

Terms and Conditions of trade – Aquaplus CWB 2012 LTD custom branded bottled water by Aquaplus CWB 2012 Ltd)

1 GENERAL

1.1 Definitions

- 1.1.1 "The Company" shall mean AQUAPLUS CWB 2012 LTD and its successors and assigns.
1.1.2 "Customer" shall mean The Customer or any person or agent or third party acting on behalf of and with the authority of The Customer, including any guarantors, personal or otherwise.
1.1.3 "Goods" and "Products" shall mean goods supplied by The Company to The Customer (and where the context so permits shall include any supply of services as hereinafter defined).
1.1.4 "Services" shall mean all services or product supplied by The Company to The Customer and includes any advice or recommendations (and where the context permits shall include any supply of Goods as defined supra).
1.1.5 "Price" shall mean the cost of goods as agreed between The Company and The Customer subject to clause 2 of this contract.

1.2. Sale of all Products subject to Terms and Conditions

All the Products sold by The Company are sold subject to the following terms and conditions. The terms and conditions apply to every sale unless expressly varied by The Company at its sole discretion.

1.3. Terms and Conditions

These terms and conditions shall prevail over any other document purporting to have a contractual effect

2. PRICE

2.1. Currency

The prices of products are displayed in New Zealand currency (NZD) and are exclusive of GST.

2.2. The Company may vary prices unless otherwise agreed to in separate supply agreement

The Company may vary the prices of the products at any time without notice except when an existing order has been confirmed by both The Customer and The Company. This shall not apply if The Customer and The Company have entered into a formal supply agreement which states the price and any price change variable.

2.3. The Company may set credit limits

The Company may from time to time set credit limits for individual customers and/or require a deposit.

2.4 Quotations (Booking Confirmations)

2.4.1 All quotations are deemed to be estimations only and are subject to final approval by The Company and are only valid for a period of 30 days unless stated otherwise.

3. PRODUCT RANGE AND AVAILABILITY

3.1. Product availability

- a. Every effort will be made to fulfil orders placed with The Company, but The Company shall not be liable to any person or entity if The Company declines to supply product(s) for any reason whatsoever, except to refund any payments made against said orders.
b. The Company reserves the right to determine the specials that are available.
c. Specials are subject to availability while stocks last.
d. The Company may delay dispatch of a bulk order due to stock availability or for non payment where applicable.
e. The Company may dispatch partial orders, with prior written notice.

3.2. Product range

The Company reserves the right to limit the range of products available to certain geographical areas.

4. PAYMENT

4.1. Payment Options

- a. Payment with order: Payment is received and processed by The Company with the order of the products from The Customer)
b. Credit terms: As arranged and approved by The Company at its sole discretion.

4.2. Payment method

- a. Cheque: Meaning personal cheque or bank cheque.
b. Direct credit: Meaning payment is made directly into the indicated bank account of The Company.

4.3. Payment Policy

The Company reserves the right to choose the payment option and method that The Customer shall undertake.

4.4. Identification security

The Company may refuse an order if The Customer is unwilling or unable to supply suitable personal identification. The company reserves the right to refuse any order at its sole discretion without reason.

4.5. Due date for payment

If credit account payment terms have agreed to and granted, The Customer is required to settle all payments in full by midnight on the due date indicated on the invoice. In the event that the due date should fall on a weekend or public holiday then the previous business day will become the due date for payment.

4.6. Default of payment and remedy

- A. If The Customer is in default of payments then The Company may demand immediate full payment without notice and/or (at The Companies discretion) immediate return of the goods at The Customer's expense.
B. A late payment penalty fee of 10% or \$200 (whichever is lowest) shall be automatically added to any outstanding/overdue payments on a Customers account upon the account becoming overdue. This fee shall apply unless an alternative due date has been granted by The Company to The Customer at The Companies sole discretion.
C. All overdue accounts shall bear interest at the rate of 2.5% per month, starting from 30 days after the account becomes overdue month of the account being overdue, calculated on a daily basis, until the time of actual payment but without prejudice to The Company's other rights and remedies in respect of Customers default in failing to make full payment on the due date.
D. The Customer will upon demand pay to The Company any and all moneys (including but not limited to solicitor costs, Court costs, collection agencies costs, additional administration expenses, private investigators costs and disbursements) incurred by The Company in recovering payment of any overdue amount.

