

AquaMarine Repair Services – Terms & Conditions of Trade

1. Definitions		
1.1 "AquaMarine Repair Services" means AquaMarine Repair Services Trust T/A AquaMarine Repair Services PTY LTD, its successors and assigns or any person acting on behalf of and with the authority of AquaMarine Repair Services Trust T/A AquaMarine Repair Services PTY LTD.	(b) by way of instalments/progress payments in accordance with AquaMarine Repair Services payment schedule;	Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
1.2 "Customer" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;	In the event that Goods are returned to, or held by AquaMarine Repair Services (for repair or otherwise), AquaMarine Repair Services undertakes to maintain a reasonable duty of care towards the Goods but risk (including, but not limited to, insurance risk) in the Goods remains with the Customer notwithstanding that property in the Goods may remain with AquaMarine Repair Services under clause 10. Under no circumstances shall the liability of AquaMarine Repair Services, for Goods held by AquaMarine Repair Services, exceed the fair market of the Goods.
1.3 "Goods" means all Goods or Services supplied by AquaMarine Repair Services to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	(d) the date specified on any invoice or other form as being the date for payment; or	7.4 The Customer acknowledges that AquaMarine Repair Services is only responsible for parts that are replaced by AquaMarine Repair Services and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify AquaMarine Repair Services against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising, where AquaMarine Repair Services are required to tow a Vessel, either on water or road, at any time, AquaMarine Repair Services shall not be liable for (and the Customer indemnifies AquaMarine Repair Services against) any damages that may arise during towing unless it arises from the recklessness or willful misconduct of AquaMarine Repair Services or his employees.
1.4 "Equipment" means all Equipment including any accessories supplied on hire by AquaMarine Repair Services to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by AquaMarine Repair Services to the Customer.	(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AquaMarine Repair Services.	7.5 The Customer acknowledges and accepts that the design, position, orientation and size of certain tanks may create a restriction to the capabilities of AquaMarine Repair Services to successfully clean the tank, particularly on tanks with flat floors, baffles and limited access. Some contamination may be impossible to remove.
1.5 "Vessel" shall mean the boat/marine craft described in any documentation supplied by AquaMarine Repair Services to the Customer.	4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and AquaMarine Repair Services.	7.6 The Customer acknowledges and accepts that no warranty is expressed or given where additives have been used in fuel tanks prior to AquaMarine Repair Services carrying out cleaning Services.
1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between AquaMarine Repair Services and the Customer in accordance with clause 4 below.	4.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AquaMarine Repair Services nor to withhold payment of any invoice because part of that invoice is in dispute.	7.7 AquaMarine Repair Services shall not be responsible for rust deposits on water jackets or any damages arising from the same.
1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".	4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to AquaMarine Repair Services an amount equal to any GST AquaMarine Repair Services must pay for any supply by AquaMarine Repair Services under this or any other agreement for the sale of the Goods/ Hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	7.8 The Customer acknowledges and accepts that the design, position, orientation and size of certain tanks may create a restriction to the capabilities of AquaMarine Repair Services to successfully clean the tank, particularly on tanks with flat floors, baffles and limited access. Some contamination may be impossible to remove.
