

## Angebot

Samtgemeinde Bersenbrück  
z.H.: Herr J. Siesenis  
Lindenstraße 2  
49593 Bersenbrück  
Deutschland

Datum	Angebots nummer	Subjekt
15 Mai 2019	18.735 - 1	Samtgemeinde Bersenbrück   Freibad Bersenbrück

Sehr geehrter Herr Siesenis,

vielen Dank für Ihre Anfrage und Interesse in unsere Firma.

Eine kurze Einführung Aqua Drolics:

- Fast 30 Jahre Spezialität und Leidenschaft für Wasserspielprodukten
- Ein Sortiment von über 300 Standardprodukten mit verschiedene Stilen und fröhlichen Farben
- Spezialisiert auf maßgeschneiderte Produkte
- Mehr als 3.000 realisierte Projekte in über 60 Ländern
- Die wichtigsten Werte sind; Spaß, Qualität und Sicherheit
- Eigene Produktionsanlage in den Niederlanden
- Hochwertige Produkten aus Glasfaserverstärktem Polyster (GFK) und Edelstahl
- Im Einklang mit den Gesundheits-und Sicherheitsanforderungen der Europäischen Normen
- Fünf Jahre Garantiezeit mit Verlängerungsmöglichkeit

***Aqua Drolics bietet Langlebigkeit für lange Zeit und viel Wasserspaß!***



Wir freuen uns, Ihnen unser Angebot wie hierunter zu präsentieren für Ihr neues Kinderbecken von Freibad Bersenbrück in 2020 – 2021.

Wir stehen Ihnen immer zur Verfügung, falls Sie das Design oder Angebot direkt an Ihre Wünsche anpassen möchten

	<b>Umschreibung</b> Samtgemeinde Bersenbrück   Freibad Bersenbrück	<b>Anzl.</b>	<b>Nettopreis</b>
1.	1010 1000 Coloured pool   Drawing 190510-01/04	1,00	€ 47.415,00
2.	1110 9204 Dolphin	1,00	€ 2.700,00
3.	1110 9930 Pool steps blue	1,00	€ 2.550,00
4.	1110 9867 Shark	1,00	€ 6.575,00
5.	1110 9055 Tumbler	1,00	€ 4.800,00
6.	1110 8922 Snake 3,5 meter	1,00	€ 4.300,00
7.	1110 9039 Mushroom Ø 160 cm	1,00	€ 4.350,00
8.	1110 9849 Water play table	1,00	€ 5.900,00
9.	1110 9924 Fish	1,00	€ 2.550,00
10.	1210 8910 Rainbow slide	1,00	€ 5.075,00
11.	1110 8929 Turtle	1,00	€ 3.475,00
<b>Zusätzliche Kosten</b>			
	Verpackungskosten		€ 585,00
	Transport Kosten nach DE-49593		€ 830,00
	Montage Kosten		€ 9.700,00
<b>Zahlungsbedingungen</b>			
40% bei Auftrag, Zahlungsfrist 7 Tage			
30% 3 Wochen nach Auftrag			
25% 6 Wochen nach Auftrag			
5% nach Montage, Zahlungsfrist 7 Tage			
	Betrag excl.		€ 100.805,00
	Mwst.		
	Mwst.		€ 0,00
	<b>Total Betrag</b>		€ <b>100.805,00</b>

Paraphe für Einstimmung:

Außer wenn anders umschrieben sind unsere Preise exklusive MwSt. und ab Fabrik (exklusive Transport- und Verpackungskosten) und exklusive Montage.

Lieferzeit: ca. 6-8 Wochen nach Empfang Auftragsbestätigung und technische Daten.

Der Montagezeitraum ist in Absprache.

Wir hoffen dass wir Ihnen hiermit ein angemessenes Angebot unterbreitet haben.  
Sollten Sie weitere Fragen haben, stehen wir Ihnen gerne zur Verfügung.

Wir sehen Ihrer Reaktion mit Interesse entgegen.

