

## Terms and Conditions

### 1. General and Definitions

In these Terms and Conditions:

- 1.1. "Aquaplumb" "we" or "us" refers to AQUA PLUMB - AUCKLAND WIDE LIMITED and includes its managers, directors and staff.
- 1.2. "Client" or "you" refers to the person or entity engaging the services of Aquaplumb or the nominated representative or agent of the person engaging the services of Aquaplumb.
- 1.3. "Vessel" refers to any watercraft or marine vessel owned or operated by the Client which is the subject of this agreement.
- 1.4. "Services" refers to all Aquaplumb services that are provided to the Client, which may include, but are not limited to, supply, installation, maintenance, repair, and consultation related to marine systems.
- 1.5. When you request our services or goods, either in writing or verbally, you agree to be bound by these terms and conditions.
- 1.6. For contracts signed on behalf of the vessel's owner or Companies and other similar enterprises, this Contract and its associated Terms and Conditions must be signed by an individual duly authorized to make such commitments on behalf of that company or owner. If not, they assume all responsibilities and obligations of "The Client" in this agreement.

### 2. Scope of Services

- 2.1. Aquaplumb agrees to provide the Client with marine plumbing and marine-related services under the terms outlined herein.
- 2.2. Aquaplumb and the Client shall agree upon the scope of the Services prior to the commencement of work.
- 2.3. Aquaplumb reserves the right to refuse service if, upon inspection, we determine that the requested services are beyond Aquaplumb's expertise or capability or if the Client fails to comply with any obligations outlined in these Terms and Conditions.
- 2.4. Aquaplumb reserves the right to subcontract the execution of services without requiring your prior written approval.
- 2.5. Aquaplumb will perform the Services with reasonable skill, care, diligence, and professionalism.
- 2.6. If Aquaplumb has provided you with a timeframe for the completion of services unless expressly agreed otherwise in writing, such timeframe is an estimate only. It does not constitute an essential element of the Contract and is not binding on Aquaplumb in any way.

Failure by Aquaplumb to meet any timeframe provided shall not entitle the Client to any compensation.

### **3. Payment and Fees**

- 3.1 Aquaplumb will estimate the time and resources required to deliver the services to you to the best of our ability. However, unless we have agreed in writing to a set price for the services, you will be responsible for paying our actual costs, which will be calculated based on the following:
- a) The hours worked by Aquaplumb service technicians multiplied by the hourly rates applicable on the date(s) when the technicians provided the services.
  - b) Additional expenses and costs Aquaplumb absorbs on your behalf.
  - c) The price of any goods supplied.
- 3.2 Additional costs, such as freight, courier services, travel expenses, and other related expenses incurred in providing services or goods that are not included in the estimated fees or quoted price, shall be the Client's responsibility, payable in addition to the agreed-upon amount.
- 3.3 Whenever feasible, prices for goods shall be provided in writing by Aquaplumb to the Client.
- 3.4 All fees and prices listed are exclusive of Goods and Services Tax (GST) and any other applicable taxes and duties, which shall be the responsibility of the Client and payable in addition to the quoted amount, if appropriate.
- 3.5 At Aquaplumb's discretion, we may request that you make a deposit, which serves as an advance payment for the services, or require a full fee for the services before commencement. This payment shall be due according to the payment terms outlined in our estimate or invoice.
- 3.6 Unless explicitly specified otherwise by Aquaplumb, the Client must remit payment for all services and goods to our designated bank account under the terms specified on our invoice.
- 3.7 The Client must pay all outstanding amounts without any offset or deduction.
- 3.8 Full and Final payment shall be made upon completion of services unless otherwise agreed upon in writing by both parties.
- 3.9 Aquaplumb will consider the Client in default if they do not receive full payment by the due date mentioned on the invoice.
- 3.10 Where the Vessel is registered in a country other than New Zealand and the Client is seeking materials and services to be provided free of GST, the Client is responsible for providing to Aquaplumb customs T.I.E. and documentation before the commencement of any services or ordering and supply of materials. Otherwise, the recovery of GST becomes the Client's sole responsibility.

### **4. Access to Vessel**

- 4.1. The Client grants Aquaplumb irrevocable access to the Vessel to provide the Services and service equipment and retrieve equipment supplied in the case of default of payment.

- 4.2. The Client shall ensure that Aquaplumb has safe and unimpeded access to the Vessel during the agreed-upon service times.
- 4.3. The Client shall provide information relating to key stowage before the commencement of work. Failure to do so or delay meeting a field technician will incur additional charges, applied at Aquaplumb's discretion based on the technician's hourly rate.
- 4.4. If Aquaplumb cannot access the Vessel or the Vessel is deemed unsafe, Aquaplumb reserves the right to leave the Vessel, void the Contract, or reschedule.

