

Aqualine GEO

General Terms and Conditions of Sale

of new and used products
(valid from 20 November 2010)

Application/Incorporation

- 1.1 These terms and conditions of sale shall govern all expressions of intent and all legal declarations that refer to entering or executing any kind of sales or service agreement between Aqualine-Geo and its purchasers.
- 1.2 These terms and conditions of sale will be incorporated by an explicit agreement or – if such an explicit agreement is, due to the nature of sales or service agreement, difficult to enter in and the purchasers accepts these terms and conditions – by entering into the sales or service agreement. If the purchaser is an entrepreneur under sec. 14 German Civil Code (*BGB*) these terms and conditions of sale shall also govern all future transactions between the parties without any further incorporation agreement.

Conclusion of Contracts

All public or published offers of Aqualine-Geo do not legally bind Aqualine-Geo. Offers made to individual purchasers will bind Aqualine-Geo for a 30-day period after the first draft.

Prices/Payment

- 3.1 All agreed prices are fix prices. Unless otherwise expressly agreed upon, all prices are exclusive of the valid statutory VAT at the time of contract closure as well as exclusive of costs for packaging, insurance and transport.
- 3.2 Additional service which is not included in the sales price will be charged separately. Such an additional charge will be due and payable upon finishing the additional service.
- 3.3 Aqualine-Geo is entitled to charge the purchaser with cost increases arising in the meantime (especially for price increases from suppliers and freight forwarders) if the period between order and proper delivery exceeds four months. If such a cost increase charged to the purchasers exceeds 5 per cent of the agreed original price, the purchaser is entitled to cancel his sales order within one week from being informed about the surcharge.
- 3.4 Unless otherwise agreed upon, the agreed purchase price becomes due and payable within two weeks from receiving the invoice without any further note by Aqualine-Geo.
- 3.5 Unless otherwise expressly defined by the purchasers, all payments of the purchaser will be regarded as made to the elder claims of Aqualine-Geo at first. Sec. 367 of German Civil Code (*BGB*) shall, however, prevail.
- 3.6 In case of delay by purchaser's payments, Aqualine-Geo is entitled to collect due date interest in the amount of 5 per cent (if the purchaser is an entrepreneur: 8 per cent) above the respective base interest rate p. a. Aqualine-Geo reserves all rights to claim further damages for delay.
- 3.7 The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

Reservation of Right of Modification

- 4.1 Aqualine-Geo is entitled to make its own choice between several products equal to the sold product until the product will be delivered at the purchaser.
- 4.2 Unless the purchaser ordered a certain product or Aqualine-Geo makes use of sec. 4.1, Aqualine-Geo is entitled to deliver another product than the ordered product insofar that the purchaser is unreasonably interfered with such a switch.

Delivery/Default of Delivery

- 5.1 Part-deliveries by Aqualine-Geo are hereby agreed upon. As far as such part-deliveries concern a separate position of purchaser's order the part-deliveries shall be deemed separate delivery.
- 5.2 Unless otherwise agreed in a written way, Aqualine-Geo shall deliver its products within 30 days from receiving the order. In the event that a pre-payment by the purchaser has been agreed the 30-day period shall start from receiving the full pre-payment. In case of default of delivery the purchaser has to grant a reasonable extension. If Aqualine-Geo does not deliver within such an extension the purchaser may cancel the sale contract and may collect all his pre-payments. Any further claims against Aqualine-Geo shall be excluded unless intent or gross negligence have governed the delay.
- 5.3 Aqualine-Geo shall be released from its delivery obligations if a supplier of Aqualine-Geo is not able to supply Aqualine-Geo or Aqualine-Geo cannot be supplied due to any kind of force majeure unless these circumstances have been entered prior to entering into the sale's contract. If such circumstances occur Aqualine-Geo will inform the purchaser immediately and will repay any pre-payments to the purchaser; all further claims of the purchaser shall be excluded.

Passing of Risk

The risk of loss, damage to or deterioration of the sold goods passes to the purchaser upon handover of the sold goods to the freight forwarder.

