



A

STANDARD TERMS AND CONDITIONS OF SALE
OF AQUAHEAT POOL HEAT PUMPS CC

1. APPLICABILITY OF THE STANDARD CONDITIONS

Unless otherwise agreed in writing and signed by Aquaheat, these Standard Conditions of Sale shall constitute the entire agreement between Aquaheat and the Customer and all goods are sold and/or services are rendered subject to this Agreement only. Any additional or different terms or conditions contained in the Customer's order shall be null and void and of no force and effect.

2. DEFINITIONS

- 2.1 Customer" means any person or persons at whose request or on whose behalf or in respect of whom Aquaheat undertakes any business.
- 2.2 "Aquaheat" means Aquaheat Pool Heaters CC, Registration № 98/12389/23;
- 2.3 "these conditions" means these Standard Terms and Conditions of Sale.

3. ORDER

- 3.1 The contract between Aquaheat and the Customer shall only come into existence when a duly authorised representative of Aquaheat has accepted the Customer's order either wholly or in part.
- 3.2 All orders accepted by Aquaheat shall be binding on the Customer and may not be cancelled without obtaining Aquaheat's prior written consent.

4. PRICES

- 4.1 Subject to the other provisions of these conditions, the purchase prices at which the goods shall be sold will be determined by agreement between Aquaheat and the Customer from time to time.
- 4.2 The prices are based on the costs to Aquaheat, at the date on which the contract between the Customer and Aquaheat is concluded, of carrying out its obligations under such contract, which includes, *inter alia*:-
- 4.2.1 the cost to Aquaheat of acquiring the raw materials and the costs of labour and freight;
- 4.2.2 the cost of purchasing foreign currency to pay for the importation of the raw materials;
- 4.2.3 import duties, government imposts, levies and other charges.
- 4.3 If, after the date of conclusion of the contract between Aquaheat and the Customer, there is an unfavourable change in the relevant foreign currency exchange rate or the applicable government imposts, levies or charges or any other change to the costs of labour, raw materials or freight, resulting in an increased cost to Aquaheat in supplying the goods and/or rendering the services in question, then Aquaheat shall, on 30 (thirty) days notice in writing to the Customer, be entitled to adjust its price by the amount of such increase.
- 4.4 Within 14 (fourteen) days of the date of the written notice of the price increase from Aquaheat or its agents, the Customer shall, on notice in writing, be entitled to cancel any undelivered balance of the order which has not yet been prepared as at the date of receipt of the Customer's notice by Aquaheat. The Customer shall be deemed to have accepted the price increase if Aquaheat does not receive the Customer's notification of the cancellation of the whole or a portion of the order within 14 (fourteen) days of the date of Aquaheat's notice of the price increase.
- 4.5 Unless otherwise stipulated, all prices are exclusive of VAT.



4.6 If the Customer varies its order or if there are delays or changes which are not as a result of any act or omission of Aquaheat, Aquaheat shall be entitled to revise its prices by notice in writing.

4.7 In the event of a price reflected on an order or confirmation of the order being incorrect due to a clerical error, then Aquaheat shall have the right to amend such price to rectify the error.

5. VALUE ADDED TAX

The Customer shall be responsible for and undertakes to pay to Aquaheat, at the same time as it is obliged to pay any sum in respect of goods supplied or to be supplied and/or services rendered or to be rendered, any tax payable thereon by Aquaheat in terms of the Value Added Tax Act № 1991 or any replacement Act.

6. PAYMENT

6.1 Unless otherwise specifically agreed to by Aquaheat in writing, all amounts shall be paid by the Customer to Aquaheat, without deduction, demand or set-off, within seven days of the date of Aquaheat's statement of account.

6.2 Any amount not paid on due date shall, at the discretion of Aquaheat, bear interest from the due date until it is paid, at a rate of 2 percent per month.

6.3 If any amount owing by the Customer to Aquaheat is not paid on the due date then all amounts owing by the Customer to Aquaheat from any cause whatsoever shall become immediately due and payable.

7. TIME NOT OF THE ESSENCE

7.1 The time stated for delivery of the goods or the rendering of any service by Aquaheat is approximate only and shall not be a material term to the contract between Aquaheat and the Customer.

