

# General Terms and Conditions of Sale for Products

## 1. Applicability. Definitions

- 1.1. Unless otherwise explicitly agreed in writing between the Parties, these General Terms and Conditions of Sale (the “**GTCS**”) shall apply to all sales of Products by Aquaporin A/S, Nymøllevej 78, 2800 Kongens Lyngby, Denmark, Danish CVR No. 28315694, or any of its affiliates (“**AQP**”) to its customers (“**Customer**”). AQP and Customer may be referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.
- 1.2. Any terms or conditions submitted by Customer to AQP which are inconsistent with, different than, or additional to these GTCS are hereby rejected by AQP, unless otherwise explicitly agreed in writing between the Parties.
- 1.3. These GTCS shall apply if reference has been made to them, unless otherwise explicitly agreed in writing between the Parties.
- 1.4. “**Business Day**” means a business day on which AQP and Customer are open, but excluding Saturdays, Sundays and days on which commercial banks in the countries of AQP and Customer are closed.
- 1.5. “**Intellectual Property Rights**” or “**IPR**” means any and all patents, copyrights, rights in databases/database rights, design rights, registered designs, technical information,

know-how, trademarks, trade names, proprietary names, business and service marks, domain names, applications for any of the foregoing, sui generis rights, moral rights, and other industrial, proprietary property and/or intellectual property rights, in each case whether registered or unregistered and including the right to apply for registration of the same wherever subsisting in the world and such other similar protected rights in any country and any licenses under or in respect of such rights and including the exclusive right to do and to authorize others to do any and all acts in relation to such rights throughout the world including the right to claim damages for conversion in respect of any infringing works.

- 1.6. “**Products**” means the products as has been listed in a sales quote or order confirmation issued by AQP.
- 1.7. “**Warranty Period**” means the period of time during which the warranty applies, and which period varies depending on the type of Product and is specified in the Limited Warranty.

## 2. Orders. Formation of Agreement

- 2.1. All sales quotes made by AQP shall be open for acceptance within thirty (30) calendar days from the date of issue, unless otherwise specifically stated therein or agreed in writing between the Parties.

- 2.2. All orders issued by Customer shall specify, as a minimum, relevant Products, quantity, applicable unit prices, delivery place and requested delivery dates, if any.
- 2.3. Customer shall send its orders for Products via email to sales@aquaporin.com. AQP shall, within seven (7) Business Days after receipt of an order, notify Customer of its acceptance or rejection of such order and, if accepted, of the estimated date of delivery.
- 2.4. A binding individual agreement for the sale of Products ("**Agreement**") shall be deemed to exist only when AQP has confirmed an order in writing. If any discrepancies occur in AQP's order confirmation, Customer shall immediately notify AQP hereof. Otherwise, AQP's order confirmation shall be deemed accepted by Customer.

### 3. Price. Terms of Payment

- 3.1. All sales of Products to Customer shall be made at the prices set forth in AQP's sales quote. Unless otherwise stated in an applicable sales quote, all prices quoted by AQP are net prices, for delivery EXW, AQP's warehouse (Incoterms® 2020), exclusive of taxes and duties.
- 3.2. Prices shall be based on the raw material prices, subsidies, rates of exchange, customs tariffs, etc. in force on the date of the sales quote. In the event of material changes to such raw material prices, subsidies, rates, tariffs, etc. AQP reserves the right to adjust and change the prices and, by that, an Agreement accordingly.
- 3.3. Unless otherwise stated in an applicable sales quote, all payments to AQP shall be made in DKK against invoice within thirty (30) calendar days from invoice date without offset or deduction. Payment shall not be deemed to have been effected before AQP's account has been fully and irrevocably credited.
- 3.4. In the event that Customer is granted a credit, AQP may require Customer to provide appropriate security for such credit on terms approved by AQP.
- 3.5. Any amounts required to be paid by Customer to AQP hereunder which are overdue, shall be subject to a default interest as from the due date until the date of receipt of payment at the rate of 2% per month. In addition hereto, AQP may, after having notified Customer in writing, stop shipments of Products and otherwise suspend its performance of an Agreement until it receives payment.
- 3.6. To the extent permitted by applicable law, the title to Products shall remain vested in AQP, and shall not pass to Customer, until Customer has paid for Products in full.

### 4. Delivery

- 4.1. Unless otherwise stated in an applicable sales quote or order confirmation, all deliveries of Products shall be made on delivery terms EXW, AQP's premises (Incoterms® 2020). The passing of risk in Products shall be regulated in accordance with the said delivery term.

