

# Aqualine Trading Limited

## TERMS AND CONDITIONS OF TRADE

Effective from 1 July 2023

The following terms and conditions apply to credit facilities and all purchases of goods and services from Aqualine Trading Limited as defined in clauses 1.6 below.

### 1 DEFINITIONS

- 1.1 "Customer", "you" and "your" means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.2 "Goods" means all goods and services provided by Aqualine to the Customer and without limitation shall include all charges for labour and work, hire charges, or any fee or charge associated with the supply of goods.
- 1.3 "Guarantor" means that person (or persons) or entity who agrees herein to be liable for the debts of the Customer.
- 1.4 "PPSA" means the Personal Property Securities Act 1999.
- 1.5 "Order" means an agreement between Aqualine and the Customer for Aqualine to supply Goods to the Customer.
- 1.6 "Aqualine", "us" and "we" means those Aqualine Trading Limited, together with any other subsidiary an/or related company of Aqualine Trading Ltd from time to time.
- 1.7 "Quote" means a written offer from Aqualine to the Customer to supply Goods for a specified price subject to the terms and conditions of such offer.

### 2 TERMS OF SALE

- 2.1 Aqualine will only supply Goods to the Customer on these terms unless Aqualine agree otherwise in writing.
- 2.2 Aqualine may however amend these terms from time to time.
- 2.3 Aqualine are under no obligation to accept all or any of the Customer's orders.
- 2.4 Any instructions received by us from you for the supply of Goods shall constitute acceptance of the Terms and Conditions herein,
- 2.5 These Terms and Conditions are to be read in conjunction with our Invoice as provided by us to you. If there are any inconsistencies between these documents then the Terms and Conditions contained in this document shall prevail.

### 3 ORDERS, QUOTES, ESTIMATES

- 3.1 Aqualine may decline in whole or in part any orders at its sole discretion.
- 3.2 Where the terms of this contract are at variance with the order or instruction from the Customer this contract shall prevail.
- 3.3 A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on these Terms and Conditions.
- 3.4 Quotes are prepared from the information supplied to Aqualine by the Customer,
- 3.5 Aqualine will not be liable nor will Aqualine be bound by the Quote where
- (a) The information is inaccurate or any information omitted and/or
- (b) Any variations made by the Customer which results in the work being different from that quoted.
- 3.6 Unless otherwise stated prices do not include GST
- 3.7 When Goods are required in addition to the quotation the Customer agrees to pay the additional cost of such goods.
- 3.8 An estimate for price or quantities is not binding on Aqualine.
- 3.9 Aqualine will hold the Quote fixed for three months from the date of the Quote.
- 3.10 Aqualine may charge any cost increases at the end of the three month period.
- 3.11 Aqualine may charge any increased cost from the date of the Quote caused by any alteration or modification requested by the Customer after the date of the Quote or any increase in cartage rates as advised by the NZRT Association
- 3.12 The Quote must be accepted by the Customer in writing within 30 days unless Aqualine tells the Customer in writing that it has been withdrawn.
- 3.13 Once the Customer has accepted a Quote the Customer may not cancel or vary it without Aqualine's written consent. If Aqualine do provide their written consent to cancel or vary, the Customer will be liable to refund to Aqualine all costs and expenses incurred by Aqualine in filling the order up to the date of cancellation.

### 4 DELIVERY

- 4.1 Where Aqualine do not undertake delivery, risk in the Goods passes to the Customer at the time possession is given to the Customer or the Customer's nominated carrier.
- 4.2 Where Aqualine do undertake delivery Aqualine are not a common carrier and do not undertake the obligations or liabilities of a common carrier.
- 4.3 Where Aqualine have agreed to leave a public road or street to deliver the Goods to the Customer then; the Customer is responsible for providing suitable means of access and the Customer will be liable for all costs, damages and expenses incurred (including consequential loss) if the Customer fails to provide suitable means of access.
- 4.4 Aqualine reserves the right to refuse to deliver Goods to the Customer if in Aqualine's opinion or in the opinion of Aqualine's representative there is no suitable access.
- 4.5 Aqualine may charge the Customer normal hourly truck hire rates for delays caused by the Customer or the Customer's agents or contractors
- 4.6 The Customer must pay all delivery and insurance charges (if any)
- 4.7 Delivery of the Goods is deemed to be made:
- (a) When you are or your agent is given possession of the Goods; or
- (b) When the Goods arrive at your premises (unloading is then at your risk); whichever is the earlier.
- 4.8 On delivery, the Goods are at your sole risk, and with effect from the time of delivery, you will have in place appropriate insurance to cover both your interest as bailee of the goods and our interest as owner of the goods under clause 11.1.
- 4.9 Any delivery date agreed by us is approximate only and no delay in delivery will entitle you to cancel your order for the Goods.