2. Acceptance	5. On-Line Ordering	8. Customer's Responsibilities
2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.	The Customer acknowledges and agrees that:	8.1 It is the Customer's responsibility to:
2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AquaMarine Repair Services.	(a) AquaMarine Repair Services does not guarantee the website's performance; display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by AquaMarine Repair Services	(a) advise the precise location of all known noxious gases, biohazard, other hazardous or toxic waste that is present to AquaMarine Repair Services prior to commencement of the Services on the site and clearly mark the same. AquaMarine Repair Services shall reserve the right to charge for any associated costs incurred in working with or disposal of such noxious gases, biohazard, other hazardous or toxic waste, with all charges being a variation as per clause 4.2;
2.3 None of AquaMarine Repair Services agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of AquaMarine Repair Services in writing, nor is AquaMarine Repair Services bound by any such unauthorised statements.	(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;	(b) follow all procedural requirements where necessary in relation to the substances mentioned in clause 8.1(a);
2.4 The Customer acknowledges and accepts that where the Customer requests a pre-purchase inspection of a Vessel that this Service is only a visual inspection and does not include the internal condition or mechanical soundness of the Vessel, and that Aqua Marine Services shall carry out such Service based on AquaMarine Repair Services knowledge and experience of the marine industry. Where the Customer subsequently purchases said Vessel, the Customer shall not hold AquaMarine Repair Services liable for any damages, losses or additional expense due to unforeseen hidden or unidentifiable difficulties found after the purchase, as being beyond AquaMarine Repair Services inspection parameters.	(d) there are inherent hazards in electronic distribution, and as such AquaMarine Repair Services cannot warrant against delays or errors in transmitting data between the Customer and AquaMarine Repair Services including orders, and you agree that to the maximum extent permitted by law, AquaMarine Repair Services will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;	(c) provide AquaMarine Repair Services with a free water source where required for washing and/or for carrying out decontamination processes; and
2.5 In the event that the Goods and/or Services provided by AquaMarine Repair Services are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by AquaMarine Repair Services and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.	(e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;	(d) remove all equipment and personal effects on-board or attached to the Vessel. All care taken but the Customer shall not hold AquaMarine Repair Services liable for any loss or damage of the same unless due to the negligence of AquaMarine Repair Services or its employees.
2.6 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, AquaMarine Repair Services reserves the right to vary the Price with alternative Goods as per clause 4.2, subject to prior confirmation and agreement of both parties. AquaMarine Repair Services also reserves the right to halt all Services until such time as AquaMarine Repair Services and the Customer agree to such changes. AquaMarine Repair Services shall not be liable to the Customer for any loss or damage the Customer suffers due to AquaMarine Repair Services exercising its rights under this clause.	(f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, AquaMarine Repair Services shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.	8.2 The Customer and/or AquaMarine Repair Services shall report any pollution incidents immediately to the proper authorities as per any applicable statutory or regulatory requirements to the appropriate body.
2.7 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on AquaMarine Repair Services website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.	5.2 AquaMarine Repair Services reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of AquaMarine Repair Services business, or violated these terms and conditions.	8.3 Where applicable, AquaMarine Repair Services shall provide a copy of any pollution incident response management plans that may be required and/or evidence of the appropriate licences or insurance held by AquaMarine Repair Services.
2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.	6. Delivery of Goods/Equipment	8.4 The Customer warrants that all information pertaining to the Vessel is true and accurate to the best of the Customer's knowledge, information and belief.
3. Change in Control	6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:	8.5 AquaMarine Repair Services shall be entitled to rely on the accuracy of the disclosed information provided to AquaMarine Repair Services in relation to the Vessel's condition, title, history, construction, surface treatments, and the use of the Vessel.
3.1 The Customer shall give AquaMarine Repair Services not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by AquaMarine Repair Services as a result of the Customer's failure to comply with this clause.	(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at AquaMarine Repair Services address; or	8.6 The Customer acknowledges that it is their sole responsibility to ensure the Vessel is insured adequately or at all.
4. Price and Payment	(b) AquaMarine Repair Services (or AquaMarine Repair Services nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.	9. Compliance with Laws
4.1 The Price shall be AquaMarine Repair Services estimated Price (subject to clause 4.2). The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Customer approval before proceeding with the Services.	6.2 At AquaMarine Repair Services sole discretion the cost of delivery is in addition to the Price.	9.1 The Customer and AquaMarine Repair Services shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
4.2 AquaMarine Repair Services reserves the right to change the Price;	6.3 Where the Customer has made an order using AquaMarine Repair Services website the cost of delivery will be in addition to the Price and shall be calculated as per their third party freight suppliers current charges (which are subject to size, weight and location), a link to their website will be displayed on AquaMarine Repair Services website. In accordance with clause 5, AquaMarine Repair Services cannot guarantee the performance of their third party freight supplier's website.	9.2 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to the Services and any other relevant safety standards or legislation.
