

**AQUA AERO TERMS AND CONDITIONS
FOR THE SUPPLY OF PRODUCTS AND COATING SERVICES**

1. Definitions and interpretation

1.1. In these General Terms the definition shall have the meaning as defined in the text of these General Terms or as defined below:

Agreement: the agreement for the supply of Products or Coating Services which comes into existence accordance with clause 2.3.

Aqua Aero: the Aqua Aero legal entity as set out in the Agreement. In general, Aqua Aero Coatings B.V. sells the Products, and Aqua Aero Operations B.V. supplies the Coating Services.

Coating Services: the coating services supplied by Aqua Aero as set out in the Coating Services Specification.

Coating Services Specification: the specification for the Coating Services provided by Aqua Aero to Customer.

Customer: the legal person or the natural person, acting for purposes of his trade, business, craft or profession, who purchase the Products from Aqua Aero.

Customer Equipment: the part of the heating, ventilation, air conditioning or refrigeration (HVAC&R) equipment to which Aqua Aero performs the Coating Services.

Direct Damages: means (i) the reasonable costs which Customer incurred to have Aqua Aero's performance fulfil the Agreement, (ii) the reasonable costs and expenses incurred in determining the cause and extent of the damages insofar as such determination relates to any Direct Damages within the meaning of these General Terms and (iii) the reasonable costs and expenses incurred in preventing or reducing any Direct Damages.

General Terms: these Aqua Aero terms and conditions for the supply of products and coating services.

Order: Customer's order for the supply of the Products or the Coating Services as set out in Customer's purchase order form, or Customer's written acceptance of Aqua Aero's quotation.

Parties: Aqua Aero and Customer, individually also referred to as **Party**.

Products: the coatings and chemicals as set out in the Agreement.

Product Specifications: Aqua Aero's written description or specification of the Products.

1.2. In these General Terms:

- a) written or in writing shall also include electronic communication by e-mail;
- b) a reference to a clause is to a clause in these General Terms; and
- c) any terms and dates except for payment terms quoted for delivery are approximates only and shall not be deemed strict deadlines.

1.3. These General Terms apply to all offerings and quotations of Aqua Aero for supply of Products and/or Coating Services. Aqua Aero encourages Customers to print a copy of General Terms or save them on Customer's system for future reference.

1.4. These General Terms are built up in several parts, Part A applies to the Agreements for the supply of Products, Part B applies to the Agreements for the supply of Coating Services and Part C (and the clauses 1 and 2) apply to all Agreements.

2. Agreement

2.1. Aqua offers and/or quotations shall not be binding with respect to price, quantity, delivery time and availability of the Products and Coating Services.

2.2. Customer's Order constitutes an offer by Customer to purchase the Products or the Coating Services in accordance with these General Terms. Customer is responsible for ensuring that its Order is complete and accurate.

2.3. Customer's Order shall be deemed accepted when Aqua Aero issues a written acceptance of the Order,

- at which point the Agreement shall come into existence.
- 2.4. Any samples, drawings or advertising produced by Aqua Aero and any descriptions or illustrations contained in Aqua Aero's brochures or on its website are produced for the sole purpose of giving an approximate idea of the Products and the Coating Services referred to in them and shall not form part of the Agreement.
 - 2.5. Nothing in the Agreement shall be construed to create a joint and several liability between the Aqua Aero legal entities for the supply of Products or the supply of Coating Services.

PART A: PRODUCTS

3. Delivery of the Products

- 3.1. Aqua Aero shall deliver the Products to Customer Ex Works/FCA (Aqua Aero's factory warehouse) within the meaning of the most recent version of the Incoterms (the **Delivery Location**) on the date communicated by Aqua Aero to Customer in writing (**Delivery**).
- 3.2. If Customer fails to take Delivery of the Products, Aqua Aero shall store the Products at Customer's risk until delivery takes place, and charge Customer for all related costs and expenses (including insurance).
- 3.3. Aqua Aero may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle Customer to suspend, reject or terminate any other instalment.
- 3.4. Customer shall comply with all applicable laws and regulations of the country for which the Products are destined.