### 5 CUSTOMER PROPERTY

- 5.1 All Customer's property supplied to Aqualine by or on behalf of the Customer will be held at the customer's risk.

### 6 DISCOUNT

- 6.1 Where the Customer receives a discount based on volume for Goods or services and the Customer fails to purchase the total volume of Goods or services Aqualine reserves the right to withdraw such discount.

### 7 PAYMENTS

- 7.1 The Customer must pay the price and other charges on the 20th of the month following the date of purchase or service.
- 7.2 Aqualine may however require the Customer to pay sooner possibly before the goods are sent to the Customer.
- 7.3 Payment must be made in cleared funds by direct credit via electronic/online banking to the account specified on our Invoice, or by any other method stipulated by us.
- 7.4 If at any time we deem your credit to be unsatisfactory, at our sole discretion, we may elect to immediately suspend or to terminate this contract or any credit arrangement and require you to pay on delivery of the Goods. Contracts suspending in keeping with this clause 7.4 may be reinstated by us, against at our sole discretion, by your bringing your credit into a satisfactory position and by application by you in writing.
- 7.5 All payments by you must be made in full and without any deduction or right of set off or counterclaim. You agree, however, that all moneys which we may owe you on any account whatsoever may, at our option, be set off against payments due by you to us.

### 8 OWNERSHIP

- 8.1 Aqualine will remain the owner of the Goods the Customer purchases from them until all obligations due by you are fulfilled and all sums the Customer owes to Aqualine for any reason are paid in full, and even if the Customer incorporates the goods with other products.
- 8.2 It is agreed that:
- (a) Until ownership of the Goods passes to you in accordance with clause 11.1 that you are only a bailee of the Goods and unless the Goods have become fixtures you must return the Goods to us upon request;
- (b) You hold the benefit of your insurance of the Goods on trust for us and must pay to us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) The production of these terms and conditions by us shall be sufficient evidence of our rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with us to make further enquiries;
- (d) We may commence proceedings to recover the price of the Goods notwithstanding that ownership of the Goods has not passed to you.
- 8.3 Aqualine can always enter premises where the Goods are located (or where Aqualine believe them to be located) and take possession of and/or remove them while Aqualine remain the owner.
- 8.4 If the Customer wishes to resell any Goods before the Customer becomes the owner, the Customer may do so only if the sale is genuine and made in the ordinary course of the Customer's business. The Customer must promptly account to Aqualine for the proceeds of the sale and will hold any proceeds on trust for Aqualine until the Customer does so.

### 9 OVERDUE PAYMENT

- 9.1 The Customer must pay default interest at the rate of 2.5% per month on overdue payments calculated from the date payment is due until Aqualine receive payment.
- 9.2 Aqualine may review their default rate from time to time.
- 9.3 The Customer must immediately pay all costs (including legal costs) incurred by Aqualine in collecting or attempting to collect the Customer's overdue payments.

### 10 OUR RIGHTS

- 10.1 If a Default Event occurs then;
- (a) Aqualine will be entitled to cancel all or part of the Customer's orders which have not been delivered in full; and
- (b) All amounts the Customer owe Aqualine whether due for payment or not will be immediately due and payable; and Aqualine may reclaim goods in the Customer's possession or control and dispose of them for Aqualine's own benefit as Aqualine think fit.
- 10.2 For the purposes of this clause a „default event“ occurs if
- (a) A payment by the Customer is overdue: or
- (b) In Aqualine's opinion the Customer is unlikely to be able to pay their debts immediately

### 11 WARRANTIES

- 11.1 All other guarantees, warranties and representations in relation to the goods or their supply are excluded except the extent that Aqualine cannot lawfully exclude them.

### 12 CONSUMER GUARANTEES ACT 1993

- 12.1 When the Customer purchases Goods from Aqualine for business purposes, then the guarantees and rights expressed or implied in the Consumer Guarantees Act in the Customer's favour do not apply to the goods or services.

