

GENERAL TERMS AND CONDITIONS OF SALE OF AQUADAM CLOSE CORPORATION (SOUTH AFRICA) REG. NO. 1992/015957/23

These General Terms and Conditions of Sale ("Conditions of Sale") shall constitute the contract for the supply and/or delivery and/or installation of steel water tanks and other water harvesting or storage products and related services (hereinafter collectively referred to as "Goods") by Aquadam Close Corporation or any related entities of Aquadam Close Corporation (hereinafter collectively referred to as "Aquadam") to the Purchaser.

1. General

- 1.1 All quotations are made and all orders for the Goods are accepted by the Purchaser on and subject to the Conditions of Sale and any special terms and conditions as may be agreed to by Aquadam in writing. Previous dealings between Aquadam and any Purchaser or the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Conditions of Sale or be deemed in any circumstances whatsoever to do so, unless otherwise specifically agreed in writing.
- 1.2 A quotation is valid for 30 calendar days from the date of issue, after which it is automatically void and Aquadam shall not be bound by such quotation. Aquadam reserves the right to issue a new quotation in its sole discretion in such event.
- 1.3 The Purchaser must sign acceptance of the quotation and return the quotation to Aquadam within 30 calendar days for the quotation to be binding and for a contract to commence in accordance with these Conditions of Sale and before the Goods will be provided to the Purchaser by Aquadam.
- 1.4 Aquadam reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Purchaser and shall not be liable for any form of damages or cancellation fee or penalty in respect thereof. Aquadam reserves the right and shall be entitled to vary, amend or terminate any quotation furnished to the Purchaser.
 - 1.4.1 The Purchaser specifically acknowledges that the quotation furnished to the Purchaser by Aquadam is based solely on information supplied by the Purchaser to Aquadam.
 - 1.4.2 The Purchaser acknowledges that any quotation furnished to it by Aquadam may be terminated, varied or amended in the sole discretion of Aquadam in the event that the site conditions, being the conditions of the site at which or on which any of the Goods are to be installed, vary from the site conditions communicated by the Purchaser to Aquadam. For purposes of this clause 1.4.2 the term "site conditions" shall be deemed to include accessibility to the site, requirements for geotechnical or geological support, investigations or reports, requirements for earthworks, level of the site, requirements for cleaning of the site, whether the site has been suitably compacted, requirements surrounding drainage, requirements for excavation, adequate supply of electricity and water to the site, any additional requirements of the Purchaser relating to safety and security in relation to the site and any additional requirements arising from the condition and situation of the site which will result in a nonstandard installation of the Goods arising or resulting in the specification/s of any Goods having to be varied.
 - 1.4.3 Where Aquadam varies or amends any quotation as a result of the site conditions varying from the site conditions communicated by the Purchaser to Aquadam then the provisions of clauses 1.2 to 1.3 of these Conditions of Sale shall apply and the initial quotation furnished by Aquadam to the Purchaser shall be deemed to be void and shall not constitute any form of agreement or representation on the part of Aquadam whatsoever and such amended or varied quotation shall supersede and replace any prior quotation furnished by Aquadam to the Purchaser.
 - 1.4.4 Where Aquadam terminates any quotation as a result of the site conditions varying from the site conditions communicated by the Purchaser to Aquadam then the provisions of clause 1.4 of these Conditions of Sale shall apply, notwithstanding any initial acceptance of any quotation by Aquadam.
- 1.5 The obligations of Aquadam to supply the Goods to the Purchaser shall only commence on the date that Aquadam agrees in writing to supply the Goods to the Purchaser. This may not be the date that the order is received by Aquadam.
- 1.6 At any time prior to commencement of manufacture, or date of procurement of materials for the Goods, or modifying or adapting any of the Goods as the case may be (hereinafter collectively referred to as "Manufacturing"), by Aquadam, the Purchaser may, by notice in writing to Aquadam, terminate this contract or request a variation to this contract. Such termination takes effect upon Aquadam receiving the notice of termination and confirming to the Purchaser that Aquadam has not commenced Manufacturing of the Goods. If the Purchaser terminates the contract, the Purchaser shall be liable to pay to Aquadam a cancellation fee equal to an amount of 20% of the accepted quotation price for the Goods, alternatively, the Purchaser shall be liable to pay to Aquadam all such costs and expenses incurred by Aquadam up to the date that termination takes effect, whichever amount is higher at the date of termination. The costs and expenses incurred by Aquadam up to the date that termination takes effect will be determined and proved by a written certificate, signed by a member of Aquadam. The certificate will be binding on the Purchaser upon the mere production thereof and will be valid as a liquid document against the Purchaser in any competent court.
- 1.7 Where the Purchaser seeks to vary an order placed with Aquadam, the variation is not binding on Aquadam until accepted in writing by Aquadam. The Purchaser will be liable for a fee of R500 plus VAT (total R570) per variation plus any addition or reduction to the quotation price as determined by Aquadam. Once Aquadam commences Manufacturing of the Goods, no variations are permitted.
- 1.8 The law applicable to the agreement between Aquadam and the Purchaser is the law of the Republic of South Africa.

