

## AQUATICO GENERAL TERMS AND CONDITIONS OF SERVICE

- 1. INTERPRETATION**
- 1.1. The word “T&C’s” refers to these General Conditions of Service (as updated or amended from time to time per clause 2.3 below) and the words “clause” or “clauses” refer to clauses of these T&C’s respectively.
- 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. “Credit Facility” – 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 completion (by the Customer) and acceptance (by the Company) of a Customer Take-on Form - Credit);
- 1.2.2. “Company” – means Aquatiko Scientific (Pty) Ltd with Registration Number: 2006/028605/07 and/or Aquatiko Laboratories (Pty) Ltd with Registration Number: 2012/065554/07;
- 1.2.3. “Customer” – means the person/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.O.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” – mean the Company and the Customer jointly and “Party” means either of them individually;
- 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 report compiled and delivered to the Customer by the Company (if relevant) consequential to the Services provided by the Company to the Customer.
- 2. APPLICATION**
- 2.1. Unless otherwise agreed in writing, only these T&C’s and the completed Customer Take-On Form shall apply with regards to the Services by the Company to the Customer, irrespective of how or why the provision of Services arise.
- 2.2. For avoidance of doubt, these T&C’s and the Customer Take-On Form will override all terms and conditions of service stipulated/advanced by the Customer, unless specifically agreed otherwise between the Parties in writing. In this regard, and unless specifically agreed otherwise in writing, the Customer hereby renounces its own terms and conditions of service, or any equivalent or like terms and conditions implemented by the Customer from time to time in favour of these T&C’s and the completed Customer Take-On Form.
- 2.3. The most recent version of these T&C’s are freely available to the Customer via the Company’s website at [www.aquatico.co.za](http://www.aquatico.co.za) and/or per request from the Company’s offices. These T&C’s are subject to change from time to time, as the Company may determine in its sole and absolute discretion, and it shall be and remain the Customer’s sole and absolute responsibility and liability to ensure that he/she/it remains up to date and knowledgeable on the latest version of these T&C’s in issue from time to time. The Customer acknowledges that he/she/it shall be bound by the latest version of the T&C’s in issue from time to time, notwithstanding his/her/its signature hereto.
- 3. QUOTATIONS AND SERVICE REQUEST**
- 3.1. Quotations delivered by the Company shall be valid for a period of 30 (thirty) days only.
- 3.2. The Company reserves the right to adjust prices quoted if circumstances (and/or information provided by the Customer) which served as basis for the quotation change.
- 3.3. The acceptance of quotations and the placing of Services requests by the Customer shall not be binding on 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**
- 4.1. 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.
- 4.2. 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;
- 4.3. If any of the Company’s costs/expenses in providing the Services to the Customer (i.e. costs of equipment/supplies, transport, etc.) have increased for any reason beyond the Company’s control, or in the ordinary course of the Company’s business, before the Services commences under a request for 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**
- 5.1. 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**
- 6.1. Prices charged will be strictly nett and not subject to any discount/rebate, unless otherwise agreed in writing between the Parties.
- 6.2. In the event that the Company agreed to grant a settlement, volume, trade or other discount/rebate, such discount/rebate shall only be effectively 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. General**
- 7.1.1. All payments shall be made to the Company:
- 7.1.1.1. via electronic funds transfer or cash deposit only, and
- 7.1.1.2. in South African currency free of bank and other charges, and
- 7.1.1.3. into such bank account as the Company may determine, and
- 7.1.1.4. free from any deduction, withholding and/or set-off.
- 7.1.2. 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 Service 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 in law, until such payment is received.
- 7.1.3. All payments received by the Company shall be appropriated firstly towards levied interests and thereafter to capital.
- 7.1.4. The Customer shall not withhold payment to the Company for any reason whatsoever.



**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 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 Result/s will be provided to the Customer) before:

7.2.2.1. 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; and

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. 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 Forms completed by the Customer.

7.3.3. 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.

7.3.4. If any amount owed by the Customer to the Company, from any cause whatsoever, whether under a Services request or not, is not paid on the 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 20 (twenty) 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 obligation under all credit agreements to which it is a party, having regard to its:

8.3.1. financial means, prospects and obligation; and

8.3.2. probable propensity to satisfy, in a timely manner, all the obligations under all credit agreements to which the Customer is a party, when considering its history of debt repayment.

8.4. The Customer warrants and guarantees that neither it, nor any of its members/directors/shareholders/trustees, are under any form of debt review (as provided for in the NCA).

8.5. The Customer warrants and guarantees that it will immediately inform the Company should the positions warranted and guaranteed in clauses 8.3 and 8.4 above change in any form or manner, for any reason whatsoever or at any time whatsoever.

**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 of interest charged by the Company's 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**

10.1. A certificate under the hand of any member, shareholder, director and/or manager of the Company (whose appointment need not 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 of whatsoever nature against the Customer in any competent court and shall be valid as a liquid document for such purpose.

