



TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 **Aquacraft Plumbing** means Aquacraft Plumbing Limited and (if applicable) its related companies, successors, assigns and authorised agents;
- 1.2 **Customer** means the person, company or entity purchasing goods and/or services from Aquacraft Plumbing;
- 1.3 **invoice** includes any written quotation and other contractual document issued by Aquacraft Plumbing;
- 1.4 **goods** means all goods sold or to be sold by Aquacraft Plumbing to the Customer; and
- 1.5 **services** means all services provided by Aquacraft Plumbing to the Customer.

2. TERMS AND CONDITIONS PARAMOUNT

Except as expressly agreed in writing these terms and conditions shall apply to and govern all contracts and other dealings between Aquacraft Plumbing and the Customer notwithstanding any statement to the contrary in any order or other document of the Customer.

3. ACCEPTANCE

Any instructions received and accepted by Aquacraft Plumbing from a Customer for the supply of goods and/or services shall constitute a binding contract and acceptance on these terms and conditions.

4. ORDERS

- 4.1 Notwithstanding any credit arrangement, Aquacraft Plumbing reserves the right to accept or decline any Customer order.
- 4.2 Where goods are sold by description or by reference to a sample, Aquacraft Plumbing will use its best endeavours to supply goods complying with such description or sample, but Aquacraft Plumbing shall not be liable for any variation in the goods.
- 4.3 The quantity, quality and description of, and any specification for, goods shall be those set out in any Aquacraft Plumbing quotation or the Customer's order as may be applicable provided that Aquacraft Plumbing may make changes to specifications which do not materially affect the quality or performance of goods.
- 4.4 Where there is a Aquacraft Plumbing quotation and a Customer order, the terms of Aquacraft Plumbing's quotation shall govern.

5. DELIVERY

Aquacraft Plumbing will endeavour to deliver goods and services within any timeframes requested by the Customer, but delivery time shall not be of the essence and Aquacraft Plumbing shall not be liable for any loss to the Customer caused by any delay or non-delivery. Aquacraft Plumbing reserves the right to deliver goods and services by instalments and failure by Aquacraft Plumbing to deliver any one or more instalment shall not entitle the Customer to cancel the contract as a whole.

6. PRICE

- 6.1 The Customer shall pay the price stated on Aquacraft Plumbing's invoice, save for errors, which Aquacraft Plumbing reserves the right to correct. All prices are quoted and shown net excluding GST, and do not include any other taxes or levies, delivery/freight charges, insurance charges or currency exchange fluctuations which, if applicable, will be extra charges payable by the Customer.
- 6.2 All published prices are indications only. In some cases estimates have been made and actual prices may vary. Prices are subject to alteration without prior notice and goods and services will be sold at the relevant prices at the time of delivery.
- 6.3 Services provided by Aquacraft Plumbing shall be charged on the basis of either fixed quotes or time charge at Aquacraft Plumbing's rates from time-to-time. The Customer shall pay for all materials used and all other out-of-pocket expenses incurred by Aquacraft Plumbing in connection with the provision of services and travelling expenses where applicable.
- 6.4 If in Aquacraft Plumbing's invoice there is reference to a deposit or any component of the purchase price for the goods or services being non-refundable, then the Customer shall not be entitled to a refund of any amount so paid in the event of cancellation or termination of contract for any reason whatsoever.

