

General Terms & Conditions

Aquametro Oil & Marine AG
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I. Scope of application

1. These General Terms and Conditions refer to all deliveries and services of Aquametro Oil & Marine AG (hereinafter defined as Aquametro) to contractual partners.
2. All deliveries and services, incl. accessories, installation and commissioning base exclusively on these General Terms and Conditions – unless otherwise explicitly defined in writing. Divergent or additional provisions by the customer shall apply only if we expressly accept them in writing.

The customer accepts the General Terms and Conditions of Aquametro as binding even if his order or previous written communication contradicts and refers to his own terms and conditions. The General Terms and Conditions for deliveries of Aquametro also apply for all further business transactions with the customer. Unless otherwise agreed, they also apply for deliveries of spare parts, installation work and commissioning.

Our Terms of Delivery also apply if Aquametro performs a delivery or service despite contradictory or deviating terms of a customer.

II. Offer, contract conclusion

1. Our offers and the documents related to the offer are only decisive for the contract conclusion, if they are explicitly defined as binding offer. Furthermore, our spoken and written application-specific consultation as well as suggestions, calculations, project planning, illustrations in offers invoices etc. are always only the description of the best possible use for our products. These descriptions do not free the partner from its unlimited obligation to control the suitability of our products for the intended purpose.
2. The placement of an order is a binding declaration that the customer will purchase the ordered product. The contract is binding once Aquametro confirms it in writing or electronically with an order confirmation sent to the customer. Unless otherwise stated the contract conclusion is subject to correct and timely delivery by our subcontractors. This only applies for the case that we are not responsible for the non-delivery, especially in case of conclusion of a congruent covering transaction with our supplier. The customer is immediately informed about the non-availability of services. Eventually already rendered compensatory measures need to be refunded.

3. If the customer is placing an electronic order we are not obliged to confirm the order electronically. Aquametro is also not obliged to make technical means available for customers to check and correct typing errors before placing an order. We are furthermore not obliged to communicate certain information about the contract in electronic form to the customer before placing the electronic order. We point out that our usual contractual conditions, including our General Terms and Conditions, are available on the Aquametro website www.aquametro-oil-marine.com. If we confirm the electronic order with an electronic order confirmation, the contractual conditions of this order are available in reproducible form.

4. Offer documents, plans, drawings, cost estimates and all technical documents – also in electronic form – need to be treated as confidential information and shall neither be forwarded or published nor made available to third parties in writing. They need to be issued or deleted upon request. The same applies for provided software.

III. Scope of delivery

1. For the scope of delivery exclusively our written or electronically transmitted order confirmation is decisive. Amendments, collateral agreements or changes also need to be confirmed by Aquametro in writing or electronic form to be valid. There are no other amendments or collateral agreements.
2. The minimum invoice amount for deliveries is CHF 100.--.
3. If orders for goods to be delivered on demand are agreed, a maximum of three part deliveries can be called, within one year at the most from the order/confirmation of order.

If the individual requests for delivery are not within a certain period defined in the order confirmation, a processing fee of CHF 100.-- shall be paid.

4. All documents underlying the order confirmation such as evaluations, drawings, calculations and technical details are only approximate values and generally no guarantee commitments in legal terms, unless they are expressly defined as such in the order confirmation.
5. Partial deliveries are not admissible.

6. Aquametro is entitled to apply technical changes, which lead to improvement, as far as no price increases are caused.
7. The customer is obliged to accept the ordered goods and services at the agreed date and to perform the required preparatory work for timely acceptance and installation. In case of delayed take over or preparatory work for timely installation Aquametro is entitled to charge the expenses from the customer which were necessary in connection with the unsuccessful quotation and storage as well as preservation of the good supplied. This does not affect the right to cancel the contract and to demand 20 percent of the agreed price as flat-rate compensation for damages.
8. In case of amendments of the order confirmation, which have been initiated by the customer, the delivery period needs to be newly defined and an amendment fee of CHF 100.-- is charged. No changes in this sense are reductions of the delivery scope or the annulation of an order before the production is started. In such cases a sum to cover the processing expenses of CHF 200.-- is charged.

