

1. Definitions

- 1.1 “Aquasure Marine” means SBM Business Holdings Pty Ltd T/A Aquasure Marine, its successors and assigns or any person acting on behalf of and with the authority of SBM Business Holdings Pty Ltd T/A Aquasure Marine.
- 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.
- 1.3 “Goods” means all Goods or Services supplied by Aquasure Marine 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).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by Aquasure Marine to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, estimates, authority to hire, or any other work authorisation form provided by Aquasure Marine to the Customer.
- 1.5 “Vessel” shall mean the boat described in any documentation supplied by Aquasure Marine to the Customer.
- 1.6 “Price” means the Price payable for the Goods and/or Equipment hire as agreed between Aquasure Marine and the Customer in accordance with clause 4 below.

2. Acceptance

- 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.
- 2.2 These terms and conditions may only be amended with Aquasure Marine’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Aquasure Marine.
- 2.3 None of Aquasure Marine’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Aquasure Marine in writing, nor is Aquasure Marine bound by any such unauthorised statements.
- 2.4 The Customer accepts that where the Customer requests a pre-purchase inspection of a Vessel, that Aquasure Marine shall carry out such Service based on Aquasure Marine’s knowledge and experience of the marine industry. Where the Customer subsequently purchases said Vessel, the Customer shall not hold Aquasure Marine liable for any damages, losses or additional expense due to unforeseen hidden or unidentifiable difficulties found after the purchase, as being beyond Aquasure Marine’s inspection parameters.

3. Change in Control

- 3.1 The Customer shall give Aquasure Marine 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 Aquasure Marine as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1 The Price shall be Aquasure Marine’s estimated Price (subject to clause 5). The final price can only be ascertained upon completion of the works. Variances in the estimated Price of more than ten percent (10%) will be subject to Customer approval before proceeding with the works.
- 4.2 Aquasure Marine reserves the right to change the Price in the event to Aquasure Marine’s estimate. Any variation from the plan of scheduled works or specifications (including, but not limited to, for overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, additional works required due to hidden or unidentifiable difficulties beyond the control of Aquasure Marine or as a result of increases to Aquasure Marine in the cost of materials and labour) will be charged for on the basis of Aquasure Marine’s estimate and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Aquasure Marine’s sole discretion a non-refundable deposit may be required.
- 4.4 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 Aquasure Marine, which may be:
 - (a) on delivery of the Goods/Equipment or completion of the Services;
 - (b) by way of instalments/progress payments in accordance with Aquasure Marine’s payment schedule;
 - (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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (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 Aquasure Marine.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and Aquasure Marine.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Aquasure Marine an amount equal to any GST Aquasure Marine must pay for any supply by Aquasure Marine 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.

5. Delivery of Goods/Equipment

- 5.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods/Equipment at Aquasure Marine’s address; or
 - (b) Aquasure Marine (or Aquasure Marine’s nominated carrier) delivers the Goods/Equipment to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 At Aquasure Marine’s sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then Aquasure Marine shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 5.4 If delivery is delayed as a consequence of the Customer’s instructions, or lack thereof, then Aquasure Marine 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 Aquasure Marine and in the event that the Goods and/or the Vessel are stored elsewhere, all cartage costs incurred by Aquasure Marine.
- 5.5 Notwithstanding clause 5.4, failure to take delivery of the Goods and/or Vessel after a period of one (1) month will result in Aquasure Marine enforcing their rights to execute the sale of the Goods pursuant to clause 16.
- 5.6 Aquasure Marine 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.
- 5.7 Any time or date given by Aquasure Marine to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and Aquasure Marine will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 5.8 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:
- (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.

