

# aquatherm

## General Terms and Conditions of Business and Supply

### 1. General – Sphere of validity

- 1.1** The following terms and conditions of supply for goods and services below form the basis of all our offers, goods and services. They shall also apply for all future business relationships, even if they are not expressly agreed again.
- 1.2** The terms and conditions of business of our Customers shall only be recognised to the extent that they are identical with our terms and conditions of supply for goods and services or are expressly made the basis of the respective contract or performance by us in writing in an individual case.
- 1.3** Our terms and conditions of supply for goods and services shall only apply for businesses, legal entities and special funds created by public law within the meaning of § 310 Section 1 of the German Civil Code [BGB].
- 1.4** If there are discrepancies between the general terms and conditions of business written in German and a translation into the respective language to be used for negotiation, the original German version shall count. aquatherm cannot be held liable for translation errors irrespective of our liability for intent and gross negligence.

### 2. Offer and Offer documents

- 2.1** Our offers are subject to change without notice and are not binding.
- 2.2** Unauthorised third parties must not be allowed access to offers, cost estimates, models, drawings, calculations as well as other contract and supply documents. We shall reserve the copyright and title to them. Orders, agreements, assurances etc. made by our representatives shall be subject to written confirmation. We shall only be subject to contractual obligations on the basis of our order confirmation or as a result of starting the execution of the order.
- 2.3** Complaints about order confirmations are to be submitted straight away in writing and within one week at the latest.
- 2.4** All information such as dimensions, weights, quality assurances, pictures, samples, descriptions, sketches etc. in offers, catalogues and other printed matter are simply approximations but have been worked out the best of our ability, unless they have been specifically designated as binding in the order confirmation. The compliance of materials and semi-manufactures furnished by the Customers with contractual specifications or drawings and samples handed over shall only be checked by us by specific written agreement.
- 2.5** Deals made by our field staff as well as agreements made over the telephone shall be subject to our written confirmation to be legally valid.

### **3. Prices – Terms and conditions of payment**

- 3.1** As far as no other arrangements are made, our prices are strictly net, plus the rate of value added tax in force at that time and additional delivery charges, duties and fees.
- 3.2** Goods worth EUR 2,000.00 or more shall be delivered free of shipping costs within Germany. Under the same requirements delivery outside of Germany shall be delivered free up until Germany's border. For delivery of goods with a net value of up to EUR 200.00 there will be a minimum quantity surcharge of EUR 8.00 in addition to the carrying charge. If the customer requires an express delivery, then the express costs will be invoiced additionally after payment. For deliveries via a haulage firm this will occur within two working days after placing the order/ or within 24 hours after handover to the haulage firm of the so called next-day-costs or express deliveries by way of a parcel service. These costs will be calculated independently of any free carriage limits.
- 3.3** All prices are based upon the cost factors at the point in time at which the contract is signed or date of the order confirmation. If there are significant increases in the cost of raw materials, power, freight or packing material changes subsequently for us or for our suppliers, and if these result in a significant increase in our purchasing prices or in our own costs, we shall consequently be entitled to demand negotiations with the Customer about price adjustments straight away, unless a price has been expressly confirmed by us as being a fixed price. If an agreement is not reached within a reasonable period of time we shall consequently be entitled to withdraw from contracts concerning deliveries which are still outstanding.
- 3.4** As far as no other arrangements are made, all invoices are to be paid net without cash discount within 30 days from date of invoice. If payment is credited to our account within 10 days from the date of invoice a cash discount of 2% will be granted, provided that all payment obligations due from earlier deliveries have been fulfilled.
- 3.5** In case that own or third party acceptances are given, the draft taxes and discounting fees shall consequently be for the account of the Buyer. Payments by drafts shall not be regarded as being payment in cash and shall not entitle the Customer to a discount for making payment in cash. We reserve the right to accept our own promissory notes or those bills issued by third parties.
- 3.6** Drafts and cheques shall only be accepted on account of performance. We shall not furnish any warranty for drafts or cheques being presented and protested on time. In the event that a draft is protested, be it a promissory note issued by the Customer, be it a protested bill accepted from a third party not being paid immediately, the claims from all drafts still current, be they from promissory notes or third party bills shall become payable immediately.
- 3.7** Employees or representatives may only take receipt of payments if they have been specifically authorised to do so. In so far as payments are made nevertheless to such persons, they shall only have debt-discharging effect once they have been received in-house.

