



**Aquaculture  
Consultancy &  
Engineering**

Your specialist in design and construction  
of Recirculating Aquaculture Systems (RAS)



# ***General Conditions and Terms for Consultancy and Sales***





# General Terms and Conditions of Sale

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## 1 PREAMBLE

These General Terms and Conditions apply to all offers of consultancy work and sales by Aquaculture Consultancy & Engineering (Seller). All offers made and quotations submitted by the seller will be without obligations, also if these include a term for acceptance. All acceptances of offers made by the Buyer, including verbal orders and acceptances, are irrevocable. These general terms are applicable in full to any changes in the contract, to the extent that they have not been deviated through an agreement In Writing between the Parties. Any modifications of or deviations from them must be agreed by both Parties In Writing.

## 2 DEFINITIONS

In these General Conditions the following terms shall have the meanings hereunder assigned to them:

“Buyer”: Shall mean the legal entity buying the Deliverable;

“Contract”: the agreement In Writing between the parties concerning delivery and performance of the Works and all appendices, including agreed amendments and additions In Writing to the said documents;

“Contract Price”: the payment to be made for the Works;

“Deliverable”: consultancy, machinery, apparatus, materials, articles, documentation, software and other products to be supplied by the Seller under the Contract;

“Gross Negligence”: an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission;

“In Writing”: communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties;

“Parties”: Shall mean the Buyer and the Seller is collectively referred to as the Parties;

“Seller”: The legal entity delivering the Deliverable;

“Site”: the place where the Deliverable is to be installed, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Deliverable and installation equipment;

“Works”: the Deliverable, installation of the Deliverable and any other work to be carried out by the Seller under the Contract. If the Works shall according to the Contract be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term “Works” shall then refer to the section in question;



### 3 OFFERS and PAYMENT

1. Any prices stated are excluding delivery, packaging, VAT, customs and any other local, regional or national duties or taxes, unless agreed otherwise.

All relevant expenses and import permits including import duties, custom clearances etc., if any, are for BUYER's own account and risk. Seller will ensure that all export documents related to the Agreement are in compliance with European laws and International regulations. Seller will support Buyer regarding the export process in general.

2. Unless otherwise agreed, payment shall be made within 14 days after the date of the invoice as follows:

a) when the deliverable does not include installation:

One third of the agreed price for the Deliverable at the formation of the Contract,

One third when the Seller notifies the Buyer that the Deliverable or the essential part of it is ready for dispatch from the place of manufacture and

The final third on arrival of the Deliverable at the Site.

b) when installation is included in the lump sum Contract Price:

30 percent of the Contract Price at the formation of the Contract,

30 percent when the Seller notifies the Buyer that the Deliverable or the essential part of it is ready for dispatch from the place of manufacture,

30 percent on arrival of the Deliverable at the Site,

10 percent of the Contract Price on taking-over.

3. If installation is delayed due to a cause which is attributable to the Buyer, the Buyer shall compensate the Seller for any resulting additional costs, including but not limited to:

a) waiting time and time spent on extra journeys;

b) costs and extra work resulting from the delay, including removing, securing and setting up installation equipment;

c) additional costs, including costs as a result of the Seller having to keep his equipment at the Site for a longer time than expected;

d) additional costs for journeys and boarding and lodging for the Seller's personnel;

e) additional financing costs and costs of insurance;

f) other documented costs incurred by the Seller as a result of changes in the installation programme.

4. Whatever the means of payment used, payment shall not be deemed to have been effected before the Seller's account has been irrevocably credited for the amount due.

5. If the Buyer fails to pay by a stipulated date, the Seller shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

6. In case of late payment and in case the Buyer fails to give an agreed security by the stipulated date the Seller may, after having notified the Buyer In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Buyer gives the agreed security.

7. If the Buyer has not paid the amount due within three months, the Seller shall be entitled to terminate the Contract by notice In Writing to the Buyer and, in addition to the interest and compensation of recovery costs according to this Clause 5, to claim compensation for the loss he incurs. Such compensation shall not exceed the Contract Price.

### 4 RETENTION OF TITLE

8. The Deliverable shall remain the property of the Seller until paid for in full, including payment for installation of the Deliverable, to the extent that such retention of title is valid under the relevant law.

9. The Buyer shall at the request of the Seller assist him in taking any measures necessary to protect the Seller's title to the Deliverable. The retention of title shall not affect the passing of risk under Clause 29.



## 5 PREPARATORY WORK AND WORKING CONDITIONS

10. The Seller shall in good time provide drawings showing the manner in which the Deliverable is to be installed, together with all information required for preparing suitable foundations, for providing access for the Deliverable and any necessary equipment to the Site and for making all necessary connections to the Works.

