

# STANDARD DELIVERY AND SERVICE TERMS AND CONDITIONS

Aquametro Oil & Marine GmbH, Friedrich-Barnewitz-Str. 11,  
18119 Rostock, Germany

## I. Scope of Application

1. These STANDARD DELIVERY AND SERVICE TERMS AND CONDITIONS (STC) shall apply to all deliveries and services provided by Aquametro Oil & Marine GmbH (hereinafter referred to as AOM) to a contracting partner ("Customer") in all B2B legal transactions.

2. All deliveries and services, including accessories, assembly, and commissioning shall be subject exclusively to our STC below, unless expressly agreed otherwise. The Customer's deviating or supplementary terms and conditions shall apply only if expressly accepted by us in writing.

The Customer accepts AOM's STC to be binding on it even if this contradicts its orders or prior correspondence, where reference is made to its own terms and conditions. These STC shall also apply to all other business conducted with the Customer that involve deliveries or services by AOM. Unless agreed otherwise, they shall also apply to the delivery of spare parts, assembly work, and commissioning. As stated in our reply to inquiries, these STC are available electronically at any time on our website at [www.aquametro-oil-marine.com](http://www.aquametro-oil-marine.com) and will also be attached to our confirmation of order.

These STC shall also apply in the event AOM makes delivery or performs services without reservation while being aware of a Customer's conflicting or deviating terms and conditions.

## II. Offer, Conclusion of Contract

1. Our offers and the documents being part of the offer shall become the basis for the conclusion of the contract only if the respective offer has been expressly specified to be a binding offer. In all other respects, our advice on technical applications, both verbal and written, as well as proposals, calculations, project design, presentations in offers, invoices, etc., are simply the best possible description of use of our products. These descriptions shall not release the Customer from its unlimited obligation to satisfy itself by its own review of the fitness of our products for its intended purpose.

2. By placing an order, the Customer states with binding effect that it wishes to purchase the ordered goods. A contract shall not have been deemed entered into with legal effect unless it has been confirmed by AOM in writing or electronically by means of a confirmation of order and this confirmation of order has been received by the Customer. Unless expressly agreed otherwise, the conclusion of the contract shall be subject to our own proper and timely provisioning from our suppliers. This shall apply only in case that we are not responsible for the failure to deliver, in particular in cases where we have entered into a matching cover arrangement with our supplier. If the service becomes unavailable, the Customer shall be notified without undue delay. Any payments already made will be refunded.

3. If the Customer orders electronically, we are not obligated to confirm the order by electronic means. Furthermore, AOM shall not be obligated to provide technical means that the Customer can use to recognize and rectify input errors prior to placing its order. In addition, we are not obligated to provide certain information regarding the contract to the Customer also by electronic means prior to the submission of the Customer's electronic order. We would like to point

out that our usual terms and conditions of contract, including these STC are available on the AOM website [www.aquametro-oil-marine.com](http://www.aquametro-oil-marine.com). To the extent that we confirm the electronic order by an electronic confirmation of order, the terms and conditions of contract for that order will be stored in a retrievable and reproducible form.

4. Offer documents, plans, drawings, cost estimates and all technical documents – also in electronic form – must be treated as trade secrets and must neither be disclosed, published, copied nor made available to third parties in writing. They must be surrendered or deleted upon request. The same shall apply to any software provided. A right of retention and/or a right to refuse performance on the part of the Customer shall be excluded in this respect.

### **III. Scope of Delivery**

1. The scope of delivery shall be determined exclusively by our written or electronic order confirmation.
2. The minimum invoice amount of deliveries is €100.00 net plus VAT in the statutory amount applicable from time to time.
3. If call-off orders have been agreed upon, a maximum of three partial deliveries can be called off within a period of up to one year from the date of the order/order confirmation. If the individual calls are not made within the period stipulated in the order confirmation, a processing fee of €100.00 net plus VAT in the statutory amount applicable from time to time shall be payable.
4. All documents on which the order confirmation is based, such as computations, drawings, calculations and technical specifications, shall be considered approximate values only and shall not be deemed warranty promises or binding quality information within the meaning of the law, unless they have been expressly described as such in the order confirmation.
5. Partial deliveries and partial services are permissible.
6. AOM shall have the right to make technical changes that result in improvement and do not affect the Customer to the extent that these changes will not trigger a price increase.
7. The Customer shall be obligated to take receipt of ordered goods and accept services at the date agreed upon and to carry out necessary technical preparations for the timely acceptance and assembly. In the event of failure to take