Default in Acceptance

- 7.1 In case of default in acceptance or other breach of duties to cooperate by the purchaser, Aqualine-Geo is entitled to claim any resulting damage.
- 7.2 As a damage compensation Aqualine-Geo is entitled to claim a lump-sum compensation of 20 per cent of the agreed purchase price unless the purchaser gives evidence that the damage of Aqualine-Geo is lower. Furthermore Aqualine-Geo reserves the right to further compensation in the event that damages are higher, e.g. in the case of custom-made products.
- 7.3 In case of default in acceptance for a period longer than 30 days, Aqualine-Geo may claim from 0.5 per cent up to 15 per cent of the purchase price per month as a storage charge, at minimum however 40.00 EURO, unless the purchaser provides evidence for each case that the storage costs are lower or not at the level stated.

Warranty

- 8.1 The warranty of Aqualine-Geo shall be governed by the following terms exclusively.
- 8.2 Warranty for new goods
 - 8.2.1 In case of non-conformity of the product, the purchaser is entitled, but also limited, to alternative performance in the form of remedy of the defect unless a consumer business under sec. 474 German Civil Code (*BGB*) can be assumed. In this case Aqualine-Geo may, at its sole discretion, select between repair or delivery of conforming goods. Both have to be completed within one week. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract. If Aqualine-Geo spend spare parts or complete goods, Aqualine-Geo becomes owner of the replaced parts and goods. Furthermore, the purchaser has to pay Aqualine-Geo reasonably for the period of use.
 - 8.2.2 In case of remedy a defect, the purchaser is obliged to keep the product ready at his location for remedy the defect. If such a remedy of defect is impossible and therefore transport to Aqualine-Geo is necessary, the purchaser is obliged to allow the product to be collected by Aqualine-Geo or by a named freight forwarder. This also applies in the case of replacement deliveries.
 - 8.2.3 Warranty claims arise upon purchaser's receipt of the goods and shall be time-barred after 12 months from such a receipt. In the event of a sale of consumer goods, the statute limitation amounts to two years.
- 8.3 Warranty for used goods
 - 8.3.1 For the as agreed delivery of used goods, kind of warranty obligations and damage compensation shall be excluded unless Aqualine-Geo has been acted provably with malice or Aqualine-Geo has expressly assumed a guarantee. Used goods are goods that have been repaired or renewed by Aqualine-Geo.
 - 8.3.2 In the event Aqualine-Geo has assumed a guarantee or has to accept warranty claims under clause no. 8.3.1 all claims of the purchaser will be time-barred after four weeks. In the event that a consumer business under sec. 474 German Civil Code (*BGB*) can be assumed the statute limitation will come up after one year.

- 8.4 Common terms for new and used goods
- 8.4.1 Regardless of all other duties under this clause no. 8.4 the purchaser has to inform Aqualine-Geo by written notice within 14 days from receipt of the goods. Perceptible damages of the packaging have to be mentioned on the shipment documents and to be announced within 48 hours to Aqualine-Geo by the purchaser. If the purchaser fails with these obligations his warranty claims will be forfeited.
- 8.4.2 All requirements regarding inspection and objection established by sec. 377 German Commercial Code (*HGB*) remain unaffected. The announcement of any defect has to be made with a precise description by the purchaser within 48 hours from discovery of the defect.
- 8.4.3 The warranty of Aqualine-Geo does not cover those defects which occur after delivery by wear and tear, humidity, unreasonable heat, influences of weather, missing maintenance or unreasonable treatment. Interferences into the product by the purchaser himself or by other unauthorized persons shall be deemed unreasonable treatment under this clause. Furthermore, the warranty of Aqualine-Geo does not cover defects caused by use of unauthorized accessories unless Aqualine-Geo has released these accessories. Finally, Aqualine-Geo does not guarantee for compatibility with products of other suppliers.
- 8.4.4 The warranty of Aqualine-Geo does not cover any damages caused by wrong product information and user guides unless the damage has been caused by intent or gross negligence of Aqualine-Geo. Notwithstanding all kind of liability under clause no. 10.1, any liability of Aqualine-Geo caused by gross negligence shall be excluded if the purchaser does not respect written technical advises/user guides issued by Aqualine-Geo.