11. The Buyer shall in good time undertake preparatory work to ensure that the conditions necessary for installation of the Deliverable and for the correct operation of the Works are fulfilled. This shall not apply to preparatory work which according to the Contract shall be performed by the Seller.

12. The preparatory work referred to in Clause 11 shall be carried out by the Buyer in accordance with the drawings and information provided by the Seller under Clause 7. In any case the Buyer shall ensure that the foundations are structurally sound. If the Buyer is responsible for transporting the Deliverable to the Site, he shall ensure that the Deliverable is on the Site before the agreed date for starting the installation work.

13. The Buyer shall ensure that:

a) the Seller's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. Provided that the Buyer has been given notice In Writing in reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Seller;

b) he has, in good time before installation is started, informed the Seller In Writing of all relevant safety regulations in force at the Site. Installation shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before installation is started and shall be maintained;

c) the Seller's personnel are able to obtain suitable and convenient board and lodging in the neighbourhood of the Site and have access to internationally acceptable hygiene facilities and medical services;

d) he has made available to the Seller free of charge necessary storage facilities, providing protection against theft and deterioration of the Deliverable, the tools and

equipment required for installation and the personal effects of the Seller's personnel;

e) the access routes to the Site are suitable for the required transport of the Deliverable and the Seller's equipment.

14. Upon the Seller's request in good time, the Buyer shall make available to the Seller, free of charge, such labour and operators as may be specified in the Contract or as may reasonably be required for the purpose of the Contract. The persons made available by the Buyer under this clause shall provide their own tools. The Seller shall not be liable for such labour provided by the Buyer or for any acts or omissions of the persons concerned.

15. If the Seller so requires, the Buyer shall give all necessary assistance required for the import and re-export of the Seller's equipment and tools, including assistance with customs formalities. The assistance as such shall be provided free of charge.

16. The Buyer shall give all necessary assistance to ensure that the Seller's personnel obtain, in good time, visas and any official entry, exit or work permits and (if necessary) tax certificates required in the Buyer's country, as well as access to the Site. The assistance as such shall be provided free of charge.

17. The Buyer shall make available to the Seller, free of charge waste facilities for residues of building material.

## 6 BUYER'S DEFAULT

18. If the Buyer anticipates that he will be unable to fulfil in time his obligations necessary for carrying out installation, including complying with the conditions specified in Clauses 10-17, he shall forthwith notify the Seller In Writing, stating the reason and, if possible, the time when he will be able to carry out his obligations.

19. Without prejudice to the Seller's rights under Clause 20, if the Buyer fails to fulfil, correctly and in time, his obligations necessary for carrying out installation, including to comply with the conditions specified in Clauses 10-17, the following shall apply:

a) The Seller may at his own discretion choose to carry out or employ a third party to carry out the Buyer's obligations or otherwise take such measures as are appropriate under





the circumstances in order to avoid or alleviate the effects of the Buyer's default.

b) The Seller may suspend in whole or in part his performance of the Contract. He shall forthwith notify the Buyer In Writing of such suspension.

c) If the Deliverable has not yet been delivered to the Site, the Seller shall arrange for storage of the Deliverable at the Buyer's risk. The Seller shall also, if the Buyer so requires, insure the Deliverable.

d) The Buyer shall pay any part of the Contract Price which, but for the default, would have become due.

20. If taking-over is prevented by the Buyer's default as referred to in Clause 23 and this is not due to any such circumstance as mentioned in Clause 56, the Seller may also by notice In Writing require the Buyer to remedy his default within a final reasonable period.

If, for any reason which is not attributable to the Seller, the Buyer fails to remedy his default within such period, the Seller may by notice In Writing terminate the Contract in whole or in part. The Seller shall then be entitled to compensation for the loss he suffers by reason of the Buyer's default, including any consequential and indirect loss. The compensation shall not exceed that part of the Contract Price which is attributable to that part of the Works in respect of which the Contract is terminated.

## 7 LOCAL LAWS AND REGULATIONS

21. The Seller shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works. If required by the Seller, the Buyer shall provide the relevant information on these laws, regulations and rules In Writing.

22. The Seller shall carry out any variation work necessary to comply with changes in laws, regulations and rules, referred to in Clause 25, or in their generally accepted interpretation, occurring between the date of submission of the offer and taking-over. The Buyer shall bear the extra costs and other consequences resulting from such changes, including variation work.

23. If the parties are unable to agree on the extra costs and other consequences of changes in laws, regulations and rules, referred to in Clause 21, the Seller shall be compensated for any variation work on a time basis.

## 8 VARIATIONS

24. Subject to the provisions of Clause 32, the Buyer is entitled to request variations to the scope, design and construction of the Works until the Works have been taken over. The Seller may suggest such variations In Writing.

25. Requests for variations shall be submitted to the Seller In Writing and shall contain an exact description of the variation.