delivery, or of acceptance, at the agreed date or to carry out preparatory measures for a timely assembly, AOM shall be entitled to claim from the Customer all costs incurred for the unsuccessful offer as well as for the storage and preservation of the goods. Notwithstanding the aforesaid, AOM shall have the right to rescind the contract that incorporates these STC as an integral part, and to claim liquidated damages in the amount of 10% of the agreed-upon price after AOM had first, without success, set an appropriate period for the taking of delivery/acceptance or the carrying out of preparatory measures by the Customer for the timely assembly. The Customer shall be entitled to provide proof that AOM has suffered a slighter damage. AOM shall be entitled to provide proof that it has suffered a higher damage.

8. In the event of changes to the order confirmation caused by the Customer, the delivery period shall be reset, and a flat fee for changes of €100.00 plus VAT in the statutory amount applicable from time to time shall be paid. A reduction of the scope of delivery or cancellation of an order prior to the commencement of production shall not be deemed a change within the aforesaid meaning. In these cases, a flat fee for expenses in the amount of €200.00 plus VAT in the statutory amount applicable from time to time shall be owed. The Customer shall be entitled to provide proof that AOM has suffered a slighter damage. AOM shall be entitled to provide proof that it has suffered a higher damage.

### **IV. Price, Payment, and Default in Payment**

1. The quoted prices are binding and, in the absence of a special agreement, apply ex works, including loading at the factory or handover to the forwarder/carrier, but excluding packaging. Value added tax in the statutory amount applicable from time to time shall be added to the prices.
2. Unless separately agreed, payment must be made without any deduction to the paying agent/bank account specified by AOM and shall be due upon receipt of the invoice.
3. Default in payment occurs with a reminder after the due date, but no later than 30 days of receipt of the respective invoice (Section 286(3) German Civil Code [BGB]).
4. The Customer shall pay interest on the debt during the default at the rate of 9 percent above the base interest rate. AOM reserves the right, without prejudice to further rights, to provide proof of, and assert, higher damages caused by default.

5. The Customer's counterclaims may be effectively offset against AOM's claims only if and to the extent that the Customer's counterclaim is undisputed or has been finally adjudicated.

6. If AOM becomes aware of a significant deterioration of the financial situation of the Customer, AOM shall be entitled, in deviation from Clause 2, to request total or partial advance payment or provision of security.

7. Any agreed cash discount cannot be claimed unless all previous invoices that have fallen due have been paid, and the outstanding invoice amount has been settled in full. Discount agreements always relate to the mere net value of the goods, i.e., excluding inspection fees, calibration fees, and services of any kind.

## **V. Delivery Period, Delays in Delivery**

1. Each date of delivery is specified in the agreements between the contracting parties. AOM's compliance with the delivery date requires that all commercial and technical questions between the contracting parties have been clarified in due time and that the Customer has fulfilled all obligations and duties incumbent upon it, such as the provision of the required technical or official documents or permits, or any advance payment required. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if AOM is responsible for the delay.

2. Compliance with the delivery period shall be subject to our own proper and timely provisioning.

3. The delivery period shall be deemed complied with if, prior to the expiry of this period, the delivery item has left the AOM facility or readiness for dispatch has been notified. Where an acceptance of services is required, the date of acceptance, except in cases of justified refusal of acceptance, shall be the relevant date for compliance, alternatively the notification of readiness for acceptance to the extent that the subject matter of the service has been completed and is ready for acceptance inspection.

4. The delivery period and period for performing services shall be reasonably extended in the event of industrial disputes, including but not limited to strike and lockout, as well as upon occurrence of unforeseen obstacles outside the sphere of AOM's influence, and of obstacles that demonstrably have a considerable impact on the completion or delivery of the delivery item/service. This shall also apply if these circumstances occur at sub-suppliers. AOM shall not be responsible for the circumstances referred to above if they occur during an ongoing delay. In important cases, AOM shall inform the Customer as soon as possible of the beginning and the end of any such obstacles. Furthermore, there is agreement between AOM and the respective Customer that the delivery period / period for performing services shall be extended by pandemic events (such as the COVID-19 pandemic) and/or strike or war if and to the extent these circumstances have an influence on the procurement of materials, transport routes, labor or other aspects necessary for the contractual delivery/service.

5. No compensation for delay shall be owed for late deliveries from outside suppliers prescribed by or agreed with the Customer.

