GENERAL TERMS AND CONDITIONS OF SERVICE

1. INTERPRETATION

1.1 The word “T&C’s” refers to these General Terms and Conditions of Service (as updated or amended from time to time per clause 2.3 below).

1.2 In these T&C’s, unless the context clearly indicates a contrary intention, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.2.1 “Customer” means a formal credit facility granted by the Company to certain of its customers via the approval (by the Company) of a formal credit application (i.e. via the completion (by the Customer) and acceptance (by the Company) of a Customer Take-On Form – Credit);

1.2.2 “Company” means Aquatico Scientific (Pty) Ltd with Registration Number: 2006/028605/07 and/or Aquatico Laboratories (Pty) Ltd with Registration Number: 2012/005354/07;

1.2.3 “Customer Take-On Form” means the entity acquiring Services from the Company (as recorded in the applicable Customer Take-On Form);

1.2.4 “Customer Take-On Form” means the Company’s form(s) to be completed by the Customer, stipulating the Customer’s relevant information and a request to apply for a trading account with the Company (whether for a Credit Facility account [i.e. Customer Take-On Form – Credit] and/or a cash-before-delivery account [i.e. Customer Take-On Form – C.B.D.]);

1.2.5 “CPA” means the Consumer Protection Act (Act 68 of 2008) as amended;

1.2.6 “NCA” means the National Credit Act (Act 34 of 2005) as amended;

1.2.7 “Parties” means the Company and the Customer jointly and “Party” means either of them as the context requires;

1.2.8 “Services” means such services provided by the Company to the Customer from time to time, including (but not limited to) water testing and environmental monitoring services;

1.2.9 “Test Results” means the results of laboratory testing, etc. and the procedures associated therewith which served as basis for payment or rejection by the Company;

1.3 Quotations and Service Request

Quotations delivered by the Company shall be valid for a period of 30 (thirty) days only.

The Company reserves the right to adjust prices quoted, if the circumstances (and/or the information provided by the Customer) which served as basis for the quotation change.

The acceptance of quotations and the placing of Service requests by the Customer shall not bind the Company, unless acknowledged and confirmed in writing by the Company. Any and all Services shall be executed at the discretion of the Company and the mere receipt by the Company of a request for Services shall not oblige the Company to provide the requested Services.

4. PRICE

In instances where a quotation has been delivered by the Company and accepted by the Customer, the price applicable will be based on the accepted quotation, subject to clauses 3.1, 3.2 and 4.3.

Should no accepted quotation exist, the acceptance of a request for Services by the Company is subject to the proviso that Services will be provided at the prices applicable as per the Company’s price/tariff list in force from time to time, subject to clause 4.3.

If any of the Company’s costs/expenses in providing Services, then the price shall be increased by the excess or, if the excess cannot be determined exactly, by a reasonable allowance for it.

5. VAT

Unless specifically stated otherwise by the Company in writing, all prices quoted by it and/or referenced in its price/tariff list in force from time to time, will be deemed to be quoted and referenced exclusive of VAT.

6. DISCOUNTS AND REBATES

Prices charged will be strictly nett and not subject to any discount/rebate, unless otherwise agreed in writing between the Parties.

In the event that the Company agreed to grant a settlement, volume, trade or other discount/rebate, such discount/rebate shall only be effective and formally granted where the Company receives full payment by due date. If the Company does not receive full payment by due date, the settlement or trade discount/rebate shall be regarded as null and void and the Customer shall be liable for payment of the full amount charged, interest and penalty charges, as provided for in these T&C’s, shall be levied on such full amount charged.

7. PAYMENTS

7.1 Payments shall be made to the Company:

7.1.1 via electronic funds transfer or cash deposit only; and

7.1.2 in South African currency free of bank and/or set-off.

7.1.3 into such bank account as the Company may determine;

7.1.4 free from any deduction, withholding and/or set-off.

Should any payment not be received on or before the due date for payment, the Company shall have the option, without prejudice to any of its other rights, to cancel or suspend further supply of Services and/or, by giving written notice thereof to the Customer, to require immediate payment of (in which event the Customer will immediately pay) all amounts owing by the Customer to the Company, whether or not those amounts are actually due, and/or to take any other action it may deem necessary, in accordance with these T&C’s or otherwise at law, until such payment is received.