Mit freundlichen Grüßen

Aqua Drolics  
Marthe Rovers

**Für Einstimmung**

Herr J. Siesenis

Datum:

Unterschrift:

#### Wichtige Punkte

1. Wir liefern nur die Wasserspielobjekten. Wenn wir die Produkten montieren ist im Preis das folgendes einbegriffen; Material, Montagearbeiten, Oberirdische Leitungen. Im Preis nicht einbegriffen sind: Bauliche Einrichtungen, Filteranlage, unterirdische Leitungen, Pumpen, Betonbohrungen. Wenn ein Gabelstapler oder Kran benötigt wird, sind diese nicht im Preis inbegriffen.
2. Die maximale Wassertiefe wofür die Produkte geeignet sind, ist abhängig vom Produkt. Auf die Datenblätter finden Sie die genaue Hinweisen. Für die Verwendung in einem Becken mit einer größeren Wassertiefe können die Produkte nach gemeinsamer Beratung angepasst werden. Die eventuellen Mehrkosten werden Ihnen im Voraus mitgeteilt.
3. Die Produkte werden in unseren Standard-Farben ausgeführt. Nach Beratung mit Ihnen können auch andere Farbkombinationen gewählt werden, was sich allerdings auf den Preis und die Lieferzeit auswirken kann.
4. Unser Design, Herstellung und Installation sind in Übereinstimmung mit den europäischen Normen: EN 1069, EN 1176, EN 13451.
5. Die Gültigkeit dieses Angebots ist 6 Monate.
6. Auf alle Angebote und Aufträge sind die Aqua Drolics Verkaufs- und Lieferbedingungen anwendbar.
7. Sehen Sie bitte die andere Angaben in den allgemeinen Seiten auf den nächsten Seiten.



# GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

Version 2016.01, 29.01.2016

## Article 1: Applicability

The following definitions apply to these general terms and conditions of delivery and payment, referred to hereafter as the general terms and conditions:

**Seller or contractor:** Aqua Drolics, with its registered office at Sportlaan 9, 5683 CS Best, The Netherlands, entered in the Chamber of Commerce under number 17194289;

**Buyer or client:** the counterparty to the seller or contractor, acting in the capacity of a professional or company;

**Contract:** the contract between the buyer and the seller.

The provisions of these general terms and conditions apply to all offers and all contracts between the buyer and seller to which the seller has declared these general terms and conditions applicable. This holds true insofar as the parties do not deviate from these general terms and conditions explicitly and in writing. These general terms and conditions are held to have been stipulated for the buyer and for any third parties that the buyer may involve.

In the event that these general terms and conditions contain provisions that are declared void or nullified, the other provisions of these general terms and conditions will remain in full force. The buyer and the seller will in that case consult with each other to agree on new provisions to replace the void or nullified provisions.

The application of the client's general terms and conditions is expressly excluded.

## Article 2: Offers/quotes

All offers made by the seller are non-binding; they remain valid for six months, unless the offer specifies a different time period. The seller is only bound to the quote if acceptance thereof is confirmed by the buyer in writing.

If the client provides data, drawings, etc. to the contractor, the contractor may assume that they are correct and will base his offer and design on that information.

The prices specified in the offer are based on delivery ex works. Prices do not include shipping, transport and packaging costs, nor do they include VAT unless specified otherwise.

A composite price quotation (quote) does not constitute a commitment by the seller to provide part of the items specified in the offer or quote for a proportionate percentage of the stated price. Offers and quotes do not apply automatically to subsequent orders.

## Article 3: Intellectual property rights

Unless otherwise agreed, the contractor will retain the copyrights, along with all intellectual property rights, on the offers he has made, as well as on the designs, images, drawings, models/test models, etc. provided.

The rights to the data specified in Article 3.1 will remain the property of the contractor, irrespective of whether a fee has been charged for the manufacture thereof. This data must not be reproduced, used or disclosed to any third parties without the contractor's express consent. In the event of a violation of this provision, the client will be required to pay the contractor a fine of € 25,000 per day, in words TWENTY-FIVE THOUSAND EUROS, effective immediately. Under the law, this fine can be claimed in addition to compensation for damages.

The client will be required to return to the contractor the data specified in paragraph 1 immediately on the contractor's request and within the period set by the contractor. In the event of a violation of this provision, the client will be required to pay the contractor a fine of € 1,000 per day, in words ONE THOUSAND EUROS. Under the law, this fine can be claimed in addition to compensation for damages.