- 3.8** Supply to other countries than Germany is made – as far as no other special arrangements are made – against advance payment or irrevocable and confirmed letter of credit made out to us as beneficiaries and opened by the customer through his bank and at his expense.
- 3.9** In so far as the Customer is in default with the fulfilment of an obligation, all other accounts he may owe to us shall be payable immediately in spite of any agreements that may have been made otherwise. The same shall apply if the Customer stops making his payments, is over-indebted, insolvency proceedings are instigated upon his assets or if the opening of such proceedings is rejected due to lack of assets or if aquatherm becomes aware of circumstances substantiating doubts in the creditworthiness of the Buyer.
- 3.10** If the Customer is in default with payment we shall be entitled to make the delivery of further goods or provision of further services dependent upon payment in advance or the furnishing of securities and to assert statutory claims. Received drafts may be returned prior to maturity and immediate payment may be demanded.
- 3.11** If accounts are owed to us for several invoices relating to goods or services supplied by us incoming money shall be offset first of all against the debt due for payment. If there are several debts due for payment incoming money shall be offset against the debts offering us the least security, and if there is more than one debt offering us the same degree of security, incoming money shall be offset against the debt most onerous to the debtor, and if there is more than one debt which is equally onerous to the debtor, incoming money shall be offset against the older debt and if the debts date from the same day the incoming money shall be offset against them proportionately. This shall apply regardless of what the debtor specified when making the payment.
- 3.12** The Buyer may only offset with counter-claims or assert rights of retention on account of such counter-claims if his counter-claims are not contested or if they have been declared final and absolute in a court of law.

#### **4. Periods of time for the supply of goods and services**

- 4.1** Delivery dates or periods which may be agreed either on a binding or non-binding basis must be made in writing.
- 4.2** We shall not be to blame for delays in the delivery of goods or rendering of services as a result of force majeure and as a result of events making it not only significantly more difficult or impossible to render our performance on a basis which is not only temporary, and this includes in particular strike, lock-out, official instructions etc., even if periods and dates for performance have been agreed on a binding basis. Such delays in the supply of goods and services shall entitle us to postpone the goods or services by the duration of the hindrance plus a reasonable start-up time or to withdraw from part or all of the part of the contract not yet fulfilled.

- 4.3** If the hindrance lasts for more than 2 months our Customer shall be entitled to withdraw from the part of the contract not yet fulfilled after setting us a reasonable subsequent period of time to supply the goods or services. The Customer may consequently not derive any compensation claims for damages as a result if the delivery period is extended or if we are exempted from our obligation.
- 4.4** If the Seller is in default with supplying goods or services or if it becomes impossible for him to supply the goods or services, the Seller's liability for compensation for damages shall consequently be limited in accordance with Number 7 of these General Terms and Conditions of Business.
- 4.5** aquatherm shall not be liable for waiting times arising, unless we have promised a collection or delivery date on a binding basis.
- 4.6** The choice of shipping routes, means of transport, method of despatch and packing shall be at the dutiful discretion of the Seller.
- 4.7** Partial deliveries are allowed.
- 4.8** The Buyer may only withdraw from the contract in accordance with the statutory regulations on account of a default in delivery if we are to blame for the default.

## **5. Passing of risk – Packing**

- 5.1** Unless agreed otherwise, the place of fulfilment for goods to be supplied shall be the respective place of despatch. The place of performance for all other obligations, in particular the Buyer's payment obligations, shall be Attendorn.
- 5.2** Risk shall pass over to the Customer no later than when the items to be supplied are handed over to the haulier, freight forwarder or other third party appointed to dispatch the goods. This shall also apply in those cases in which partial deliveries are supplied or are despatched or handed-over are a result of a circumstance the Customer is responsible for, so that risk shall pass over to the Customer on that day on which the Seller is ready to despatch the goods and has notified the Customer accordingly.
- 5.3** Number 5.2 shall also apply for the Customer's items to be processed. If the goods to be processed are collected by us at the Customer's request, the Customer shall bear the risk of conveyance. We shall be at liberty to take out insurance cover for this risk.
- 5.4** The consignment shall only be insured by us against theft, breakage, transport, fire and water damage or other insurable risks at the Customer's express request and expense.

## **6. Liability for defects**

**6.1** Supplied items are to be inspected carefully straight away once they have been delivered to the Customer or to a third party specified by him. They shall be regarded as having been approved if the Seller does not receive written notification of manifest defects or other defects which would have been identified in the course of a thorough inspection conducted straight away upon delivery, within 7 working days from the delivery of the supplied items or otherwise within 7 working days from the discovery of the defect or from the point in time at which the defect was identifiable for the Customer in the normal use of the supplied item without detailed inspection. At the Seller's request the supplied item about which a complaint has been made is to be returned to the Seller carriage-free for the Seller. If the notified defect is justified, the Seller shall reimburse the costs of the cheapest method of despatch. This arrangement shall not apply if the costs of carriage increase as a result of the supplied item being at a location other than that where it is to be used in accordance with the regulations.

