

These terms and conditions apply when you enter into a contract with Aquamatic Limited for the supply of goods, the supply of maintenance services or the hire of equipment, or a combination of any of these three.

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

"Aquamatic Materials"	has the meaning given in clause 7.2.7.
"Aquamatic"	Aquamatic Limited registered in England and Wales with company number 02615425.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Commencement Date"	has the meaning given in clause 2.2.
"Commission"	means putting Equipment in place, assisting with Equipment location setup, programming and connecting it into the relevant flow of water. "Commissioning" and "Commissioned" shall be interpreted accordingly.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 16.8.
"Contract"	the contract between Aquamatic and the Customer for the supply of Goods and/or Maintenance Services and/or the hire of Equipment in accordance with these Conditions.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
"Customer"	the person or firm who purchases the Goods and/or Maintenance Services, and/or hires Equipment from Aquamatic.
"Deposit"	the deposit fee that may be set out in the Order payable by the Customer to Aquamatic in accordance with the terms of the Order.
"Equipment"	the equipment set out in the Order that is subject to Maintenance Services or that is hired by the Customer.
"Force Majeure Event"	has the meaning given to it in clause 15.
"Good Industry Practice"	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"Good Working Order"	operating in accordance with the applicable specification of the manufacturer of the Equipment.
"Goods"	goods to be purchased or hired by the Customer (or any part of them) set out in the Order.
"Goods Specification"	the description or specification for the Goods set out in accordance with clause 3.1.
"Installation"	the installation of Equipment where this involves anything further than Commissioning of the Equipment. "Installing" and "Installed" shall be interpreted accordingly.
"Location"	the location set out in the Order for the delivery of the Goods, the performance of the Maintenance Services and / or the location of the Equipment hired.
"Maintenance Services"	the maintenance services (including Planned Maintenance and Unplanned Service), supplied by Aquamatic to the Customer as set out in the Service Specification.
"Order"	the Customer's order for the supply of Goods, Maintenance Services and / or the hire of Equipment, as set out in the Customer's purchase order form, or the Customer's written acceptance of Aquamatic's quotation.
"Planned Maintenance"	visits to the Location by Aquamatic to perform routine maintenance and ensure that the Equipment is in Good Working Order as set out in the Service Specification. shall be interpreted accordingly.

"Rental Payments"	the payments made by or on behalf of Customer for hire of the Equipment.
"Rental Period"	the period of hire as set out in the Order.
"Risk Period"	the period during which Equipment hired from Aquamatic is at the sole of the risk of the Customer as set out in clause 8.6.
"Service Specification"	the description or specification for the Maintenance Services set out in the Order or provided by Aquamatic to the Customer.
"Spare Parts"	all spare components and subassemblies of the Equipment supplied for installation in the Equipment as part of the provision of the Services.
"Total Loss"	the Equipment is, in Aquamatic's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.
"Unplanned Service"	where Aquamatic attends the Location to perform services on Equipment that is not in Good Working Order on an ad hoc basis in response to a call out from the Customer.

1.2. Interpretation:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its successors and permitted assigns.
- 1.2.3. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5. A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1. The Order constitutes an offer by the Customer to purchase Goods or Maintenance Services or to hire Equipment, or any combination of these, in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when Aquamatic issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by Aquamatic and any descriptions of the Goods or illustrations or descriptions of the Services contained in Aquamatic's datasets or on Aquamatic's website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Any quotation given by Aquamatic shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue, after which it shall only be honoured with the express agreement of Aquamatic.
- 2.6. All of these Conditions shall apply to the supply of Goods and Services and the hire of Equipment except where application to one of these is specified.
- 2.7. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
3. Purchase of Goods
- 3.1. The Goods are described in Aquamatic's data sheets or on Aquamatic's website (the **Goods Specification**).