IV. Price, payment and default of payment

1. The offered prices are binding and apply with no other agreement ex works including loading at our premises or transfer to the forwarding agent/carrier, but without packaging. Additionally to the prices the respective legally defined value-added tax is charged.
2. Unless otherwise agreed the payment needs to be arranged cash without deduction to the paying agent defined by Aquametro and is due upon receipt of the invoice.
3. Default of payment shall commence with a reminder after the due date, without a reminder not later than 10 days after the due date.
4. The customer must, during the period of default, add 8 per cent p.a. interest to the amount owed. Aquametro reserve the right to assert higher damages.
5. Any delay of payments or settling of accounts due to eventually disputed counter claims from the customer is not valid unless it is legally binding.
6. If a substantial deterioration of the customer's financial situation becomes apparent to Aquametro, Aquametro is entitled to partially or entirely request prepayments or securities deviating from Clause 2 or to withdraw from the contract.
7. An agreed discount deduction can only be applied when older due invoices are paid and the open invoice amount is completely paid. Discount agreements always refer to the net value of goods, thus without testing fees, calibration fees and services of all types.

V. Period of delivery, delays in delivery

1. The respective delivery date results from agreements of the contractual parties. Its compliance by Aquametro requires that all commercial and technical questions between the contractual parties are clarified in time and that the customer fulfils all obligations such as submitting all required technical or official documents or approvals or made a prepayment in time. If this is not the case the delivery time is reasonably prolonged. This does not apply if Aquametro is responsible for a delay.
2. The compliance with the specified period of delivery is subject to the proviso that correct deliveries are received by us in due time.
3. The period of delivery is met if the delivery subject leaves the Aquametro site until its expiry or the readiness for delivery is reported. If an acceptance is required the acceptance date is – except in cases of justified refusals of acceptance – decisive or alternatively the reporting of acceptance readiness.
4. The delivery time shall be extended appropriately in the event of measures in connection with labour disputes, particularly strikes and lock-outs and in the event of unforeseen obstacles occurring which cannot be influenced by Aquametro insofar as such obstacles demonstrably influence the completion or delivery of the delivery item concerned. This is also valid, if these circumstances occur at sub-suppliers. Circumstances of this nature shall not be the responsibility of Aquametro, even if they occur during a delay already caused by other reasons. Aquametro will inform the customer at the beginning and end of such obstacles in important cases as soon as possible.
5. No compensation for damage resulting from delay shall be owed for delayed deliveries from third-party suppliers, which have been requested by or agreed with the customer.
6. In case of a delay of delivery caused by us the partner has the right to withdraw from the contract and/or claim for compensation instead of the service if a reasonable extension of the period has been granted with the notice that the acceptance of the contractual item will be rejected after the extension period. No claim for compensation is due if the delay of delivery is caused by the behaviour of the sub-suppliers.
7. If the delivery or production is delayed due to circumstances for which the customer is responsible, then the customer must nevertheless make the payments relating to the original delivery date. In this case Aquametro shall be entitled to warehouse the goods and to charge at least 0.5 percent of the sales price per month as warehousing costs. Aquametro is also entitled to claim the compensation of verifiable higher costs.

8. In the event of a default of the customer in the performance of his contractual obligations, Aquametro is additional to the claims according to Clause 6 after fruitless expiry of a reasonable period of grace also authorised to dispose of the goods in other ways and/or to deliver to the customer with a suitable prolonged period and/or to refrain from the contract and to claim compensation for damages caused by the customer's non-compliance. As damage an amount of 20 percent of the order value is deemed, subject to the provision of proof of more extensive damages. The damage is settled with the arranged prepayment. This also applies for a withdrawal from a contract if the goods of a delivery order are already in production. The customer has the right to prove that such damage has not incurred at all or not in the stated amount.
3. Aquametro is entitled to insure the delivery item, at the cost of the customer, against theft, breakage, fire, water damage and other damages unless the customer has demonstrably taken out insurance cover by himself.
4. The customer is not entitled to pledge or assign the goods as security. In the case of pledges and seizure or other orders by third parties, the customer is obliged to inform Aquametro immediately.
5. Aquametro is entitled to withdraw from the contract and to request the delivery item in case the customer is breaching the contractual conditions or his obligation according to the Clauses 2 to 4.
6. The customer is entitled to market the goods in the ordinary course of business. He is still liable for all owed invoices and transfers already now all claims in the height of the invoice amount to Aquametro, which result due to the sale to a third party. Aquametro accepts this transfer. After the transfer the customer is entitled to collect the claim, but is required to forward the received payments up to the amount complying with the open invoices immediately and without request to Aquametro. Aquametro reserves the right to collect the claim on its own, as soon as the customer is not meeting the payment obligations anymore and is in delay.