2. Price

- 2.1 Where a Purchaser wishes to place an order for the Goods, Aquadam will provide a quotation or otherwise notify the Purchaser of a single total price, inclusive of VAT, applicable to those Goods if the price is capable of being quantified. The Purchaser shall be liable to pay to Aquadam all amounts on account inclusive of VAT in the same manner and by the same means as all other charges. Aquadam will issue a tax invoice showing the amount of VAT in respect of the supply if requested by the Purchaser.
- 2.2 The price of Goods specified by Aquadam in any quotation:
 - (a) will remain valid for a period of 30 days for an order made by the Purchaser in accordance with the quotation, unless otherwise specified; and
 - (b) is subject to these Conditions of Sale and any other conditions specified in the quotation.
- 2.3 Unless otherwise provided, prices do not include delivery charges or accommodation charges. Delivery and accommodation charges vary by region, and will be advised to the Purchaser at the

time the quotation is made or otherwise prior to the order being confirmed. Any delivery or accommodation charge will be shown as a separate amount on the invoice if applicable.

- 2.4 Unless otherwise provided, prices do not include supply or installation of nozzles, inlets, outlets, overflows, scours and level indicators. In the event that the Purchaser requires the supply and/or installation of any nozzles, inlets, outlets, overflows, scours and level indicators, the Purchaser shall be responsible to communicate this to Aquadam in its order and shall provide Aquadam with detailed drawings and specifications on requirements relating to the nozzles, inlets, outlets, overflows, scours and level indicators and ancillary piping and placement requirements.
- 2.5 Where the prices specified for Goods do not include VAT or any other tax or government impost/levy/duty/excise/charge, the invoice will show such charges as a separate amount if applicable. Notwithstanding the aforesaid, the Purchaser shall be liable to Aquadam for all such VAT, excise, sales, levies or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the Goods or any part of the Goods, or upon the Manufacturing, use, supply or delivery of same.

3. Payment

- 3.1 Subject to clause 3.2, payment for Goods purchased from Aquadam must be on a cash basis with placement of the order by the Purchaser unless otherwise agreed to by Aquadam.
- 3.2 Where the Purchaser has established an approved credit account with Aquadam and subject to the approval of Aquadam, the Purchaser shall be liable to pay to Aquadam 50% (or such other amount as may be agreed to in writing by Aquadam) of the price on acceptance of the quotation by Aquadam and the balance of the price upon delivery or installation of the Goods, as the case may be.
- 3.3 The Purchaser will not be entitled to any agreed settlement discount where the Purchaser does not make payment as required by clauses 3.1 or 3.2. Where the Purchaser has made a payment by cheque and has been granted a settlement discount and the cheque is subsequently dishonoured, the Purchaser will not be entitled to the settlement discount and shall pay Aquadam the full invoice price for the Goods.
- 3.4 Aquadam shall be entitled to charge interest on any amount overdue from the date it became due to the date payment is received at the rate of 1.5% above the prevailing rate charged by ABSA Bank to prime borrowers on overdraft accounts in excess of R100,000.00. All payments made by the Purchaser will be first applied to the accrued interest, legal costs (if any) and then capital.

