

1 INTRODUCTION

- 1.1 These terms and conditions govern the sale for the supply of goods and services ("Goods and Services") provided by You to Aquaheat New Zealand Limited and any other company within the Horizon Energy Group¹ ("Aquaheat") and take precedence over Your standard conditions of sale, quotes, invoices, or any other communications from you whether expressly included with Your offer or quote or implied in anyway.

2. ORDERS

- 2.1 Aquaheat will confirm all orders for Goods and Services by issuing a Purchase Order that includes:
- Purchase Order Number;
 - Details of the Goods or Services to be completed;
 - Details of where and when the Goods are to be delivered; or
 - Details of where and when the Services are to be completed.
- 2.2 Except where the Purchase Order provides otherwise in writing, all Purchase Orders shall include the terms and conditions of any Subcontract, Contract or Agreement ("Other Agreement") entered into by Aquaheat with another for the supply of goods or services to the Site. By accepting a Purchase Order, You agree that you have been provided the opportunity to inspect the Other Agreement and agree to all terms and conditions contained therein.
- 2.3 By accepting a Purchase Order from Aquaheat, You agree that the Goods and Services will be provided under the terms of this Agreement.
- 2.4 A notification to Aquaheat that You accept a Purchase Order subject to any additional or amended terms is not valid unless agreed in writing by Aquaheat. Aquaheat will not be bound by any additional or amended terms unless it has agreed to them in writing and may accept a supply of Goods and Services without being bound by any additional or amended terms it has been notified of but not agreed to in writing.

3. DELIVERY OF GOODS

- 3.1 In relation to the delivery of Goods, You must (at Your cost):
- adequately pack and protect the Goods against damage and/or deterioration during Delivery;
 - deliver the Goods to the delivery address provided by Aquaheat;
 - provide detailed advice notes and packing slips with the Goods;
 - provide all warranty and guarantees for the Goods;
 - provide applicable documentation such as datasheets or certificate of conformance/analysis; and
 - otherwise satisfy Aquaheat delivery requirements as set out in the Purchase Order or otherwise advised by Aquaheat
- 3.2 Unless expressly agreed otherwise, You agree that no payment is due to You until the requirements of 3.1(b) – 3.1(e) are satisfied. Aquaheat may withhold payments or to engage others to provide the Goods and set off all costs against any amounts otherwise due to you if you fail to meet these Terms.
- 3.3 A delivery note must accompany all deliveries, and must include:
- Aquaheat Purchase Order number;
 - Your legal name and contact details; and
 - Full description of Goods and quantity delivered.
- 3.4 Quantities delivered must conform to the quantities ordered by Aquaheat and Aquaheat will only accept part deliveries and interim invoices if agreed in writing by Aquaheat prior to delivery.

¹ Companies or legal entities included within the Horizon Energy Group are Aquaheat New Zealand Limited (including AquaFire and Colt), Aquaheat Facility Services Limited (including Hamilton Plumbing, McAra, and CH Faults), Aquaheat South Pacific Limited, CoolLogic Refrigeration Limited, Caldwell Levesque Limited, ElectriServ, ElectriNet, and Horizon Services Limited.

- 3.5 The signing of any delivery receipt or similar document by a Aquaheat representative does not indicate Aquaheat acceptance of the Goods.
- 3.6 If, following inspection of any delivered Goods, Aquaheat considers that the Goods, or the Delivery of the Goods, breaches this Agreement, then Aquaheat may (without limiting any other right or remedy):
- require that the Supplier repair or replace the Goods, in which case the Supplier must immediately do so, at its cost; or
 - reject the Goods, in which case clause 3.8 will apply.
- 3.7 If Aquaheat is not satisfied with Your progress in repairing or replacing any Goods Aquaheat may:
- reject the Goods, in which case clause 3.8 will apply; or
 - arrange for the Goods to be repaired by someone else, in which case You will reimburse all costs and expenses incurred by Aquaheat
 - in doing so.
- 3.8 If Aquaheat rejects any Goods in accordance with this Agreement You must:
- remove the rejected Goods from Aquaheat premises at its own risk and expense. If You do not remove the rejected Goods within 15 Working Days, Aquaheat may return the Goods and recover from You any cost and expense incurred; and
 - provide a full refund of any amount paid (or credit for any amount payable) for the rejected Goods.
- 3.9 If Aquaheat wishes to test or inspect any Goods before accepting delivery, You will provide any assistance with that testing or inspection which is reasonably requested by Aquaheat. Goods will be subject to subsequent inspection and use of the Goods. Acceptance testing does not negate Aquaheat rights to recover from You or reject the Goods for any inadequacy in the Goods supplied

4. TITLE AND RISK

- 4.1 Unencumbered title in Goods will pass to Aquaheat upon delivery of the Goods to Aquaheat.
- 4.2 Risk and ownership in Goods will pass to Aquaheat upon delivery, this does not prejudice Aquaheats rights of redress at law if the Goods are damaged, inadequate or do not match the quantity and/or quality set out in the Purchase Order