All payments received by the Company shall be appropriated firstly towards levied interest and thereafter to capital.

7.2 Cash Facility Payments

7.2.1 In the event that the Customer does not hold a Credit Facility with the Company, or the Parties determine that a particular transaction will be concluded on a cash-before-delivery basis, full payment for Services to be provided shall be made by the Customer to the Company prior to commencement of the Service(s).

7.2.2 The Company shall have no obligation to commence with delivery of any Service(s), analysis and/or report(s) (and no Test Results) will be provided to the Customer before:

7.2.2.1 a formal proof of payment of the relevant amount(s) due and owing by the Customer to the Company has been delivered to the Company by the Customer;

7.2.2.2 the payment of the relevant amount(s) due and owing by the Customer to the Company reflects in the nominated bank account of the Company;

7.2.3 The sufficiency, and subsequent acceptance, of the “formal proof of payment” referred to in clause 7.2.2.1 above, shall be within the sole and absolute discretion of the Company.

7.3 Credit Facility Payments

7.3.1 A Credit Facility may be applied for by the Customer after 3 (three) months of its first engagement with the Company for provision of the Service(s), and the application will be subject to review and approval by the Company in its sole and absolute discretion.

7.3.2 The Company’s review may include (but shall not be limited to) a credit check with regard to the Customer, a review of the Customer’s payment history with the Company [and others] and other actions the Company may deem relevant in the circumstances.

7.3.3 In the event that the Customer holds a Credit Facility with the Company, the Customer shall make payment within the time frame prescribed via the Customer Take-On Form completed with regard to the Customer’s application for the Credit Facility (i.e. the Customer Take-On Form – Credit, completed by the Customer).

7.3.4 The Company reserves the right to review the extent, nature and duration of Credit Facility provided, and may withdraw the Credit Facility at any stage as per its sole discretion.

7.3.5 If any amount owed by the Customer to the Company, from any cause whatsoever, whether under a Service request or not, is not paid on due date then (and without prejudice to any other rights the Company may have) the Company may terminate any Credit Facility granted to the Customer.

8. CREDIT SCREENING

8.1 The Company may, in its sole and absolute discretion and at any time whatsoever, investigate and review the Customer’s consumer credit information (as defined in the NCA) at/with any registered credit bureau.

8.2 In events where the Customer defaults with regard to any payment due and owing to the Company, the Company may list/register the Customer’s consumer credit information (as defined in the NCA) with such
registered credit bureaus/agencies as the Company deems fit and proper in its sole and absolute discretion. It is however understood that, if, at the time of such intended listing/registration, the relationship between the Company and Customer constitutes that of a credit agreement in terms of the NCA and the NCA actually applies, the Company shall give the Customer twenty (20) business days’ advance notice of such intended listing/registration.

8.3 The Customer warrants and guarantees that it is not over indebted in any form or manner. In this regard, the Customer warrants and guarantees that it is able to, in a timely manner, satisfy all of its obligations under all credit agreements to which it is a party, having regard to the:

8.3.1 financial means, prospects and obligations; and

8.3.2 absolute confirmation and agreement by the Customer that the correct Services have been rendered.

8.4 The Customer warrants and guarantees that it is a juristic person, all amounts not paid by the Customer on due date for payment, shall bear interest at the prevailing prime overdraft rate charged by Investec Bank from time to time plus 5% (five percent) capitalised monthly in arrears, from the date on which payment falls due until the date on which payment is received in full.

9. INTEREST

9.1 In the event that the Customer is a juristic person, all amounts not paid by the Customer on due date for payment, shall bear interest at the prevailing prime overdraft rate charged by Investec Bank from time to time plus 5% (five percent) capitalised monthly in arrears, from the date on which payment falls due until the date on which payment is received in full.

9.2 In the event that the Customer is a natural person, all amounts not paid by the Customer on due date for payment, shall bear interest at the maximum rate of interest permitted under the NCA from time to time with regard to incidental credit agreements.