4. Risk and ownership

- 4.1. The risk in the Products shall pass to Customer upon completion of Delivery.
- 4.2. Ownership of the Products shall not pass to Customer until Aqua Aero receives payment in full (in cash or cleared funds) for the Products and any other goods that Aqua Aero has supplied Customer in respect of which payment has become due, in which case ownership of the Products shall pass at the time of payment of all such sums. In this respect, Aqua Aero retains title to the Products.

5. Product price and payment

- 5.1. The price of the Products shall be the price set out in the Agreement.

- 5.2. Aqua Aero may, by giving notice to Customer at any time before Delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- a) any factor beyond Aqua Aero's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in transport, energy, labour, raw materials and other manufacturing costs);
- b) any request by Customer to change the delivery date(s), Delivery Location, way of transportation or quantities or types of Products ordered; or
- c) any delay caused by any instructions of Customer or failure of Customer to give Aqua Aero adequate or accurate information or instructions.

- 5.3. Unless otherwise agreed in the Agreement:

- a) the price of the Products excludes amounts in respect of value added tax (VAT) and other taxes and import duties and costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to Customer; and
- b) Aqua Aero may invoice Customer for the Products on or at any time after the completion of Delivery.

6. Inspection of Products

- 6.1. Customer may reject any Products delivered to it that do not comply with the Product Warranty, provided that:
 - a) a written notice of rejection is given to Aqua Aero (i) in the case of a defect that is (or would be) apparent on normal visual inspection, within ten business days of Delivery and (ii) in the case of a latent defect, within a reasonable time, not exceeding one month, of the latent defect having become apparent; and
 - b) none of the exclusions set out in clause 7.3 apply.
- 6.2. If Customer fails to give written notice of rejection in accordance with clause 6.1.a), it shall be deemed to have accepted these Products and all of Customer's rights shall lapse.

7. Product Warranty

- 7.1. On Delivery and for a period of the best before date mentioned on the label of the Products thereafter (the **Product Warranty Period**), the Products shall conform in all material respects with the Specification and shall be fit for any purpose held out by Aqua Aero in writing (the **Product Warranty**).

The applicability of article 7:17 of the Dutch Civil Code is expressly excluded.

- 7.2. Subject to clause 7.3, Aqua Aero shall, at its option and as a sole remedy for Customer, replace the defective Products, or refund the price of the defective Products in full, provided that:
- a) Customer gives notice in writing to Aqua Aero within three days after discovering product default and during the Product Warranty Period;
 - b) Aqua Aero is given a reasonable opportunity of examining such Products; and
 - c) Customer (if asked to do so by Aqua Aero) returns such Products to Aqua Aero's place of business at Aqua Aero's cost.
- 7.3. Aqua Aero shall have no obligations nor be liable for the Products' failure to comply with the Product Warranty in any of the following events:
- a) Customer makes any further use of such Products after giving notice in accordance with clause 7.2.a);
 - b) the defect arises because Customer failed to follow Aqua Aero's written instructions as to the storage and use of the Products or (if there are none) good trade practice regarding the same;
 - c) Customer alters such Products without the written consent of Aqua Aero; or
 - d) the Products differ from their description because of changes made to ensure they comply with applicable statutory or regulatory requirements.
 - e) The product has been applied.
- 7.4. Except as provided in this clause 7, Aqua Aero shall have no further obligations and liability, on whatever ground, to Customer in respect of the Products' failure to comply with the Product Warranty.

PART B: COATING SERVICES

8. Supply of Coating Services

- 8.1. Aqua Aero shall supply the Coating Services to Customer in accordance with the Agreement in all material respects.
- 8.2. Aqua Aero shall use all best endeavours to meet any performance dates for the Coating Services specified in the Agreement.
- 8.3. Aqua Aero shall provide the Coating Services at the location as set out in the Agreement (the **Service Location**).
- 8.4. Aqua Aero reserves the right to amend the Coating Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature

or quality of the Coating Services, and Aqua Aero shall notify Customer in any such event.

- 8.5. Aqua Aero hold the Customer Equipment in safe custody at its own risk and maintain the Customer Equipment in the condition as it was received by Aqua Aero until returned to Customer.
- 8.6. Aqua Aero shall inform Customer in writing about the completion of the Coating Services.

