

## TERMS AND CONDITIONS

1. Through the present website [www.aquacooler.mu](http://www.aquacooler.mu) (the "**Website**"), we offer a plethora of equipment for hire or sale, normally governed by our Equipment Hire Agreement or Equipment Maintenance Agreement (the "**Agreements**"). However, customers who do not sign our Agreements shall be subject to the terms and conditions set out below. The said terms and conditions tell you the rules which apply when you hire or purchase our equipment.
2. By using our Website:
  - (a) You accept these terms and conditions of use and undertake to unequivocally agree to comply with them.
  - (b) These terms and conditions will not apply to customers who have signed an Equipment Hire Agreement and/or Equipment Maintenance Agreement with us.
3. We recommend that you print a copy of the present document for future reference.
4. We may amend the present Website from time to time. Each time you wish to use our Website, please ensure that you have carefully read and understood the terms and conditions as amended. Ignorance of the terms and conditions as amended shall not be a valid defence under whatever circumstances.
5. Our equipment:
  - (a) Any equipment displayed online and presented in the catalogue published on the Website are each subject to a description stating their essential characteristics.
  - (b) Any media illustrating any equipment is given for description purposes only and are in no way contractual in nature.
  - (c) Except for the essential characteristics specific to the equipment, any discrepancy between the description or any media describing the equipment on the Website and the reality of the equipment delivered to you cannot be the subject of a claim or reimbursement from us.
  - (d) The products comply with the requirements of Mauritian law in force at the time of their marketing.
6. Delivery, installation, and transfer of risk:
  - (a) Delivery is made by us at the location informed by you and shall be made during normal delivery time.
  - (b) Our representative shall be present at the time of delivery for the handing over and/or installation of the equipment. Acceptance of such handing over and/or installation by our representative shall constitute conclusive evidence that you have examined the equipment and have found it to be in good condition, complete and fit in every way for the purpose for which it is intended.
  - (c) You may request for a relocation and reinstallation of the equipment to another location other than the one previously informed by you. However, a relocation fee and transportation cost shall be charged.
  - (d) If you fail to accept delivery of the equipment on the delivery date, then, except where such failure is caused by us, the equipment shall be deemed to have been delivered at 9.00 am on the delivery date and we shall store the equipment until delivery takes place, and charge you for all related costs and expenses (including insurance).
  - (e) The total transfer of the risks to you takes place upon the delivery of the equipment.
7. Warranty:
  - (a) We warrant that the equipment shall substantially conform to its specification (as made available by us), be of satisfactory quality and fit for any purpose held out by us.
  - (b) We shall use all reasonable endeavours to remedy, free of charge, any material defect in the equipment which manifests itself within the warranty period, provided that:

- i. You notify us of any defect in writing within 10 Business Days of the defect occurring;
  - ii. We are permitted to make a full examination of the alleged defect;
  - iii. The defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than our authorised personnel; and
  - iv. The defect is directly attributable to defective material, workmanship or design.
- (c) You shall be entitled only to such warranty or other benefit as we have received from the manufacturer.
- (d) If we fail to remedy any material defect in the equipment, we shall, at your request, accept the return of part or all of the equipment and make an appropriate reduction to relevant payments and, if applicable, return any deposit (or any part thereof).

8. Maintenance:

- (a) For the purposes of this clause, the following terms shall have the following definitions:

**Business Day** A day, other than a Saturday, Sunday or public holiday in Mauritius, when banks in Mauritius are open for business.

**Business Hours** The period from 8.00 am to 5.00 pm on any Business Day.

**Corrective Maintenance** Making any adjustments to the equipment or replacing any parts or components (excluding non-durable items, if any) of the equipment, in each case as required to restore the equipment in good working order.

**Emergency Maintenance** Making any adjustments to the equipment or replacing any parts or components (excluding non-durable items, if any) of the equipment, in each case as required to restore the equipment in good working order.

**Excluded Causes** Include, but are not limited to:

- the use of the equipment with equipment or materials not supplied or approved in writing by us or the manufacturer;
- any maintenance, alteration, modification, repair or adjustment performed by persons other than us or our employees or agents unless approved in writing by us;
- you or third party displacing the equipment without our consent;
- the use of the equipment in a wrongful or negligent manner, in breach of the operating manual or the warranty coverage for the equipment; or
- a failure, surge or an interruption in the electrical power or its related infrastructure connected to the equipment.

**Excluded Maintenance** Any maintenance required to restore any defect or malfunctioning or failure in the equipment to good working order where the defect of malfunctioning or failure results from or is caused by any of the Excluded Causes.