- 3.2. Aquamatic reserves the right to amend the specification for the Goods if required by any applicable statutory or regulatory requirement or if the amendments are minor in nature and do not impact the functionality of the Goods. Aquamatic shall provide notice to the Customer where amendments are made to the specification for the Goods where it is reasonable to do so.
- 3.3. Aquamatic shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Aquamatic reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.4. Delivery of the Goods shall be set out in the Order and shall be either where:
 - 3.4.1. Aquamatic delivers the Goods to the Location or such other location as the parties may agree at any time after Aquamatic notifies the Customer that the Goods are ready; or
 - 3.4.2. the Customer collects the Goods from Aquamatic's premises within three Business Days of Aquamatic's notifying the Customer that the Goods are ready.
- 3.5. Where Goods are being delivered by Aquamatic to the Customer, delivery shall be completed on the completion of unloading of the Goods at the Location.
- 3.6. Where Goods are being collected by the Customer, delivery shall be completed on the loading of the Goods at the Location. Any reference to delivery of the Goods in these Conditions shall also apply to the collection of Goods.
- 3.7. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Aquamatic shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Aquamatic with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.8. If Aquamatic fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Aquamatic shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Aquamatic with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.9. If the Customer fails to accept delivery of the Goods within three Business Days of Aquamatic notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Aquamatic's failure to comply with its obligations under the Contract in respect of the Goods:
 - 3.9.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Aquamatic notified the Customer that the Goods were ready; and
 - 3.9.2. Aquamatic shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.10. If ten Business Days after the day on which Aquamatic notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Aquamatic may cancel the Contract and may resell or otherwise dispose of part or all of the Goods, and the Customer shall be liable to pay to Aquamatic an amount equivalent to a maximum of 25% of the cost of the Goods in respect of costs incurred by Aquamatic in relation to the failure to accept delivery.
- 3.11. Aquamatic may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4. Quality of Goods Purchased**
- 4.1. Except where the provisions of clause 4.2 or clauses 4.6 apply, Aquamatic warrants that on delivery, and for a period of 12 months from the date of delivery or the date that Aquamatic notifies the Customer that the Goods are ready for collection (the **Warranty Period**), the Goods shall:
 - 4.1.1. conform in all material respects with their description; and
 - 4.1.2. be free from material defects in design, material and workmanship.
- 4.2. Where the Customer is purchasing Goods that were previously Equipment hired by another customer, Aquamatic warrants that on delivery, and for a period of 3 months from the date of delivery or the date that Aquamatic notifies the Customer that the Goods are ready for collection (the **Warranty Period**), the Goods shall:
 - 4.2.1. conform in all material respects with their description; and
 - 4.2.2. be free from material defects in design, material and workmanship.
- 4.3. The warranties in clause 4.1 shall not apply where the Customer purchases Equipment from Aquamatic following a period of hire.
- 4.4. Subject to clause 4.5, if:
 - 4.4.1. the Customer gives notice in writing to Aquamatic during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
 - 4.4.2. Aquamatic is given a reasonable opportunity of examining such Goods; and
 - 4.4.3. the Customer (if asked to do so by Aquamatic) returns such Goods to Aquamatic's place of business at the Customer's cost,Aquamatic shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.5. Aquamatic shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:
 - 4.5.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.3;
 - 4.5.2. the defect arises because the Customer failed to follow Aquamatic's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 4.5.3. the defect arises as a result of Aquamatic following any drawing, design or goods specification supplied by the Customer;
 - 4.5.4. the Customer alters or repairs such Goods without the written consent of Aquamatic;
 - 4.5.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 4.5.6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.6. Insofar as the Goods comprise or contain equipment or components which were not manufactured or produced by Aquamatic, the Customer shall be entitled only to such warranty or other benefit as Aquamatic has received from the manufacturer.
- 4.7. Except as provided in this clause 4, Aquamatic shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.8. These Conditions shall apply to any repaired or replacement Goods supplied by Aquamatic.
- 5. Supply of Maintenance Services**
- 5.1. Aquamatic shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 5.2. Aquamatic shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.3. Aquamatic reserves the right to amend the Service 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 Services, and Aquamatic shall notify the Customer in any such event.
- 5.4. Aquamatic warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with Good Industry Practice.
- 5.5. **Commissioning.** Where the Order confirms that:
 - 5.5.1. the Goods being delivered are of the type and nature that can be Commissioned rather than Installed; and