VI. Transfer of risks

1. The risk of coincidental loss and coincidental deterioration of the purchased item shall pass to the customer no later than upon acceptance, in case of sales shipment at the time of handover to the forwarding agent, the carrier or other persons or companies commissioned with the performance of shipping. This also applies if partial deliveries shall be performed or Aquametro also takes over other services, e.g. the shipping costs or delivery, installation and configuration.

Upon request of the customer the delivery will be insured at his expense against theft, breakage, transportation, fire and water damages as well as against other risks that may be insured.

2. If the delivery is delayed due to circumstances that the customer is responsible for, then the risk is transferred to the customer from the day on which the goods are ready for dispatch; however Aquametro is obliged, at the request and the expense of the customer, to effect insurance as requested by the customer.
3. Delivered goods have to be accepted by the customer, even if they show insubstantial defects, without affecting his guarantee rights.

VII Retention of title

1. Aquametro reserves the retention of title to all goods supplied until all claims are settled in an ongoing business relationship. The customer obliges to issue a certificate to evidence the agreed retention of title to the contractual item upon request, in which the retention of title is documented and to issue this certificate to Aquametro. Upon request of Aquametro as well as in case of an insolvency application of the customer, the contractual item under retention of title needs to be externally visibly marked as "Property of the company Aquametro Oil & Marine AG".
2. The customer is obliged to handle the goods with care. If maintenance and inspection work is required, the customer needs to perform it regularly on his own expenses.

7. If processing is arranged with products not belonging to us, Aquametro acquires in the new object the co-ownership at the ratio of the invoice value of the goods delivered to the invoice value of the other processed goods. The same applies if the delivery item is processed with other objects not belonging to Aquametro.

VIII Acceptance

1. In the absence of other agreements the acceptance takes place at the site of Aquametro.
2. The installation, commissioning and maintenance of delivered items and rendered services need to be performed according to the information and provisions stipulated by Aquametro as well as in compliance with relevant national and international standards. Guarantee claims for the functionality of facilities, which have not been installed by Aquametro, can only be accepted if Aquametro has agreed in writing to work by third parties.
3. The customer is solely responsible that the requirements for commissioning of the delivery item are met. In case of unsuccessful acceptance Aquametro has the right to check the delivery item and to fulfil the obligations within a reasonable period, to make the goods then available for another acceptance. Aquametro corrects immaterial deficiencies or functional errors, which do not significantly affect the functionality of the delivered product, within a short period of time. Acceptance may not be withheld due to such deficiencies. Deliveries will be deemed as accepted if the customer is accepting the delivery without reservations.

IX Guarantee and non-fulfilment

1. Aquametro guarantees (i) subject to the other provisions of these General Terms and Conditions, to hold a title to the goods and to have the right of unencumbered use of the goods; (ii) that goods manufactured by Aquametro and/or Aquametro's affiliates shall conform with Aquametro's specifications and be free of defects in materials and workmanship and (iii) that services provided by Aquametro or Aquametro's affiliates will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice.

Aquametro will eliminate all faults with repair or, at its discretion, by delivery of one or several spare parts, which occur despite suitable use, care and maintenance at goods manufactured by Aquametro within a period of 24 calendar months after their delivery, 90 days after the delivery for consumables and spare parts (the "guarantee period") and which explicitly derive from a material flaw or manufacturing fault, but always with the condition that the parts with the respective fault are returned within the guarantee period to Aquametro, whereby the postage costs and the insurance need to be paid by the customer in advance. The replaced parts are then the property of Aquametro again.

If the complaint is justified the repaired or replaced parts are delivered by Aquametro at the expense of Aquametro to the customer site.