10. CERTIFICATE

A certificate under the hand of any member, shareholder, director and/or manager of the Company (and any appointment not to be proved) as to the existence and the amount of the Customer’s indebtedness to the Company at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the Customer’s indebtedness to the Company, shall be prima facie proof of the contents and the correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings whatsoever in nature otherwise permitted to the Customer in any competent court and shall be valid as a liquid document for such purposes.

11. SUB-CONTRACTORS

11.1 The Company shall have the right to appoint sub-contractors to assist in (or wholly take charge of) the provision of Services, as and when it deems reasonably necessary, subject to notice thereof to the Customer.

12. TEST RESULTS, REPORTS AND ADVICE

12.1 Unless specifically agreed otherwise in writing by the Company, the Customer shall not in any way rely on draft reports, or its history of debt repayment.

12.2 The Customer agrees that all documents, advice and other exchanges between the Company and the Customer shall be for the purposes of informing and assisting the Customer only. None of the aforementioned may be disclosed or transferred to any third party without the Company’s prior written consent.

12.3 The Company’s advice and documents are based on its understanding of the law, regulations, official directives and/or official practice as at the time it is given. It may be affected by subsequent changes in law, regulation and/or official practice. The Company has no legal obligation to update advice and documents once given, and it does not undertake to do so unless specifically otherwise agreed.

12.4 The Company shall be entitled to retain any and all work created for the Customer (albeit Test Results or other documents), and any and all documents and information provided to the Company by the Customer and the entire content of any and all files opened and held by the Company for and on behalf of the Customer.

13. SERVICE SPECIFICATIONS

13.1 The Customer shall be liable and responsible to ensure that correct and accurate Service requirements (i.e. Service specifications and descriptions) are delivered to the Company with regard to each Service request. Any document (including Service request forms, quotations, e-mails, faxes, etc.) delivered or transmitted to the Company by the Customer, albeit a signed document or not, referencing the type, description and/or specifications of Services requested shall be deemed as an absolute proof of the Customer’s agreement with and acceptance of the entire content referenced in such document, and shall be accepted and referenced without any review thereof to the Company.

13.2 The Customer indemnifies and undertakes to hold the Company harmless with regard to all claims, damages, losses, costs, expenses and/or any other negative result the Company may suffer as a result of the Company delivering incorrect Services (albeit as relates to type, specifications, description, etc.) based on the communications and/or confirmations made and/or delivered by the Customer.

13.3 If Services (or any part thereof) are to be supplied or delivered in accordance with any specific specifications, instructions or information furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against the Company and the Company shall in no form or manner be liable for damages, damage, claim or cost sustained by the Customer as a result of any error, discrepancy or defect in, or brought about by, those specifications, instructions and/or information.

14. WARRANTIES

14.1 The Company does not deliver or provide any guarantees, warranties or representations of any nature whatsoever with regard to any Services, except for those that are prescribed by law or which are expressly provided in writing by the Company.

15. LIMITATION OF LIABILITY

15.1 The Company shall never be liable and/or accountable for any special, indirect and/ or consequential damages/losses suffered by the Customer, or anyone else, in any form or manner or for any reason whatsoever.

15.2 The Company shall never be liable and/or accountable for any losses/damages suffered by the Customer, or anyone else, unless same is caused as a direct result of the Customer’s negligent or willfully malicious acts and/or/and neglects of the Company.

15.3 Notwithstanding anything contained herein or elsewhere to the contrary, the Company’s liability toward the Customer shall never exceed the amount(s) actually paid by the Customer to the Company for the Service(s) to which the specific claim relates, unless specifically prescribed otherwise by law.

15.4 The Company shall have the right to require the Customer to provide further limitation of liability undertakings, which undertakings shall be provided by the Customer before the Company shall be required to proceed with Service delivery on any relevant Service request.

16. NONPERFORMANCE

16.1 The Customer shall not have any claims of any nature whatsoever against the Company for any failure by the Company to carry out any of its obligations under a Service request, these T&C’s or the Customer Take-On Form as a result of six major, force majeure, act of God, strike or lockdown, shortage of labour or materials, breakdown of machinery, delays in transport, accidents of any kind and default or delay by any subcontractor or supplier of the Company, riot, political or civil disturbances, the elements, war, fire, earthquake, any state or government or any authority, or any other cause whatsoever beyond the Company’s control.