## **5. Liability**

- 5.1. Aquaplumb shall not be liable for any damages, losses, or injuries arising from the Client's failure to properly maintain or operate the Vessel following the completion of services, including third parties and other contractors not engaged by Aquaplumb.
- 5.2. The Client acknowledges that marine plumbing work may involve inherent risks and agrees to indemnify and hold harmless Aquaplumb from any claims, liabilities, or expenses arising from such risks.
- 5.3. Except where prohibited by law and as explicitly stated in these Terms, Aquaplumb shall not be held liable for any loss, damage, or liability, including consequential loss, lost profits, or business interruption, suffered by you or any other party. Such loss or damage may arise directly or indirectly from the services rendered or goods supplied by Aquaplumb to you, regardless of whether the cause is contractual, tortious (including negligence), or otherwise.
- 5.4. In situations where the services encompass the examination or scrutiny of a vessel or any tasks involving a product or article harbouring latent defects not discernible at the time of assessment or scrutiny and which were unlikely to have been reasonably detectable during such processes (inclusive of scenarios such as restricted accessibility to vessel components, vessel spaces, or time constraints), Aquaplumb shall bear no responsibility for said defects.
- 5.5. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and various other statutes may impose warranties, conditions, or obligations on Aquaplumb. We disclaim all such imposed warranties, conditions, or obligations only to the extent permissible by law, and we disavow any warranties, conditions, or duties imposed or implied under common law, equity, or any other legal doctrine.
- 5.6. In the case of the Consumer Guarantees Act 1993 - where goods and services supplied by Aquaplumb are for business purposes, and the Client is not a consumer, the guarantees in the Act will be excluded.
- 5.7. While we value the privilege of accessing your vessel and exercising caution while onboard, the owner must ascertain their satisfaction with the vessel's condition and equipment settings upon completing a job.
- 5.8. To enable Aquaplumb to deal with any complaint that may arise relating to the Services, the Client must provide full details of any complaint within five working days of the supply of the relevant services.

- 5.9 Neither Aquaplumb nor the Client shall be liable for any failure to perform its duties under this Contract due to circumstances beyond its control, including without limitation flood, fire or other adverse weather conditions.
- 5.10 Aquaplumb shall not be liable to the Client for any loss, damage, costs, expenses, or other claims arising from incomplete, incorrect, or inaccurate information or instructions provided by the Client, including any relative information withheld, concealed areas on the vessel, or limitations encountered during our servicing, as Aquaplumb's services are provided based on our qualifications and experience, taking into account the information provided by the Client on the Vessel.

## **6 Client's Responsibility for Maintenance**

- 6.1 The Client is solely responsible for carefully reading and adhering to the instructions, maintenance schedules and details in any manuals supplied with equipment installed by Aquaplumb.
- 6.2 The Client is also responsible for ensuring that all equipment and plumbing systems provided or installed by Aquaplumb are regularly and reasonably tested, inspected and maintained.
- 6.3 Where Aquaplumb supplies equipment but a third party installs it, the installation must be done in accordance with any manuals and instructions provided.
- 6.4 Aquaplumb accepts no responsibility or liability for the failure or poor performance of goods that have not been maintained or operated following the manuals and instructions supplied.

## **7 Warranties**

- 7.1 Except for warranties imposed by law and not expressly excluded, we warrant that we will supply goods that comply with the warranties offered by the manufacturer for the specified period.
- 7.2 Subject to any applicable warranties, we retain the sole discretion to repair or replace defective goods or offer a refund. A refund or replacement is contingent upon the following conditions:
- a) The defect not being caused, wholly or partially, by your failure to maintain the goods adequately;
  - b) Your adherence to any user and installation manuals, instructions, or guidelines provided by us or the manufacturer;
  - c) Immediate cessation of use of the goods upon the manifestation of any defect or when such defect should reasonably become apparent to a prudent operator or user;
  - d) The defect not resulting from normal wear and tear, accidents, or acts of nature;
  - e) The goods not having undergone repair, alteration, or overhaul in any manner.
- 7.3 If we perform any services under warranty from a supplier or manufacturer, you acknowledge and agree that our responsibility is limited to repairing or replacing such goods as instructed.

We do not provide warranties for repaired or replaced goods. You must pay our actual costs for such services.