- 5.5.2. the parties have agreed that Aquamatic are to Commission the Goods, upon delivery of the Goods to the Location, an Aquamatic representative shall Commission the Goods.
- 5.6. **Installation.** Aquamatic will never partake in Installation of the Goods. Where the Goods require Installation, the Customer shall be responsible for arranging the Installation.
- 5.7. **Planned Maintenance.** Where Planned Maintenance is provided under the Contract, the Order will specify how frequently the Planned Maintenance will be carried out. If Aquamatic's representative discovers that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order during the course of Planned Maintenance, the representative will use all reasonable endeavours to repair it during that visit at the Location. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) Aquamatic's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair, or remove the Equipment (or part of the Equipment, if applicable) for repair off-site. Where the Equipment is to be removed from the Location, Aquamatic may agree to the Customer hiring replacement Equipment without charge, and to be agreed in writing.
- 5.8. **Unplanned Service.** On the Customer informing Aquamatic that Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, Aquamatic shall:
- 5.8.1. use all reasonable endeavours to ensure that one of its representatives shall attend the Location during Business Hours or within the relevant response time agreed between the parties; or
- 5.8.2. advise the Customer to return the Equipment to Aquamatic for repair.
- 5.9. **Liability for delay if Customer refuses off-site repair.** Aquamatic shall not be liable for any delay in providing the relevant Maintenance Service if in Aquamatic's reasonable opinion it needs to remove the Equipment (or part of the Equipment, if applicable) for repair off-site and the Customer unreasonably refuses this request.
- 5.10. **Health and safety compliance.** Aquamatic shall procure that its representatives shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these have been brought the attention of its representatives.
- 5.11. **Supply of Spare Parts.** Aquamatic shall supply and fit at the Customer's cost such Spare Parts as required to maintain the Equipment in Good Working Order or to restore the Equipment to Good Working Order.
- 5.12. **Quality of Spare Parts and transfer of title in Spare Parts.** All Spare Parts shall be either new, or reconditioned or reassembled Spare Parts which are equivalent to new Spare Parts in performance. All consumables shall be new. Aquamatic will transfer to the Customer, with full title guarantee and free from all third party rights, all the Spare Parts and consumables that it provides to the Customer, and the Spare Parts shall become part of the Equipment upon their installation in the Equipment.
- 5.13. **Removed part.** The parties agree that any parts removed from the Equipment during Maintenance Services shall be the property of the Customer and the Customer shall be responsible for the disposal of any removed parts unless they have been removed by an Aquamatic representative for off-site investigations and / or repairs.
- 6. Equipment hire**
- 6.1. Where the Customer is to hire Equipment from Aquamatic under the Contract, Aquamatic shall hire the Equipment to the Customer for use at the Location for the Rental Period subject to these Conditions.
- 6.2. Delivery of the Equipment shall be made by Aquamatic. Aquamatic shall use all reasonable endeavours to effect delivery by the date set out in the Order. Risk shall transfer in accordance with clause 8.1 of this agreement.
- 6.3. To facilitate delivery, the Customer shall provide all requisite materials, facilities, access and suitable working conditions to enable delivery to be carried out safely and expeditiously.
- 6.4. Aquamatic warrants that the Equipment shall substantially conform to its specification (as made available by Aquamatic).
- 6.5. Aquamatic shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within 3 months from delivery, provided that:
- 6.5.1. the Customer notifies Aquamatic of any defect in writing within ten Business Days of the defect occurring;
- 6.5.2. Aquamatic is permitted to make a full examination of the alleged defect;
- 6.5.3. the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than Aquamatic's authorised personnel;
- 6.5.4. the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and
- 6.5.5. the defect is directly attributable to defective material, workmanship or design.
- 6.6. Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by Aquamatic, the Customer shall be entitled only to such warranty or other benefit as Aquamatic has received from the manufacturer.
- 6.7. If Aquamatic fails to remedy any material defect in the Equipment in accordance with clause 6.5, Aquamatic shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the Rental Period and, if relevant, return any Deposit (or any part of it).
- 7. Customer's obligations**
- 7.1. The Customer shall ensure that the terms of the Order and any information it provides in the Service Specification are complete and accurate.
- 7.2. Where Maintenance Services are provided in a Contract, the Customer shall:
- 7.2.1. co-operate with Aquamatic in all matters relating to the Services;
- 7.2.2. provide Aquamatic, its employees, agents, consultants and subcontractors, with access to the Location and other facilities as reasonably required by Aquamatic to provide the Maintenance Services;
- 7.2.3. provide Aquamatic with such information and materials as Aquamatic may reasonably require in order to supply the Maintenance Services, and ensure that such information is complete and accurate in all material respects;
- 7.2.4. prepare the Location for the supply of the Maintenance Services;
- 7.2.5. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 7.2.6. comply with all applicable laws, including health and safety laws;
- 7.2.7. keep all materials, equipment, documents and other property of Aquamatic (**Aquamatic Materials**) at the Location in safe custody at its own risk, maintain Aquamatic Materials in good condition until returned to Aquamatic, and not dispose of or use Aquamatic Materials other than in accordance with Aquamatic's written instructions or authorisation;
- 7.2.8. use the Equipment only in accordance with the instructions and recommendations of the manufacturer of the Equipment or as may be advised from time to time by Aquamatic;
- 7.2.9. permit only trained and competent personnel to use the Equipment;
- 7.2.10. notify Aquamatic promptly if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order;
- 7.2.11. keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment or as may be advised from time to time by Aquamatic;
- 7.2.12. not allow any other person than Aquamatic's representatives to adjust, maintain, repair, replace or remove the Equipment or any part of it, unless otherwise agreed in writing by Aquamatic; and