Any other claim in connection with a delivered defective part, in particular every claim for compensation is agreed as being excluded between the two parties. In particular Aquametro is not liable for indirect damages (interruption in business etc.). The guaranteed amount is in any case limited to the invoice amount.

Aquametro will remedy any deficiencies of services, rendered by Aquametro and/or its commissioned sub-suppliers if they are reported within a period of ninety days after this service has been performed. The goods, which have been repaired or replaced according to this Clause IX 1., or the services, whose deficiencies have been remedied in accordance with this Clause IX 1., also have the mentioned guarantee for the non-expired part of the guarantee period or a guarantee of ninety days after the date of return to the customer (or the remedy of defects in case of services), whichever shall be the later.

2. The goods or services, which Aquametro acquired at a third party for resale to the customer, exclusively have the guarantee, which has been initially granted by the manufacturer.
3. Despite the clauses IX 1. and IX 2, Aquametro is not responsible for any deficiencies, caused by usual wear or improper operation, materials or workmanship, which has been performed, delivered or specified by the customer, the non-compliance with requirements specified by Aquametro concerning storage, installation commissioning provisions, a lack of sufficient maintenance, any

change or repair, which has not been approved in writing by Aquametro in advance, the use of unapproved software or unapproved exchange or spare parts. The costs, which arise to Aquametro due to the analyses and the rectification of these defects, need to be reimbursed by the customer upon request. The customer is at any time solely responsible for the suitability and correctness of information he delivers.

4. The preceding procedures constitute the only guarantee of Aquametro and the exclusive claim for compensation of the customer in case there is a breach of this guarantee. No explanation, guarantee or other declaration of any type can be explicitly or implicitly used concerning the satisfactory quality, the commercial quality, the suitability for certain purposes or any other consideration in connection with any of these goods or services.

X. Liability

1. For damages which have not arisen in connection with the delivery item, Aquametro is only liable – for any legal reason whatsoever – in case of intent, gross negligence of the corporate agents or managers, culpable injury to life, body and health, in case of deficiencies, which have been maliciously concealed or whose absence Aquametro has assured as well as in case of deficiencies of the delivery item, provided liability is provided in accordance with the product liability law for injury to persons and damages to privately used materials.

In case of minor negligent breaches Aquametro is not liable.

Any further claims are excluded.

2. Claims for compensation of the customer due to a deficiency have a limitation period of one year after delivery of the delivery item. This is not applying if Aquametro cannot be accused of malice.

XI Software usage

To the extent that the scope of delivery includes software, the customer is granted a non-exclusive right (licence) to use the software supplied including its documentation. It shall be transferred exclusively for use on the delivery item intended for this purpose. The use of software on more than one system is prohibited.

The customer may only reproduce, edit, translate or convert it from the object code into the source code as far as legally admissible. The customer is obliged to not remove manufacturer details – in particular copyright notations – without prior, express approval of Aquametro.

All other rights to the software and its documentation including its copies remain with Aquametro or the software supplier. The awarding of sub-licences is not permissible.

XII Return of goods

Aquametro is not obliged to accept goods wrongly or excessively ordered by the customer. If these are accepted as a gesture of goodwill, Aquametro charges a processing fee of 30 percent of the sales value or a minimum amount of CHF 100.--, if the returned foods are delivered without damages and in a faultless original packaging. In case the returned goods are damaged or used, the status value is estimated and refunded to the customer. If the customer is not satisfied with the refunded value, the customer has the right to pick it up again with cancellation of compensation or to let the goods be picked up respectively. Goods older than 6 months are generally not accepted for return. Deliveries of special versions are generally not accepted for return.

XIII Cessions

All rights from our contractual relationship can only be transferred to third parties upon our prior, written approval. This applies both for individual rights from the contract as well as for the entire contractual relationship. However, Aquametro has the right to let deliveries be directly performed by Aquametro AG, Therwil.

XIV Applicable law, place of jurisdiction

1. For all legal relationships between Aquametro and the customer the respective Swiss law valid for the legal relationship is exclusively applicable. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply.
2. The place of jurisdiction is Therwil, also for documents, bills of exchange and cheque proceedings, if the customer is a general merchant, a legal entity of public law or a special public fund. However, Aquametro is also entitled to raise a claim at the customer's place of residence.