**6.2** If the supplied items have quality defects the Customer shall be entitled to demand subsequent fulfilment. In the event that this should be unsuccessful, i.e. should a repair be impossible, unreasonable, the Seller refuse to carry out a repair or if there is an unreasonable delay in carrying out a repair or supplying a spare part, the Customer may withdraw from the contract or reduce the purchase price as appropriate. A repair shall be regarded as having been unsuccessful after a second attempt has been unsuccessful, unless there are extenuating factors arising due to the nature of the thing or the defect in particular or to other circumstances.

**6.3** The warranty period is 1 year from supply.

**6.4** If the Seller is to blame for a defect, the Customer may demand compensation for damages subject to the preconditions specified in Number 7.

## **7. Liability for compensation for damages on account of the Seller being at fault**

**7.1** The Seller's liability to pay compensation for damages, regardless of whatever legal reasons upon which they are based, in particular on account of impossibility, default, the supply of defective or incorrect goods, breach of contract, breach of duties during contractual negotiations and unlawful acts, shall be limited in accordance with this Number 7, to the extent that in each instance the Seller is at fault.

**7.2** The Seller shall not be liable

- in the event that his executive bodies, legal representatives, salaried staff or other assistants are guilty of ordinary negligence;
- in the event that his non-senior salaried staff, or other assistants are guilty of gross negligence,

provided that the fault does not concern the breach of essential contractual duties. Those obligations to supply fault-free goods on time as well as the duties to

provide advice, protection and to exercise proper care the objective of which is to make it possible for the Customer to use the supplied items in accordance with the contract or to protect the life and limb of the Customer's staff from considerable damage shall be regarded as being essential contractual duties.

- 7.3** In so far as the Seller is liable to pay compensation for damages in accordance with the reason in Number 7.2, this liability shall be limited to damages which the Seller foresaw when entering into the contract as a possible consequence of a breach of contract or in consideration of the facts of which he was aware or must have known, or must have foreseen when applying due diligence. Besides, the Seller shall only have to pay compensation for indirect damage and consequential damage, which are the result of defects in the supplied items to the extent that such damage is typically to be expected when the supplied item is used as intended.
- 7.4** In the event of liability for ordinary negligence in cases in which damages are caused by default, the Customer's right to compensation for damages shall be limited to default compensation amounting to 3% of the invoiced amount for the goods and services affected by the default for each full week of default, up to a maximum of 15% of the value of the relevant sum invoiced.
- 7.5** The above exclusions and limitations of liability shall apply to the same extent for the benefit of the Seller's executive bodies, the legal representatives, employees and other assistants.
- 7.6** In so far as the Seller provides technical information or acts as a consultant, and the information he provides are not covered by the contractually agreed scope of performance owed by him, such information shall be passed over free of charge and excluding all liability.
- 7.7** The limitations in this Number 7 shall not apply for the Seller's liability on account of wilful conduct, of guaranteed characteristics, of loss of life, personal injury or physical harm or in accordance with the German Product Liability Act.

## **8. Manufacturer's warranty**

- 8.1** In addition to the rights and claims based on quality defects in accordance with Number 6 we shall furnish a warranty for a period of 10 years beginning with the date of manufacture or marking or stamping for plastic pipes and fittings manufactured or distributed by us in accordance with the following warranty terms and conditions.
- 8.2** The written guarantee shall cover quality defects which are proven to be attributable to material defects in the plastic pipes and / or fittings.
- 8.3** The precondition for a warranty based upon a written guarantee is
- 8.3.1** compliance with the generally accepted rules of technology, in particular the guidelines for the installation of the respective systems,

**8.3.2** that we are allowed an opportunity to inspect / rectify the damage within 8 days from the damage occurring,

**8.3.3** the plastic pipes and / or fittings are used in those installations in which “water” is the flow medium, having the composition as defined by the “Regulations governing the quality of water for human consumption” – Drinking water regulation 2000.

**8.3.4** we have authorised application clearance with regard to the flow media and / or the operating conditions.

**8.4** Under the written guarantee we shall replace the plastic pipes and / or fittings free of charge and reimburse the third party expenses incurred in the rectification, removal and unearthing of the faulty products as well as for the installation, mounting, laying and acceptance of fault-free products and we shall pay compensation for damages in so far as third party property is damaged as a result of defective plastic pipes and / or fittings.