- 7.4 Unless otherwise agreed, if you make a warranty claim, you must arrange to return the Goods to Aquaplumb and bear all associated costs. If you cannot do so, we will invoice you for the actual costs we incur in arranging the return of the Goods.
- 7.5 We provide a warranty only for Services provided by us, other than warranties imposed by law that are not expressly excluded (clause 6). If the services are defective, we will rectify them at the port or place where we originally carried out them at our sole discretion. However, this will be subject to the following conditions:
- (i) The Client must give us notice of the defective Services in writing within 12 calendar months of the completion of the original Services, and
  - (ii) The Client must return the vessel to the port or place where we initially provided the services at their own expense.

## **8.0 Data Protection & Intellectual Property**

- 8.1 Aquaplumb will only use any personal or sensitive information provided by the Client to provide the Services and materials or to inform the Client of the availability of similar services and materials unless the Client agrees otherwise.
- 8.2 The Client can correct any information or ask for information about the Client to be deleted by giving written notice to Aquaplumb via email at the following address: [info@aquaplumb.co.nz](mailto:info@aquaplumb.co.nz)
- 8.3 The copyright, design right and all other intellectual property rights in any materials and other documents or items prepared or produced for the Client, in connection with Services or Goods, shall belong to Aquaplumb, and any such materials, documents, or items shall be or remain the sole property of Aquaplumb.
- 8.4 Aquaplumb shall be permitted to use photographs and videos of the Client's property, demonstrating the goods and services provided by Aquaplumb for marketing purposes.
- 8.5 The Client shall be entitled to use any such materials, documents, or services other than photography, as referred to in paragraph 9.3 in connection with the Services but shall not be entitled to copy and such items or use them for any commercial purpose.

## **9. Personal Property Securities Act 1999 ("PPSA")**

- 9.1. All terms in this clause have the meaning ascribed in the PPSA, and any references to sections shall be to sections of the PPSA.
- 9.2. Your agreement for us to provide the Services establishes a security interest in the Goods we provide you.
- 9.3. You must not give any other security interest or lien over Goods in which we hold a security interest.

- 9.4. Upon our request, you are obliged to expeditiously sign any pertinent documents and undertake any other necessary actions as required by us to ensure that our security interest attains the status of a first-ranking perfected security interest in the Goods.
- 9.5. Aquaplumb reserves the right to access any vessel, premises, installation, or transport (as applicable) to retrieve Goods in which we hold a security interest as outlined in clause 4.1 of this Contract.
- 9.6. If Goods in which we maintain a security interest are processed, incorporated, or otherwise dealt with in any manner, resulting in their transformation into accessions, processed, or commingled goods, our security interest shall persist in the entirety of the resultant whole. You are prohibited from granting any additional security interest or lien, whether in the Goods themselves or the resulting whole.
- 9.7. You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 9.8. You now relinquish your entitlement to receive a copy of any verification statement (as defined in the PPSA).
- 9.9. You must provide us with advance written notification of any intended alteration to your name or address.

## **10 Default and Consequences of Default**

- 10.1. In the event of client default, Aquaplumb may, while the default remains unremedied, and without limitation to other remedies:
  - (a) suspend or terminate this Agreement;
  - (b) enforce any security interest we hold;
  - (c) appoint a receiver in respect to any Goods. Any receiver we appoint is authorized to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law. We will not be liable to the Client for any loss or damage the Client suffers due to our exercise of our rights under this clause;
  - (d) sell or otherwise dispose of the vessel and use the proceeds to meet the settlement amount owing and shall pay to the client the balance after deduction of all amounts owing; or
  - (e) Enter the vessel by any means necessary, without being responsible for any damage to remove any equipment installed by us if any invoice remains unpaid for 21 days.
- 10.2. All debt collection costs (including legal fees on a solicitor client basis) for all recovery or attempted recovery costs incurred by Aquaplumb will be payable by the Client.
- 10.3. Aquaplumb reserves the right to charge interest of 6% per annum against the total balance outstanding and an administration fee of \$50 per month for the duration of the default.
- 10.4. In the event of a default, the Client grants Aquaplumb a registered security interest (as described in the PPSA) in the Vessel.

10.5 If the Client is a Company or a Trust, all of the Directors of the company of all of the Trustees of the Trust hereby agree that they will enter into a deed in which they personally guarantee all costs by the Client in relation to the Services.

**11. Force Majeure**

11.1. If Aquaplumb by reason of any matter beyond its control including, without limitation, any COVID-19 related health order restriction, act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations is unable to perform in whole or in part under these terms and conditions to the extent and for the period that it is not reasonably able to perform and Aquaplumb shall not in any way be liable to the Client in respect to such inability.

**12. Governing Law**

12.1. These Terms and Conditions shall be governed by and construed by the laws of New Zealand.

**13. Entire Agreement**

13.1. These Terms and Conditions constitute the entire agreement between Aquaplumb and the Client and supersede all prior agreements and understandings, whether oral or written, relating to the subject matter herein.