4. Default

- 4.1 Where the Purchaser is in default in the performance of any of its obligations under these Conditions of Sale, Aquadam may refuse, without prejudice to any other rights it may have under these Conditions of Sale or at law, to supply or deliver further Goods to the Purchaser until such time as the Purchaser has remedied that default and/or may choose to terminate the contract.
- 4.2 If the Purchaser defaults in any payment, commences to be wound up or is placed under administration or into liquidation or becomes insolvent, commits any act of insolvency, enters into any business rescue arrangement, enters into any form or scheme of arrangement with its creditors or becomes subject to any other analogous event, Aquadam may at its option and in its sole discretion exercise the following rights in addition to any other rights it may have under these Conditions of Sale or at law:
 - (a) suspend deliveries of further Goods to the Purchaser whether under this contract or otherwise; or
 - (b) terminate the contract in relation to Goods that have not been delivered.
- 4.3 All reasonable costs relating to any action taken by Aquadam to recover monies due from the Purchaser (including, without limitation, legal costs on the scale as between attorney and own client and any other debt collection costs inclusive of collection commission) will be payable by the Purchaser.
- 4.4 If the Purchaser is in default in the performance of any of its material obligations under these terms and conditions, Aquadam may refuse to deliver further Goods until such time as the Purchaser has remedied that default and where:
 - (a) the Purchaser has not notified Aquadam of any damage, inaccuracies or defects under clause 8 of this Contract; and
 - (b) the Purchaser does not remedy that default within 7 days of the Purchaser receiving written notification, or such other time as may be agreed by the parties,

Aquadam may terminate the contract in relation to Goods that have not been delivered.

5. Specifications, materials or special orders

- 5.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in data packs, price lists or other matter of Aquadam or elsewhere are approximations only. They are intended by Aquadam to be a general description for information and identification purposes and do not create a sale by description. Aquadam reserves the right at any time to:
 - (a) produce Goods with such minor modifications from its drawings and specifications as it sees fit in accordance with Aquadam's minor production tolerances and improvements made to the Goods from time to time or as required by any site; and
 - (b) alter specifications shown in its quotation to reflect any necessary changes made.
- 5.2 Aquadam shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after Aquadam has ordered special materials or commenced with Manufacturing. Where any change in product dimension, materials or finish or any other variation to the Goods is accepted by Aquadam, then the provisions of clause 1.4 of these Conditions of Sale shall apply.
- 5.3 In the case of goods or components not of Aquadam's manufacture, Aquadam shall give the Purchaser and use its reasonable endeavours to enforce at the cost of and for the benefit of the Purchaser, such warranties and guarantees as Aquadam has obtained from its suppliers. The Purchaser indemnifies Aquadam against all damages, delays, additional costs or the like incurred by or payable by the Purchaser for or as a result of any goods or components not of Aquadam's manufacture suffering any form of defect or causing any defect arising in the Goods or in the use of the Goods or the suitability of the Goods for the purposes required by the Purchaser.
- 5.4 Where Aquadam is required to order special material or qualities for which a supplier requests minimum order quantities, the Purchaser may be requested to accept an increase of the minimum quantity required to be ordered by Aquadam to fulfil the order and if so requested the Purchaser shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.
- 5.5 If Aquadam is required to process the Purchaser's goods or materials then Aquadam does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing, Aquadam accepts no responsibility and shall not, in any way be liable to the Purchaser for any damage done or caused to such materials or goods.
- 5.6 The Purchaser expressly agrees that if the Goods, which are the subject of an order, are for a

particular purpose or are required to possess certain characteristics, the Purchaser will specify that purpose or those characteristics in writing in the order.

- 5.7 If the Purchaser does not specify the particular purpose or the special characteristics in accordance with clause 5.6 and Aquadam does not expressly confirm in writing that the goods are reasonably fit for the specified purpose or that the Goods possess the specified characteristics, then the Purchaser agrees that it did not rely on the skill or judgment of Aquadam in relation to the suitability of the Goods for a particular purpose or the special characteristics possessed by the Goods.