**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 it 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, conclusions or advices, whether written or oral, issued by the Company or its sub-contractors.

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 documents are based in 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, directives and/or 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), 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 the Company for and on behalf of the Customer has fully paid any and all amounts due and owing by it to the Company.

**13. SERVICE SPECIFICATIONS**

13.1. The Customer shall be liable and responsible to ensure that correct and accurate Service requirements (i.e. Service specification 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 or Services requested, shall serve as:

13.1.1. absolute proof of the Customer's agreement with and acceptance of the entire content reference in such document; and

13.1.2. absolute confirmation and agreement by the Customer that the correct Services have been requested by it.

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 specification, 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 special 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 any loss, damage, claim or cost sustained by the Customer as a result of any error, discrepancy or defect in, or brought about by, those specification, 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 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 grossly negligent or wilfully malicious acts and/or 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 Services 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 to with the delivery of Services on any relevant Services request.
- 16. NON PERFORMANCE**
- 16.1. The Customer shall not have any claims of any nature whatever 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 vis major, force majeure, act of God, strike or lockout, shortage of labour or materials, breakdown of machinery delays in transport, accidents of any kind and default or delay by any sub-contractor or supplier of the Company, riot, political or civil disturbances, the elements, any act of any state or government or any authority, or any other cause whatever beyond the Company's control.
- 16.2. The Company shall not be required to settle strikes, differences with workmen or government claims by acceding to any demands when in the discretion of the Company, it would be inadvisable to accede to such demand. Notwithstanding the provisions of this clause 15.4, the Customer shall not be relieved of any obligation to make payment in the normal course as stipulated for Services delivered (or to be delivered) to it.
- 16.3. In the event that the Company is unable to comply with a Services request, for any reason which the Company did not actually foresee/anticipate, the Company shall be entitled to cancel the Services request by notice in writing. The Customer shall have no claims regarding such cancelled Services 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.
- 17. CANCELLATION**
- 17.1. The Customer will be liable for payment of the full amount quoted by the Company and accepted by the Customer, should the Services request to the Company be cancelled (for any reason whatsoever) once Service (including but not limited to any form of analysis and/or reporting) 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, being an individual, dies or is provisionally or finally sequestrated or surrenders his/her estate; or
- 17.2.4. If the Customer suffers any civil judgment to be taken or entered against it;
- 17.2.5. If the Customer initiates (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/juristic person, is placed under a provisional or final order of liquidation, winding-up or judicial management; or
- 17.2.8. If the Customer compromises or attempts to compromise generally with its creditors or commits any other deed of insolvency in terms of section 8 of the Insolvency Act No. 24 of 1936, as amended.
- 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 requests or these T&C's and the Customer Take-On Form, then the matter in dispute or difference may 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.
- 18.3. Notwithstanding the provisions in clauses 18.1 and 18.2 the Company may at its sole and absolute discretion opt, elect and proceed to institute proceedings in any High Court or Magistrates Court, having jurisdiction, to enforce any right it may in accordance with this Agreement.
- 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;
- 19.2.2. shall choose a *domicilium citandi et executandi* 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, used by it for its own purposes such as transport of the equipment and/or delivery of Service, 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 are 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.
- 21.2. 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 intended that either of these Acts (albeit it in whole or partially) apply voluntarily.



- 21.3. Hence, for as far as the provisions of these T&C's and the Customer Take-On Forms 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 its performance 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, is 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 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, a Service request, the T&C's and the Customer Take-On Forms. 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 and 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 and the Customer Take-On Form to any third party without the prior written consent of the Customer.
- 22.7. **Relaxation**
- No relaxation which the Company may give at any time and on any occasion in regard to carrying out of the Customer's obligations in terms of any Service request or these T&C's and 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.
- 22.10. **Notices and address for notices**
- 22.10.1. The Customer and the signatory hereto, choose as their *domicilia citandi et executandi* the address recorded as the Physical Address for the Company in the Customer Take-On Form, for all purposes arising out of or in connection with these T&C's and/or the Customer Take-On Form, at which address all processes and notices arising out of or in connection herewith, its breach or termination may validly be served upon or delivered to the Customer and signatory.
- 23. PERSONAL SURETY**
- 23.1. The signatory hereto binds himself/herself as surety and co-principal debtor in solidum 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.
- 23.2. The signatory further waives the benefits of excussion and division and of the legal *exceptions non numerate pecuniae* and *non causa debiti* and acknowledges himself to be fully acquainted with the meanings of these terms. The T&C's and the Customer Take-On Form shall apply mutatis mutandis to this suretyship.

**Declaration:**

I, \_\_\_\_\_, the undersigned with identity number: \_\_\_\_\_, acting on behalf of the Customer and in my personal capacity as surety, hereby 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\_\_\_\_\_.

\_\_\_\_\_  
 Designation: \_\_\_\_\_  
 Signature

Initial: \_\_\_\_\_