9. Customer's obligations

- 9.1. Customer shall provide Aqua Aero with the Customer Equipment in good condition at its own risk at the Service Location.
- 9.2. Customer is responsible for off-loading and loading of the equipment.
- 9.3. In case equipment arrives damaged to Aqua Aero site, customer will instruct Aqua Aero immediately after notification of defect.
- 9.4. Customer is responsible for delivering equipment in re-usable packing. If the packing is not re-usable, to the sole discretion of Aqua Aero, customer will bear all cost for the repacking of the equipment.
- 9.5. Customer shall:
- a) provide Aqua Aero with such information and materials as Aqua Aero may reasonably require in order to supply the Coating Services, and ensure that such information is complete and accurate in all material respects;
 - b) co-operate with Aqua Aero in all matters relating to the Coating Services; and
 - c) comply with any additional obligations as set out in the Coating Services Specification.
- 9.6. Customer shall collect the Customer Equipment within a reasonable period after completion of the Coating Services at the Service Location.
- 9.7. If Aqua Aero has supplied Coating Services that do not comply with the requirements of clause 10.1, Customer shall (i) in the case of a defect that is (or would be) apparent on normal visual inspection, within ten business days after the date of collection of the Customer Equipment and (ii) in the case of a latent defect, within a reasonable time, not exceeding one month, of the latent defect having become apparent.
- 9.8. If Customer fails to give written notice of rejection in accordance with clause 9.7 it shall be deemed to have accepted the Coating Services and all of Customer's rights shall lapse.

10. Quality of Coating Services

- 10.1. In providing the Coating Services, Aqua Aero shall:
- a) perform the Coating Services with care and skill;

- b) use person who are suitably skilled and experienced to perform the Coating Services; and
 - c) ensure that the Coating Services will conform with the Coating Services Specification in all material respects (the **Service Warranty**).
- 10.2. Subject to clause 10.3, Aqua Aero shall, at its option and as a sole remedy for Customer, provide repeat performance of the Coating Services, or to provide a full refund of the fees paid for the Coating Services in case the Coating Services do not comply to the Service Warranty, provided that:
- a) Customer gives notice in writing, including digital pictures, to Aqua Aero in time in accordance with clause 9.6; and
 - b) Aqua Aero is given a reasonable opportunity of examining such Customer Equipment.
- 10.3. Aqua Aero shall have no obligations nor be liable for the failure to comply with Service Warranty in any of the following events:
- a) Customer makes any further use of such Customer Equipment after giving notice in accordance with clause 9.6;
 - b) the defect arises because Customer failed to follow Aqua Aero's written instructions as to the use of the Customer Equipment to which the Coating Services were provided;
 - c) Customer alters or repairs the Customer Equipment without the written consent of Aqua Aero; or
 - d) the defect arises because of normal wear and tear, wilful damage or abnormal working conditions; or
 - e) The defect arises during transportation of the Customer equipment.
- 10.4. Except as provided in this clause 10, Aqua Aero shall have no further obligations and liability, on whatever ground, to Customer in respect of the Coating Services' failure to comply with the Service Warranty.

11. Fees

- 11.1. The fees for the Coating Services shall be calculated as set out in the Agreement, or if the Agreement does not provide for a calculation method, on price list basis.
- 11.2. Unless otherwise agreed in the Agreement:
- a) the fees for the Coating Services excludes amounts in respect of value added tax (VAT) and other taxes and import duties and costs and charges of packaging, insurance and transport of the Customer Equipment, which shall be invoiced to Customer; and

- b) Aqua Aero may invoice Customer for the Coating Services on or at any time after the completion of the Coating Services.

PART C: GENERAL PROVISIONS

12. Payment

- 12.1. Customer shall pay invoices in the currency set out in the invoice in full and in cleared funds at the bank account set out in the invoice.
- 12.2. Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding. Aqua Aero may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Customer against any amount payable by Aqua Aero to Customer.
- 12.3. At any time Aqua Aero has the right to demand the provision of security by Customer for the performance by Customer of its obligations under the Agreement, including without limitation the right to demand an undisclosed pledge on the Products for the duration of the retention of title under clause 4.2.