## Article 4: Recommendations, designs and materials

The client cannot derive any rights from recommendations and information he receives from the contractor if such information has no direct relevance to the contract.

The client is responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials specified by him or on his behalf.

The client indemnifies the contractor for any third-party claims regarding the use of drawings, calculations, samples, models, et cetera provided by the client or on his behalf.

The client may examine the materials that the

contractor wants to use before they are incorporated or have them examined at his own expense. In the event that the contractor incurs damages as a result, such damages will be at the client's expense.

## Article 5: Delivery period

The delivery period is estimated by the contractor. The contractor determines the delivery period on the basis that he will be able to perform the contract under the circumstances that prevail at that time. The delivery period commences once agreement is reached on all technical details; all necessary data, definitive drawings, etc. are in the possession of the contractor; the agreed payment (or payment instalment) has been made, and all necessary conditions for the performance of the contract have been satisfied.

If different circumstances prevail than the circumstances that were known to the contractor when he determined the delivery period, the contractor may extend the delivery period by the time needed to perform the contract under these circumstances. If the work cannot be planned in the contractor's schedule, it will be completed as soon as his schedule allows.

In the case of additional work, the delivery period will be extended by the time required for the delivery of the materials and parts and to carry out the additional work. If the additional work cannot be planned in the contractor's schedule, it will be completed as soon as his schedule allows.

In the event that the contractor suspends performance of the contract, the delivery period will be extended by the duration of that suspension. If continuation of the work cannot be planned in the contractor's schedule, it will be completed as soon as his schedule allows.

In the event of weather that makes it impossible to work, the delivery period will be extended by the duration of that delay.

Delivery after the agreed delivery period does not under any circumstance entitle the other party to any compensation, unless agreed in writing. In the event that the contractor is unable to deliver on time due to the client's actions, the second partial invoice of 60% will follow no more than 4 days later.

## Article 6: Transfer of risk

For purchases, delivery is "ex works"; the risk for the objects / the delivery transfers at the moment when the seller makes them available to the buyer.

The provision in the previous paragraph notwithstanding, the client and the contractor may agree that the contractor will arrange transport. In that event, the client is also responsible for risks during storage, loading, transport and unloading. The client may insure itself against such risks.

In the event that the seller installs and/or assembles the objects / goods that are sold, the risk for the objects / goods transfers at the moment when the seller makes the objects available to the buyer in the buyer's business premises or at another agreed location.

In the event that the purchase involves an exchange and the buyer continues to use the object to be exchanged in anticipation of delivery of the new item, the risk for the object to be exchanged remains with the buyer until he has transferred

possession of the object to the seller.

#### Article 7: Price adjustments

If six months have passed since the date on which the contract was signed and the contractor has not yet completed fulfilment of the contract, the contractor may charge the client for an increase in the factors that determine the price. Payment of the price increase referred to in paragraph 1 takes place concurrent with payment of the principal sum or the final instalment.

#### Article 8: Unfeasibility of the contract

The contractor is authorised to suspend the fulfilment of his obligations if the contractor is temporarily unable to fulfil his obligations as a consequence of circumstances which could not be foreseen at the time when the contract was signed and which are beyond his control. Circumstances which could not be foreseen at the time when the contract was signed and which are beyond his control include circumstances in which suppliers and/or subcontractors fail to fulfil their obligations to the contractor or do not do so in time, weather, earthquakes, fire, loss or theft of tools, loss of materials intended for use on the contract, road-blocks, strikes or work stoppages, and restrictions on import or trade. The contractor is not authorised to suspend the fulfilment of his obligations if fulfilment becomes permanently impossible or if a temporary impossibility has lasted longer than six months. The contract can then be dissolved regarding that part of the obligations that have not yet been fulfilled. In that event, the parties are not entitled to compensation for damages incurred as a result of dissolving the contract.

#### Article 9: Scope of the work

The client must ensure that all permits, exemptions and other decisions necessary to carry out the work are obtained in a timely manner. Unless agreed otherwise, the price of the work does not include:

- the cost of earthwork, piling, hacking, breaking, groundwork, brickwork, carpentry, plastering, painting, wallpapering, repairing or other building work;
- the cost of connecting gas, water, electricity or other infrastructure facilities;
- the cost to prevent or limit any damage to objects present during the work;
- the cost of removing building and other materials or waste;
- travel and accommodation expenses.