7.2 Subject to 7.1, Aquaheat will make reasonable efforts to deliver goods and render services within the times stated in the contract and late delivery shall not render the contract invalid nor render Aquaheat liable for any claim or damages.

7.3 Delivery of the goods is dependant on stock availability and shall be made, subject to 7.1 and 7.2, when stocks are available.

8. DELIVERY AND RISK

8.1 Unless otherwise agreed in writing, the Customer shall take delivery of the goods at Aquaheat's premises. If Aquaheat agrees to deliver the goods to the Customer at any other place, then the Customer will be liable for all of the costs of delivery and these costs shall be paid to Aquaheat by the Customer on demand.

8.2 Where delivery is effected by Aquaheat's transport, or by Aquaheat's transport contractor:-

8.2.1 all risks in the goods shall remain with Aquaheat until and shall pass to the Customer on the transporting vehicle coming to a stop at the point where the goods are to be unloaded;

8.2.2 the responsibility for unloading rests with the Customer;

- 8.2.3 Aquaheat reserves the right to pass on to the Customer any additional charges or any other costs whatsoever, including insurance premiums, which may be incurred by Aquaheat as a result of delayed or protracted unloading of the goods by or on behalf of the Customer;
- 8.2.4 Aquaheat also reserves the right to charge the Customer with any other costs relating to the delivery of the goods to the Customer, including insurance premiums.
- 8.3 When a delivery is made by Aquaheat to the Customer through the medium of a transport carrier engaged by or on behalf of the Customer, then and in such event, all risks in and to the goods in question shall pass to the Customer on delivery of the goods by Aquaheat to the carrier.
- 8.4 Unless the Customer reports in writing an incomplete or short delivery to Aquaheat within 7 (SEVEN) days of the consignment in question having been delivered, the Customer shall be precluded from making any claim against Aquaheat in connection with such short or incomplete delivery.
- 8.5 Where the Customer requests that delivery be suspended or delayed to a date later than that originally requested, Aquaheat shall be entitled to charge the Customer a reasonable fee for the storage of such goods.
- 8.6 Aquaheat is entitled to withhold delivery of goods if the Customer has not made payment of amounts due in respect of previous orders.

9. OWNERSHIP

- 9.1 Ownership of all goods delivered shall remain in Aquaheat until Aquaheat has received payment of the full purchase price notwithstanding that the goods may have been purchased for resale.
- 9.2 The Customer acknowledges Aquaheat's rights to repossess the goods if the Customer defaults with any payment, in whole or in part, and the Customer shall bear the onus of proving that it has not defaulted with any payment and that payment has been made in full to Aquaheat.
- 9.3 Aquaheat's rights to repossess the goods in terms of clause 9.2, includes, *inter alia*, Aquaheat and/or its agents having the right to enter the Customer's premises for the purpose of inspecting and/or removing the goods from the Customer's premises.

10. HYPOTHEC

The Customer shall give valid notice to his landlord of the terms of these Conditions in order to prevent the landlord's hypothec from being exercised over any goods supplied by Aquaheat to the Customer.

11. NOTIFICATION OF DEFECTS

- 11.1 Within 7 (SEVEN) days after the receipt of the goods the Customer shall be required to advise Aquaheat of any defects, failing which the goods shall be deemed to be complete in all respects and without defects, and the Customer shall be precluded from making any claim against Aquaheat in connection with the defective goods.
- 11.2 If Aquaheat agrees that the goods are defective, Aquaheat's liability shall be limited to replacing such goods as against return to it of the defective goods.
- 11.3 Notwithstanding that the Customer may have a claim against Aquaheat for the goods being defective, the Customer is not entitled to withhold payment of any amount due to Aquaheat nor set off any amount against any payment due to Aquaheat.

12. RETURN OF GOODS

If Aquaheat agrees to accept the return of any goods for credit, the Customer shall be liable to pay Aquaheat a handling charge of not less than 10% (ten percent) of the invoiced price of the goods returned.

