

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

“**Seller**” shall mean Aquarius Fluid Products, Inc. (and any of its affiliates). “**Agreement**” shall collectively mean these terms and conditions and the purchase order or acknowledgement accompanying these terms and conditions. Any reference herein to Seller’s purchase order shall, if applicable, also refer to Seller’s acknowledgement. “**Product**” shall mean the goods and/or services being sold or provided. “**Manufacturer**” shall mean the company manufacturing the Product. “**Buyer**” shall mean the Purchaser to whom Seller is selling the Product or providing a Service (as defined below). Any other capitalized terms not defined hereunder shall have the same meaning as set forth in the Illinois Uniform Commercial Code.

2. GENERAL TERMS AND CONDITIONS

This writing constitutes an offer or counter-offer by Seller to sell the Products described in the purchase order accompanying these terms and conditions in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Buyer, and acceptance of this offer is expressly conditioned upon Buyer’s assent to these terms and conditions. Buyer will be deemed to have assented to these terms and conditions when:

- (a) Buyer signs and delivers to Seller an acknowledgement copy of any Seller’s sales order, quotation, order acknowledgement or invoice forms;
- (b) Buyer delivers to Seller a purchase order;
- (c) At Seller’s option, Buyer shall have given to Seller (orally or in writing) specifications of quantity and/or type of Products, assortments thereof, delivery dates, shipping instructions, instructions to bill, or the like as to all or any part of the merchandise described in the purchase order accompanying these terms and conditions;
- (d) Buyer has received delivery of the whole or any part thereof;
- (e) Buyer has otherwise assented to the terms and conditions hereof; or
- (f) Buyer makes payment, in whole or in part, for the Products.

No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing by an authorized representative of Seller at its offices located in Elgin, Illinois. Seller hereby objects to and rejects any such additional or different provisions contained in any purchase order or other communication heretofore or hereafter received from Buyer.

The rights and obligations of the parties hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. NO ORDER MAY BE CANCELLED OR ALTERED BY BUYER EXCEPT UPON TERMS AND CONDITIONS ACCEPTABLE TO SELLER, AS EVIDENCED BY SELLER’S WRITTEN CONSENT.

3. PRICING

The prices for the Products set forth on Seller’s purchase order are Seller’s prices for such Products with all of the terms in this form, including the exclusive warranty and the various disclaimers and limitations of liability enforceable against Buyer. Such prices quoted will be binding upon the Seller for thirty (30) days from

the date of quotation; provided that prices for any accessories or components not of the Seller’s manufacture are subject to change without notice. With respect to those items not of Seller’s manufacture on which firm prices have not been obtained, Seller will pass on the same escalation provisions as are made a part of Seller’s purchase order. Seller’s minimum billing charge is \$100.00 plus all applicable transportation expenses.

All prices listed are payable in United States dollars. All prices on accepted orders and covering Seller Services are firm for a period of thirty (30) days from the date of acceptance. Prices are subject to change without notice.

Payment is due net thirty (30) days from date of shipment, unless Seller requires payment in advance, or unless the purchase order accompanying these terms and conditions states different terms. Notwithstanding the above, at its option at anytime, Seller may require Buyer to make payment by an irrevocable letter of credit drawn on a prime U.S. bank as of the date Seller accepts Buyer’s order. Any letter of credit required by Seller shall provide for payment against Seller’s invoice and bill of lading, and shall be in form and substance satisfactory to Seller. Commencement of order processing may be deferred or cancelled (with appropriate cancellation charges) if Buyer does not promptly provide such a letter of credit. Payment for service work, including any material furnished as part of service, is due upon receipt of invoice. All overdue amounts will incur finance charges of the lesser of (a) 1.5% per month or (b) the maximum rate permitted by law.

All claims for monies due or to become due Buyer from the Seller shall be subject to deduction by the Seller for any amounts due the Seller from Buyer.

4. SERVICES

Buyer may order services (collectively, “**Services**”) from or through Seller from time to time.

Where Services are ordered in a statement of work (“**Statement of Work**”), each Statement of Work hereby incorporates these terms and conditions and constitutes a separate agreement with respect to the Services performed. In the event of an addition to or a conflict between any term or condition of the Statement of Work and these Terms and Conditions, the terms and conditions of this Agreement will control, except as expressly amended in the applicable Statement of Work by specific reference to this Agreement. Each such amendment will be applicable only with respect to such Statement of Work and not to future Statements of Work. Changes to the scope of the Services described in a Statement of Work will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and Conditions and the applicable Statement of Work. Each Statement of Work may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.

In addition to any specific duties set forth in any applicable Statement of Work, Buyer agrees to cooperate with Seller in

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connection with performance of the Services by providing (i) timely responses to Seller's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Seller which are necessary or useful as determined by Seller in connection with providing the Services.