#### Article 10: Changes in the work

Changes in the work will in any case result in an increase or decrease in the amount of work if:

- there is a change in the design or specifications for work;
- the information provided by the client does not correspond to reality;
- there are discrepancies of more than 10% from the estimated amounts.

Additional work is calculated on the basis of the value of the factors that determine the price as they prevail at the moment when the additional work is carried out. Reduced work is calculated on the basis of the value of the factors that determine the price as they prevailed at the moment when the contract was signed.

If the balance of the reduced work exceeds the balance of the additional work, the contractor may charge the client for 10% of the difference in the two sum totals at the time of final settlement. This provision does not apply to a reduction in work that is the result of a request from the contractor.

#### Article 11: Execution of the work

The client will ensure that the contractor can perform his work without interruptions and at the agreed time, and that he will have access to the necessary arrangements during the execution of the work, such as:

- water and power: an earthed electricity connection of 220V / 3 x 3.5kW must be provided within a 10-metre range of the site;
- heating if the temperature in the working environment is below 7 °C;
- in the event of work taking place outdoors, a wind-proof and waterproof tent must be erected over the site at all times. The tent should cover the work entirely with a margin of at least 1 metre around the work, without use of central poles and with a minimum work height of 2.5m (calculated from the concrete slab). This tent must be put in place at least 2 days before the installation work starts.

The site must be easily accessible to facilitate smooth and rapid unloading and loading.

Assistance on delivery is possible.

Possibility to test the products with water within the installation period. If this is not possible, there will be charges for the extra travel expenses and any accommodation expenses.

In all other cases in which the client has not fulfilled one of the terms listed in these terms and conditions, as a result of which the contractor's technicians must return home immediately, all extra travel and accommodation expenses will be charged to the client.

For the construction of a wading pool, the client must ensure that the floor is dry (hardened for approx. 3 weeks), smooth and even (finely structured floor, on a sand cement basis) and that the pipes have been arranged according to the contractor's specifications.

"Smooth" is understood to be level, with a maximum deviation of 2% slope up to a max. of 4 cm.

The client is aware that there will be inconvenience during the installation process due to unpleasant odours, noise, dust and so on. The client is responsible for the choice of whether or not to open the rooms to the public during the installation works. The client cannot object to any form of inconvenience whatsoever as a reason for suspending or stopping work.

The client is liable for all damage arising from the loss, theft, burning down or damaging of tools, materials and other property of the contractor present at the site where the work is carried out. In the event the client fails to fulfil his obligations as laid down in the previous paragraphs and this results in a delay in the execution of the work, the work will be carried out as soon as the schedule of the contractor allows for it. Furthermore, the client is

liable for all damages arising from such failure for the contractor, such as extra man-hours, travel and accommodation expenses, etc.

The work will be executed consecutively as much as possible and must take into account deviating work hours.

Only standard working hours are included; an allowance is calculated for night-time hours, for instance.

#### Article 12: Delivery of the work

The work is considered completed if: the client has approved the work.

For that purpose, the client must be available immediately after the end of the work to accept delivery and sign the delivery slip to indicate approval.

If this does not occur, the work is considered completed if:

- the client has taken the work into operation. If the client takes part of the work into operation, then that part is considered completed;
- the contractor has informed the client in writing that the work is completed and the client does not inform the contractor in writing, within 14 days, whether or not the work is approved;
- the client does not approve the work based on minor defects or missing parts that can be repaired or delivered subsequently within 30 days and that do not impede the taking into operation of the work. If the client does not approve the work, he is required to notify the contractor in writing, stating the reasons.

If the client does not approve the work, he must give the contractor the opportunity to deliver the work again. The provisions of this article apply to that delivery again.

Immediately after the client's work is completed, it should be possible to test the work with water. If this is not the case, the work will be considered to have been delivered, and the payment term starts as agreed. In the event that the contractor has to return to the site to test the work with water after all, or if it later becomes apparent that there are faults that the contractor needs to fix, any extra travel and accommodation expenses will be charged to the client.

#### Article 13: Liability

The contractor is liable for damage incurred by the client that is directly and exclusively the result of a shortcoming that can be attributed to the contractor. However, the only damage that qualifies for compensation is damage for which the contractor is insured or should reasonably have been insured.