- 4.2. AQP shall endeavour to deliver Products on the date of delivery notified by AQP in its acceptance of a submitted order (cf. section 2.3). If AQP anticipates that it will not be able to deliver Products on the said date, AQP shall forthwith notify Customer hereof, stating the reason for the delay and, if possible, provide Customer with a new estimated date of delivery.
- 4.3. AQP's compliance with the delivery date is conditional upon Customer's fulfilment of its own contractual obligations, including but not limited to AQP's punctual receipt from Customer of specifications, documentation, permissions and advance payments (if applicable). If Customer fails such fulfilment, the delivery date shall be extended accordingly.
- 4.4. If AQP fails to deliver Products within fourteen (14) Business Days of a delivery date specified in a revised order confirmation (cf. section 4.2) and does not inform Customer of the delay, Customer may terminate an applicable Agreement in whole or in part (as to those Products affected by the delay) by providing written notice of termination to AQP within seven (7) Business Days of the expiration of the grace period.
- 4.5. If Customer fails to collect Products on the agreed date of delivery, AQP shall arrange for storage of Products at the risk and expense of Customer until actual delivery or cancel an Agreement or any part thereof, in either case without prejudice to any other rights or remedies available to AQP. However, AQP shall provide Customer with fourteen (14) Business Days advance notification of its decision.
- 4.6. AQP reserves the right to make delivery in instalments. Each instalment shall be regarded as fulfillment of a separate and independent Agreement.

### 5. Acceptance of Products

- 5.1. Customer shall inspect Products delivered upon receipt. Customer is deemed to have accepted Products delivered, unless written notice of rejection specifying the reasons for rejection is received by AQP within five (5) Business Days after delivery of Products. The foregoing only applies to defects reasonably discoverable without opening individual packaging of Products.

### 6. Limited Warranty

- 6.1. The warranty given by AQP, during the Warranty Period, is specified in the limited warranty policy relevant for each Product (the "**Limited Warranty**").
- 6.2. THE WARRANTY SET FORTH IN THIS SECTION 6 IS THE ONLY WARRANTY APPLICABLE BETWEEN THE PARTIES WITH RESPECT TO PRODUCTS AND NO OTHER WARRANTIES OF ANY KIND SHALL APPLY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AQP DISCLAIMS AND EXCLUDES ALL WARRANTIES OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6, WHETHER STATUTORY, EXPRESS

OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

## 7. Product Liability

- 7.1. In the event any third party claims, suits or actions are brought against Customer during the Warranty Period, alleging bodily injury (including death) or damage to property caused by defects in Products, AQP agrees to indemnify and hold Customer harmless for any and all claims, costs, damages, expenses (including the reasonable fees of attorneys and other professionals), liabilities and other responsibilities incurred or sustained Customer, provided that:
- a) the defect is attributable to the negligence of AQP and existed at the time Product was delivered by AQP to Customer and, consequently, is not attributable to (i) an accident, (ii) faulty and/or improper use, installation, maintenance, service, repair or alteration contrary to AQP's technical specifications, documentation or written instructions, (iii) normal wear and tear or deterioration, (iv) improper environmental conditions (including, but not limited to, electrical surges, water damage, and heat exposure), (v) the negligence of Customer or any third party, or (vi) lack of responsible care;
  - b) no Product or label modifications have been made;
  - c) Customer is liable for such bodily injury or property damage under the relevant laws; and
  - d) Customer promptly notifies AQP in writing of any notice or claim of such injury or damage and of the commencement of any suit or action for injury or damage received by or brought against Customer.
- 7.2. AQP shall have the right, but not be obligated to, assume the defence of any claim made in accordance with section 7.1 at AQP's own cost and expense and Customer shall in such case, at AQP's cost and expense, provide such information, cooperation, and assistance to AQP as may be reasonably necessary to assist AQP in its defence against any such claim. Customer may not settle or otherwise enter into any agreement with any claimant, nor make any admission which may be prejudicial to the interest of AQP, without AQP's prior written consent.
- 7.3. Notwithstanding anything to the contrary in an Agreement, the liability of AQP under this section 7 shall only apply and be limited to what is payable from the product liability insurance taken out and maintained by AQP.
- 7.4. THE FOREGOING PROVISIONS OF THIS SECTION 7 SET FORTH THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY OF AQP AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS, SUITS, OR ACTIONS RELATED TO BODILY INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE.

## 8. Indemnification by Customer

- 8.1. Customer shall be fully liable for, and shall keep AQP indemnified and held harmless against any and all losses, claims, liabilities, damages, costs and expenses (including the reasonable fees of attorneys and other professionals) of every nature and kind incurred or sustained by AQP or otherwise arising out of or relating to Customer's sale, promotion and marketing of Products, including any misrepresentations or false statements made by Customer to its customers regarding Products. In addition hereto, should Customer, by act or omission, be in breach of an Agreement, Customer shall assume full liability for any loss or damage incurred by AQP as a result of such breach by Customer.
- 8.2. The indemnity shall apply regardless of where the occurrence giving rise to the claim took place or where the claim is asserted. AQP shall give Customer notice of any claim and of any legal proceedings within the scope of the indemnity and shall give Customer the right to conduct the negotiations of any such claim and the defence of any such legal proceeding, subject to the right of AQP to be associated with such negotiation or defence.

## 9. Intellectual Property Rights

- 9.1. Customer recognises AQP's right, title and interest in and to the IPR relating to Products and any documentation and drawings provided by AQP in conjunction with a sale or delivery of any Products. Any documentation or drawings provided by AQP to Customer shall not be used for any other purpose than that for which they were provided and may not without the prior written consent of AQP otherwise be used or copied, reproduced, transmitted or communicated to third parties.