(a) if a variation to the Goods which are to be supplied is requested;	6.4 The Customer acknowledges and accepts that Goods ordered will only be delivered to a physical address and where only a PO Box address is given that AquaMarine Repair Services reserve the right to refuse delivery, if all such cases the Customer will be notified to arrange alternate delivery of the Goods.	10. Title To Goods
(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested;	6.5 If delivery is delayed as a consequence of the Customer's instructions, or lack thereof, then AquaMarine Repair Services may after two (2) days execute their right to store all such Goods and/or the Vessel for the Customer and the Customer shall be liable to pay for all storage costs charged or incurred by AquaMarine Repair Services and in the event that the Goods and/or the Vessel are stored elsewhere, all cartage costs incurred by AquaMarine Repair Services.	10.1 AquaMarine Repair Services and the Customer agree that ownership of the Goods shall not pass until:
(c) if during the course of the Services, the Goods cease to be available from AquaMarine Repair Services third party supplier, then AquaMarine Repair Services reserves the right to provide alternative Goods; or	6.6 Notwithstanding clause 6.5, failure to take delivery of the Goods and/or Vessel after a period of one (1) month will result in AquaMarine Repair Services enforcing their rights to execute the sale of the Goods pursuant to clause 18.	(a) the Customer has paid AquaMarine Repair Services all amounts owing to AquaMarine Repair Services; and
(d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to the pre-existing condition of the tank, type of contamination particulates, limitations to accessibility to the tank or other obstructions, hazardous gases are present, or damages discovered to the interior of fuel tanks, fuel lines, injections pumps and/or filters, etc.) beyond the control of AquaMarine Repair Services; or	6.7 AquaMarine Repair Services may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	(b) the Customer has met all of its other obligations to AquaMarine Repair Services.
(e) in the event of increases to AquaMarine Repair Services in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond AquaMarine Repair Services control.	6.8 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:	10.2 Receipt by AquaMarine Repair Services of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
4.3 Variations will be charged for on the basis of AquaMarine Repair Services estimate, and will be detailed in writing, and shown as variations on AquaMarine Repair Services invoice. The Customer shall be required to respond to any variation submitted by AquaMarine Repair Services within ten (10) working days. Failure to do so will entitle AquaMarine Repair Services to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	(a) such discrepancy in quantity shall not exceed 5%, and	10.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 10.1:
4.4 At AquaMarine Repair Services sole discretion a non-refundable deposit may be required.	(b) the Price shall be adjusted pro rata to the discrepancy.	(a) the Customer is only a bailee of the Goods and must return the Goods to AquaMarine Repair Services on request.
4.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by AquaMarine Repair Services, which may be:	6.9 Any time specified by AquaMarine Repair Services for delivery of the Goods/Equipment is an estimate only and AquaMarine Repair Services will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that AquaMarine Repair Services is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then AquaMarine Repair Services shall be entitled to charge a reasonable fee for redelivery and/or storage.	(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AquaMarine Repair Services and must pay to AquaMarine Repair Services the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(a) on delivery of the Goods/Equipment;	7. Risk	(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for AquaMarine Repair Services and must pay or deliver the proceeds to AquaMarine Repair Services on demand.
	7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.	(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of AquaMarine Repair Services and must sell, dispose of or return the resulting product to AquaMarine Repair Services as it so directs.
	7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, AquaMarine Repair Services is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AquaMarine Repair Services is sufficient evidence of AquaMarine Repair Services rights to receive the insurance proceeds without the need for any person dealing with AquaMarine Repair Services to make further enquiries.	(e) the Customer irrevocably authorises AquaMarine Repair Services to enter any premises where AquaMarine Repair Services believes the Goods are kept and recover possession of the Goods.
	7.3 If the Customer requests AquaMarine Repair Services to leave Goods outside AquaMarine Repair Services premises for collection or to deliver the	(f) AquaMarine Repair Services may recover possession of any Goods in transit whether or not delivery has occurred.