### 13 LIMITATION OF LIABILITY

- 13.1 Aqualine will not be liable for any direct or consequential loss incurred by the Customer as a result of any act or omission by Aqualine.
- 13.2 Aqualine will not be liable to the Customer for failure to deliver by specified date, or for loss caused by anything which is beyond Aqualine's reasonable control
- 13.3 Aqualine's liability to the Customer is otherwise limited to the value of the Goods supplied by Aqualine and associated with the Customer's claim.
- 13.4 Aqualine may at their option and as appropriate either:
- (a) Replace defective Goods or
- (b) Pay the Customer the price (excluding GST) the Customer paid Aqualine for the Goods
- 13.5 Aqualine will not however accept responsibility for any defective Goods, unless;
- (a) The Customer notify Aqualine of the defect within 14 days of the Customer receiving the Goods, and
- (b) The Customer allows Aqualine to fully investigate their claim
- 13.6 This clause will not apply to the extent that the law prohibits Aqualine from limiting their liability

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### 14 WAIVER

- 14.1 If Aqualine delay or do not exercise any of their rights or remedies that will not be a waiver of the right or remedy.
- 14.2 Any waiver or consent Aqualine gives you the Customer must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

### 15 SEVERABILITY

- 15.1 If part of this agreement is deemed to be invalid, illegal or unenforceable the validity existence legally and enforceability of the remaining provisions shall not be affected prejudiced or impaired.

### 16 PERSONAL PROPERTY SECURITIES ACT

- 16.1 You acknowledge that the contract creates a security interest ("security interest") (as that term is defined in the PPSA) in the Goods. You will, if requested by us, sign any documents (including any new agreements), provide all necessary information and do anything else required by us to ensure that the security interest is a perfected security interest (as that term is defined in the PPSA).
- 16.2 If Aqualine register their security interest on the Personal Properties Securities Registrar you the Customer waive the requirement to receive a copy of the Registration Verification statement (under section 145 of the PPSA).
- 16.3 You will not enter into any agreement which permits any other person to register any security interest under the PPSA in respect of the Goods without our prior written consent.
- 16.4 If the Goods are for your business use, you agree, to the extent permitted under the PPSA and unless we agree by notifying you in writing, that you will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, you will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the Goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods or reinstate the contract).

### 17 ASSIGNMENT

- 17.1 The Customer shall not assign any of its rights or obligations under this agreement without the written consent of Aqualine.

### 18 GOVERNING LAW

- 18.1 These terms will be governed by New Zealand Law and you the Customer agree to submit to the exclusive jurisdiction of the New Zealand Courts.

### 19 GUARANTORS

- 19.1 Any personal guarantee made by any third party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and Customer shall be jointly and severally liable under the terms and condition of this contract.

### 20 NOTICES

- 20.1 Any notice given under these Terms and Conditions must be in writing (whether or not described as "written notice" in these Terms and Conditions) and must be delivered personally, sent by courier, or sent by email, for the attention of the relevant person, and to the relevant address, email address given below (or as notified by one party to the other in accordance with this Clause).

#### The Seller:

Email:

#### The Customer:

As noted on the Application for Credit Account on the front page of these Terms and Conditions.

- 20.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice is sent by courier, 48 hours after sending; and
- (c) where the notice is sent by email, at the time of the transmission (providing that the sending party retains written evidence of the transmission).

### 21 WEBSITE

- 21.1 All Goods which are displayed on the Aqualine Website are subject to Aqualine's Terms and Conditions of Trade

### 22 CANCELLATION

- 22.1 We may cancel any contract to which these terms and conditions apply or cancel the delivery of Goods at any time before the Goods are delivered by giving written notice to you. On giving such notice we shall repay to you any sums paid in respect of the Goods. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that you cancel an order for Goods, then you shall be liable for any loss incurred by us (including, but not limited to, any loss of profits) up to the time of cancellation.

### 23 DISPUTE RESOLUTION

- 23.1 Both Aqualine and the Customer must first discuss the dispute and in good faith try and settle it between themselves, and if they can't resolve the dispute they must then refer it to mediation by a LEADR qualified person.
- 23.2 This clause will not apply to application by either Aqualine or the Customer for urgent interlocutory relief.

### 24 CONFIDENTIALITY

- 24.1 The provisions of this agreement are strictly confidential to the parties. Neither party may disclose or permit to be disclosed any provision of, or any information (and particularly any financial information) relating to the contract the subject of these Terms and Conditions to any person not a party without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.

### 25 COMPLIANCE WITH LAWS

- 25.1 The parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to provision of the Goods, including the Health and Safety at Work Act 2015.