E. Payments by The Customer shall be applied first in the reduction of interest, penalty fee, liquidated damages and costs due pursuant to 4.6 A, B, C and D. The balance then being in reduction of any amounts due as original payment.

5. DELIVERY

5.1. Right to withhold delivery

The Company reserves the right to withhold delivery of the Products to The Customer for the non payment of invoices by The Customer to The Company on a timely basis.

5.2. Best endeavours

The Company shall use reasonable endeavours to deliver the Products to the delivery address (specified by the Customer on the order form or by email on a timely basis.

5.3. Change of Address

The Customer is to notify The Company immediately of a change to its delivery address and The Company shall not be liable in anyway for deliveries made to addresses supplied by The Customer that are incorrect or out of date.

5.4. Delays to delivery

The Company shall not be liable for failure to deliver on a timely basis whether the delay has been due to causes beyond the control of The Company or otherwise. Where delays to the delivery have occurred, The Customer is still bound by the payment terms in clause 4 of these terms. The Company will inform The Customer of these delays.

5.5. Delivery deemed to have taken place

If The Customer refuses to take delivery of the Products, the Products may be left at the delivery address and be deemed delivered at that point in time. If the product is attempted delivery and refused by The Customer, and The Company has not left it at the point of delivery, The Product is still deemed to be delivered.

5.6 Delivery date and timeframe

All delivery dates indicated by The Company either in writing, by email, or verbally are deemed to be approximates only. The Company takes no responsibility or liability whatsoever in relation to any delivery date unless explicitly stated in writing by The Company.

5.7 Delivery Freight Charges

The Company will endeavour to provide The Customer with an accurate freight cost but where additional freight charges have been charged to The Company by the assigned freight carrier for the freighting of The Customers ordered products, for whatever reason, The Customer agrees to pay these in full in accordance with clause 4 of this agreement.

5.8 Critical time and location specific deliveries
Where The Customer has requested a critical time or location specific delivery at the time of ordering, The Company will use its best endeavours to try and satisfy that request, however, no guarantees or warranties are given, implied or entered into as a result.

5.7 Special Delivery Instructions

The Customer shall notify The Company of any special delivery instructions at the time of ordering.

5.8 Receiving Damaged Goods

The Customer shall be responsible for identifying freight damaged goods prior to accepting The Product. Failure to do so, may result in any warranties being void.

6. PLACEMENT/VARIATION/CANCELLATION OF ORDER

6.1 Placement of order

The Customer is deemed to have placed an order through either returning a completed order form/booking confirmation, through submitting an online order through The Companies website(s) or by phoning or emailing The Company.

6.2 Variation of order

Once the order has been placed and design elements have been approved by The Customer, any changes/variations to the order will only be permitted at The Company's sole discretion. Additional charges for changes/variations may be added to the total amount payable by The Customer. The Customer will be notified of these additional charges before they are applied. If The Customer wishes to cancel the order due to not wanting to pay the additional charges then section 6.3 (below) applies.

6.3 Cancellation of order

If The Customer wishes to cancel the order at any stage, The Customer will be liable to pay for any and all costs (Including the apportioned profit margin of The Company) incurred up until the cancellation notice has been given in accordance with clause 4 of this agreement. All cancellations must be made in writing to The Company.

7. TITLE IN GOODS AND PROPERTY/RISK

7.1 Title in Goods

The ownership and title to the goods(product) supplied shall pass to The Customer when full payment shall have been received by The Company for those products, and for any other products already supplied by The Company to The Customer.

7.2. Product(s) risk

Any and all risk in the Products shall pass to The Customer upon delivery to The Customer's delivery address.

8. VARIATION IN ACTUAL QUANTITY SUPPLIED

8.1 Every effort shall be made by The Company to deliver the quantity specified in the final order. All quotations and orders however, are conditional upon a margin of 10% being supplied either over or under the quantity specified. Unless otherwise agreed in writing (including email) this margin shall be charged or deducted respectively on a pro rata basis.

9. WARRANTIES AND REFUNDS

9.1 Due to the nature of the product, requests for refunds will not be accepted unless covered by applicable consumer legislation or the warranties in clause 9.2, 9.3.