		(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AquaMarine Repair Services.
		(h) AquaMarine Repair Services may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
		11. Personal Property Securities Act 2009 ("PPSA")
		11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

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- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Customer to AquaMarine Repair Services for Services – that have previously been supplied and that will be supplied in the future by AquaMarine Repair Services to the Customer.
- 11.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AquaMarine Repair Services may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 11.2(a)(i) or 11.2(a)(ii);
 - indemnify, and upon demand reimburse, AquaMarine Repair Services for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of AquaMarine Repair Services;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of AquaMarine Repair Services;
 - immediately advise AquaMarine Repair Services of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 AquaMarine Repair Services and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by AquaMarine Repair Services, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by AquaMarine Repair Services under clauses 11.2 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12. Security and Charge**
- 12.1 In consideration of AquaMarine Repair Services agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies AquaMarine Repair Services from and against all AquaMarine Repair Services costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AquaMarine Repair Services rights under this clause.
- 12.3 The Customer irrevocably appoints AquaMarine Repair Services and each director of AquaMarine Repair Services as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
- 13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 13.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify AquaMarine Repair Services in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow AquaMarine Repair Services to inspect the Goods/Equipment.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 13.3 AquaMarine Repair Services acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AquaMarine Repair Services makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. AquaMarine Repair Services liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, AquaMarine Repair Services liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If AquaMarine Repair Services is required to replace the Goods under this clause or the CCA, but is unable to do so, AquaMarine Repair Services may refund any money the Customer has paid for the Goods.
- 13.7 If the Customer is not a consumer within the meaning of the CCA, AquaMarine Repair Services liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Customer by AquaMarine Repair Services at AquaMarine Repair Services sole discretion;
 - limited to any warranty to which AquaMarine Repair Services is entitled, if AquaMarine Repair Services did not manufacture the Goods;
 - otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 13.1; and
 - AquaMarine Repair Services has agreed that the Goods are defective; and the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, AquaMarine Repair Services shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store any Goods/Equipment;
 - the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
 - the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Customer failing to follow any instructions or guidelines provided by AquaMarine Repair Services;
 - fair wear and tear, any accident, or act of God.
- 13.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by AquaMarine Repair Services as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that AquaMarine Repair Services has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.10.
- 13.11 AquaMarine Repair Services may in its absolute discretion accept non-defective Goods for return in which case AquaMarine Repair Services may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 13.12 Notwithstanding anything contained in this clause if AquaMarine Repair Services is required by a law to accept a return then AquaMarine Repair Services will only accept a return on the conditions imposed by that law.
- 14. Intellectual Property**
- 14.1 Where AquaMarine Repair Services has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of AquaMarine Repair Services. Under no circumstances may such designs, drawings and documents be used without the express written approval of AquaMarine Repair Services.
- 14.2 The Customer warrants that all designs, specifications or instructions given to AquaMarine Repair Services will not cause AquaMarine Repair Services to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify AquaMarine Repair Services against any action taken by a third party against AquaMarine Repair Services in respect of any such infringement.
- 14.3 The Customer agrees that AquaMarine Repair Services may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which AquaMarine Repair Services has created for the Customer.
- 15. Default and Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AquaMarine Repair Services sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes AquaMarine Repair Services any money the Customer shall indemnify AquaMarine Repair Services from and against all costs and disbursements incurred by AquaMarine Repair Services in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AquaMarine Repair Services contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies AquaMarine Repair Services may have under this contract, if a Customer has made payment to AquaMarine Repair Services, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by AquaMarine Repair Services under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 15.4 Without prejudice to AquaMarine Repair Services other remedies at law AquaMarine Repair Services shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AquaMarine Repair Services shall, whether or not due for payment, become immediately payable if:
- any money payable to AquaMarine Repair Services becomes overdue, or in AquaMarine Repair Services opinion the Customer will be unable to make a payment when it falls due;
 - the Customer has exceeded any applicable credit limit provided by AquaMarine Repair Services;
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 16. Cancellation**
- 16.1 Without prejudice to any other remedies AquaMarine Repair Services may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions AquaMarine Repair Services may suspend or terminate the supply of Goods/Equipment to the Customer. AquaMarine Repair Services will not be liable to the Customer for any loss or damage the Customer suffers because AquaMarine Repair Services has exercised its rights under this clause.