6. If dispatch or completion is delayed for reasons for which the Customer is responsible, the Customer shall still be required to make the payments associated with the original delivery date. In this case, AOM shall be authorized to place the delivery item in storage and charge at least 0.5% of the sales price per month as storage fee, but no more than 10% of the net sales price. AOM shall have the right to claim any higher costs it has demonstrably incurred. The Customer shall have the right to provide proof of lower storage costs.

7. Upon occurrence of any default by the Customer in fulfilling its contractual obligations, AOM shall be entitled, in addition to its claims specified in Clause 6 above, and after unsuccessful expiration of a reasonable additional period for performance granted by AOM, to dispose otherwise of the delivery item and/or to provide delivery to the Customer subject to a reasonable extended period and/or rescind the contract and claim compensation of damages caused by the Customer's failure to perform. Damages shall be defined as an amount of 10 percent of the net order value, subject to proof of further damages. The damages shall be set off against the advance payment made. This provision shall also apply in the event of cancellation of the contract while an order is already in production. The Customer shall have the right to prove that damages of 10 percent of the net order value have not been incurred or not in this amount.

## **VI. Passing of Risk**

1. The risk of accidental loss, destruction or deterioration of the delivery item shall pass upon the Customer upon delivery, or, in cases of a sale by delivery to a place other than the place of performance at the Customer's request, upon delivery of the item to the forwarder, the carrier, or the person or institution otherwise commissioned to carry out the shipment. This shall also apply in the event of partial deliveries or in cases where AOM has assumed additional services, such as the costs of shipment or delivery, installation and setting up.

At the Customer's request, AOM will insure the shipment against theft, breakage, transport damage, fire and water damage and other insurable risks at the Customer's expense.

2. If the shipment is delayed due to circumstances for which the Customer is responsible, the risk shall pass as of the day of readiness for shipment to the Customer; however, AOM shall be obligated to effect the insurance policies that the Customer has asked for at the Customer's request and expense.

3. Delivered items must be accepted by the Customer without prejudice to its warranty rights, provided they do not have major defects.

## **VII. Retention of Title**

1. AOM retains title to the delivery item until all claims from an ongoing business relationship with the respective Customer have been settled in full. In order to prove the agreed retention of title to the contractual object, the Customer undertakes to produce a document on request that evidences the retention of title, and to hand this document over to AOM. At AOM's request and in the event of an application for insolvency filed by the Customer, the contractual object shall be visibly marked on the outside to read "Owned by Aquametro Oil & Marine GmbH".

2. The Customer is obligated to handle the goods with care. If maintenance and inspection work is required, the Customer shall continuously perform this work at its own expense.

3. AOM shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Customer's expense unless the Customer has taken out this insurance itself and can provide proof thereof.

4. The Customer may neither pledge the delivery item nor transfer title thereto to serve as security. In the event of attachment as well as seizure or other dispositions by third parties, the Customer shall notify AOM without undue delay.

5. In the event of breach of contract by the Customer, including but not limited to default in payment or violation of an obligation set forth in Clause 2 to 4 of this provision, AOM shall be entitled to rescind the contract after having set a reasonable period of time for the purpose of the outstanding action to be taken or payment to be made, and to demand return of the delivery item. In this respect, the Customer's right to retention and/or right to refuse performance shall be excluded.

6. The Customer shall be entitled to resell the delivery item in the ordinary course of business. The Customer continues to be liable for all outstanding claims and shall assign to AOM upon and at the time of entering into the respective contract that incorporates these STC as an integral part, all claims in the amount of the invoice accruing to the Customer against a third party as a result of the resale. AOM accepts the assignment upon entering into the respective contract that incorporates these STC as an integral part. After the assignment, the Customer shall be authorized to collect the claim but shall immediately transfer to AOM, without prompting, any payments received up to the amount of the outstanding invoices. In this respect, the Customer's right to retention and/or right to refuse performance shall be excluded. AOM reserves the right to collect the claim itself as soon as the Customer fails to properly comply with its payment obligations and is in default of payment.

7. If items are processed with items not belonging to us, AOM shall acquire co-ownership in the new item at the ratio of the value of the goods delivered by AOM to the other processed items. The same shall apply if the delivered item is mixed with other items not belonging to AOM.

## **VIII. Acceptance**

1. Acceptance of the service – to the extent that a service under a contract for work is the object of the contract that incorporates these STC as an integral part – shall be carried out at AOM's premises unless otherwise agreed.