## 10. IPR Infringement

- 10.1. If any Product as delivered hereunder is held to infringe a third party's IPR and Customer is enjoined from using same, AQP may, at its expense and option, (a) modify Product without impairing in any respect the functionality, capacity or performance, so that it is non-infringing; (b) procure for Customer the right to continue to use and sell Product; or (c) refund the purchase price of Products less a reasonable amount for usage.
- 10.2. THE FOREGOING PROVISIONS OF THIS SECTION 10 SET FORTH THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY OF AQP AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

## 11. Limitation of Liability

- 11.1. EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 12 "CONFIDENTIALITY" AND CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 "INDEMNIFICATION BY CUSTOMER" AND SECTION 9 "INTELLECTUAL PROPERTY RIGHTS", IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT, LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY, OR UNDER ANY OTHER LEGAL THEORY, SHALL EITHER PARTY WITH RESPECT TO ANY MATTERS RELATING TO AN AGREEMENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT LOSSES OR DAMAGES INCLUDING LOSS OF DATA, LOSS OF PROFIT, REVENUE OR PRODUCTION, INTEREST ON INVESTMENTS, LOSS OF GOODWILL, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS OR CLAIMS OF CUSTOMERS REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. THIS LIMITATION SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER ANY WARRANTY AND/OR THE TERMS AND CONDITIONS OF AN AGREEMENT.
- 11.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN AN AGREEMENT, AQP'S TOTAL AND AGGREGATE LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM AN AGREEMENT SHALL BE LIMITED TO AND IN NO CASE EXCEED THE AMOUNT CUSTOMER HAS PAID FOR PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.
- 11.3. The foregoing limitations shall not apply in case of gross negligence or wilful misconduct of the defaulting Party.

## 12. Confidentiality

- 12.1. Each Party undertakes, and shall cause all officers, employees and other persons concerned by an order or Agreement to undertake, to keep secret all information received from the other Party and not to use the same except to the extent necessary to fulfil its rights and obligations under an order or Agreement.

## 13. Relief

- 13.1. Each Party shall be excused from performing of one or more of its obligations under an Agreement, if and to the extent that the affected Party proves: (a) that the occurrence of an event or circumstance that prevents or impedes a Party from performing one or more of its obligations under an Agreement is beyond its reasonable control; and (b) that it could not reasonably have been foreseen at the time of the conclusion of an Agreement; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected Party.

13.2. In the absence of proof to the contrary, the following events affecting a Party shall be presumed to fulfil conditions (a) and (b) under section 13.1: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy, supply shortages by sub-contractors; (vii) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

- 13.3. A Party successfully invoking this section 13 is relieved from its duty to perform its obligations under an Agreement and from any liability in damages or from any other contractual remedy for breach of an Agreement, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other Party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected Party. Where the duration of the impediment invoked has the effect of substantially depriving the Parties of what they were reasonably entitled to expect under an Agreement, either Party has the right to terminate an Agreement by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that an Agreement may be terminated by either Party, if the duration of the impediment exceeds one hundred twenty (120) calendar days.

## 14. Publicity

- 14.1. No press release or public announcement of any kind, nor issuing of any promotional material, relating to an order or an Agreement or its contents shall be made by Customer without AQP's written approval.

## 15. Assignment

- 15.1. Neither Party may without written approval of the other assign an Agreement or transfer its interest or any part thereof under an Agreement to any third party except that AQP may assign its rights or obligations to a third party in connection with the merger, reorganization or acquisition of stock or assets affecting all or substantially all of the properties or assets of AQP.

## 16. Miscellaneous

- 16.1. No waiver by AQP of any breach by Customer, or failure by AQP to insist on Customer's performance of obligations shall be considered a waiver of any subsequent breach of the same or any other provision.
- 16.2. Should any provision of these GTCS be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the Parties and enforced as modified. All other terms and conditions of these GTCS shall remain in full force and effect and shall be construed in accordance with the modified provision.
- 16.3. Nothing in the relationship between AQP and Customer shall create an agency, partnership or joint venture between the Parties and in specific Customer shall not be entitled to make any representation or warranty on behalf of AQP.
- 16.4. Additional Agreements, provisions, amendments and supplements to these GTCS shall not be valid, unless made in writing and signed by both Parties.

## 17. Governing Law and Arbitration

- 17.1. These GTCS and all Agreements shall be governed and construed in accordance with the laws of Denmark without regard to the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- 17.2. Any and all disputes between the Parties arising out of or in connection with these GTCS and all Agreements or the breach, termination or invalidity thereof shall – in the absence of an amicable solution to the dispute – be finally settled by Arbitration in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Voldgiftsinstituttet). The arbitration tribunal shall be composed of one arbitrator selected and appointed by the institute. The Place of Arbitration shall be Copenhagen. The language of the proceedings shall be Danish, unless the Parties agree to English or any third language. Such arbitrations proceedings including any evidence exchanges as well as the contents of any award shall be confidential.

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