7. PAYMENT

- 7.1 All accounts are:
- 7.1.1 Cash on delivery of goods or completion of provision of services (COD); or
 - 7.1.2 Credit approved accounts, if applicable (Credit Account); or
- On terms as agreed in writing between Aquacraft Plumbing and the Customer.
- 7.2 Notwithstanding that the Customer may have a Credit Account or other agreed trading terms, Aquacraft Plumbing reserves the right to require COD or other payment terms in respect of any particular supply of goods or services.
- 7.3 In the case of Credit Accounts and other agreed trading terms, the Customer shall pay in full all accounts and amounts owed to Aquacraft Plumbing by the payment date(s) specified in Aquacraft Plumbing's invoice(s). If no payment date is specified, then payment in full is due by the 20th day of the month following the month of Aquacraft Plumbing's invoice. No credit shall be extended on overdue accounts.
- 7.4 Time for payment shall be of the essence. In the event that payment is not received by the due date default interest may be charged by Aquacraft Plumbing at a rate equivalent to 11 per cent per annum above the unsecured overdraft interest rate charged by Aquacraft Plumbing's bank and calculated on a daily basis on all moneys outstanding for the period during which the payment has been overdue until all due moneys have been paid in full.
- 7.5 All payments shall be applied first in payment of default interest (if any).
- 7.6 Any discount offered by Aquacraft Plumbing is contingent upon receipt of all monies owed by the Customer on or before the payment due date(s). If the Customer fails to make full payment by the due date any discount will immediately be withdrawn and debited to the Customer's account.
- 7.7 Aquacraft Plumbing may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer to Aquacraft Plumbing and Aquacraft Plumbing shall not be bound by any conditions or qualifications that the Customer may make in relation to any payment.
- 7.8 The Customer authorises Aquacraft Plumbing to obtain at any time from any person or entity any information that Aquacraft Plumbing may require for the purpose of assessing the Customer's creditworthiness and the Customer irrevocably authorises and requests all such persons and entities to release to Aquacraft Plumbing any personal information held concerning the Customer. Where the Customer is a natural person then such authority is authority and consent for the purposes of the Privacy Act 1993. The Customer agrees that in the event of its default Aquacraft Plumbing may provide details of that default and personal information relating to the Customer to any credit agency so that such credit agency can maintain effective records.
- 7.9 The Customer is liable to pay any debt collection costs, should the customer fail to make payment on any invoice within reasonable timeframe.

8. DEFAULT

- 8.1 If the Customer fails to pay any amount owed to Aquacraft Plumbing by the due date, or fails to comply with any other obligation owed to Aquacraft Plumbing, then without prejudice to any of its other rights, remedies and powers Aquacraft Plumbing may (notwithstanding that Aquacraft Plumbing may have waived any previous default by the Customer):
- 8.1.1 Cancel any contract and/or suspend further deliveries of goods or provision of services to the Customer.
 - 8.1.2 Enter the Customer's premises or any other premises that the Customer is authorised to enter and retake possession of goods and sell them without being liable in any way to the Customer.
 - 8.1.3 Appoint a receiver pursuant to the Receiverships Act 1993 in respect of the goods (including their proceeds) and any such receiver may take possession of the goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
 - 8.1.4 Charge penalty interest as set out under "Payment" above.
- 8.2 Aquacraft Plumbing may at any time by notice in writing suspend or terminate the Customer's Credit Account or any other agreed trading terms and require immediate payment by the Customer of all amounts owed to Aquacraft Plumbing and Aquacraft Plumbing shall be entitled to exercise the powers set out in the preceding paragraphs.
- 8.3 The Customer will upon demand pay to Aquacraft Plumbing all costs, charges and expenses (including, but not only, collection commissions and legal costs on a solicitor and own client basis) incurred by Aquacraft Plumbing in collecting or taking action to collect any amount owed by the Customer and in connection with the exercise, enforcement or preservation of any of Aquacraft Plumbing's rights, powers or interests.

9. RETENTION OF TITLE

- 9.1 Notwithstanding delivery and the passing of risk in goods, or any other provision of these terms and conditions, all goods (including, where applicable, any resulting product into which the goods are incorporated, manufactured or commingled, whether or not the original identity of the goods is lost) shall remain and be the property of Aquacraft Plumbing as legal and equitable owner until Aquacraft Plumbing has received cleared payment in full of all moneys owed by the Customer to Aquacraft Plumbing.

- 9.2 Until Aquacraft Plumbing has received cleared full payment of all moneys owed by the Customer to Aquacraft Plumbing the Customer shall hold the goods on trust for Aquacraft Plumbing's and shall store the goods in such a way that it is clear that they are the property of Aquacraft Plumbing. Unless Aquacraft Plumbing directs otherwise, the Customer may use or resell the goods by way of bona fide sale at market value in the ordinary course of its business.
- 9.3 Until such time as the property in goods passes to the Customer, provided the goods are still in existence and have not been resold, Aquacraft Plumbing shall be entitled at any time to require the Customer to return the goods to Aquacraft Plumbing and Aquacraft Plumbing and its agents may at any time without further notice enter the Customer's premises or any other premises where the goods are stored and retake possession of the goods (if required, disconnecting the goods from any vessel, structure or equipment to which they may be attached or installed) or perfect Aquacraft Plumbing's security interest in the goods. In so doing, Aquacraft Plumbing shall have no liability for any losses, costs or charges suffered or incurred by the Customer and the Customer indemnifies and keeps indemnified Aquacraft Plumbing against all liability Aquacraft Plumbing may have to any third party in so acting.

10. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 10.1 The goods shall be the collateral as that term is defined in the PPSA. The Customer grants in favour of Aquacraft Plumbing a charge over all goods supplied by Aquacraft Plumbing where such goods have been delivered but the Customer has not paid all moneys owed to Aquacraft Plumbing and over all the Customer's present and after-acquired property supplied by Aquacraft Plumbing, and such charge shall be a "security interest" for the purposes of the PPSA and shall secure payment of all moneys owed by the Customer to Aquacraft Plumbing including interest and other amounts payable under these terms and conditions and the costs of registering such security interest.
- 10.2 Where a charge granted over any goods is a registrable security interest under the PPSA the following shall apply:
- 10.2.1 The Customer irrevocably appoints Aquacraft Plumbing as the Customer's attorney to do anything required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and obtain such information from third parties as is necessary or desirable to register the security interest.
- 10.2.2 The Customer consents to the collection from any third party of any information necessary or desirable to register the security interest.
- 10.2.3 The Customer will provide such information and do such acts and execute such further documents as in the opinion of Aquacraft Plumbing may be necessary or desirable to enable Aquacraft Plumbing to register and perfect under the PPSA the security interest as a first priority interest or with such other priority as Aquacraft Plumbing may agree in writing.
- 10.2.4 The Customer shall not challenge in any way Aquacraft Plumbing's right to register the security interest.
- 10.2.5 The Customer shall not seek to obtain or register a discharge of the security interest without the prior written consent of Aquacraft Plumbing.
- 10.3 The Customer agrees that sections 114(1)(a), 116, 117(1)(c), 119,120(2), 121, 125 to 127, 129 and 131 to 133 of the PPSA shall not apply to these terms and conditions or the security created hereunder.
- 10.4 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
- 10.5 The Customer shall not change its name, without first notifying Aquacraft Plumbing of its new name at least 7 days prior to the change taking effect. The Customer must not allow or permit the creation of a lien over any goods prior to payment in full to Aquacraft Plumbing of all moneys owed by the Customer to Aquacraft Plumbing. The Customer will upon demand pay all Aquacraft Plumbing's expenses and legal costs (on a solicitor and own client basis) in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions or of obtaining an order under section 167 of the PPSA. 10.6 If all moneys owed by the Customer have been paid to Aquacraft Plumbing in full, including all moneys payable under these terms and conditions, Aquacraft Plumbing shall at the request of the Customer and at the Customer's cost, register a discharge of the security interest.

11. RETURNS

- 11.1 Aquacraft Plumbing will not accept goods for return unless agreed in writing. Aquacraft Plumbing will not accept return of indented goods ordered specifically for the Customer. In the event of Aquacraft Plumbing agreeing to accept returns, the following conditions shall apply:
- 11.1.1 All goods must be unopened in their original packaging and in the same condition as when they left Aquacraft Plumbing's premises, including, but not limited to, the non-removal of tags.
- 11.1.2 All goods must be returned together with all original documentation within 5 days of Aquacraft Plumbing notifying the Customer of its willingness to accept goods for return.
- 11.1.3 All goods returned must be delivered pre-paid to Aquacraft Plumbing's premises.
- 11.2 Aquacraft Plumbing reserves the right at its option to refuse the return of any goods, and to charge (in addition to any non-refundable deposit) a restocking fee of 20% of the GST-exclusive purchase price.