13. NO WARRANTIES

Aquaheat gives no warranties and makes no representations as to the suitability of the goods for any specific use.

14. LIMITATION OF LIABILITY AND INDEMNITY

14.1 Neither Aquaheat nor any of its employees or agents shall be liable for any loss or damage whatsoever, whether direct, indirect, consequential or otherwise, including any loss of profit, to any person or property, arising from any cause in connection with the goods, services performed or advice given by Aquaheat, including *inter alia*, deleterious effects resulting from the application of any process or treatment to the goods after delivery, whether such loss or damage results from any breach of contract, delict, negligence of any degree or any other cause without limitation. The Customer hereby indemnifies Aquaheat and holds it harmless against all and any claims which may at any time be made against Aquaheat in respect of any such loss or damage.

14.2 If a Customer sells or disposes of any goods supplied to it by Aquaheat to a third party or otherwise permits a third party to use such goods, the Customer shall include in the Customer's agreement with the third party a provision in terms of which Aquaheat is afforded a similar limitation of liability to that contemplated in 14.1.

14.3 Subject to clauses 8.4 and 11.2, any claim which a Customer has against Aquaheat in connection with or arising out of any business shall lapse and become extinguished unless within:-

14.3.1 90 days of such claim arising, the Customer gives written notice thereof to Aquaheat and at the same time discloses to Aquaheat in writing the material facts on which the claim is based; and

14.3.2 12 months of such claim arising, the Customer institutes legal proceedings against Aquaheat in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on Aquaheat.

15. FORCE MAJEURE

If Aquaheat is prevented or restricted directly or indirectly from carrying out all or any of its obligations under a contract with the Customer by reason of strike, lock-out, fire, explosion, floods, storms, riot, war, sabotage, accident, an act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, negligence of the carriers, inability to obtain raw materials, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of Aquaheat, Aquaheat shall be relieved of its obligations in terms of the contract with the Customer during the period that such event and its consequences continue and shall not be liable for any delay or failure in the fulfilment of any obligations there under or loss or damages either general, special or consequential, which the Customer may suffer due to or resulting from such delay or failure in performance. If Aquaheat invokes *force majeure* it shall upon termination of such event giving rise thereto, forthwith give written notice thereof to the Customer. Should such *force majeure* continue for a period of more than 10 (ten) days then Aquaheat shall be entitled forthwith to cancel the contract with the Customer in respect of any obligation still to be performed there under.

16. CANCELLATION

Notwithstanding the acceptance of the cancellation of a contract by Aquaheat, Aquaheat shall be entitled to recover all damages incurred by it arising from or in connection with such cancellation, including but not being limited to all costs, expenses and loss of profit arising out of or in connection with such cancellation.

17. NOTICES AND DOMICILIA

17.1 All notices to be given in terms of the contract shall be in writing and shall be delivered by hand or sent by prepaid registered post to Aquaheat at C105 Sea Spray, Corner Marine Drive and Athens Road, Table View 7441, Cape Town, South Africa and to the Customer at any one of the physical business addresses set out in its credit application, quotation giving rise to the contract or the invoice in respect of the goods, which physical addresses the parties select as their *domicilium citandi et executandi*.

17.2 Each party shall be entitled at any time to change its *domicilium* to any other physical address within the Republic of South Africa, provided that such change shall take effect only upon delivery or deemed delivery of notice thereof to the other party.

18. GENERAL

18.1 No agent or employee of Aquaheat, other than a director of Aquaheat, has Aquaheat's authority to alter or vary these conditions.

18.2 The Customer may not rely on a representation which it claims persuaded it to enter the contract.

18.3 No agreement varying, adding to, deleting from or cancelling any of these conditions, and no waiver of any of these conditions, shall be effective unless reduced to writing and, signed by a director of Aquaheat.

18.4 No indulgence granted by Aquaheat shall constitute a waiver of any of Aquaheat's rights.

18.5 If Aquaheat refers any claim or dispute against the Customer to its attorneys, and whether or not Aquaheat institutes or defends any legal or arbitration proceedings to enforce or protect its rights, Aquaheat shall be entitled to recover from the Customer all legal costs (on an attorney and own client basis), tracing charges and collection commission incurred by Aquaheat in that regard.