16.2 The Company shall have the right to settle strikes, differences with workmen or government claims by accepting any demands when in the discretion of the Company, it would be inadvisable to accede to such demand. Notwithstanding the provisions of this clause 16, the Customer shall not be relieved of any obligation to make payment in the normal course as stipulated for Services delivered.

16.3 In the event that the Company is unable to comply with a Service request, for any reason which the Company did not actually foresee/anticipate, and the Company shall be entitled to cancel the Service request and delivery of the relevant Services by notice in writing. The Customer shall have no claims regarding such cancelled Service request and the Company shall not be liable, in any form or manner, for any claims, losses, damages and/or any other negative inferences suffered by anyone as a result thereof.

CANCELLATION

17.1 The Customer shall be liable for payment of the full amount quoted by the Company and accepted by the customer, should a Service request or any part thereof be cancelled (for any reason whatsoever) once Service delivery has commenced.

17.2 The Company may cancel any Service requests or any uncompleted part of a Service request for any reason, including the following but not restricted thereto:

17.2.1 If the Customer commits a breach of any of the provisions of these T&C’s and/or the Customer Take-On Form.

17.2.2 If the Customer fails to pay any amount due and payable on due date.

17.2.3 If the Customer is a natural person, dies or is provisionally or finally sequestrated or declared mentally ill.

17.2.4 If the Customer suffers any civil judgment to be taken or entered against it.

17.2.5 If the Customer institutes (or any third party institutes) business rescue proceedings (in terms of the Companies Act 71 of 2008) with regard to or against the Customer.

17.2.6 If the Customer being a partnership, the partnership is terminated; or

17.2.7 If the Customer being a legal entity/juridical person, is provisionally or finally sequestrated or declared bankrupt.

17.2.8 If the Customer suffers any civil judgment to be taken or entered against it;
17.3 The Company’s rights in terms of 17.2 shall not be exhaustive and shall be in addition to its other rights under these T&C’s and the Customer Take-On Form or otherwise.

18. ARBITRATION

18.1 If any dispute or difference of any kind whatsoever shall arise between the Customer and the Company in connection with or arising out of a Service request, these T&C’s or the Customer Take-On Form, then the matter in dispute or difference shall be referred to arbitration in accordance with the provisions of AFSA [Arbitration Foundation of South Africa].

18.2 The Arbitration shall be held in Pretoria, South Africa, in English before a single arbitrator and with a view to obtaining and expeditious result.

19. INTERNATIONAL TRADE

19.1 Regardless of the Parties’ place of execution, performance or domicile, these T&C’s and the Customer Take-On Form and all modifications and/or amendments thereto shall be governed by and construed under and in accordance with the Laws of the Republic of South Africa.

19.2 International Customers:

19.2.1 shall furnish South African Bank Guarantees with a financial institution within the Republic of South Africa, as specified by and acceptable to the Company; and

19.2.2 shall choose a domiciled or executing at an address within the jurisdiction of the South African Courts.

19.3 All sums payable shall be converted to South African currency at a rate of exchange prevailing on date of invoice, alternatively date of payment, whichever sum is the larger.

20. COMPANY EQUIPMENT

20.1 All general containers and/or equipment of the Company shall remain the sole and exclusive property of the Company. The Customer shall ensure that same is returned to the Company in the event that same is left on the premises of the Customer for any reason whatsoever.

20.2 For as long as any general containers and/or equipment of the Company are in the possession, or under the control, of the Customer, the Customer shall apply and implement all reasonable measures to ensure that same is not damaged, destroyed or lost, in any form or manner, and remains safeguarded until returned to the Company.