- 7.2.13. not move the Equipment from the Location without the prior written consent of Aquamatic (such consent not to be unreasonably withheld or delayed).
- 7.3. Where the Contract includes the hire of Equipment, the Customer shall:
- 7.3.1. ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 7.3.2. take such steps (including compliance with all safety and usage instructions provided by Aquamatic) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 7.3.3. keep clean at its own expense the Equipment in order to keep it in as good an operating condition as it was on the Commencement Date;
- 7.3.4. make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of Aquamatic;
- 7.3.5. keep Aquamatic fully informed of all material matters relating to the Equipment;
- 7.3.6. permit Aquamatic or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Location or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 7.3.7. not, without the prior written consent of Aquamatic, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.3.8. not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify Aquamatic and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Aquamatic on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 7.3.9. not use the Equipment for any unlawful purpose;
- 7.3.10. ensure that at all times the Equipment remains identifiable as being Aquamatic's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 7.3.11. deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as Aquamatic requires, or if necessary allow Aquamatic or its representatives access to the Location or any premises where the Equipment is located for the purpose of removing the Equipment; and
- 7.3.12. not do or permit to be done anything which could invalidate the insurances referred to in clause 8.
- 7.4. Where the Equipment hired from Aquamatic is not delivered up at the end of the Rental Period or on earlier termination of the Contract to Aquamatic, Aquamatic may continue to charge the Customer for the period of time in which the Equipment should have been returned to Aquamatic in accordance with the clause 9 of this agreement.
- 7.5. If Aquamatic's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 7.5.1. without limiting or affecting any other right or remedy available to it, Aquamatic shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Aquamatic's performance of any of its obligations;
- 7.5.2. Aquamatic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Aquamatic's failure or delay to perform any of its obligations as set out in this clause 7.3; and
- 7.5.3. the Customer shall reimburse Aquamatic on written demand for any costs or losses sustained or incurred by Aquamatic arising directly or indirectly from the Customer Default.
- 8. Title and risk**
- 8.1. The risk in Goods purchased shall pass to the Customer on completion of delivery.
- 8.2. Title to the Goods shall not pass to the Customer until Aquamatic receives payment in full (in cash or cleared funds) for the Goods.
- 8.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Aquamatic's property;
- 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Aquamatic's behalf from the date of delivery;
- 8.3.4. notify Aquamatic immediately if it becomes subject to any of the events listed in clause 13.4.2 to clause 13.4.4; and
- 8.3.5. give Aquamatic such information as Aquamatic may reasonably require from time to time relating to:
- 8.3.5.1. the Goods; and
- 8.3.5.2. the ongoing financial position of the Customer.
- 8.4. At any time before title to the Goods passes to the Customer, Aquamatic may require the Customer to deliver up all Goods in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.5. Any Equipment hired to the Customer shall at all times remain the property of Aquamatic, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Conditions).
- 8.6. The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (Risk Period) until such time as the Equipment is redelivered to Aquamatic. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Aquamatic may from time to time nominate in writing.
- 8.7. The Customer shall give immediate written notice to Aquamatic in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 8.8. If the Customer fails to effect or maintain any of the insurances required under this agreement, Aquamatic shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 8.9. The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Aquamatic and proof of premium payment to Aquamatic to confirm the insurance arrangements.
- 9. Charges and payment**
- 9.1. The price for Goods:
- 9.1.1. shall be the price set out in the Order or, if no price is quoted, the price set out in Aquamatic's published price list as at the date of the order; and
- 9.1.2. shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