Retention of Title

- 9.1 Aqualine-Geo retains title to the goods until receipt of all payments owed by the purchaser to Aqualine-Geo in full. Any kind of resale, pledge or encumbrances shall be legally invalid unless Aqualine-Geo has given its prior consent by written notice.
- 9.2 Deviating from the sec. 9.1.1., the purchaser may, however, resell goods only in the course of his regular business without the consent of Aqualine-Geo. For this case, the purchaser hereby assigns all claims arising out of such resale to Aqualine-Geo.
- 9.3 In case of levy of execution purchaser has to inform Aqualine-Geo immediately to enable Aqualine-Geo to intervene against such a levy of execution. The costs of such intervention have to be carried by the purchaser.
- 9.4 The purchaser shall handle the goods with due care.
- 9.5 Aqualine-Geo is entitled to assign its retention of title and its claim from sales and services including the pre-assigned claims according to sec. 9.2 to a third party.
- 9.6 The purchaser shall maintain suitable insurance for the goods covering damages by theft, by fire and by water on his own cost if he maintains his stock on an estate used by himself. In case of an event insured purchaser hereby assigns his claims against the insurance to Aqualine-Geo.

Liability

- 10.1 All kind of damage claims of the purchaser due to delinquency, regardless of the legal construction, shall be excluded especially due to impossibility, delay, breach of contractual duties, poor performance, special duties from contractual obligation and tort action, unless
- 10.1.1 the damages arise from injuries of life, body or health if such damages have been caused by intent or negligence of Aqualine-Geo or by agents or assistants in performance of Aqualine-Geo,
- 10.1.2 the damages have been caused by intent or gross negligence of Aqualine-Geo or by agents or assistants in performance of Aqualine-Geo, or
- 10.1.3 the damages have been caused by intent or gross negligence of Aqualine-Geo or by agents or assistants in performance of Aqualine-Geo regarding the breach of a main obligation of Aqualine-Geo out of the contract.
- 10.2 If Aqualine-Geo is liable under these terms, the liability shall be limited to those damages that typically occur. As far as the liability of Aqualine-Geo is excluded under these terms, the exclusion shall also be valid on behalf of employees, agents and assistants in performance of Aqualine-Geo. In the event that purchaser does not claim for his, but for the expenses he made by trust in the sales and service performance of Aqualine-Geo damages (sec. 284 German Civil Code (*BGB*)), such expenses will be reimbursed in a reasonable volume.

Place of Performance/Applicable Law/Jurisdiction

- 11.1 Place of performance shall be Saerbeck, Germany.
- 11.2 Independent of purchaser's nationality and residence this contract shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does apply.
- 11.3 If purchaser is a salesman (*Kaufmann*) under German Commercial Law (*HGB*) exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Steinfurt, Germany.

Data Protection

Aqualine-Geo will make use from all personal data of purchaser, such as name, address, phone number, for delivery and service purposes only. Any disclosure of these personal data towards third parties shall only happen with purchaser's prior express consent.

Copyrights

The copyright of all kind of documentation delivered to purchaser in executing a purchase contract shall remain at Aqualine-Geo. Purchaser, however, may use the copyright as a licensee with the non-exclusive and the non-transferable right to use the products of Aqualine-Geo.

Amendments/Written Notice

Additional terms and conditions, supplementing or amending these terms and conditions have to be agreed by written notice. This request of written note can only be amended by written notice.

Collision Clause

- 15.1 Differing or contrary terms of purchaser shall not apply except if expressly agreed by Aqualine-Geo upon in writing.
- 15.2 In the event that differing terms cause the application of optional legal rules, sec. 9.1 shall remain valid in each case.
- 15.3 The German version of these terms and conditions shall prevail all other versions in case of collision.

Legal Invalidity

Should any or more of these terms and conditions be invalid, the contract as well as the remaining terms and conditions shall remain valid. The purchaser and Aqualine-Geo shall agree on a replacement term that comes as closely as possible to the commercial meaning and purpose of the invalid term.