- 16.2 AquaMarine Repair Services may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice AquaMarine Repair Services shall repay to the Customer any money paid by the Customer for the Goods/Equipment. AquaMarine Repair Services shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AquaMarine Repair Services as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 17. Privacy Act 1988**
- 17.1 The Customer agrees for AquaMarine Repair Services to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by AquaMarine Repair Services.
- 17.2 The Customer agrees that AquaMarine Repair Services may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 17.3 The Customer consents to AquaMarine Repair Services being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Customer agrees that personal credit information provided may be used and retained by AquaMarine Repair Services for the following purposes (and for other agreed purposes or required by):
- the provision of Goods/Equipment; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 17.5 AquaMarine Repair Services may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 17.6 The information given to the CRB may include:
- personal information as outlined in 17.1 above;
 - name of the credit provider and that AquaMarine Repair Services is a current credit provider to the Customer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and AquaMarine Repair Services has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of AquaMarine Repair Services, the Customer has committed a serious credit infringement;
 - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Customer shall have the right to request (by e-mail) from AquaMarine Repair Services:
- a copy of the information about the Customer retained by AquaMarine Repair Services and the right to request that AquaMarine Repair Services correct any incorrect information; and
 - that AquaMarine Repair Services does not disclose any personal information about the Customer for the purpose of direct marketing.
- 17.8 AquaMarine Repair Services will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Customer can make a privacy complaint by contacting AquaMarine Repair Services via e-mail. AquaMarine Repair Services will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Unpaid Seller's Rights**
- 18.1 Where the Customer has left any item with AquaMarine Repair Services for repair, modification, exchange or for AquaMarine Repair Services to perform any other service in relation to the item and AquaMarine Repair Services has not received or been tendered the whole of any monies owing to it by the Customer, AquaMarine Repair Services shall have, until all monies owing to AquaMarine Repair Services are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of AquaMarine Repair Services shall continue despite the commencement of proceedings, or judgment for any monies owing to AquaMarine Repair Services having been obtained against the Customer.
- 19. Testing of Vessel**
- 19.1 AquaMarine Repair Services or its employees may test drive or carry out tests on the Vessel at AquaMarine Repair Services discretion and may if requested by the Customer collect or re-deliver the Vessel when nominated by the Customer. AquaMarine Repair Services will not be liable for (and the Customer indemnifies AquaMarine Repair Services against) any damages caused to, or by, the Vessel during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of AquaMarine Repair Services or its employees.
- 20. Equipment Hire**
- 20.1 Equipment shall at all times remain the property of AquaMarine Repair Services and is returnable on demand by AquaMarine Repair Services. In the event that Equipment is not returned to AquaMarine Repair Services in the condition in which it was delivered AquaMarine Repair Services retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all AquaMarine Repair Services shall have right to charge the Customer the full cost of replacing the Equipment. The Customer shall:
- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by AquaMarine Repair Services to the Customer.
- 20.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, AquaMarine Repair Services interest in the Equipment and agrees to indemnify AquaMarine Repair Services against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 21. Service of Notices**
- 21.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 22. General**
- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which AquaMarine Repair

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- Services has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in that state.
- 22.3 Subject to clause 13 AquaMarine Repair Services shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AquaMarine Repair Services of these terms and conditions (alternatively AquaMarine Repair Services liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 AquaMarine Repair Services may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 22.5 The Customer cannot licence or assign without the written approval of AquaMarine Repair Services.
- 22.6 AquaMarine Repair Services may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of AquaMarine Repair Services sub-contractors without the authority of AquaMarine Repair Services.
- 22.7 The Customer agrees that AquaMarine Repair Services may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for AquaMarine Repair Services to provide Goods to the Customer.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.