Damage that does not qualify for compensation includes:

- commercial damage, including e.g. losses from delays or loss of profits;
- supervision damage. Supervision damage includes damage caused as a result of or during the execution of the accepted work to objects on which work is taking place or objects that are in close proximity to the location where work is taking place;
- damage caused by wilful misconduct or deliberate recklessness on the part of agents.

The client indemnifies the contractor against any claims by third parties relating to product liability as a result of a defective product supplied by the client

to a third party and that consisted (in whole or in part) of products and/or materials supplied by the contractor.

In the event of assembly of the play equipment by the client himself, Aqua Drolics can never be liable for damage or any accidents caused by unprofessional installation of the play equipment.

#### Article 14: Warranty

The contractor warrants a proper execution of the agreed performance for a period of 60 months following completion and delivery.

If the agreed performance consists of the acceptance of work, the contractor warrants the soundness of the completed construction and the materials used for the period mentioned in paragraph 1, provided that he was free in his choice of materials.

If it appears that the delivered construction or the materials used are faulty, the contractor will repair or replace these. The parts that have to be repaired or replaced by the contractor have to be sent to the contractor 'carriage-paid'. Disassembly and assembly of these parts and any travel and accommodation expenses are at the client's expense.

If the agreed performance consists of using the materials provided by the client, then the contractor warrants the soundness of the use for the period stated in paragraph 1.

If it appears that this work was not carried out properly, the contractor will choose whether he: carries out the work again. In that event, the client must provide new materials at his own expense; repairs the defect. In that event, the client must return the material to the contractor carriage-paid; reimburses the client for a proportionate part of the invoice.

If the agreed performance consists of the delivery of an object/goods, the contractor warrants the soundness of the delivered object for the period mentioned in paragraph 1.

If it becomes apparent that the delivery was not sound, the object must be returned to the contractor carriage-paid. The contractor will then choose whether he: fixes the object; replaces the object; reimburses the client for a proportionate part of the invoice.

If items are sent back to the contractor, the client must ensure proper packaging. The contractor will charge the client for any damage caused to goods in transit.

If the agreed performance (also) consists of the installation and/or assembly of a delivered object, the contractor warrants the soundness of the installation and/or assembly for the period mentioned in paragraph 1.

If it appears that the installation and/or assembly was not carried out properly, the contractor will repair this. Any travel and accommodation expenses are at the client's expense.

In all cases, the client must offer the contractor the opportunity to repair any defect or to repeat the process.

The client may only submit claims under warranty if he has complied with all his obligations to the contractor, including full payment.

No warranties are given for defects that are the result of:

normal wear and tear or any other gradual

influence;  
wear and tear of rotating and moving parts. In the event of normal use, these parts must be replaced once a season;  
wilful damage;  
vermin;  
misuse;  
failure to perform maintenance or incorrect maintenance;  
frost damage, or the non-storage or failure to store products properly for the winter;  
force majeure such as natural disasters, storms, rain, wind;  
installation, assembly, modification or repair by the client or third parties;  
water quality with a pH value that is too high (>7.2) or too low (<6.8) and affects the polyester parts;  
water temperature higher than 32°C which affects the polyester parts;  
deviating water quality.  
Some degree of discolouration due to the effects of UV light and/or chlorine cannot be avoided and is therefore not covered by warranty.  
Objects delivered that were not new at the time of delivery are not covered by warranty.

#### Article 15: Complaints

a. Dispatch and receipt:

The client is required to check the number of items and the state of the packages immediately upon receiving the play equipment. If an order includes transport, the products must be unpacked within 48 hours of delivery to be able to claim any transit damage to the products. Any damage caused to goods in transit must be reported to the contractor immediately, and supported by photographs. If an order is placed ex works, the contractor cannot be held responsible for transit damage and consequently no guarantee applies to this.

b. Performance:

The Client cannot make any further claim based on defective performance if the Client does not test the products within 14 days and/or has not lodged a complaint with contractor in writing, and supported by photographs, within 48 hours of the testing.

#### Article 16: Non-collected objects

If objects have not been collected after expiry of the agreed delivery period, they will continue to be at the client's disposal.

