

Terms & Conditions of Supply

1. APPLICABILITY

Unless otherwise agreed in writing by Aquapipe, all quotes given by Aquapipe, and supply of Goods by Aquapipe to the Customer are governed by these terms and conditions to exclusion of all other terms and conditions or representations. These terms and conditions will not be deemed to be modified, cancelled or waived in whole or in part except by written amendment of Aquapipe. In these terms and conditions: "Aquapipe" means Aquapipe Solutions Ltd and includes any of its divisions; "Customer" means any company, person or other body which orders or requests, either itself or through an agent, the supply of Goods from Aquapipe or makes an application for credit from Aquapipe in relation to any such supply; "Goods" means all products manufactured and distributed by Aquapipe for drainage and watermain applications, including, without limitation, rehabilitation products, all associated services and hireage; "GST" means goods and services tax, pursuant to the Goods and Services Tax Act 1985; "Guarantor" means any person or entity that at any time provides a guarantee to Aquapipe in respect of the Customer's obligations; "Insolvency Event" includes, in respect of any person, when that person commits an act of bankruptcy, makes an arrangement with any or all of its creditors for rescheduling of any indebtedness, has a receiver, liquidator or voluntary administrator appointed or is otherwise insolvent or deemed to be insolvent; "PPSA" means the Personal Property Securities Act 1999; "Security Interest" means a security interest as defined in the PPSA and "Signatory" means any person signing an order or credit application for or on behalf of the Customer.

2. PRICES

Prices and Price lists, with the exception of Aquapipe written quotations, are subject to variation by Aquapipe without notice prior to the confirmation of any order. Unless otherwise agreed by Aquapipe in writing, the price payable for the Goods is the price specified on the invoice for the particular delivery of Goods. Quotations may be withdrawn or modified by Aquapipe, at any time prior to receipt of written acceptance. Quotes are otherwise valid to the date stated on the Quotations Header, or for 30 days, and will lapse if not accepted in writing by the Customers within that time. All quotes must be kept confidential between the Customer and Aquapipe.

3. PAYMENT TERMS, CREDIT AND INTEREST

Unless otherwise agreed in writing by Aquapipe, all Goods must be paid for in cash. If Aquapipe grants credit to the Customer the following terms shall apply.

- a. Payments will be made in full without deduction or set-off no later than the 20th day of the month following invoice.
- b. Should the Customer default in payment of any monies due to Aquapipe or in the performance of any other obligation which it owes to Aquapipe or any associated company or should any Insolvency Event occur in respect of the Customer or any Guarantor then:
 - i. All monies due by the Customer to Aquapipe shall immediately become due and payable.
 - ii. Aquapipe may charge the Customer interest at Aquapipe then current bank overdraft rate plus 2% on all overdue amounts, from the date payment was due until payment in full.
 - iii. Aquapipe may suspend further deliveries of Goods to the Customer until the Customer has paid all monies due by the Customer to Aquapipe; and
 - iv. Aquapipe may revoke all credit provided to the Customer and require that all further deliveries be on a cash on or before delivery basis.
- c. Any expenses, costs or disbursements incurred by Aquapipe in recovering any outstanding monies including debt collection agency fees or legal fees, shall be recoverable from the Customer.
- d. Aquapipe is entitled to request security from the Customer and shall be entitled to withhold the supply of Goods or credit until such security has been obtained.

4. SET OFF

The Customer authorises Aquapipe, and any associated company, to apply (without prior notice or demand) any credit balance of the Customer on any account with Aquapipe or any associated company or any money owed by Aquapipe or any associated company towards satisfaction of any payment due and payable by the Customer to Aquapipe or any associated company. This clause is intended to be relied upon by both Aquapipe and each associated company.