6. Delivery and Risk

- 6.1 Unless otherwise agreed, the delivery of Goods is subject to the standard delivery conditions as described by Aquadam. Aquadam reserves the right to vary these standard delivery conditions from time to time, provided that such variations only apply to orders for Goods made after the date of variation.
- 6.2 Unless otherwise agreed by Aquadam, delivery of Goods shall be effected DAS (Delivery At Site) during Aquadam's standard delivery times and shall be deemed to occur when the Goods have arrived and are ready for unloading at the nominated site. The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.
- 6.3 All risk in the Goods passes to the Purchaser on delivery of the Goods at site.
- 6.4 Where Goods are delivered DAS the following shall apply (unless otherwise agreed):
- The Purchaser shall be responsible for unloading the Goods and shall ensure that the Goods are unloaded without delay on arrival at the nominated site.
 - Aquadam reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods.
 - Where the Purchaser or his agent is not in attendance at the nominated site when the Goods arrive, Aquadam reserves the right to unload the Goods and the Purchaser shall be liable to pay Aquadam for the cost of this unloading. In the event of the site being unattended the delivery docket/manifest signed by the cartage contractor shall be prima facie evidence of due delivery of the goods. Aquadam shall not be responsible for any Goods which are stolen, pilfered or damaged after being unloaded at an unattended site.
 - Where unloading of the Goods cannot be effected, the Purchaser shall be liable to pay Aquadam all costs incurred by Aquadam including, if applicable, a return delivery fee at the prevailing freight rates.
- 6.5 Dates and times quoted for delivery are estimates only.
- 6.6 Aquadam shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where Aquadam delivers by instalments each instalment shall be deemed to be sold to the Purchaser under a separate contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Purchaser to repudiate the order.
- 6.7 Goods ordered for collection will be held for a maximum period of 10 working days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at Aquadam's option) the Purchaser's site or store or to a store selected by Aquadam and all costs incurred by Aquadam in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser.
- 6.8 No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.
- 6.9 If Aquadam is prevented either directly or indirectly from performing any of its obligations under these Conditions of Sale, including without limitation, manufacturing or making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Purchaser, either to:
- extend the time for manufacture or delivery of the Goods for a reasonable period; or
 - subject to refunding the Purchaser for any payment already made by Aquadam in respect of those particular Goods (if any) to terminate this contract, and the Purchaser shall not have any claim against Aquadam for damages or any other remedy for breach of contract. "Force Majeure" shall mean an act of God, war, unrest, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond Aquadam's control.

7. Title

- 7.1 Aquadam shall remain the legal and equitable owner of Goods supplied until Aquadam has received in full the purchase price in respect of all Goods supplied by Aquadam and all other moneys owing by the Purchaser to Aquadam. In the case of payment by cheque, payment shall not be deemed to be received by Aquadam until the same has been cleared by the bank on which it is drawn. Aquadam shall have a lien on any site where installation of the Goods has commenced and shall at its sole discretion be entitled to remove any materials or Goods from the site should the Purchaser breach any term of these Conditions of Sale.
- 7.2 Until title to and ownership of the Goods passes to the Purchaser, the Purchaser must hold the Goods for Aquadam as agent, store the Goods properly and separately from the Purchaser's own goods, retain them in good and merchantable condition and fully insure the Goods against loss or damage, however caused. The Purchaser must not create any encumbrance over the Goods which is inconsistent with Aquadam's title and ownership to the Goods.
- 7.3 If:
- any of the events in clause 4.1, 4.2 or 4.4 occur; or
 - in Aquadam's reasonable opinion the payment of any amount in respect of the Goods supplied by Aquadam is in jeopardy (for example where the Purchaser is in default under a separate contract with Aquadam or a related entity), then the Purchaser irrevocably authorises a representative of Aquadam to enter upon any site where the Goods are located to take possession of the Goods without any previous notice, and the Purchaser indemnifies Aquadam against any action, claim or demand arising out of any act lawfully done by Aquadam in the exercise of its powers and Aquadam shall be further entitled to resell any Goods which it has so taken into possession. Where Aquadam has taken possession of any Goods in accordance with this clause it shall be released from all its obligations under the contract of sale in respect of the Goods.
- 7.4 Where the Purchaser sells Goods to which it does not have title, the Purchaser shall receive the proceeds of sale of those Goods as trustee for Aquadam and shall keep such proceeds in a separate account.