18.6 In the event of Aquaheat deciding to institute legal proceedings for the enforcement of any of its rights against the Customer, Aquaheat shall be entitled to do so in the Magistrate's Court which would, but for the amount involved, have jurisdiction.

18.7 A certificate signed by a director of Aquaheat reflecting particulars of the amount owing by the Customer together with details of all deliveries made to the Customer and the invoices pertaining to such deliveries shall be *prima facie* proof thereof and of the Customer's indebtedness to Aquaheat.

18.8 The Customer may not cede any of its rights or delegate any of its obligations in terms of the contract unless a director of Aquaheat gives prior written consent to the Customer to do so.

18.9 Credit facilities allowed by Aquaheat are in Aquaheat's discretion and Aquaheat is entitled, at any time, without notice to the Customer to, vary, curtail or terminate such facilities.

18.10 Unless it conflicts with the context of these conditions, words signifying one gender will include the other genders, words signifying the singular will include the plural and *vice versa*, and words signifying natural persons will include artificial persons and *vice versa*.

C105 SEA SPRAY MARINE DRIVE
BLOUBERGRANDT 7441 SOUTH AFRICA
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CELL: 082 555 0090
FAX: 021 556 4603
FAX To EMAIL: 0866 313 019
EMAIL: heatpumps@aquahheat.co.za



- 18.11 Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of these conditions.
- 18.12 If any part of these conditions is or becomes unenforceable, it will be severable from the rest of these conditions which will continue to be binding.
- 18.13 This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

B
TERMS AND CONDITIONS FOR THE USE OF THE
WEBSITE AND CREDIT CARD PAYMENT FACILITIES

19. Use of Site

19.1 You may only use this site to browse the content, make legitimate purchases and shall not use this site for any other purposes, including without limitation, to make any speculative, false or fraudulent purchase. This site and the content provided in this site may not be copied, reproduced, republished, uploaded, posted, transmitted or distributed. 'Deep-linking', 'embedding' or using analogous technology is strictly prohibited. Unauthorized use of this site and/or the materials contained on this site may violate applicable copyright, trademark or other intellectual property laws or other laws.

20. Disclaimer of Warranty

20.1 The contents of this site are provided "as is" without warranty of any kind, either expressed or implied, including but not limited to warranties of merchantability, fitness for a purpose and non-infringement.

20.2 The owner of this site, the authors of these contents and in general anybody connected to this site in any way, from now on collectively called "Providers", assume no responsibility for errors or omissions in these contents.

20.3 The Providers further do not warrant, guarantee or make any representation regarding the safety, reliability, accuracy, correctness or completeness of these contents. The Providers shall not be liable for any direct, indirect, general, special, incidental or consequential damages (including -without limitation- data loss, lost revenues and lost profit) which may result from the inability to use or the correct or incorrect use, abuse, or misuse of these contents, even if the Providers have been informed of the possibilities of such damages. The Providers cannot assume any obligation or responsibility.

20.4 The use of these contents is forbidden in those places where the law does not allow this disclaimer to take full effect.

21 Our Rights

We reserve the right to:

21.1. modify or withdraw, temporarily or permanently, the Website (or any part of) with or without notice to you and you confirm that we shall not be liable to you or any third party for any modification to or withdrawal of the Website; and/or

21.2. change these Conditions from time to time, and your continued use of the Website (or any part of) following such change shall be deemed to be your acceptance of such change. It is your responsibility to check regularly to determine whether the Conditions have been changed. If you do not agree to any change to the Conditions then you must immediately stop using the Website.

21.3. We will use our reasonable endeavours to maintain the Website. The Website is subject to change from time to time. You will not be eligible for any compensation because you cannot use any part of the Website or because of a failure, suspension or withdrawal of all or part of the Website due to circumstances beyond our control.