5. RESERVATION OF TITLE

All Goods supplied by Aquapipe shall remain the property of Aquapipe until payment in full by the Customer of all amounts owing is received by Aquapipe. Until property in the Goods passes to the Customer, the Customer shall hold the Goods as a bailee and shall be liable to Aquapipe accordingly. If the Customer breaches any of these terms and conditions Aquapipe shall have the right (without giving notice) to retake possession of the Goods and the Customer authorizes Aquapipe or its representatives, servants, agents of employees to enter any premises upon which the Goods are stored for the purpose of retaking possession of the Goods. Aquapipe will have no liability to the Customer or any third party in relation to the entry, removal or repossession of the Goods pursuant to this clause and the Customer will indemnify Aquapipe against any claims, actions or costs that may arise as a result.

In the case of Goods supplied under an Aquapipe Agreement for Hire, payment does not constitute transfer of property in the Goods, with title retained by Aquapipe.

6. WOODEN PALLET/DUNNAGE

Where wooden pallet/dunnage are supplied by Aquapipe, Aquapipe may require the Customer to purchase such pallets/dunnage for such an amount as shall be at the sole discretion of Aquapipe. All wooden pallets/dunnage supplied by Aquapipe remain the property of Aquapipe until the Customer has paid all amounts payable by the Customer to Aquapipe. The risk of loss of, or damage to such wooden pallets/dunnage passes to the Customer upon delivery to a carrier or to the Customer or nominee, as the case may be. Aquapipe may, in its sole and absolute discretion, permit the Customer to return purchased wooden pallets/dunnage for credit, provided the Customer provides proof of purchase of the wooden pallets/dunnage.

7. PERSONAL PROPERTY SECURITIES ACT 1999

- a. The Customer must do all such things and execute or arrange for execution of all such documents as Aquapipe may require to ensure that Aquapipe has a perfected first ranking security interest(s) in the Goods and any wooden pallets/dunnage supplied by Aquapipe.
- b. Without limitation to paragraph a. of this clause the Customer grants to Aquapipe a security interest in all of its present and after acquired personal property as security for all obligations from time to time of the Customer to Aquapipe.
- c. The Customer waives its right to receive a copy of any verification statement(s) under the PPSA and agree that as between Aquapipe and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. Immediately upon request by Aquapipe the Customer must (at the Customer's cost) procure from any person considered by Aquapipe to be relevant to its security position such agreements and waivers as Aquapipe may at any time require.

8. TAXES

GST and any duty or other tax, levy or impost on or relating to the Goods, is payable by the Customer to Aquapipe upon demand, in addition to the price of the Goods.

9. CLAIMS

Aquapipe shall not be liable in respect of any claim for defective Goods unless such claim is notified to Aquapipe in writing within 7 days of delivery of the Goods. The liability of Aquapipe for defective Goods shall be limited to an amount not exceeding the purchase price of the defective Goods. Aquapipe will not otherwise be liable for any loss or damage (including direct or consequential loss, or loss of profits) incurred by the Customer or any third party as a consequence of the Goods being defective. Aquapipe will not in any circumstances be liable for any loss of damage caused by wilful or accidental damage, negligent or improper use, maintenance or storage or any other circumstances whether or not beyond Aquapipe's control.

10. CREDITS

"When Goods are supplied as ordered, the Customer does not have the right to return the Goods. However, Aquapipe may, at its sole and absolute discretion, permit the Customer to return Goods for credit, on the understanding, expressed or otherwise, that a handling fee of up to 15% of the purchase price of the Goods, plus any freight charges, plus GST, may be deducted from the value of the credit. No Goods will be accepted back unless they are returned to Aquapipe in first class resaleable condition, accompanied by adequate proof of purchase."