21. CPA AND NCA APPLICATION

21.1 It is noted that both the NCA and the CPA (amongst other laws) may find application to a Service request / transaction between the Customer and the Company from time to time. As such, it is confirmed that nothing contained in these T&C’s and the Customer Take-On Form aims/intends to circumvent the NCA or the CPA in events where it may find application. Notwithstanding that stated in 21.1 above, the NCA and CPA shall only apply to a Service request / transaction between the Parties where it is specifically provided, via the said Acts, that same applies and then only to the extent that same applies. In no way, manner or form is it intended that either of these Acts (albeit it in whole or partially) apply voluntarily.

For as far as the provisions of these T&C’s and the Customer Take-On Form may contradict any provision of the CPA or NCA (or any other law) that actually apply to a Service request / transaction between the Company and the Customer, the applicable provision/s of the said law shall prevail.

22. MISCELLANEOUS

22.1 Applicable Law

The validity of these T&C’s and the Customer Take-On Form, their interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of any circumstances or expiration or earlier termination for any reason, shall be determined in accordance with the laws of the Republic of South Africa.

22.2 Costs

The Customer agrees that if any claim against the Customer is handed over to the Company’s Attorneys for collection, the Customer will be responsible for all attorney’s costs incurred by the Company, which costs shall include all collection charges, disbursements and costs on the scale between attorney and own client, and inclusive of collection commission.

22.3 Severability

22.3.1 It is agreed that each paragraph, clause and each sub-clause in these T&C’s and the Customer Take-On Form, are severable, the one from the other.

22.3.2 If any paragraph, clause or sub-clause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses, paragraphs and sub-paragraphs shall continue to be of full and competent force and effect.

22.4 Entire T&C’s and non-variation

22.4.1 These T&C’s and the Customer Take-On Form represent all the terms and conditions pertaining to the Service/s (and related relationship) between the Company and the Customer. The Customer warrants that it understands all the terms and conditions and accepts them.

22.4.2 No alteration or variation of these T&C’s and the Customer Take-On Form shall apply unless the alteration or variation in question is expressly agreed to or issued in writing by the Company.

22.5 Confidentiality

The Customer and the Company agree to take all reasonable measures to preserve the confidential nature of Services delivered, Test Results, Service requests, the T&C’s and the Customer Take-On Form. The Parties furthermore, agree to keep all information conveyed between the Parties, in order to provide the Service/s, strictly confidential.

22.6 Assignment of rights and obligations

22.6.1 The Customer may not cede or assign its rights or obligations in terms of any Service request or these T&C’s or the Customer Take-On Form to any third party without the prior written consent of the Company, which consent shall not be unreasonably withheld.

22.6.2 The Company may cede and assign its rights and obligations in terms of any Service request or these T&C’s or the Customer Take-On Form to any third party without the prior written consent of the Customer.

22.7 Relaxation

No relaxation with the Company may give at any time and on any occasion with regard to carrying out of the Customer’s obligations in terms of any Service request or these T&C’s or the Customer Take-On Form, shall prejudice or be a waiver of any of the Company’s rights to enforce those obligations on any subsequent occasion.

22.8 Counterparts

These T&C’s and the Customer Take-On Form may be signed in counterparts, each of which will form one and the same agreement.

22.9 Take-On Form

22.9.1 The Customer confirms that all information provided on the Customer Take-On Form is true and correct.

22.9.2 The Customer’s signatory to these T&C’s and the Customer Take-On Form warrants and guarantees that he/she is duly authorized by the Customer to sign the Customer Take-On Form and these T&C’s on behalf of the Customer, and to bind the Customer to the T&C’s and the Customer Take-On Form.

22.9.3 The signatory hereby binds himself as surety and co-principal debtor in solvum with the Customer in favour of the Company for the due payment of all amounts quoted by the Company and accepted by the Customer, whether acquired by way of cession or otherwise.

22.9.4 The signatory waives the benefits of exemption and division of the legal exceptions non numerate pecuniae and non causa debiti and acknowledges himself to be fully acquainted with the meanings of these terms.

22.10 Prescription

The Customer hereby expressly waives all right to claim prescription under the relevant provisions of the Prescription Act 68 of 1969, as amended from time to time.

Declaration:

I________________________, the undersigned, with ID number:________________________herby confirm that I have read and understand the terms and conditions as stipulated above and am duly authorised to sign this document.

Signed at:________________________, on the______________of________________________20____.