8. Damage, Inaccuracies and Defects

- 8.1 The Purchaser shall check all Goods received immediately upon unloading and shall notify Aquadam of any inaccuracies or short supply of Goods or any damaged Goods within 14

calendar days of the date of delivery of the Goods. Aquadam will rectify any inaccuracies or short supply or damaged Goods as soon as it is reasonably practicable. Aquadam will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply or damage, except if you are a Consumer and such loss or damage arises from the negligence or willful misconduct of Aquadam, or any of its officers, employees or agents. Should any dispute arise between the Purchaser and Aquadam as to the existence of or extent of any damage to the Goods, then the provisions of clause 10.5 of these Conditions of Sale shall apply.

- 8.2 Any queries regarding items shown on invoices issued by Aquadam shall be lodged by the Purchaser with Aquadam within 25 days of the date of issue of the relevant invoice.
- 8.3 The Purchaser shall promptly notify Aquadam of any alleged defects in the Goods upon becoming aware of the defect and shall provide Aquadam with all relevant details to enable Aquadam to assess the alleged defect.

9. Equipment

- 9.1 All roll toolage, shears, lifting and associated equipment which Aquadam makes or obtains to produce or install the Goods, shall, unless otherwise expressly agreed by Aquadam, be and remain the property of Aquadam and any payment made with respect to them shall be deemed to be a charge in respect of their use. These and any other special tools, jigs, fixtures and patterns acquired or supplied by Aquadam for the fulfillment of the order are the property of Aquadam and are not to be used without its authority.

10. Installation

- 10.1 If the Purchaser or any third party installs Goods provided by the Purchaser, the Purchaser warrants that:
- the Goods will be installed in accordance with the relevant drawings and acknowledges that Aquadam recommended installation and assembly instructions as published by Aquadam from time to time;
 - it will obtain advice from a suitably qualified specialist to verify the capacity of any existing structure to withstand any additional load arising as a result of the installation of the Goods;
 - it will obtain any government or other approvals in relation to the installation prior to installation;
 - all installation will be done in accordance with relevant local workplace health and safety guidelines; and
 - all safe work practices will be adhered to at all times and the site is kept safe at all times.
- 10.2 If Aquadam has agreed to install the Goods, Aquadam agrees to:
- install the Goods in accordance with Aquadam's recommended installation instructions as published by Aquadam from time to time and available on request;
 - obtain those government or other approvals in relation to the installation nominated on the Order except any council approvals (including development applications); and
 - maintain the safety of its personnel on the site and ensure its personnel adhere to safe work practices at all times.
- 10.3 If Aquadam has agreed to install the Goods, at the site, the Purchaser will:
- be the principal contractor;
 - ensure it provides vehicular and safe access to Aquadam and its personnel sufficient to enable Aquadam to carry out the provision, delivery and installation of the Goods;
 - ensure proper occupational, health and safety conditions;
 - manage third parties and ensure no interference with the provision, delivery and installation of the Goods; and
 - provide Aquadam with all safety or other information relevant to the site immediately when such information becomes available.
- (f) The Purchaser specifically acknowledges the following:
- The Purchaser has a duty to ensure that sufficient access for a heavy vehicle to the nominated site has been or is provided. If not, alternative arrangements must be made by the Purchaser in advance.
 - If and when induction, medical examination and risk assessments are required for any member of staff of Aquadam, the Purchaser must inform Aquadam of any such conditions in writing of such conditions at the time of placing the order.
 - The Purchaser will be liable to pay for any standing time of Aquadam as a result of the Purchaser failing to comply with these Conditions of Sale and any recommendations or requirements contained in clause 10.3 of the Conditions of Sale. The Purchaser will be liable for the payment of penalties for stoppages outside the control of Aquadam as a result of strikes, unsafe conditions or unsafe standards that Aquadam has to comply with at the nominated site.
 - Suitable accommodation (e.g. room, hostel) must be arranged by the Purchaser for employees of Aquadam prior to installation of the Goods unless otherwise agreed in writing.
 - It is recommended that the nominated site must be clean, level, and well compacted to 95% MODAASTHO by the Purchaser. If no ring beam is required a sand pad of 80mm thick must be prepared by the Purchaser, two metres larger than the diameter of the tank. The Purchaser has a duty to obtain a complete list of requirements from Aquadam as to the nominated site prior to placing an order with Aquadam. The Purchaser hereby records having full knowledge of the duties arising from this clause and the implications of the content of clause 1.4 of these Conditions of Sale.
 - If a ring beam is required for the installation of the Goods, the Purchaser is responsible for the installation of the ring beam. The Purchaser must ensure that any such ring beam is installed according to Aquadam's specifications and requirements prior to Aquadam commencing with installation. The design specifications are available on request.
 - An operational 240 volt electrical output point complying with applicable safety standards must be supplied by the Purchaser to be located within 5 meters from the installation point of the Goods at the nominated site for the duration of the installation, at no cost to Aquadam.
 - Aquadam will use its own approved jacking system or scaffolding for the installation. If and when a crane or similar heavy lifting plant or equipment is required for the installation of any Goods, such crane, lifting plant or equipment must be supplied by the Purchaser, at no cost to Aquadam.
 - Should there be run off water from surrounding areas that could erode the foundation or sand pad, a suitable drainage system must be supplied and installed by the Purchaser.
 - After completion the Goods must be filled immediately with water to commence