**8.5** Our obligation to pay compensation for damages shall however be limited by the level of cover in our current liability insurance policy, which provides cover for up to 15 Million Euros for all inclusive damages to property, personal injuries and financial losses.

**8.6** All sealing elements used in the product lines manufactured by aquatherm shall not be covered by the written guarantee.

## **9 Reservation of title**

**9.1** The supplied goods (goods subject to reservation of title) shall remain our property until all accounts, including all balances of account from open account arrangements, to which we are entitled now or in the future against our client have been fulfilled. In the event that the conduct of the Customer is in breach of contract, e.g. default in payment, we will, having previously set a reasonable period of time, be entitled to take back the goods subject to reservation of title. If we take back the goods subject to reservation of title, this shall constitute withdrawal from the contract. After subtracting a reasonable amount to cover the costs of sale, the proceeds from the sale are to be offset against the sums owed to us by the Customer.

**9.2** The Customer has to handle the goods subject to reservation of title with care and to take out sufficient insurance cover against fire damage, water damage and losses as a result of theft to insure them for their value when new. Maintenance work and inspection which becomes necessary are to be carried out by the Customer at his own expense in good time.

**9.3** The Customer is entitled to sell the goods subject to reservation of title in a proper commercial transaction and / or to use them, as long as he is not in default with payment. Pledging or assigning the goods by bill of sale as a security is not allowed. The Customer assigns to us in full here and now as a security all accounts created by resale or other legal reason (insurance, unlawful act) with regard to the goods subject to reservation of title (Including all balances of

account under open account arrangements). We hereby accept the assignment. We authorise the Customer on a revocable basis to collect the accounts assigned to us for his account and in his own name. The authorisation to collect accounts may be revoked at any time if the Customer fails to fulfil his payment obligations properly. The Customer is not authorised to assign this account even for the purposes of collecting the account unless such an assignment creates at the same time the obligation of a factor to create the counter performance for the amount of the accounts directly to us for as long as we still have accounts against the Customer.

**9.4** If the goods subject to reservation of title are processed or transformed by the Customer this shall be carried out for us in all cases. In so far as the goods subject to reservation of title are processed together with other things not belonging to us, we shall acquire co-ownership to the new thing in proportion to the value of the goods subject to reservation of title (Final invoiced amount including value added tax) to the other processed things at the point in time of processing. The same applies for the new thing created as a result of processing as for the goods subject to reservation of title. In the event of the goods subject to reservation of title being indivisibly mixed with other things not belonging to us, we shall acquire co-ownership to the new thing in proportion to the value of the goods subject to reservation of title (Final invoiced amount including value added tax) to the other mixed things at the point in time of mixing. If the Customer's thing is to be regarded as the main thing as a result of mixing, the Customer and we agree that the Customer shall assign proportionate co-ownership of this thing to us. We hereby accept the assignment. The Customer shall keep our sole or co-ownership of the thing created in safekeeping for us.

**9.5** In the event of third party seizures of the goods subject to reservation of title, in particular levy of execution, the Customer shall indicate that the goods are our property and inform us straight away to enable us to enforce our ownership rights. In so far as the third party is not in a position to refund us the costs incurred in or out of court in connection with this, the Customer shall be liable.

**9.6** We are obliged to release the securities to which we are entitled to the extent that the achievable value of our securities exceeds the accounts to be secured by more than 10%. When releasing the securities the choice of the securities to be released is incumbent upon us.

## **10. Proprietary rights**

**10.1** If the Customer provides us with specimens, drawings or specific product manufacturing specifications of other types, we shall consequently be exempted from third party claims in an internal arrangement between us and the Customer and an external arrangement between us and the third party in the event that they assert breaches of proprietary rights against us.

**10.2** In the event of such a breach against third party proprietary rights, the Customer shall, at our request, make every necessary explanation and / or take every act in order to ensure that we are exempted from such asserted claims.

## **11. Applicable law – Place of jurisdiction – Place of fulfilment**

**11.1** The law of the Federal Republic of Germany shall apply. The UN law on sales shall not apply.

**11.2** Our principal place of business Attendorn shall be the place of jurisdiction. We are however also entitled to take legal action against the Customer at the courts having jurisdiction where he has his place of residence.

**11.3** Provided that nothing is agreed otherwise in writing, our principal place of business Attendorn shall be the place of fulfilment.

Date: 15.06.2012