11. DELIVERY

Aquapipe will use reasonable endeavours to deliver Goods ordered within a reasonable time. Delivery dates are estimates only and Aquapipe shall not be liable for any damage or loss arising out of delay in delivery. All risks in respect of the Goods will pass to the Customer on delivery to a carrier or to the Customer or nominee as the case may be. If Aquapipe is requested to store Goods, or if Aquapipe is required to store Goods because of the fault of the Customer after the Goods are ready for despatch, the Customer shall pay all charges of and incidental to such storage. Such storage will be at the Customer's risk, and will not entitle the Customer to postpone payment of any sums due to Aquapipe. A receipted consignment note, bill of lading weigh bill or despatch advice, shall be conclusive proof of delivery unless otherwise stated, delivery costs will be paid by the Customer. Transit insurance to the Customer's account can be arranged by Aquapipe if requested by the Customer. Aquapipe shall not be liable to the Customer or any third party for short delivery, or loss in transit of the Goods. Any deliveries necessitating delivery outside the hours of 7.30am – 4.00pm on weekdays must be by special arrangement. Where the Goods are delivered by Aquapipe direct to the Customer or nominee, the Customer shall provide at its expense, safe hard roading suitable for use by usual road transport to deliver materials to the site specified by the Customer or to an area alongside such site, with sufficient clear hard space at all times for unloading and stacking and unless otherwise specified, shall supply all necessary cranes and other unloading facilities.

12. ORDERS

Orders of Goods may be verbal or written. Aquapipe will not be liable for any error in the Customer's order and the Customer will be responsible for errors arising out of verbal orders not confirmed in writing. Cancellation of orders for Goods placed with and accepted by Aquapipe may be made only with the written consent of Aquapipe. Aquapipe will not be liable for any loss or damage suffered by the Customer or any third party as a result of cancellation of an order.

13. CONFIDENTIALITY

All drawings, designs, specifications, technical data and other information which Aquapipe supplies in connection with a quotation, or order are confidential. All such information remains Aquapipe's property, and must not be disclosed to any third person without our written permission and shall be returned immediately upon Aquapipe's request.

14. INTELLECTUAL PROPERTY

If Goods are supplied to the Customer's designs or specifications the Customer warrants that none of its designs or specifications infringe any copyright, patent or other intellectual property right. If the Customer's designs or specifications infringe, or are alleged to infringe any patent, registered design, copyright or other intellectual property rights, the Customer will indemnify Aquapipe for any liabilities incurred by Aquapipe as a result of the Customer's breach of this clause.

15. TESTING

If the Customer requires any Goods or material samples to be specially tested prior to delivery, arrangements may be made for the carrying out of such tests at the Customer's cost.

16. CUSTOMER MATERIALS

If the Customer supplies Aquapipe with its own materials for use in completing the Goods, the Customer undertakes that such materials will be in all respects suitable for the operation for which they are supplied. The Customer will at its own expense replace materials which in Aquapipe's opinion are unsatisfactory and will pay Aquapipe for the cost of work already carried out on such materials and for the cost of any damage incurred by Aquapipe as a result of such materials being unsatisfactory. Such materials remain the property of the Customer whilst in Aquapipe possession. The risk of loss of, or damage to, such materials will at all times be borne by the Customer.

17. INVENTORY CONTROL

If Goods are required at the request of the Customer prior to SEVEN (7) day strength being attained, Aquapipe shall not be liable for any defect or failure in the Goods and the Customer shall indemnify Aquapipe against any claims made in respect of any such defect or failure.

18. FARM GRADE/SECOND GRADE GOODS

Farm grade/second grade Goods are sold as such and marked accordingly. Under no circumstances should farm grade and/or second grade Goods be used as a substitute for first grade Goods and Aquapipe shall not be liable for any loss or damage caused by such substitutions or attempted substitutions.

19. FORCE MAJEURE

Aquapipe will not be liable to the Customer if delivery of the Goods is prevented or delayed, by reason of any circumstances beyond Aquapipe's reasonable control.

20. CONSUMER GUARANTEES ACT 1993

The Customer agrees that where it is buying the Goods for the purposes of a business the Consumer Guarantee Act 1993 does not apply. The implied conditions under the Sale of Goods Act 1908 do not apply to the supply of Goods by Aquapipe to the Customer.