Seller will follow all reasonable Buyer security rules and procedures, as communicated in writing by Buyer to Seller from time to time.

Seller may perform the Services at Buyer's place of business or such other locations as Seller and Buyer deem appropriate. When the Services are performed at Buyer's premises, Seller will attempt to perform such Services within Buyer's normal business hours unless otherwise jointly agreed to by the parties. Buyer will also provide Seller access to Buyer's staff and any other Buyer resources (and when the Services are provided at another location designated by Buyer, the staff and resources at such location) that Seller determines are useful or necessary for Seller to provide the Services. When the Services are provided on Buyer's premises or at another location designated by Buyer, Buyer agrees to maintain adequate insurance coverage to protect Seller and its employees and agents and Buyer's premises and to indemnify and hold Seller and its agents and employees harmless from any loss, cost, damage or expenses (including, but not limited to, attorneys' fees and expenses) arising out of any product liability, death, personal injury or property damage or destruction occurring at such location in connection with the performance of the Services, other than solely as a result of Seller's gross negligence or willful misconduct.

5. SECURITY INTEREST

Seller shall retain a security interest in the Products sold hereunder, and all additions or accessions to and substitutions for such Products, and Buyer hereby grants to Seller a security interest in such Products sold hereunder, until Buyer has completed payment of the purchase price, plus accrued interest, and fully performed all of the other terms and conditions hereof, at which time Seller's security interest is satisfied. Seller shall be entitled, and Buyer hereby authorizes Seller, without further action of Buyer, to prepare and file one or more Financing Statements pursuant to the Uniform Commercial Code to evidence this lien in form satisfactory to Seller (and this Agreement shall serve as a security agreement for that purpose). The Products covered hereby shall remain strictly personal property, irrespective of the mode of its attachment to realty, the consequences of its being disturbed or removed, or the use made of it. Buyer shall maintain the Products covered hereby in good condition and repair and not permit its value to be impaired. Buyer shall not sell, mortgage, pledge or otherwise deal in or encumber the Products or any part of it or permit it to be removed from the place where first installed (so long as any portion of the purchase price or accrued interest or any other sum due Seller under these terms of sale remains unpaid), without Seller's prior written consent.

Seller is authorized to inspect the Products wherever located at any reasonable time or times. The Products shall be insured by Buyer at its own expense in an amount not less than the balance due to Seller under this Agreement, with loss, if any, payable to Seller. Seller has no duty to protect, insure or realize upon the Products.

6. TAXES AND OTHER CHARGES

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore; or in lieu of such payment, Buyer shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. Should Seller, in its sole discretion, determine that the exemption document provided by Buyer does not clearly meet the requirements of the authority imposing a tax, Buyer hereby agrees to pay such tax in full.

7. DELIVERY, CLAIMS AND FORCE MAJEURE

All dates quoted for delivery of the Products are estimates only and are not guaranteed. Deliveries made by the Seller within a reasonable period of time after the dates quoted for delivery shall constitute good deliveries. The shipping terms for all Products sold hereunder are F.O.B. at Seller's address in Elgin, Illinois, unless otherwise stated on Seller's purchase order. Delivery of Products to a carrier at the Seller's offices or plant or other loading point shall constitute delivery to Buyer and regardless of the shipping terms or freight payment, all risk of loss shall be borne by the Buyer. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries and any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Method and route of shipment shall be at the discretion of Seller unless Buyer shall specify otherwise; any additional expense of the method or route of shipment specified by Buyer shall be borne entirely by Buyer. Buyer shall bear all costs of bags, barrels, boxes, pallets or other containers used to ship Products sold hereunder. No shipping containers may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by Buyer.

Claims for defects in Products, shortages or other errors in delivery must be made in writing to Seller within ten (10) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments made prior to Seller's receipt of Buyer's notice of claim, and shall constitute a waiver of all such claims by Buyer. Claims for loss or damage to Products in transit should be made to the carrier and not to Seller.

All delivery dates are approximate and are not guaranteed. Deliveries made by the Company within a reasonable time after the dates quoted for delivery shall constitute good deliveries. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, material shortages, slowdown or other labor difficulties, war, acts of terrorism, riot (or any delay on the part of a Manufacturer with respect to the foregoing), delay in

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transportation, defaults of common carriers or, without limiting the foregoing, any other delays beyond Seller's control. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason, including Seller's inability to produce goods which meet the requirements of this contract, shall be rescission of this Agreement.

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the Buyer, the inability of the Buyer to pay its debts as they become due, or in event of the appointment of a receiver or, with or without the Buyer's consent, in the event of an assignment for the benefit of creditors, then the Seller shall be entitled, in its sole discretion and in addition to any other rights and remedies available at law, to cancel the unshipped balance of any order without any liability.