9.2 Suitability for purpose

Except as provided in the Consumer Guarantees Act 1993, all warranties, descriptions, representations or advice given as to the fitness or suitability for any purpose, tolerance to any conditions, similarity to sample, merchantability or otherwise, are expressly excluded. No agent or representative of The Company is authorized to make any warranties, representations or unauthorized warranties, representations or statements. The Customer shall ensure that the Products are not used for any purpose for which they are not suitable and shall be responsible for using all necessary skill and care in handling and using the products. The Customer expressly

acknowledges and agrees that The Company assumes no obligation or liability for any advice given and all such Products are accepted by The Customer entirely at The Customers risk.

9.3 Warranty of product

- Warranty period – 14 days from delivery only.
- Warranty conditions – must be returned at The Customers expense within the warranty period
- must be accompanied a written description of the fault or warranty claim
- Only credit is offered for faulty products (not the entire batch, order or subsequent deliveries)

Warranties are only offered on the following.

9.3.1. Water quality: There must be significant scientific laboratory evidence that the quality of the water is poor. It shall be the responsibility of The Customer to arrange for this testing and The Company reserves the right to undertake testing of the products itself.

9.3.2. Plastic defects: Damaged or significantly irregular shaped bottles or caps that impede the function or storage capabilities of the product.

9.4 Warranties are only offered upon proof that The Customer has stored and looked after the product correctly. E.g. Stored in cool, dry conditions.

9.5 Warranties on delivery timeframes

No warranties are offered on any delivery dates or timeframes and the company accepts no liability thereof.

10. LIABILITY

10.1. Product liability

The liability of The Company whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of the Product or any other breach of The Companies obligations hereunder shall not in any event exceed an amount equivalent to the price of the product.

10.2. No liability for indirect loss

The Company shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever and nor shall The Company be liable for any damage or loss caused by The Customers servants, agents, buyers or other persons whatsoever.

10.3 No Liability for breach of copyright

The Company shall not be liable for any claims and/or expenses arising out of any illegal or libellous matter or breach of statute or infringement of copyright or any other intellectual property right contained on any materials that The Customer has instructed or requested The Company to produce or use.

11. INTELLECTUAL PROPERTY

11.1 All right, title and interest in all Intellectual Property in all concepts, systems, written, graphic and other material relating to The Company shall at all times remain the property of The Company.

11.2 The Customer irrevocably consents to allow The Company the right to use any complete label artwork design for any purpose for which they see fit.

11.3 In the event that The Company has surplus product which includes the intellectual property of The Customer. The Company shall be entitled to do whatever they see fit with this product, including but not limited to selling, disposing of, giving away or otherwise.. This particularly, but not exclusively, applies in the case where damaged product has been returned or withheld.

12. FORCE MAJEURE

If the performance by The Company of its obligations under The Company is prevented by reason of "force majeure" (which shall include prevention occasioned by fire, casualty, accident, act of God, natural disaster, any law, order, proclamation, regulation, demand or requirement of any government or government agency, strikes, labour disputes, shortage of labour or lack of skilled labour, shortage or unavailability of products or raw materials, delay in transit, electricity or communications failures, or other causes whatsoever (whether similar to the foregoing or not) beyond the reasonable control of The Company) The Company shall be excused from such performance to the extent of such prevention.

13. PRIVACY ACT

13.1. Collection of information

The Customer and the Guarantor/s (if separate to The Company) authorizes The Company to collect, retain and use any information about The Customer, for the purpose of assessing The Customers creditworthiness or marketing any Goods and Services provided by The Company to any other party.

13. 2 The Customer authorizes The Company to disclose any information obtained to any person for the purposes set out in clause 13 to any third party. Where The Customer is a natural person they authorise the disclosure of such information for the use with other authorities and therefore provide consent for the purposes of the Privacy Act 1993.

13.3. Collection from other sources

The Customer further authorises The Company the right to collect personal information about The Customer from The Customer or any other source available to The Company including but not limited to credit referral agencies, The Customers bank (present and past), any other suppliers of products and services to The Customer and other persons or companies with whom The Customer will have been associated.

13.4. Disclosure

The Customer authorises The Company to disclose all or any part of any personal information provided by The Customer to credit referral/collection agencies.