Non-collected objects will be stored at the risk and expense of the client. If objects have not been collected within 30 days expiry of the agreed delivery period, the contractor will charge the client a storage fee, plus interest according to the following table:

Project value < € 25,000	8%
Project value ≥ € 25,000 < € 75,000	7%
Project value ≥ € 75,000	6%
Interest is calculated on an annual basis. In the calculation of interest, a part of the month is counted as being a full month.	

#### Article 17: Payment

Payment takes place at the contractor's business address or to a bank account number designated by the client.

Unless agreed otherwise, payment takes place as follows:

in cash for purchases at the desk;  
if payment in instalments has been agreed:  
30% of the total price when the order is placed (must be paid before production starts);  
60% of the total price when the products are delivered (must be paid before installation starts);  
10% of the total price upon completion (must be paid within 14 days after the invoice date);  
In all other cases, within 14 days after the delivery date.

Regardless of the agreed payment conditions, the client is required to offer assurance of payment that the contractor considers satisfactory, if requested by the contractor. If the client fails to do so within the stipulated period, he is immediately in breach. In that case, the contractor is entitled to dissolve the agreement and claim compensation for damages from the client.

The client does not have the right to offset his claims on the contractor against such compensation, except in the event of bankruptcy of the contractor.

The full amount payable is immediately due if:

a term of payment has been exceeded;  
the client has gone bankrupt or seeks a moratorium;  
the client's objects or claims are subject to attachment;  
the client (company) is dissolved, liquidated or subject to a moratorium on payments;  
the client (natural person) is placed under guardianship or dies.

If payment has not been made within the agreed term of payment, the client owes interest to the contractor from the first day that the payment term is exceeded. The interest rate is 10% per annum or the statutory interest rate if this is higher. In the calculation of interest, a part of the month is counted as being a full month.

If payment has not been made within the agreed term of payment, the client owes all extra-judicial costs to the contractor, with a minimum of € 50.

The costs are calculated based on the following table:

On the first € 3,000	15%
On higher amounts up to € 6,000	10%
On higher amounts up to € 15,000	8%
On higher amounts up to € 60,000	5%
On amounts higher than € 60,000	3%

If the extrajudicial costs actually incurred exceed the abovementioned costs, the actual costs incurred are payable.

In the event that a court finds in the contractor's favour in judicial proceedings, all costs incurred in relation to those proceedings are at the expense of the client.

#### Article 18: Retention of title and pledge

After delivery, the contractor retains title of the delivered objects as long as the client:

has failed or will fail in the fulfilment of its obligations arising from this contract or other equivalent contracts;  
does not or will not pay for work still to be done;  
has not paid claims arising from failure to comply with the aforementioned contracts, such as damages, fines, interest and costs.

As long as the delivered objects are subject to a retention of title, the client may not encumber them beyond the normal course of his business operations.

Once the contractor has invoked his retention of title, he is entitled to reclaim the delivered objects.

The client hereby authorises the contractor to enter the premises where the objects are located.

If the contractor is unable to rely on this retention of title because the delivered objects have been mixed with other objects, distorted or investigated, then the client must pledge the newly formed objects to the contractor.

#### **Article 19: Dissolution**

If the client wishes to terminate the agreement without this constituting default on the part of the contractor, the contract will be dissolved. In that event, the contractor is entitled to the following compensation:

For standard products:

In the event of cancellation within 2 weeks after the order: 25% of the agreed order price;

In the event of cancellation more than 2 weeks after the order: 100% of the agreed order price.

Special items and tailor-made products:

These can NOT be cancelled; in the event that the client opts for cancellation, 100% of the project price will be charged.

If the contractor wants to dissolve the contract without the contractor's consent, the contractor is entitled to receive compensation of 30% of the agreed project price.

#### **Article 20: Applicable law and choice of forum**

This contract is governed by Dutch law.

The applicability of the 1980 Vienna Sales

Convention is excluded, along with any other international regulation, exclusion of which is permitted.

Only the civil court which is competent in the contractor's place of business may take cognisance of disputes, unless this is in conflict with mandatory law. The contractor may deviate from this rule regarding jurisdiction and opt to apply statutory rules of jurisdiction.

The parties may agree to a different form of dispute resolution, e.g. arbitration or mediation.