Aqua One® Avi One® Pet One® Pond One® Reptile One®

aquamanta

Kong's (Aust.) Pty. Limited
A.B.N. 68 050 291 766

APPLICATION - Use of Material Content

date of application:

business name:

address:

A.B.N./business registration no.:

contact person/s:

contact number/s: ph: mob:

internet website address:

Is this website owned by the business named above? YES / NO

email address:

Kong's account customer: YES / NO - if NO, who is your "ONE" brands distributor:

I request to USE (*tick box/s*):

material content*, as found in Kong's websites, for use in our website

material content*, not found in Kong's websites, for use in our website

hyperlink logo/s, for use in our website

(please tick) ***Aqua One*** ***Avi One*** ***Pet One*** ***Pond One*** ***Reptile One*** ***Aquamanta***

material content*, for another purpose – *please provide details and forward with this application*

* *material content that is the property of Kong's, and includes, for example: trademarks, logos, pictures, images, text and other copyright materials or the like.*

I acknowledge that the **Conditions of Use - Use of Material Content** document was provided to me at time of application and I have read, fully understand and agree to abide by the conditions within and any other condition, as may apply to my use of the material content. I/we warrant to Kong's that the information provided within is true and correct and that the applicant is an authorised officer and thereby permitted to enter into this agreement.

Date: ……

Name of Applicant: ……

Capacity of Signatory: ……

Signature of Applicant: ……

fax to : 1800 888 433 or
scan and email to: marketing@kongs.com.au

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Kong's (Aust.) Pty. Limited
A.B.N. 68 050 291 766

Conditions of Use - Use of Material Content

Introduction

For business and commercial purposes you must apply for written permission from Kong's (Aust.) Pty Limited to **use our intellectual property**, including copyright materials (material content), namely, trademarks, logos, pictures, images, text.
For example, you may wish to use the material content in our internet websites or use any other material content that is our property, for use in **your internet website** or for **use in other mediums or purposes**, for example an advertisement flyer, e-newsletter or in other marketing material.

You may also wish to **create a hyperlink from your website** to any or all of our "ONE" brand or Aquamanta websites and we can provide to you a specific "hyperlink" logo. The Conditions of Use outlines how to:

a) apply to us and register how you want to "use" our material content
b) obtain permission from us to use and access our material content
c) abide by the conditions in using the material content, where we grant permission to you

1.0. Definitions

1.1. **Kong's, we, our, us** means Kong's (Aust.) Pty Limited A.C.N. 050 291796
1.2. **You, your, customer** means Kong's approved trading account customer or other persons.
1.3. **Our websites** ("our websites"), means the internet websites: www.aquaone.com.au, www.avione.com.au, www.petone.com.au, www.pondone.com.au, www.reptileone.com.au, www.aquamanta.com.au and its web-pages. The websites are owned and operated by Kong's (Aust.) Pty Limited, A.C.N. 050 291 766.
1.4. **Your website** ("your website"), means your internet website as owned and operated by you.
1.5. **The hyperlink logo** ("hyperlink logo") means the logo provided to you, so you may effect a hyperlink of the hyperlink logo from your website to the internet web page/s in any or all of our websites
1.6. **The material content** ("the material content") means: a) the hyperlink logo b) any information or content in our websites and its web-pages that is the property of Kong's c) any other material content as provided to you that is the property of Kong's. The material content does not include information or content, which is not our property.
1.7. **The ONE brands** ("ONE" brands) means: Aqua One, Avi One, Pet One, Pond One and Reptile One OR Aquamanta

2.0. Application to USE the material content, in your website

2.1. You must obtain permission from us to use our material content in your website.
2.2. The application form *Application to Use Material Content* may be requested by email: marketing@kongs.com.au or direct to our office. All Applications are reviewed within 14 days.
2.3. The application form must be completed in full and signed by you acknowledging that you have read and agree to abide by the Conditions of Use.

3.0. Application to USE the material content in other media or for other purpose

3.1. Where you request material content for use in **media other than in your website** or **for another purpose**, you are required to **seek separate permission from us on each occasion of use** and such permission provided to you will be governed also by the Conditions of Use and may be subject to other conditions.
3.2. The application form and the application process is the same as in paragraph 2.0.

4.0. Granting of permission to use the material content

4.1. Permission granted, will be provided in writing to you and is a limited, non-exclusive, non-transferable, royalty free licence to reproduce the material content for public display in: a) your website; or b) for another purpose; and only for the purpose and use as so specified and agreed to by us.
4.1. The Conditions of Use comes into effect immediately when, a) we grant permission to you to use the material content; or b) when we provide the material content to you; or c) when you access the material content in our websites.

5.0. Access to and provision of, the material content

5.1. Where permission is granted to you, you may: a) access the material content in our websites, b) request, in writing, for other material content, not found in our websites. All requests are reviewed on a case by case basis within 14 days.
5.2. The material content will be provided in jpeg format via email, or on request in another format where practicable.

6.0. Reference to Us as a Preferred Supplier

6.1. You may refer to us, in your website or marketing material (where approved), as a preferred supplier using any of the Kong's "ONE" brand names or Aquamanta, as relevant to the information or product/s used, for example: *"Aqua One is a preferred supplier……..".* Refer to the other "ONE" brand or Aquamanta names in paragraph 1.7.

7.0. Your obligations

7.1. You acknowledge and agree to abide by and be bound by the Conditions of Use and any and all of its amendments from time to time and any other written notice provided to you by us in regard to the material content.