13.5. Customer rights

The Customer is aware of his/her rights under the Privacy Act 1993 to have access to personal information held by The Company and to request correction to the information and to be informed of action to take in response to any such request and/or to request that there be attached to the information a statement which The Customer can supply to The Company relating to the fact that The Customer has requested a correction.

14. CONSUMER GUARANTEES ACT

The Customer acknowledges that where the Products are ordered for business purposes (as that term is defined in the Consumer Guarantees Act 1993) ("CGA") the provisions of the CGA shall not apply to the sake of the Products by The Company.

15. PERSONAL PROPERTIES SECURITIES ACT 1999 (PPSA)

15.1 Upon assenting to these terms and conditions in writing The Customer acknowledges and agrees that:

- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) A security interest is taken in all Products previously supplied by The Company to The Customer (if any) and all goods that will be supplied or provided by The Company to The Customer during the continuance of the parties relationship.

15.2 The Customer undertakes to:

- (a) Sign any further documents and/or provide any further information, such information to be complete, accurate and up-to date in all respects, which The Company may reasonably require to register a financial change statement on the Personal Securities Register.
- (b) Indemnify, and upon demand reimburse, The Company for all expenses incurred in registering a financial statement or financing charge statement on the Personal Property Securities Register or releasing any Products thereby charged thereby.
- (c) Not register a financing change statement or a change demand within prior written consent of The Company.
- (d) Give The Company not less than (14) days prior written notice of any proposed change in The Customers name and/or any change The Customers details (including but not limited to, changes in The Customers, address Fax number or business practice); and
- (e) Immediately advise The Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- (f) The Company and The Customer agree that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- (g) The Customer waives its rights as a debtor under sections 116, 120(2), 125, 126, 127, 129, 131 and 132 of the PPSA.

15.3 Unless otherwise agreed to in writing by The Company, The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

16. CANCELLATION BY THE COMPANY

16.1 The Company may cancel these terms and conditions or cancel delivery of Products at any time before the Products are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation

17. LEGAL NOTICES.

Every effort is made by The Company to ensure the information shown within the website(s) and any and all other promotional and communications material including emails, flyers, mail outs, is accurate and authoritative in regard to the subject matter covered. The Company accepts no liability whatsoever where this is not the case.

18 LINKS

The links connecting the companies website to other sites are for convenience only and do not imply that The Company endorses or approves those other sites, their content or the people who maintain them.

19. PRINT QUALITY, COLOUR MATCHING, LABEL DESIGN, LABEL PROPERTIES

19.1 The Company has no liability and offers no warranties whatsoever for the graphical design of the product labels and for the final print quality and colours of the products supplied by The Company to The Customer unless a printed proof is requested in writing, at The Customers expense, in which case a 15% variation in both design and print quality (including colour matching) of that proof and the final product is deemed to be acceptable by The Customer.

20. AGREEMENT TO THESE TERMS AND CONDITONS

The terms and conditions of sale as detailed above can be legally approved and accepted by The Customer in either of the following ways.

- a. By forwarding a copy of them to The Company by email.
- b. By signing and mailing/faxing a copy to The Company address.
- c. By replying or sending an email to The Company stating that they have been accepted.
- d. By accepting a booking confirmation and/or placing an order either in print or electronically.

21. SURVIVAL

If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22. ALTERATIONS TO THESE TERMS

22.1. Only The Company is permitted to make alterations to these terms and conditions.

22.2 The Company reserves the right to review these terms and conditions at any time and from time to time. If following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which The Customer places an order with the Company.

23. GUARANTEE/GUARANTORS

23.1 Where a customer has been trading for a period of three years or less, The Company reserves the right to request a director or directors or authorized agent of The Customer to provide The Company with a guarantee, personal or otherwise, as seen fit by The Company.

23.2 The Company reserves the right to request a director or directors or authorized agent of The Customer to provide The Company with a guarantee, personal or otherwise, as seen fit by The Company.

23.3 The Company reserves the right, at their sole discretion, to waive their rights to request such a guarantee as detailed in 23.1 and 23.2 above.

24. Exclusive rights to supply

If The Company and The Customer have entered into a preferred suppliers agreement then these terms and conditions shall apply to such agreement.