12. WARRANTIES/DEFECTS

- 12.1 It is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of goods for any particular purpose and no representation, warranty or undertaking in relation to the goods has been or is made or given by or on behalf of Aquacraft Plumbing in relation thereto. All claims for defective goods must be in writing and delivered to Aquacraft Plumbing together with the goods in question for inspection by a designated representative of Aquacraft Plumbing within 5 days of receipt of the goods. All claims must quote the relevant Aquacraft Plumbing invoice number. Any claims not made within 5 days of receipt will be deemed waived by the Customer.
- 12.2 Aquacraft Plumbing shall have no liability in respect of any defect arising from misuse, wilful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear. Aquacraft Plumbing shall have sole right to decide whether goods are capable of repair and Aquacraft Plumbing's liability (if any) in respect of goods shall be limited as follows:
- 12.2.1 Where goods are capable of repair, to the repair of the goods or the payment of the cost of having the goods repaired; or
- 12.2.2 Where goods are incapable of repair, to the replacement of the goods or supply of equivalent goods or the payment of the cost of replacing the goods or acquiring equivalent goods.
- 12.3 No guarantee or warranty is given, and no obligation incurred, by Aquacraft Plumbing in respect of goods or components not manufactured by Aquacraft Plumbing, in respect of which the Customer shall only be entitled to the benefit of any guarantee or warranty given to Aquacraft Plumbing by the manufacturer or supplier provided that Aquacraft Plumbing shall not be required to pay or incur any cost in relation thereto.
- 12.4 All services provided by Aquacraft Plumbing are provided in good faith on the basis of the information provided by the Customer. Where Aquacraft Plumbing is requested by the Customer to provide casual advice in conjunction with the sale of goods but not constituting the formal provision by Aquacraft Plumbing of services then Aquacraft Plumbing shall have no liability whatsoever in relation to any such advice given and the Customer shall rely solely on its own judgment in connection with all such matters. If the Customer alleges defects in Aquacraft Plumbing's workmanship then the Customer shall forthwith after becoming aware of the same notify Aquacraft Plumbing in writing. Failure to so notify Aquacraft Plumbing in writing shall constitute a waiver by the Customer of its rights against Aquacraft Plumbing in respect of any such alleged defect. Aquacraft Plumbing shall have no liability where any services performed or goods supplied have been re-installed, modified, not maintained or improperly maintained or improperly used. Any rectification work required to be carried out by Aquacraft Plumbing shall be carried out at a place and at a time stipulated by Aquacraft Plumbing and the Customer shall be responsible for delivering the goods or vessel, as the case may be, to that place by that time.
- 12.5 No guarantee, warranty, representation or statement shall be binding on Aquacraft Plumbing unless made in writing by a director or senior officer of Aquacraft Plumbing. Except as expressly set forth in these terms and conditions all warranties and conditions, whether implied by law or otherwise, are excluded and Aquacraft Plumbing shall have no liability whatsoever to the Customer. Aquacraft Plumbing shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or Aquacraft Plumbing had been advised of the possibility of the Customer incurring the same.
- 12.6 If it shall be held that Aquacraft Plumbing has any liability to the Customer then, except as expressly set forth in these terms and conditions, the liability of Aquacraft Plumbing to the Customer shall not exceed the lesser of:
- 12.6.1 the value of the goods or services the subject of any claim; or
- 12.6.2 the contract price.
- 12.7 Aquacraft Plumbing shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by it.
- 12.8 Nothing in these terms and conditions shall affect the rights of the Customer under the Consumer Guarantees Act 1993, Fair Trading Act 1986 and other statutes that may imply warranties and conditions, provided that, if the Customer is, or holds itself out to be, acquiring the goods for the purposes of a business, then such statutes are excluded.

13. PRODUCT DISCLAIMER

Aquacraft Plumbing takes no responsibility for the warranty, repair, and replacement or any problem resulting where by a product, fixture, tap or fitting supplied by the client. Such product may be installed by Aquacraft Plumbing as per the manufacture instruction but any fault, malfunction or manufactures warranty issue is the sole responsibility of the Customer. Any labour and/or materials required in any rectification work will be charged to the Customer as an extra. Should the Customer wish to claim the costs, the Customer must first pay Aquacraft Plumbing's invoice, following which the Customer can claim reimbursement from the importer, wholesaler or other third party as the case may be.

14. WAIVER

These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. Aquacraft Plumbing shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by a director of Aquacraft Plumbing and any such waiver shall apply only to the particular transaction to which it refers.

15. SEVERABILITY

If any clause or provision of these terms and conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

16. GOVERNING LAW

The contract shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.