22 Privacy Policy

- 22.1 We are committed to protecting your privacy. This privacy policy applies to all the web pages related to this website.
- 22.2 All the information gathered in the online forms on the website is used to personally identify users that subscribe to this service. The information will not be used for anything other than which is stated in the Terms & Conditions of use for this service. None of the information will be sold or made available to anyone.
- 22.3 The Site may collect certain information about your visit, such as the name of the Internet service provider and the Internet Protocol (IP) address through which you access the Internet; the date and time you access the Site; the pages that you access while at the Site and the Internet address of the Web site from which you linked directly to our site. This information is used to help improve the Site, analyze trends, and administer the Site.
- 22.4 We may need to change this policy from time to time in order to address new issues and reflect changes on our site. We will post those changes here so that you will always know what information we gather, how we might use that information, and whether we will disclose that information to anyone. Please refer back to this policy regularly. If you have any questions or concerns about our privacy policy, please send us an E-mail.
- 22.5 By using this website, you signify your acceptance of our Privacy Policy. If you do not agree to this policy, please do not use our site. Your continued use of the website following the posting of changes to these terms will mean that you accept those changes.

23. Cookie/Tracking Technology

- 23.1 The Site may use cookie and tracking technology depending on the features offered. Cookie and tracking technology are useful for gathering information such as browser type and operating system, tracking the number of visitors to the Site, and understanding how visitors use the Site. Cookies can also help customize the Site for visitors. Personal information cannot be collected via cookies and other tracking technology; however, if you previously provided personally identifiable information, cookies may be tied to such information. Aggregate cookie and tracking information may be shared with third parties.

24. Third Party Links

- 24.1 In an attempt to provide increased value to our Users, we may provide links to other websites or resources. You acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable, directly or indirectly, for the privacy practices or the content (including misrepresentative or defamatory content) of such websites, including (without limitation) any advertising, products or other materials or services on or available from such websites or resources, nor for any damage, loss or offence caused or alleged to be caused by, or in connection with, the use of or reliance on any such content, goods or services available on such external sites or resources.

25. Product availability

- 25.1 Lead time is dependent on stock availability. Should we have stock available, orders will be dispatched the same day provided payment is validated/received before 10:00 hours.
- 25.2 Should the product not be in stock please allow 10 weeks plus freight transit time. This will allow for manufacturing and delivery to our warehouse.
- 25.3 Every effort is made to effect shipment of your order timeously however unforeseen circumstances may cause delays. Should we be faced with such an occurrence Aquaheat Pool Heaters CC will contact you via email and provide a revised shipping schedule.

26. Delivery Policy

- 26.1 When you click to make a purchase with us legal obligations arise and your right to refund of monies charged to your credit card or paid in any other way agreed by us, are limited by our terms & conditions. You must not make any purchase through this site unless you understand and agree all our terms and conditions. Once payment is made for the purchase, it is deemed that you have read and understood the terms and conditions for such purchase. If you have any queries please contact us before making any purchase for any service through this website.

26.2 Shipping

After an order is received, an invoice will be raised upon which payment is made. After payment is received and confirmation is received from the bank that the funds are cleared, we will ship the product to any physical address in South-Africa.

Please ensure the correct shipping address is provided from the outset as title and risk will pass to you once the order has left our premises.

26.3 Undeliverable packages

Occasionally packages are returned to us undeliverable. Should this event take place every attempt will be made to contact you to make arrangements for re-shipment.

26.4 Order processing

Order processing will not begin until we receive a confirmed order and full payment.

27. **Refunds/returns Policy**

Should you for any reason wish to cancel your purchase you will be liable for a 15% handling fee. You must advise us in writing of your cancellation and any such cancellation must be signed by the person who made the original purchase. The goods must be returned to us undamaged in the original format and packaging within 14 calendar days.

* Note: Aquaheat Pool Heaters CC recommends that you use a courier for all returns that offers shipment tracking through a 24 hours customer helpline. Should you choose to use a carrier that does not offer a tracking facility and the goods are lost then no refund or return will be considered. Return shipment costs will be for the customer's account.

28. **Payment Options and Pricing**

All transactions will be processed in South African Rands (ZAR).

Aquaheat Pool Heaters CC endeavours to offer you competitive prices on current products; your total order price will include the price of the purchase plus any applicable sales tax and shipping charges (on the day of shipping).