2. Assembly, commissioning and maintenance of the delivered items and services rendered must be carried out in a workmanlike manner in accordance with the specifications and regulations prepared by AOM as well as all relevant national and international standards. Warranty claims for the proper functioning of equipment not manufactured by AOM but provided by the Customer may not be asserted unless AOM has agreed in writing to the third-party performance.

3. The Customer bears sole responsibility for ensuring that the prerequisites for the commissioning of the delivery item/service are fulfilled at its premises. In the event of failed acceptance, AOM shall be entitled to examine the delivery item and provide a cure within a reasonable period of time, and to then carry out another acceptance test. Insignificant defects or malfunctions not significantly impairing the operability of the delivery item/service shall be promptly remedied by AOM. The Customer may not refuse taking of delivery/acceptance because of these defects. Acceptance shall also be deemed successful if the Customer has taken receipt of the contractual object without any reservation.

## **IX. Liability for Defects (Warranty) and Failure to Perform**

1. AOM represents that the goods manufactured by AOM conform to AOM's specifications and are free from defects in material and workmanship, and that the services performed by it are performed with the requisite know-how, reasonable care, and accuracy, and in accordance with the general rules of engineering. AOM shall remedy all defects of the goods manufactured by AOM, notified to it within 12 calendar months of delivery, that have occurred despite adequate use, care and maintenance and are the result of a defect in material or workmanship, by repair or, at AOM's discretion, by delivery of one or more replacement parts. Clause XI of these STC shall apply in addition. The replaced parts shall become AOM's property.

The repaired or replaced parts – provided that the complaint is justified – shall be delivered by AOM and at its costs to the Customer's registered office or the place of use specified in the contract.

2. AOM shall not be responsible for any deterioration of the delivery item/service caused by normal wear and tear, or faulty operation, materials or work made, delivered or specified by the Customer, the failure to comply with AOM's requirements as to storage, installation, commissioning instructions, inadequate maintenance, any modification or repair not pre-approved by AOM, the use of unauthorized software or unapproved replacement or spare parts. Costs incurred by AOM in investigating and remedying such complaints shall be reimbursed by Customer upon AOM's request on the basis of the hourly and service charge rates charged by AOM from time to time, which are also invoiced to AOM's other customers. The Customer shall at all times be exclusively responsible for the adequacy and accuracy of the information provided by it.

3. All claims for damages and reimbursement of expenses shall be governed exclusively by Clause X below.

## **X. Liability and Limitation of Liability**

1. Unless provided otherwise below, any further claims of the Customer regardless of the theory of liability (including, but not limited to, claims for damages arising from a breach of secondary contractual obligations, in tort and fault-based liability, and claims for the reimbursement of expenses except as specified in Section 439(2) German Civil Code) shall be excluded; this shall apply in particular to claims for damages not involving the purchased item, installation and removal costs, as well as to claims for compensation for loss of profit.

The aforementioned exclusion of liability shall not apply

(a) to the exclusion or limitation of liability for damages resulting from injury to life, body or health, which are based on a culpable breach of duty by us, our legal representatives or our vicarious agents;

(b) to damages based on an intentional or grossly negligent breach of duty on our part, or on an intentional or grossly negligent breach of duty by our legal representatives or vicarious agents;

(c) in the event of the assumption of a warranty or an undertaking as to quality, if it is the very defect covered by such warranty or undertaking that has triggered the liability.

2. In the event of negligent breach of an essential contractual obligation (so-called fundamental obligation), liability shall not be excluded but limited to the foreseeable damage typical of this type of contract. A loss or damage is typical of a type of contract/foreseeable if its realization is typically to be expected when the obligation in question is violated.

3. The above shall apply accordingly in the event of reimbursement of expenses.

4. The Customer's right of recourse pursuant to Section 478 German Civil Code (Recourse of the entrepreneur) shall be excluded to the extent that the components provided by us to the Customer are improperly installed in the end product. If the purchased item has been resold to the end customer without any modification, the recourse claims shall apply to the extent that the Customer has not made any agreements with its customer that go beyond the statutory claims for defects.

5. If we are liable to pay compensation for a defect in accordance with the provisions of the German Product Liability Act, the extent of our liability shall be exclusively governed by this statute. Any further liability requires an express written agreement.