5. DELIVERY OF SERVICES

- 5.1 You must ensure all Services performed by You:
- will be carried out in accordance with the requirements set out in the Purchase Order or as specified by Aquaheat, and with all reasonable care, skill and diligence.
 - will be carried out at the time specified in the relevant Purchase Order, or if no time is specified, will be carried out promptly.
 - will be carried out by an appropriate number of people with an appropriate level of experience, qualification and supervision; and
 - will be carried out in accordance with all applicable legislative and regulatory requirements, and all applicable industry codes of conduct.
- 5.2 If You breach this Agreement in relation to the Delivery of any Service, then Aquaheat may (without limiting any other right or remedy):
- require You to perform the Services again to the required standard at Your expense; or
 - have the Services re-supplied by another party and recover the cost of doing so from You.

6. APPROVALS AND CONSENTS

- 6.1 Other than as set out in the applicable Purchase Order You must obtain every necessary and prudent authorisation, approval and consent required to ensure that Aquaheat can at all times enjoy the full benefits of the Goods and Services.

7. PRICE

- 7.1 The prices stated on Aquaheat 's Purchase Order are fixed, unless there is prior written approval from both parties.
- 7.2 The price excludes GST but includes freight, insurance, packaging, crating, local cartage, customs duty, labour, consumables and/or any other cost involved in the delivery of the Goods and Services. The Subcontractor is not entitled to any cost fluctuation or adjustment to the price including, but not limited to any increases, taxes or surcharges on consumables (including fuel), goods or materials arising directly or indirectly from any geopolitical events, trade restrictions, supply chain disruptions or currency fluctuations.
- 7.3 You are not entitled to claim expenses, surcharges, margins or disbursements except as otherwise agreed in advance and in writing by Aquaheat.

8. PAYMENT

- 8.1 Insert company will pay for the Goods and Services in NZ dollars within 60 days following receipt of invoice.
- 8.2 All payments are subject to Aquaheat receiving a GST tax invoice that includes the Purchase Order Number and details of the amounts claimed as required by Aquaheat.
- 8.3 Failure by Aquaheat to dispute any invoice prior to payment will not prejudice Aquaheats rights to subsequently dispute the correctness of that invoice.
- 8.4 Aquaheat may withhold or deduct or set off the amount of any overpayment or any amount recoverable by Aquaheat from You under this Agreement from any future payment
- 8.5 Invoices must be submitted within ten (10) days of delivery and sent to: invoices_heg@hegroup.nz

9. ACCESS TO SITE

- 9.1 If access to any Aquaheat Site is necessary for the Delivery of the Goods and Services, Aquaheat will allow You access at reasonable times, as necessary.
- 9.2 You will comply with Aquaheat 's security, operational, health and safety and Site requirements where You have access to any Aquaheat Site.
- 9.3 When required by Aquaheat, You must complete a Aquaheat Site specific induction programme before Delivering the Goods and Services to Aquaheat in accordance with this Agreement

10. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 10.1 You represent and warrant that all Goods supplied by You:
 - a. are new and unused (unless otherwise agreed by Aquaheat).
 - b. are of merchantable quality, and free of any defects in materials and workmanship.
 - c. are fit for any purpose which they could reasonably be expected to be used for, including any purpose which Aquaheat told You it intended to use them for at or prior to the time it delivered the Purchase Order.
 - d. comply with any requirements and specifications advised by Aquaheat; and
 - e. comply with all applicable legislation, regulation and industry codes of practice.
- 10.2 You warrant that all Goods and Services will be free from material defects in materials and workmanship and conform in all material respects to the Other Agreement for a period of 12 months from either delivery, installation or commissioning (whichever is the later).
- 10.3 Third-party manufacturer warranties will be passed through to the extent permitted and will meet or exceed the time durations required under Other Agreements.

11. HEALTH & SAFETY AND ENVIRONMENT

- 11.1 You must, in the Delivery, installation and undertaking of Goods and Services:
 - a. comply with the Resource Management Act 1991 and the Health and Safety in Work Act 2015; and

- b. ensure that Your employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment; and
- c. immediately report to Aquaheat all incidents involving injury or potential injury to any person or the environment or damage to property.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights owned by a party prior to, or independent of, a Purchase Order will remain owned by that party.
- 12.2 All Intellectual Property Rights created in the course of supplying the Goods and Services will be owned by Aquaheat who may transfer ownership to others as required to meet its obligations. You must execute all documents and take all other actions reasonably required by Aquaheat to give effect to this clause 18.2.
- 12.3 You must ensure that the Goods do not breach the intellectual property rights of any third party.

13. INSURANCE

- 13.1 You must maintain insurance coverage in amounts and against risks that are normal for businesses similar to You, including, where applicable, professional indemnity insurance and insurance against public liability and property damage.