Aquaheat Pool Heaters CC reserves the right to change pricing at any time without prior notice.

29. **Credit Card**

29.1 We accept MasterCard and Visa credit cards. If you do not have a credit card please utilise one of the other payment options.

30. **EFT (Electronic Fund Transfer)**

30.1 One of the most widely used ways of sending money online. You will have to load Aquaheat Pool Heaters CC as a beneficiary on your internet banking and use the unique order number in the reference line for your payment. This should ensure speedy processing and delivery of your selected products.

Banking Details:

Bank : ABSA Table View
Branch No. : 632 005
Account Name : Aquaheat Pool Heaters CC.
Account No. : 4064231980
Account Type : Cheque

31 Direct Deposit

31.1 You may pay for your products through a direct deposit. It's exactly the same as doing an EFT payment, except you'll have to go into your bank and physically make your direct deposit there. Please fax through your deposit slip to us on (021) 556-4603 to ensure your payment is confirmed and order shipped as quickly as possible.

Banking Details:

Bank : ABSA Table View
Branch No. : 632005
Account Name : Aquaheat Pool Heaters CC.
Account No. : 4064231980
Account Type : Cheque

32. For more information about how to order, special order requirements and other payment options, please contact our Support Team on 0861 50 35 50 or email info@aquahheat.co.za

33. Security Policy

33.1 Virtual Card Services process all credit card transactions. All credit card transactions are 128 bit Secure Socket Layers (SSL) encrypted. The company registration documents and the site's registered domain name are checked and verified by Thawte, ensuring the cardholder and merchant that nobody can impersonate VCS to obtain confidential information.

33.2 Virtual Card Services is committed to providing secure online services. All encryption complies with international standards. Encryption is used to protect the transmission of personal information when completing online transactions. Virtual Card Services Internet servers are protected by firewalls and intrusion detection systems.

33.3 The Merchant does not have access to credit details.

33.4 Virtual Card Services continually reviews and enhances its security in line with technological changes.

34. Monitoring

34.1 We have the right, but not the obligation, to monitor any activity and content associated with the Website. We may investigate any reported violation of these Conditions or complaints and take any action that we deem appropriate (which may include, but is not limited to, issuing warnings, suspending, terminating or attaching conditions to your access and/or removing any materials from the Website).

35. Law

35.1 The Conditions will be exclusively governed by and construed in accordance with the laws of South Africa whose Courts will have exclusive jurisdiction in any dispute, save that we have the right, at our sole discretion, to commence and pursue proceedings in alternative jurisdictions.

36. Updating of these Terms and Conditions

36.1 We reserve the right to change, modify, add to or remove from portions or the whole of these Terms and Conditions from time to time. Changes to these Terms and Conditions will become effective upon such changes being posted to this Website. It is the User's obligation to periodically check these Terms and Conditions at the Website for changes or updates. The User's continued use of this Website following the posting of changes or updates will be considered notice of the User's acceptance to abide by and be bound by these Terms and Conditions, including such changes or updates.

C105 SEA SPRAY MARINE DRIVE
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TEL: 0861 50 35 50
CELL: 082 555 0090
FAX: 021 556 4603
FAX To EMAIL: 0866 313 019
EMAIL: heatpumps@aquahheat.co.za



37. Consent

37.1 I understand that all the designs and trademarks are registered to Aquaheat Pool Heaters CC and hereby accept the terms and conditions. I undertake not to copy/duplicate the trademarks and designs directly or indirectly in anyway and understand the legal implications thereof. Should I be found to be in violation of this agreement I understand that I will be held liable for all legal costs incurred by Aquaheat Pool Heaters CC for any civil action or any legal action deemed necessary against me.

38. Contact Details

Physical address

Aquaheat Pool Heaters
Sea Spray C105
Marine Drive
Table View
7441

Postal address

Aquaheat Pool Heaters
P.O. Box 11028
Bloubergrant
7443

Email address

info@aquahheat.co.za

Phone numbers

0861 50 35 50

Fax numbers

(021) 556 4603

A copy of the ECT Act is available at <http://www.polity.org.za/pol/acts/2002>.