26. As soon as possible after receipt of a request for a variation or after having himself made a proposal for a variation, the Seller shall notify the Buyer In Writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for taking-over and other terms of the Contract.

The Seller shall also give such notice to the Buyer when variations are required as a result of changes in laws, regulations and rules referred to in Clause 21.

27. If taking-over is delayed as a result of disagreement between the parties on the consequences of variations, the Buyer shall pay any part of the Contract Price which would have become due if taking-over had not been delayed.

28. Save as provided in Clause 22, the Seller shall not be obliged to carry out variations requested by the Buyer until the parties have agreed on how the variations will affect the Contract Price, the time for taking-over and other terms of the Contract.

## 9 PASSING OF RISK

29. The risk of loss of or damage to the Deliverable shall pass to the Buyer in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS® in force at the date of formation of the Contract. If no trade term has been specifically agreed, delivery of the Deliverable shall be EXW.

Any risk of loss of or damage to the Works not covered by the first paragraph of this Clause shall pass to the Buyer.

Any loss of or damage to the Deliverable and Works after the risk has passed to the Buyer shall be at the risk of the Buyer, unless such loss or damage results from the Seller's negligence.



## 10 TESTS UPON DELIVERY

30. When agreed upon in the contract taking-over tests shall be performed by the Seller when installation has been completed.

The Seller shall notify the Buyer In Writing that the Works are ready for taking-over. The Seller shall determine the date for the tests and inspection on delivery and give the Buyer not less than 14 days written notice, before commencement of the Test.

The Buyer shall bear all costs of taking-over tests. The Seller shall however bear all costs relating to his personnel and his other representatives.

31. The Buyer shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the taking-over tests.

32. If, after having been notified in accordance with Clause 30, the Buyer fails to fulfil his obligations under Clause 31 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the starting date for taking-over tests stated in the Seller's notice.

33. The Seller shall prepare a checklist of the taking-over tests. This checklist shall be sent to the Buyer. If the Buyer has not been represented at the taking-over tests after having been notified in accordance with Clause 30, the test shall be accepted as accurate.

34. If the taking-over tests show the Works not to be in accordance with the Contract, the Seller shall without delay remedy the deficiencies. If the Buyer so requires In Writing without delay, new tests shall be carried out in accordance with Clauses 30-33. This shall not apply when the deficiency was insignificant.

## 11 TAKING-OVER

35. Taking-over of the Works shall be considered to take place:

a) when the taking-over tests have been satisfactorily completed or are regarded under Clause 32 as having been satisfactorily completed, or

b) where the parties have agreed not to carry out taking-over tests, when the Buyer has received a Seller's notice In Writing that the Works have been completed, provided that the Works are as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over. The Seller's obligation to install the Deliverable at the Site is fulfilled when the Works are taken over pursuant to this Clause 35.

36. The Buyer is not entitled to use the Works or any part thereof before taking-over. If the Buyer does so without the Seller's consent In Writing, the Works shall be deemed to have been taken over. The Seller is then relieved of his duty to carry out taking-over tests.

## 12 SELLER'S DELAY

37. If the parties, instead of specifying the date for taking-over, have specified a period of time within which taking-over shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Buyer have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.

38. If the Seller anticipates that he will not be able to fulfil his obligations for taking-over before or at the time for taking-over, he shall forthwith notify the Buyer thereof In Writing, stating the reason and, if possible, the time when taking-over can be expected.

## 13 LIABILITY

39. The Seller strives, to the best of its ability, to achieve the intended results with its consultancy, but does not provide any guarantee for this. For direct or indirect damage related to consultancy, the Seller is not liable, unless there is intent or gross negligence as stipulated under clause 75.



## **14 LIABILITY FOR DAMAGE TO PROPERTY BEFORE TAKING-OVER**

40. The Seller shall be liable for damage to the Buyer's property occurring before taking-over of the Works only if it is proved that such damage was caused by negligence on the part of the Seller or anyone for whom he is responsible in connection with the performance of the Contract. The Seller shall however under no circumstances be liable for loss of production, loss of profit or any other consequential or indirect loss.

## **15 LIABILITY FOR DEFECTS**

41. The Seller shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Buyer.

42. The Seller shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Works.

43. The Seller shall not be liable for defects caused by circumstances which arise after the risk has passed to the Buyer, e.g. defects due to faulty maintenance or faulty repair by the Buyer or to alterations carried out without the Seller's consent In Writing. The Seller shall neither be liable for normal wear and tear nor for deterioration.

44. The Seller shall only be liable for defects in the Works for which warranty is giving for the giving period of warranty this should be described in the contract and agreed upon by the parties.

45. Remedial work shall be carried out at the Site, unless the Seller deems it more appropriate, having regard to the interests of both parties, that the defective part or the Deliverable is sent to him or a destination specified by him.