13. Limitation of liability

- 13.1. Aqua Aero's total liability either based on breach of contract, non-conformity, wrongful act or otherwise shall be limited to the amount indemnified by Aqua Aero's insurance in the specific matter.
- 13.2. If, for whatever reason, no amount is indemnified under the insurance, Aqua Aero's total liability for breach of contract, non-conformity, wrongful act or otherwise shall be for Direct Damages only and shall not exceed half of the amount paid by Customer under the Agreement.
- 13.3. If the Agreement qualifies as a continuous agreement, Aqua Aero's total liability for breach of contract, non-conformity, wrongful act or otherwise shall be for Direct Damages only and shall not exceed the amount paid by Customer to Aqua Aero during the six months period immediately preceding the (first) date on which the liability arose with a maximum of EUR 15,000.
- 13.4. Aqua Aero's liability for other damages than Direct Damages is expressly excluded.
- 13.5. The exclusions and limitations of liability as set out in the Agreement can also be invoked by and any person (i) contracted by Aqua Aero in connection with the execution of the Agreement or (ii) affiliated with Aqua Aero. This clause is an irrevocable third-party clause for the benefit of every such person.
- 13.6. All claims of Customer for damages shall lapse within twelve months the claim arose.

13.7. Customer shall indemnify Aqua Aero against, and all third claims and damages suffered or incurred by Aqua Aero arising out of or in connection with any claim made against Aqua Aero arising out of or in connection with resale, supply or use of the Products and/or the Coating Services in breach of the Agreement.

14. Termination

14.1. Each Party has the right to terminate the Agreement for cause, in whole or in part, by giving written notice with immediate effect if any of the following events occurs:

- a) the other Party commits a breach of an essential obligation under the Agreement and, if the breach is capable of remedy, fails to remedy the breach within thirty days of a written notice of default; or
- b) any action or proceedings under any bankruptcy or insolvency law are taken against the other Party, either by the Party itself or by a third party.

14.2. Parties acknowledge and agree that the obligations under clauses 12.1 up to and including 12.3 shall in any event be considered to be essential obligations under the Agreement.

14.3. In case of termination of the Agreement for cause, the applicability of articles 6:271 and 6:272 of the Dutch Civil Code is expressly excluded, meaning that the obligations received under the Agreement cannot be revoked.

14.4. If the Agreement qualifies as a continuous agreement, Aqua Aero has the right to terminate the Agreement for convenience at any time subject to a two months' written notice to Customer.

14.5. On termination of the Agreement, for whatever reason, Customer shall immediately pay to Aqua Aero all Aqua Aero's outstanding unpaid invoices and statutory commercial interest.

14.6. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

15. Miscellaneous

15.1. If Aqua Aero is prevented, hindered or delayed in or from performing any of its obligations under the Agreement due to force majeure, Aqua Aero shall not be in breach or otherwise liable for any such failure or delay in the performance of such obligations. For the purpose of these General Terms, force majeure shall include (a) any law or any action taken by a government or public

authority, such as an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, (b) pandemics and diseases (c) fire, explosion or accident, (d) any labour or trade dispute, strikes, industrial action or lockouts, (e) shortage of raw materials for the Products and (f) non-performance by Aqua Aero's suppliers.

15.2. Customer acknowledges and agrees that all intellectual property rights in the Products, the deliverables of the Coating Services and Aqua Aero's trademark shall remain with Aqua Aero. Customer shall not use the trademark 'Aqua Aero' for any other reason than to identify the specific products which are delivered by Aqua Aero unless Aqua Aero has given prior written approval to Customer for other use of the trademark.

15.3. If any provision of the Agreement is or becomes invalid or non-binding, Parties shall remain bound by all other provisions hereof. In that event, Parties shall replace the invalid or non-binding provision by provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of such provision and the Agreement.

16. Governing law and jurisdiction

16.1. These General Terms and the Agreements shall be governed by and construed in accordance with the laws of The Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 is expressly excluded.

16.2. Any dispute arising out of or in connection with an Agreement shall be exclusively referred to the competent court in Utrecht, The Netherlands.

Utrecht, July 2022, version 1.0