commissioning. If no leaks are visible within 24 hours, the Goods will be deemed to be leak-free and signed completion will be deemed to have taken place. Failure by the Purchaser to ensure that the Goods are immediately filled with water or failure on the part of the Purchaser to ensure that sufficient provision is made for the supply of water to fill the Goods will result in the Purchaser being liable for all extra costs arising from the Purchaser's failure.

- 10.4 Aquadam may, at its option, suspend or terminate the provision and installation of the Goods if Aquadam considers the site to be unsafe or unsuitable.
- 10.5 If Aquadam has agreed to install the Goods and should any dispute arise between the Purchaser and Aquadam as to whether the Goods have been adequately or properly installed then the Purchaser and Aquadam agree that a qualified engineer appointed by Aquadam shall determine whether the Goods have been adequately or properly installed. Where such engineer determines that the Goods have been adequately or properly installed such engineer shall sign a completion certificate in respect of the Goods so installed and such signed certificate shall constitute prima facie evidence that Aquadam has complied in full with all of its obligations for the delivery and installation of the Goods and that the Goods are suitable for the purposes of the Purchaser and the completion certificate shall be binding on the Purchaser. The Purchaser agrees that such engineer's decision shall be final and binding upon the Purchaser.
- 10.6 If the Purchaser installs Goods otherwise than in accordance with Aquadam's recommended installation instructions, any warranty in relation to the Goods will be void and Aquadam will not be liable for any loss or damage in relation to any such installation or Goods.
- 10.7 Where Aquadam is not required to install the Goods, the Purchaser acknowledges that nothing in these Conditions of Sale will constitute Aquadam to be a contractor of the Purchaser and Aquadam's obligations are limited to those of a supplier of Goods.

11. Warranties, Liabilities and Indemnities

- 11.1 (a) Aquadam shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods, and the Purchaser agrees that all such advice is accepted by Purchaser entirely at the Purchaser's risk;
- (b) or as otherwise expressly specified in the terms of any applicable written warranty provided by Aquadam, Aquadam's liability to the Purchaser (whether arising under statute, contract, delict (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at Aquadam's option, to:
 - (i) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
 - (ii) in the case of services, the resupply of services or paying for the cost of resupplying the services.
- (c) and also subject to clause 11.2(b), Aquadam is not liable to the Purchaser or anyone else in connection with the Goods or the supply of the Goods or with these Conditions of Sale (including any changes hereto) including without limitation for:
 - (i) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from or in connection with:
 - (A) the loading, unloading or delivery of the Goods;
 - (B) a failure to deliver, or delay in delivering, the Goods;
 - (C) a failure to install the Goods in accordance with Aquadam's recommended procedures and specifications as published from time to time;
 - (D) the removal of defective Goods or the installation of replacement Goods; or
 - (E) the use of any tool or equipment loaned or hired out by Aquadam;
 - (ii) any direct, indirect or consequential loss or damage, liquidated sums or liquidated damages, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
 - (iii) any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding); and
- (d) the Purchaser indemnifies Aquadam from and against all losses, damages, costs and expenses suffered or incurred by Aquadam, and all claims, demands, suits, actions or proceedings made or brought against Aquadam, arising out of or in connection with:
 - (i) Aquadam's use of or reliance on any materials, design, drawing or specification provided to Aquadam by the Purchaser (including any allegation or claim that any such use or reliance by Aquadam infringes the intellectual property rights of any person);
 - (ii) any loss or damage caused by or during the processing of materials supplied to Aquadam by the Purchaser; or
 - (iii) any loss or damage caused by any tool or equipment, or the use of any tool or equipment, hired out by Aquadam to the Purchaser, except if you are a Consumer and such loss or damage arises from the negligence or willful misconduct of Aquadam, or any of its officers, employees or agents.