14. INDEMNITY

- 14.1 You must indemnify Aquaheat in respect of any loss, damage or expense suffered or incurred by Aquaheat as a direct or indirect consequence of any act, error, omission, breach of any warranty or other obligation in or arising from this Agreement. The indemnity shall survive the termination of this Agreement.

15. DEFAULT AND TERMINATION

- 15.1 Without limiting any other rights or remedies which Aquaheat has, Aquaheat may, by notice in writing, terminate (or suspend Your performance of) this Agreement with immediate effect if You
 - a. materially breaches the terms of this Agreement and does not remedy that breach within 10 Working Days of being notified of the breach by Aquaheat.
 - b. goes into liquidation, has a receiver, administrator or statutory manager appointed in respect of itself or its assets, becomes unable to pay its debts as they fall due, is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts, is removed from the New Zealand Companies Register.
 - c. breaches any of Aquaheat health and safety obligations;
 - d. fails to deliver the Goods within 10 Working Days of the delivery date or agreed timeframe;
 - e. delivers Goods and provides Services where a material portion of those Goods and Services are defective; or
 - f. engages in any activity, conduct or otherwise that may adversely affect the reputation of Aquaheat.
- 15.2 If You breach any term of the Agreement, Aquaheat may withhold payment of any amounts due under this Agreement in respect of the Goods and Services until the relevant breach has been remedied. If the breach is not able to be remedied, Aquaheat may permanently withhold an amount equal to the loss which it reasonably calculates it has suffered as a result of the breach.
- 15.3 If Aquaheat disputes any part of an invoice submitted by You, Aquaheat will pay the undisputed amount but may withhold payment of the disputed amount without penalty until the dispute is resolved.
- 15.4 Termination of the Agreement or cancellation of the Purchase Order does not affect any responsibilities which are intended to continue or come into effect after the Agreement terminates.
- 15.5 Unless agreed otherwise if a claim or invoice is not received by , Aquaheat within 60 working days of the Goods being delivered or Services completed, You shall not claim or invoice , Aquaheat for any such Goods or Services and , Aquaheat will have no obligation to pay for any such Goods or Services unless otherwise agreed in writing by , Aquaheat .

16 CONFIDENTIALITY

- 16.1 You will not use Aquaheat name to advertise or promote itself or its business in any way without the prior written consent of Aquaheat.
- 16.2 Any information provided by Aquaheat to the Supplier, which is marked as confidential, must not be disclosed to any third party by You without the prior written consent of Aquaheat or used by You other than for the purpose of satisfying Your obligations under the Purchase Order. This obligation survives termination or expiration of the Purchase Order.

17 GENERAL

- 17.1 Neither party will be liable to the other for any delays nor non-performance of contractual obligations under this Agreement caused by a Force Majeure, provided each party has taken reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event. A Force Majeure event includes fire, pandemics, outbreaks of war, acts of hostility and acts of God but excludes labour shortages, or industrial action affecting You; failures of equipment; cost increases, or economic conditions; or any event that merely makes performance more difficult, more expensive, or less profitable.
- 17.2 You must not assign or subcontract any of its rights or obligations under these terms and conditions without Aquaheat's prior written consent.
- 17.3 Nothing in these terms and conditions is to be interpreted as constituting either Aquaheat or You as agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in these terms and conditions.
- 17.4 If any provision of these terms and conditions is held invalid, unenforceable or illegal for any reason, these terms and conditions will remain otherwise in full force apart from such provisions, which will be deemed deleted.
- 17.5 No failure or delay on the part of Aquaheat in exercising any of its rights under these terms and conditions shall be construed as constituting a waiver of any such rights.
- 17.6 This Agreement is governed by New Zealand law.

18 TESTS

- 18.1 The cost of any tests required by Aquaheat to determine the performance of the Goods will be borne by You. If witness testing is required, You will provide no less than 10 working days' notice.

19 DISPUTES

- 19.1 The parties will use their best efforts to resolve the dispute in good faith and in accordance with this clause 19. If, after receipt of a written notice of dispute, that dispute is not resolved within 10 days the dispute will be escalated to senior management to be resolved within a further 10 days.
- 19.2 If the dispute is not resolved under clause 19.1 then, unless otherwise agreed, either party may refer the dispute to expert determination by written notice to the other party.
- 19.3 The expert will be appointed by agreement or, failing agreement within 10 days following the date of referral to expert, by the President (or his or her nominee) of the Arbitrators and Mediators Institute of New Zealand who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute. The parties shall agree the procedure for this expert referral, or failing agreement, the parties agree to the Expert determining the procedure to be followed provided that the Expert's decision is delivered no later 10 Working Days after receipt of the parties' written submissions.
- 19.4 The Expert's fees will be at the parties' cost, and the Expert will determine the proportion of those fees that each party will be required to pay, having regard to (amongst other things) the conduct of the parties.
- 19.5 Nothing in this clause 19 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand Court.

20. CHANGES TO TERMS AND CONDITIONS

- 21.1 Aquaheat reserves the right to change these terms and conditions at any time. Any changes will be effective immediately upon posting on its website.