6. Risk

- 6.1 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.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Aquasure Marine is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Aquasure Marine is sufficient evidence of Aquasure Marine’s rights to receive the insurance proceeds without the need for any person dealing with Aquasure Marine to make further enquiries.
- 6.3 If the Customer requests Aquasure Marine to leave Goods outside Aquasure Marine’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.
- 6.4 The Customer acknowledges that it is their sole responsibility to ensure the Vessel is insured adequately or at all.
- 6.5 In the event that Goods are returned to, or held by Aquasure Marine (for repair or otherwise), Aquasure Marine 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 Aquasure Marine under clause 8. Under no circumstances shall the liability of Aquasure Marine, for Goods held by Aquasure Marine, exceed the fair market of the Goods.

7. Customer’s Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Aquasure Marine and the Customer acknowledges that the Goods are bought relying solely upon the Customer’s skill and judgment.
- 7.2 Where Aquasure Marine provides advice to the Customer, such advice is given in good faith only. The Customer acknowledges that Aquasure Marine shall not be liable for any claims howsoever arising out of any advice given.

8. Title To Goods

- 8.1 Aquasure Marine and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Aquasure Marine all amounts owing to Aquasure Marine; and
 - (b) the Customer has met all of its other obligations to Aquasure Marine.
- 8.2 Receipt by Aquasure Marine 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Aquasure Marine on request.
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for Aquasure Marine and must pay to Aquasure Marine the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (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 Aquasure Marine and must pay or deliver the proceeds to Aquasure Marine on demand.

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- (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 Aquasure Marine and must sell, dispose of or return the resulting product to Aquasure Marine as it so directs.
- (e) the Customer irrevocably authorises Aquasure Marine to enter any premises where Aquasure Marine believes the Goods are kept and recover possession of the Goods.
- (f) Aquasure Marine 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 Aquasure Marine.
- (h) Aquasure Marine may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

9. Personal Property Securities Act 2009 (“PPSA”)

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 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 that has previously been supplied and that will be supplied in the future by Aquasure Marine to the Customer.
- 9.3 The Customer undertakes to:
 - (a) 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 Aquasure Marine may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Aquasure Marine 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;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Aquasure Marine;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Aquasure Marine;
 - (e) immediately advise Aquasure Marine 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.
- 9.4 Aquasure Marine 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.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Aquasure Marine, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Aquasure Marine under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of Aquasure Marine 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).
- 10.2 The Customer indemnifies Aquasure Marine from and against all Aquasure Marine’s costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Aquasure Marine’s rights under this clause.
- 10.3 The Customer irrevocably appoints Aquasure Marine and each director of Aquasure Marine as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer’s behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Aquasure Marine 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 Aquasure Marine to inspect the Goods/Equipment.
- 11.2 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**).
- 11.3 Aquasure Marine acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Aquasure Marine makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Aquasure Marine's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Aquasure Marine's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Aquasure Marine is required to replace the Goods under this clause or the CCA, but is unable to do so, Aquasure Marine may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, Aquasure Marine's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Aquasure Marine at Aquasure Marine's sole discretion;
 - (b) limited to any warranty to which Aquasure Marine is entitled, if Aquasure Marine did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) Aquasure Marine has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Aquasure Marine shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods/Equipment;
 - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) 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;
 - (d) the Customer failing to follow any instructions or guidelines provided by Aquasure Marine;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 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 Aquasure Marine 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 Aquasure Marine 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 11.10.
- 11.11 Aquasure Marine may in its absolute discretion accept non-defective Goods for return in which case Aquasure Marine 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.
- 11.12 Notwithstanding anything contained in this clause if Aquasure Marine is required by a law to accept a return then Aquasure Marine will only accept a return on the conditions imposed by that law.

12. Intellectual Property

- 12.1 Where Aquasure Marine 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 Aquasure Marine.
- 12.2 The Customer warrants that all designs, specifications or instructions given to Aquasure Marine will not cause Aquasure Marine to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Aquasure Marine against any action taken by a third party against Aquasure Marine in respect of any such infringement.
- 12.3 The Customer agrees that Aquasure Marine may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Aquasure Marine has created for the Customer.