YOU MUST:

7.2. include in the Terms of Use or other legal notice displayed in **your website**, the following statement or part statement and include reference to the relevant "ONE" brands or Aquamanta used in your website or marketing material: for example,***"Aqua One, Avi One, Pet One, Pond One and Reptile One or Aquamanta are trademarks and the property of Kong's (Aust.) Pty Limited.***
7.3. endeavour to use the **hyperlink** logo, where you wish to effect a hyperlink from your website and its web pages to our websites and any of its web-pages.

7.4. maintain the quality of your website such that its content and activities conducted through it remain current, in good taste and compliant with all applicable laws, rules and regulations, (we cannot be held liable for discontinued products and outdated or incorrect information, you retain in your website).

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7.5. advise to us, immediately upon becoming aware of any: i) infringement or threatened infringement to the material content; ii) unauthorised use of the material content.

7.6. at our request: provide more information about your use of the material content, or in regard to your use, remove, alter or modify the material content, for example, the size, appearance, position or other, within 14 days of such request.

7.7. inform any third party, including any agent, employee or contractor, about your obligations and liabilities under the Conditions of Use, where that third party undertakes actions on your behalf, to cause display of the material content in your website or for other use purpose.

7.8. tell us when you have a change of control, ownership, merger, acquisition or cessation of your business

7.9. tell us where you cease to operate, or be the registrant of, your website

7.10. obtain permission to use "other" content in our website/s, that is not Kong's property, from the property owner.

YOU MUST NOT:

7.11. alter the material content in any manner, for example, a) change the colour or any element b) distort the appearance or perspective other than to decrease or increase the size c) replicate any webpage in our websites d) display it in any manner that implies an affiliation with (other than as a "preferred supplier"), sponsorship or endorsement by us, or that can be interpreted to suggest, in our opinion, that editorial content has been authorised by, or represents our views or opinions or those of our employees

7.12. display the material content as the most prominent feature of the web pages in your website

7.13. use the material content as part of any other feature or design element including other logos , however, you may use and display the material content with other company's logos etc, provided that the placement of such does not, in our reasonable opinion, cause to mislead or confuse.

8.0. General

8.1. You acknowledge and agree that we retain all right, title and interest in our websites and the material content including any and all associated goodwill.

8.2. You represent and warrant that:

a) you or your authorised officer on your behalf, has the right to enter into this agreement, and the agreement does not conflict with any other agreement or obligation by which you are bound;

b) your website does not breach the rights of any third party in any jurisdiction including, without limitation, any copyright, trademark or other legal rights;

c) your website does not include any material which is harmful, unlawful, threatening, defamatory, obscene or indecent or which encourages illegal activity and does not contain direct links to sites or pages displaying the types of material referred to herein;

d) you will use the material content, solely as provided for herein, and not in any manner that may diminish or otherwise damage our goodwill and reputation in: i) the material content, ii) our websites, iii) our general business activities.

8.3. We reserve the right at any time, and in our sole discretion, to change or otherwise modify the Conditions of Use statement and the material content in our websites or the material content in its general form.

8.4. We may terminate immediately any permission granted to use the material content by giving written notice, for whatever reason and without limitation to: a) your breach of the provisions under the Conditions of Use agreement b) the cessation, change of control, ownership, merger/ acquisition of your business c) you cease to operate, or be the registrant of, your website d) where in our opinion you are incapable, or likely to become incapable, of fulfilling your obligations herein.

8.5. Upon termination you must remove from your website a) all hyperlinks to our websites and its website pages b) all material content c) all other reference to us d) comply with all other reasonable written notices from us

8.6. To the maximum extent permitted by law, we make no warranties, express or implied by law, in relation to the material content such as logos, trademarks, text, or images in our websites or as provided to you, including, without limitation, any warranties relating to infringement of intellectual property rights of a third party.

8.7. To the maximum extent permitted by law, in no event shall we be liable for any direct, indirect, punitive, incidental, special, or consequential damages arising out of, or in any way connected with, the provision of, your access to, display of, or use of, the material content or with the delay or inability to provide, access, display or use, the material content whether based on negligence, contract, tort, strict liability, or otherwise.

8.8. If, despite the limitation in clause 8.7., we are found liable for any loss or damage which arises out of or in any way connected with any of the occurrences so described, then to the maximum extent permitted by law our liability will in no event exceed the aggregate total of AU$100.00.

8.9. You must indemnify us, and keep us indemnified, against all actions, proceedings, losses, liabilities, claims, demands, costs and expenses (including reasonable legal expenses): a) suffered or incurred by a third party in relation to any actual or threatened claim amounting from a breach of the Conditions of Use or any other legal right, caused by you and any of your agents, employees or contractors including any negligent or willful act or omission.

8.10. Neither party will be liable to the other for the consequences, delays or failures of its performance under the Conditions of Use, including any direct, indirect or consequential loss, due to events beyond its control, including without limitation acts of God, fire, flood, accident or terrorism

8.11. We reserve our legal rights at all times, even where we may not action such rights immediately.

8.12. If any part of the Conditions of Use is deemed invalid or unenforceable, for whatever reason, then that part shall be severed and will not affect the continued operation of the remaining provisions there under.

8.13. This agreement is governed by and shall be construed in accordance with the laws of the state of New South Wales, Australia and the parties submit to the jurisdiction of the courts of that state.