**Maintenance Services**

Routine Maintenance, Corrective Maintenance, and Emergency Maintenance

**Routine Maintenance**

Testing that the equipment is functional, making any adjustments as may be required to ensure that the equipment remains in good working order, and replacing any non-durable items that require replacing (if any).

- (b) This clause shall only be applicable where we are mandated to supply Maintenance Services.
- (c) Our representative shall perform the Routine Maintenance every month or at such frequency as we reasonably determine during Business Hours.

If during the Routine Maintenance our representative discovers that the equipment is defective or malfunctioning or has failed or is not otherwise in good working order, our representative shall use all reasonable endeavours to repair it during the Routine Maintenance.

If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) we shall either arrange for a further visit within Business Hours to complete the repair, or remove or arrange for the removal of the equipment (or part of the equipment, if applicable) for off-site reparation.

- (d) If you inform us that the equipment is defective or is malfunctioning or has failed or is not otherwise in good working order, we shall use all reasonable endeavours to ensure that one of our representatives shall attend you during Business Hours within 5 to 10 Business Days to perform the Corrective Maintenance.
- (e) If you inform us that the equipment is defective or is malfunctioning or has failed or is not otherwise in good working order, and requires repair outside of Business Hours and/or within a shorter time period than 5 Business Days, we shall use all reasonable endeavours to ensure that one of our representatives shall attend you within the 5 Business Days to perform the Emergency Maintenance.
- (f) Where it is not reasonably practicable for our representative to complete the Corrective Maintenance or Emergency Maintenance on their first visit, we shall either arrange for a further visit within Business Hours to complete the repair, or remove or arrange for the removal of the equipment (or part of the equipment, where applicable) for repair off-site.
- (g) We shall not be liable for any delay in providing any Maintenance Services or Excluded Maintenance if, at our discretion the equipment (or part of the equipment, if applicable) needs to be removed for repair off-site.
- (h) The Maintenance Services shall be chargeable and a disturbance fee shall also be chargeable where we have been solicited and no Maintenance Service is required to be made to the equipment.

9. Limitation of liability:

- (a) Neither you nor we may benefit from the limitations and/or exclusions set out in this clause in respect of any liability arising from its deliberate default.
- (b) We shall not be liable for the equipment's failure if:
  - i. You report that the equipment is defective or malfunctioning or has failed or is otherwise not in good working order either in writing or in such manner to us and make any further use of the equipment;
  - ii. The defect arises because you failed to follow our oral and/or written instructions as to the storage, commissioning, installation, use and/or maintenance of the equipment;

- iii. The defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; and
- iv. The equipment has been used improperly or negligently.

(c) We shall not be liable for the following types of losses:

- i. loss of profits;
- ii. loss of business;
- iii. loss of agreements or contracts;
- iv. loss of anticipated savings;
- v. loss of or damage to goodwill; and/or
- vi. indirect or consequential loss.

10. Force Majeure:

- (a) All facts or circumstances which are unavoidable, external to the parties, unpredictable, inevitable, beyond the control of the parties and which cannot be prevented by them, despite all reasonably possible efforts, will be considered as force majeure. The blocking of means of transport or supplies, earthquakes, cyclones, fires, storms, floods, lightning, the shutdown of telecommunication networks or difficulties specific to telecommunication networks external to the parties are, expressly regarded as cases of force majeure or fortuitous cases, besides those usually retained by the jurisprudence of the Courts of Mauritius.
- (b) The party invoking the circumstances referred to above must immediately notify the other party of their occurrence as well as their disappearance.
- (c) All cases of force majeure shall be considered as causes of exemption justifying the non-performance and/or the suspension of the obligations of the party suffering the force majeure.

11. Intellectual Property:

- (a) All the elements reproduced on the Website, including photographs, visuals, texts, logos, slogans, drawings and images, are our exclusive property and are protected by copyright, trademark law and the law of patents.
- (b) Any reproduction or diffusion of these elements, without our prior written authorisation exposes the violators to legal proceedings.
- (c) The corporate names, trademarks and distinctive signs reproduced on the Website are protected by applicable intellectual property law. Reproduction or representation of all or part of any of the aforementioned signs is strictly prohibited and must be subject to prior written authorisation from us.

12. Governing Law:

Any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the present terms and conditions or their subject matter shall be governed by and construed in accordance with the law of Mauritius.

13. Jurisdiction:

Each party irrevocably agrees that the courts of Mauritius shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the present terms and conditions.