46. If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Seller may demand that the defective part is sent to him or a destination specified by him. In such case the Seller shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Buyer.

47. The Buyer shall at his own expense provide access to the Works and arrange for any intervention in equipment

other than the Works, to the extent that this is necessary to remedy the defect.

48. Unless otherwise agreed, necessary transport of the Deliverable or parts thereof to and from the Seller in connection with the remedying of defects for which the Seller is liable shall be at the risk and expense of the Seller. The Buyer shall follow the Seller's instructions regarding such transport.

49. Unless otherwise agreed, the Buyer shall bear any additional costs which the Seller incurs for remedying the defect caused by the Works being located in a place other than the Site.

50. If the Buyer has given notice of defects and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the costs he incurs as a result of the notice.

51. If the Seller does not fulfil his obligations for remedying the defect for which the Seller is liable, the Buyer may by notice In Writing fix a final reasonable period for fulfilment of the Seller's obligations, which shall not be less than one month.

If the Seller fails to fulfil his obligations within such final period, the Buyer may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Seller.

Where successful repair work has been undertaken by the Buyer or a third party, reimbursement by the Seller of reasonable costs incurred by the Buyer shall be in full settlement of the Seller's liabilities for the said defect.

52. Where the defect has not been successfully remedied, as stipulated under Clause 51:

a) the Buyer shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price, or, where the defect is so substantial as to significantly deprive the Buyer of the benefit of the Contract as regards the Works or a substantial part of it,

b) the Buyer may terminate the Contract by notice In Writing to the Seller in respect of such part of the Works as cannot in consequence of the defect be used as intended by the parties. The Buyer shall then be entitled to compensation for



his loss, costs and damages up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

53. The Seller shall not be liable for defects in any part of the Works from the end of the liability period agreed upon by the parties.

54. Save as stipulated in Clause 44, the Seller shall not be liable for defects. This applies to any loss the defect may cause, including loss of production, loss of profit and other indirect loss. This limitation of the Seller's liability shall not apply if he has been guilty of Gross Negligence.

## **16 ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS**

55. The Seller shall not be liable for any damage to property caused by the Works after taking-over and whilst the Works are in the possession of the Buyer. Nor shall the Seller be liable for any damage to products manufactured by the Buyer or to products of which the Buyer's products form a part.

If the Seller incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Buyer shall indemnify, defend and hold the Seller harmless.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing.

The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Works. The liability between the Seller and the Buyer shall however be settled in accordance with Clause 60.

The limitation of the Seller's liability in the first paragraph of this Clause shall not apply where the Seller has been guilty of Gross Negligence.

## **17 FORCE MAJEURE**

56. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties, such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-Sellers caused by any such circumstance referred to in this Clause.

A circumstance referred to in this Clause, whether occurring prior to or after the formation of the Contract, shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

57. The party claiming to be affected by Force Majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

If Force Majeure prevents the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the Works.

58. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under Clause 56 for more than six months.

## **18 CONSEQUENTIAL LOSSES**

59. Save as otherwise stated in these General Conditions there shall be no liability on either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

## **19 DISPUTES AND APPLICABLE LAW**

60. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of





Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

terminable, non-transferable right to use the documentation.

61. The Contract shall be governed by the substantive law of the Seller's country.

62. The decision of the arbitration court shall be final, conclusive and binding upon both Parties thereto.

## 20 CONFIDENTIALITY

63. All Deliverables delivered by the Seller, is to be considered confidential by its nature. Each Party shall keep strictly confidential the information known to him delivered under this Contract and shall undertake all the reasonable steps to prohibit the disclosure of this information to any third party, as long as it is necessary to fulfil the obligations arising out of the Contract or to protect the rights and legitimate interests, in case of which the appropriate Party obligates such third parties to maintain the confidentiality limits, at least treats the maintenance of such confidentiality as if his/her own (but not less than a reasonable degree of caution) and shall not allow such features of information to be removed from private, confidential or copyright rights notes. The confidential information can only be disclosed due to the process of obtaining the necessary legal permits for the project or to subcontractors named in this Agreement. In case of disclosure, it should be limited to instances of absolute necessity. The Buyer shall oblige its personnel and any party to whom the confidential information is disclosed, equivalently as stated in this Agreement. In case of disclosure, the Buyer shall indemnify the Seller.

## 21 PROPRIETARY RIGHTS

64. Seller shall continue to own all Background Technology, meaning all intellectual property rights and know-how, technical design, engineering and test data, manufacturing methodology, software, algorithms and other information and technology already owned or possessed by, known to, developed by or for one of the parties independent of the contract work performed. Technology developed by Seller and which does not to any extent contain confidential information of Buyer's Background Technology shall be the property of the Seller. The Seller shall be deemed to give the Buyer a non-