12. Intellectual Property and Confidentiality

- 12.1 The Purchaser grants Aquadam a perpetual, royalty free licence to use all drawings, designs, specifications and any other information provided by Purchaser for the purposes of providing the Goods.
- 12.2 The Purchaser warrants that all drawings, designs, specifications and any other information provided by the Purchaser in relation to the Goods will be accurate and complete and will not infringe any third party's intellectual property or other rights.
- 12.3 Aquadam will remain the legal and equitable owner of all intellectual property which arise in relation to Aquadam's drawings, designs, specifications or any other work undertaken by Aquadam in relation to the Goods.
- 12.4 Aquadam grants the Purchaser a perpetual, royalty free, licence to use any information Aquadam provides to the Purchaser in relation to the Goods solely for the purposes of using or maintaining the Goods in accordance with these Conditions of Sale.
- 12.5 The Purchaser agrees to maintain the confidentiality of, and will not provide to any third party, Aquadam's drawings, designs, specifications or any other information which Aquadam provides to the Purchaser in relation to the Goods.

13. Privacy, Representations and Acknowledgement by Purchaser

- 13.1 The Purchaser agrees that Aquadam may to the extent permitted by law obtain a consumer credit report about the Purchaser from a credit reporting agency to assess the Purchaser's credit application or to collect overdue payments;
- 13.2 The Purchaser represents to Aquadam that it is not aware of any information, notice or court proceedings that may lead to insolvency, appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator. The Purchaser does not intend to enter into

a scheme or arrangement with creditors either formally or through a court or otherwise. If the Purchaser is a company, partnership or sole trader, the Purchaser represents that none of the directors, partners or sole traders has been a director of a company which has been placed in liquidation or has been declared insolvent or has entered into an arrangement with its creditors.

- 13.3 If the Purchaser is entering into an agreement as the trustee of a Trust, the Purchaser represents warrants and agrees that the Trust is duly constituted and that the Purchaser is duly authorised by the Trust and that Aquadam is entitled to be indemnified fully out of the Trust property before the claims of any beneficiaries. In addition, the Purchaser agrees to be personally liable to Aquadam for the Trust's liabilities and that Aquadam can enforce such liabilities, at its discretion, jointly and severally, against the Purchaser or the Trust.

14. Miscellaneous

- 14.1 If any dispute or difference arises between the Purchaser and Aquadam in connection with the supply of Goods under these Conditions of Sale, either party may give written notice to the other of the existence of the dispute or difference. Both parties agree to act in good faith and use reasonable endeavours to resolve the dispute or difference.
- 14.2 Non stock items are not returnable by the Purchaser to Aquadam. Aquadam may in its discretion accept the return of stock items and in so doing may charge the Purchaser a restocking fee.
- 14.3 These Conditions of Sale do not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.
- 14.4 Failure by Aquadam to insist upon the strict performance of any term of these Conditions of Sale will not be deemed to be a waiver of rights that Aquadam may have and will not be deemed a waiver of any subsequent breach of any term or condition.

Dated at _____ on this _____ day of _____ 20_____

For: Purchaser, who warrants that he is duly authorised thereto

Witness:

Details:

Witness:

Details: