurrence of the relevant Force Majeure Event.
- (d) Q water must give immediate notice to the purchaser of the cessation of a Force Majeure Event and must as soon as reasonably possible after cessation of that Force Majeure Event, resume performance of any obligation suspended as a result of it.
- (e) If the ability of the contractor to perform its obligations under this agreement is materially adversely affected by a Force Majeure Event for a period that continues beyond the date which is 60 days from the date of occurrence of the relevant Force Majeure Event, either party may:
- (i) Request that the goods be supplied by a mutually agreed alternative manner; or
 - (ii) Cancel the contract.
- (f) Each party must bear its own costs and no party will have any claim for compensation against the other arising from the cancellation of the contract pursuant to this clause.



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23. GST

- (a) For the purposes of this clause 23:
 - (i) "GST", "Supply", "Tax Invoice" and "Taxable Supply" have the meanings given in the GST Act.
 - (ii) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 as amended.
- (b) If any supply made by either party ("Supplier") to the other ("Recipient") under this Agreement is a Taxable Supply, then in relation to any consideration payable by Recipient to Supplier under this Agreement, Supplier shall be entitled to recover from Recipient an additional amount on account of GST, such amount to be equal to the amount of Supplier's GST liability. In respect of the supply calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this contract is the value of the Taxable Supply and shall be recoverable at the time when the purchase price is paid. Supplier must issue a Tax Invoice to Recipient for the amount of GST referable to each Taxable Supply.
- (c) IF any supply under this contract is a Taxable Supply then both parties acknowledge that they are registered for GST purposes.

24. GENERAL

- (a) This contract may not be amended, deleted or added to without the consent in writing of Q water Pty Ltd.
- (b) The purchaser must not assign its interest in this contract without the consent of Q water in writing.
- (c) This contract shall be governed by and construed in accordance with the laws of Queensland, Australia and the parties submit to the jurisdiction of the courts of Queensland, Australia. The Vienna Convention is excluded for the purpose of this contract.
- (d) The purchaser shall pay to Q water any amount which Q water is required to pay on account of any excise or sales taxes, customs duty, goods and services tax, or any other taxes, duties or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any part thereof, or the manufacture, or sales of the same. Unless such taxes or other impositions have been specifically included in the price quoted, they shall be payable by the purchaser as an extra charge.
- (e) Nothing in this contract will constitute a partners hip between the parties nor constitute one party the agent or representative of the other party.
- (f) Any notice or other communication to be given by a party to another party under this contract must:
 - (i) Be in writing.
 - (ii) Give the address of recipient as set out in this contract or as revised by notice from the relevant party.
 - (iii) Be left at or sent by prepaid/registered post to that address or sent by facsimile; and
 - (iv) Be deemed to be served:
 - (A) On the day of delivery; or
 - (B) 3 days (if sent within Australia) or 7 days (if sent outside Australia) after the date of posting by prepaid; or
 - (C) On the date recorded on the transmission report if sent by facsimile or the next business day if outside business hours.
- (g) All payments made under this contract must be made in Australian dollars to an account nominated by Q water.
- (h) Q water reserves its absolute right to set off against any amounts payable under this contract any other monies payable by Q water to the purchaser, and shall give the purchaser reasonable notice of such set-off as and when it chooses to exercise this right.
 - (i) This contract contains the entire agreement of the parties with respect to the subject matter to which this contract relates. All prior terms, agreements or representations, expressed or implied, are superseded by the contract.
 - (ii) Where any ambiguity exists between the quotation and these Standard Trading Terms and Conditions of Sale (other than terms clearly provided for within the quotation), these Standard Trading Terms and Conditions of Sale shall prevail.

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