13. Default and Consequences of Default

- 13.1 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 Aquasure Marine's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 At Aquasure Marine's sole discretion, should any account become overdue from the agreed payment due date then an amount of ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied as a late payment fee which sum shall become immediately due and payable.
- 13.3 If the Customer owes Aquasure Marine any money the Customer shall indemnify Aquasure Marine from and against all costs and disbursements incurred by Aquasure Marine in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Aquasure Marine's contract default fees, and bank dishonour fees).
- 13.4 Without prejudice to any other remedies Aquasure Marine may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Aquasure Marine may suspend or terminate the supply of Goods/Equipment to the Customer. Aquasure Marine will not be liable to the Customer for any loss or damage the Customer suffers because Aquasure Marine has exercised its rights under this clause.
- 13.5 Without prejudice to Aquasure Marine's other remedies at law Aquasure Marine shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Aquasure Marine shall, whether or not due for payment, become immediately payable if:

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- (a) any money payable to Aquasure Marine becomes overdue, or in Aquasure Marine's opinion the Customer will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Aquasure Marine 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 Aquasure Marine shall repay to the Customer any money paid by the Customer for the Goods/Equipment. Aquasure Marine shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 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 Aquasure Marine as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 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.

15. Privacy Act 1988

- 15.1 The Customer agrees for Aquasure Marine to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Aquasure Marine.
- 15.2 The Customer agrees that Aquasure Marine may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) 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
 - (d) to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Customer consents to Aquasure Marine being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Aquasure Marine for the following purposes (and for other purposes as shall be agreed between the Customer and Aquasure Marine or required by law from time to time):
 - (a) the provision of Goods/Equipment; and/or
 - (b) the marketing of Goods/Equipment by Aquasure Marine, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods/Equipment.
- 15.5 Aquasure Marine may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 15.6 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that Aquasure Marine is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Aquasure Marine, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by Aquasure Marine has been paid or otherwise discharged.

16. Unpaid Seller's Rights

- 16.1 Where the Customer has left any item with Aquasure Marine for repair, modification, exchange or for Aquasure Marine to perform any other service in relation to the item and Aquasure Marine has not received or been tendered

the whole of any moneys owing to it by the Customer, Aquasure Marine shall have, until all moneys owing to Aquasure Marine are paid:

(a) a lien on the item; and

(b) 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.

16.2 The lien of Aquasure Marine shall continue despite the commencement of proceedings, or judgment for any moneys owing to Aquasure Marine having been obtained against the Customer.

17. Testing of Vessel

17.1 Aquasure Marine or its employees may test drive or carry out tests on the Vessel at Aquasure Marine's discretion and may if requested by the Customer collect or re-deliver the Vessel when nominated by the Customer. Aquasure Marine will not be liable for (and the Customer indemnifies Aquasure Marine 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 Aquasure Marine's or its employees.

18. Equipment Hire

18.1 Equipment shall at all times remain the property of Aquasure Marine and is returnable on demand by Aquasure Marine. In the event that Equipment is not returned to Aquasure Marine in the condition in which it was delivered Aquasure Marine retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Aquasure Marine shall have right to charge the Customer the full cost of replacing the Equipment.

18.2 The Customer shall:

(a) 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.

(b) 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.

(c) 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 Aquasure Marine to the Customer.

18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Aquasure Marine's interest in the Equipment and agrees to indemnify Aquasure Marine 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.

19. General

19.1 The failure by Aquasure Marine to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Aquasure Marine'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.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which Aquasure Marine has its principal place of business, and are subject to the jurisdiction of the Brisbane courts in Queensland.

19.3 Subject to clause 11 Aquasure Marine 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 Aquasure Marine of these terms and conditions (alternatively Aquasure Marine's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

19.4 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 Aquasure Marine nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 Aquasure Marine may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

19.6 The Customer agrees that Aquasure Marine may amend these terms and conditions at any time. If Aquasure Marine makes a change to these terms and conditions, then that change will take effect from the date on which Aquasure Marine notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Aquasure Marine to provide Goods/Equipment to the Customer.

19.7 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.

19.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.