- 9.2. The charges for Maintenance Services, Rental Payments and any agreed Deposit shall be set out in the Order.
- 9.3. Where the Customer is to pay a Deposit, the Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. If the Customer fails to make any Rental Payments, or causes any loss or damage to the Equipment (in whole or in part), Aquamatic shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to Aquamatic any sums deducted from the Deposit within ten Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 5 Business Days of the end of the Rental Period.
- 9.4. Aquamatic reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Aquamatic that is due to:
- 9.4.1. any factor beyond the control of Aquamatic (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.4.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 9.4.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Aquamatic adequate or accurate information or instructions in respect of the Goods.
- 9.5. In respect of Goods purchased, Aquamatic shall invoice the Customer on or at any time after completion of delivery. In respect of any Deposit, Maintenance Services and Rental Payments, Aquamatic shall invoice the Customer as set out in the Order.
- 9.6. The Customer shall pay each invoice or pro forma invoice submitted by Aquamatic:
- 9.6.1. as agreed in the Order or, where no payment term is set out in the Order within 30 days of the date of the invoice; and
- 9.6.2. in full and in cleared funds to a bank account nominated in writing by Aquamatic, and
- 9.6.3. time for payment shall be of the essence of the Contract.
- 9.7. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Aquamatic to the Customer, the Customer shall, on receipt of a valid VAT invoice from Aquamatic, pay to Aquamatic such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8. If the Customer fails to make a payment due to Aquamatic under the Contract by the due date, then, without limiting Aquamatic's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10. Intellectual property rights**
- 10.1. All intellectual property rights in or arising out of or in connection with the Goods and the Maintenance Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Aquamatic.
- 11. Confidentiality**
- 11.1. Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2. Each party may disclose the other party's confidential information:
- 11.2.1. to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 12.1. The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 12.2.1. death or personal injury caused by negligence;
- 12.2.2. fraud or fraudulent misrepresentation;
- 12.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 12.2.4. defective products under the Consumer Protection Act 1987.
- 12.3. Subject to clause 12.2, Aquamatic's total liability to the Customer shall not exceed the total value of the Contract.
- 12.4. The following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 12.5. Aquamatic has given commitments as to compliance of the Goods and Services with relevant specifications in clause 4 and clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. This clause 12 shall survive termination of the Contract.
- 13. Termination**
- 13.1. Without affecting any other right or remedy available to it, where the Contract is for the provision of Maintenance Services or Equipment Rental either party may terminate the Contract by giving the other party not less than 7 days' written notice.
- 13.2. Where the Customer terminates the Contract in accordance with clause 13.1, Aquamatic shall be entitled to pro-rata the annual charges for the Maintenance Services and / or Rental Payments (subject to a 25% minimum) and make a reasonable charge for the administration charges of the cancellation.
- 13.3. Where the Contract includes Planned Maintenance visits and one or more of these visits has already taken place when the Customer terminates the Contract under clause 13.1, Aquamatic may opt to charge the Customer pro-rata fees based on the time that has passed since the commencement of the Contract and the percentage of the visits that have taken place as at the termination date to cover the requirements set out at clause 13.2.
- 13.4. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.4.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 13.4.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver

- appointed to any of its assets or ceasing to carry on business;
- 13.4.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.4.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.5. Without affecting any other right or remedy available to it, Aquamatic may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 13.5.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 13.5.2. there is a change of Control of the Customer.
- 13.6. Without affecting any other right or remedy available to it, Aquamatic may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Aquamatic if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.4.2 to clause 13.4.4, or Aquamatic reasonably believes that the Customer is about to become subject to any of them.
- 13.7. This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 14. Consequences of termination**
- 14.1. On termination of the Contract:
- 14.1.1. the Customer shall immediately pay to Aquamatic all of Aquamatic's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Aquamatic shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2. the Customer shall return all of Aquamatic Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Aquamatic may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 14.1.3. Aquamatic's consent to the Customer's possession of any Equipment hired to the Customer shall terminate;
- 14.1.4. Aquamatic may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Location or any premises at which the Equipment is located; and
- 14.1.5. without prejudice to any other rights or remedies of the Customer, the Customer shall pay to Aquamatic on demand:
- 14.1.5.1. all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 9.8; and
- 14.1.5.2. any costs and expenses incurred by the Aquamatic in recovering the Equipment or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 14.2. On termination of the Contract pursuant to clause 13.4, any other repudiation of the Contract by the Customer which is accepted by Aquamatic or pursuant to clause 13.7, without prejudice to any other rights or remedies of Aquamatic, the Customer shall pay to Aquamatic on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period, less:
- 14.2.1. a discount for accelerated payment at the percentage rate set out in the Order; and
- 14.2.2. Aquamatic's reasonable assessment of the market value of the Equipment on sale.
- 14.3. The sums payable pursuant to clause 14.2 shall be agreed compensation for Aquamatic's loss and shall be payable in addition to the sums payable pursuant to clause 14.1.5. Such sums may be partly or wholly recovered from any Deposit.
- 14.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.5. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 15. Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to non-performance by Aquamatic's suppliers or sub-contractors (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 16. General**
- 16.1. Assignment and other dealings**
- 16.1.1. Aquamatic may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Aquamatic.
- 16.2. Notices.**
- 16.2.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 16.2.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 16.2.1.2. sent by email to the address specified in the Order.
- 16.2.2. Any notice shall be deemed to have been received:
- 16.2.2.1. if delivered by hand, at the time the notice is left at the proper address;
- 16.2.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 16.2.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.2.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.3. Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.4. Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5. No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of

the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6. **Entire agreement.**

16.6.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.6.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

16.6.3. Nothing in this clause shall limit or exclude any liability for fraud.

16.7. **Third party rights.**

16.7.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.7.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9. **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.10. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.