6. The provisions above do not reverse the burden of proof.

### **XI. Limitation**

The Customer's claims for defects shall be statute-barred 12 months after the passing of risk, all other claims also 12 months after the statutory commencement of the limitation period. In deviation from sentence 1, in the event of our liability pursuant to Clause X hereof, in particular in the event of assumption of a warranty, the warranty provisions shall apply, and in the event of fraudulent concealment of a defect as well as in the event of claims for damages under the Product Liability Act, due to the injury of life, body or health, or due to intentional or gross negligent breach of duty, the statutory limitation periods shall apply.

### **XII. Force Majeure**

1. If AOM is prevented due to force majeure from complying with its contractual obligations, in particular from delivering the products, AOM shall be released from its obligation to perform for the duration of the impediment plus a reasonable lead time without being obligated to pay damages to the Customer. The same shall apply if AOM's performance of its obligations is unreasonably impeded or temporarily rendered impossible by unforeseeable circumstances for which AOM is not responsible, including, but not limited to, labor disputes, war, pandemic, government action, energy shortages, obstacles to delivery affecting a supplier, or major operational disruptions. This shall also apply to any of these events affecting a subcontractor. This shall also apply in cases where AOM is already in default of delivery. In the event that AOM is released from its obligation to deliver, AOM shall refund any advance payment made by the Customer.

2. AOM and the Customer shall have the right to rescind the contract after a reasonable period of time has expired if such impediment lasts longer than four months and AOM or the Customer is no longer interested in the performance of the contract as a result of such impediment. Upon expiry of said period of time, one party shall state at the request of the other party whether it wishes to exercise its right of rescission or if it wishes to deliver/take receipt of the products within a reasonable period and pay for them.

### **XIII. Use of Software**

1. To the extent that the scope of delivery includes software, the Customer shall be granted a non-exclusive right (license) to use the delivered software including its documentation. The software shall be provided for use on the delivery item for which it is intended. Use of the software on more than one system is prohibited.

2. The Customer must not duplicate, revise, translate or convert the software from object code to source code unless this is done to the extent permitted by law. The Customer undertakes not to remove manufacturers' information – in particular copyright notices – or to alter them without the prior express consent of AOM.

3. All other rights to the software and the documentations including copies thereof shall remain with AOM or the software supplier, respectively. Granting sublicenses is not permitted.

#### **XIV. Return of Goods**

AOM shall not be obligated to accept the return of goods based on the Customer's orders that were incorrect or for too many items. Should AOM accept such returns nonetheless as a gesture of goodwill, AOM will charge a processing fee of 30 percent of the sales price or a minimum fee of €100.00 plus VAT in the statutory amount applicable from time to time, provided that the returned item arrives undamaged and in its intact original packaging. If the returned item is damaged or was used, the current value will be determined and refunded to the Customer. If the Customer does not agree with the amount of the refund, it is free to pick up the item or have it picked up, against cancellation of the refund. The return of items older than 6 months will, as a rule, not be accepted.

The return of deliveries of special makes will, as a rule, not be accepted.

#### **XV. Assignments**

All rights arising from our contractual relationship may be assigned to third parties only subject to our prior consent. This shall apply both to individual rights under the contract as well as to the entire contractual relationship.

#### **XVI. Severability**

Should any parts of these STC be or become invalid, the effectiveness of the remainder hereof shall not be affected thereby; the same shall apply to rectifying contractual omissions of these Standard Terms and Conditions. In lieu of the invalid/incomplete provision, the parties shall agree upon a provision that provides for that which had been intended with the invalid/incomplete provision in economic terms either to the full extent, or, if this is not possible under the law, to the greatest legally effective extent.

#### **XVII. Applicable Law, Place of Jurisdiction**

1. All legal relationships between AOM and the Customer shall be exclusively governed by the laws of the Federal Republic of Germany that are applicable to the legal relationship. The provisions of the UN Convention on contracts for the International Sale of Goods shall not apply to the extent as they have not yet been implemented into national law of the Federal Republic of Germany.
2. Rostock shall be the exclusive place of jurisdiction, including disputes involving an instrument, a bill of exchange or a check if the Customer is a merchant [entered in the German commercial register as a merchant], a public law entity or public corporation. AOM shall, however, also be entitled to take legal action at the Customer's place of business.
3. Should these terms and conditions be translated into a language other than German, the German version of these STC shall prevail in case of doubt as to interpretation.



[www.aquametro-oil-marine.com](http://www.aquametro-oil-marine.com)

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