8. STORAGE

If the Products are not shipped after notification to Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may bill Buyer and/or may store such Products at Buyer's risk in a warehouse or yard or upon Seller's premises, and Buyer shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefor. Interest may be charged at legal rates.

9. CHANGES

Seller may at any time, with approval of Buyer, make such changes in design and construction of Products as Seller deems appropriate and Seller may furnish suitable substitutes, without the approval of Buyer, for material unobtainable because of priorities or regulations established by governmental authority or non-availability of material from Manufacturers.

10. WARRANTIES

Buyer understands that Seller is not the manufacturer of the Products purchased by Buyer hereunder and the only warranties offered are those of the Manufacturer, not Seller (except with respect to Seller's Services discussed below). In purchasing the Products, Buyer is relying on the Manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the Products that may be provided by Seller. SELLER HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. Buyer expressly waives any claim that it may have against Seller based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Seller against any such Claim made against Buyer by a third party. Buyer acknowledges that no employee of Seller is authorized to

make any representation or warranty on behalf of Seller that is not in this Agreement.

Seller warrants that the Services will be performed in a good and workmanlike manner. Buyer's sole and exclusive remedy and Seller's entire liability with respect to this warranty for Services will be, at the sole option of Seller to either (a) use its reasonable commercial efforts to reperform or cause to be performed any Services not in substantial compliance with this warranty or (b) refund amounts paid by Buyer related to the portion of the Services not in substantial compliance; provided, in each case, Buyer notifies Seller in writing within five (5) business days after performance of the applicable Services. EXCEPT AS SET FORTH HEREIN OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS SELLER'S WARRANTY, AND SUBJECT TO APPLICABLE LAW, SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. BUYER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER THAT IS NOT IN THIS AGREEMENT OR IN A STATEMENT OF WORK EXPRESSLY AMENDING SELLER'S WARRANTY.

THE WARRANTY CONTAINED IN THIS SECTION 10 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Any description of the Products, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

11. COMPLIANCE WITH LAWS

Compliance with Federal, state and local laws, orders and regulations applicable is the responsibility of the Manufacturer. Such Manufacturer shall be responsible for compliance with the requirements and standards of OSHA or any other similar law, only to the extent that they apply to the Product itself and are sufficiently identified in the order to Seller's satisfaction and

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accepted by it in writing. Price and delivery shall be subject to adjustment or compensate for compliance with any other laws, orders, regulations or requirements. However, Seller does not warrant that any equipment and features meet the requirements of any local, state or federal laws or regulations, including those issued under OSHA. The Product described in the purchase order accompanying these terms and conditions is provided only with the safety devices and features shown in the applicable specifications.

12. PATENTS, TRADEMARKS AND COPYRIGHTS

Seller shall not be obligated to defend or indemnify Buyer for alleged infringement of any United States patent, trademark, or copyright relating to any Products manufactured by the Manufacturer and sold by Seller. Seller shall not be obligated to indemnify Buyer in the event a claim for infringement arises from or is related to Product designs or specifications proposed or furnished by Buyer. The foregoing states the entire liability of Seller for direct infringement, and in no event shall Seller be liable for consequential, incidental, or special damages attributable to an infringement.

The sale of any Products hereunder may in no way be construed as an inducement by Seller of any infringement by Buyer.

Buyer shall indemnify and hold harmless Seller and Manufacturer from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's and Manufacturer's reasonable attorneys' fees and other costs of defense) incurred by Seller and Manufacturer as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties, direct or indirect, arising as a result of Seller furnishing to Buyer Products manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer, or any claim of contributory infringement resulting from the use or resale by Buyer of Products sold hereunder.

13. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; BUYER'S INDEMNITY

Seller's liability with respect to breaches of warranty shall be limited as provided in Section 10 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, CONTINGENT, SPECIAL OR ANY OTHER INDIRECT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shutdown or slowdown costs, spoilage of material, or

for any other types of economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Buyer's customers or any third party asserted by Buyer against Seller for indemnity or contribution, as well as direct claims of Buyer against Seller.

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or others arising out of or in connection with the Products and/or Services sold hereunder and based on Product or Service defects not proven to have been caused solely by Seller's negligence.

14. CONFIDENTIAL INFORMATION

Any sketches, models, samples, designs, production or manufacturing processes or techniques or other confidential or proprietary information of Seller disclosed to Buyer (the "Confidential Information") shall remain the property of Seller, and Buyer shall keep the Confidential Information strictly confidential and the Confidential Information shall not, without Seller's prior written consent, be disclosed or disseminated by Buyer in any manner whatsoever, in whole or in part, and shall not hereafter be used by Buyer directly or indirectly for any purpose other than as is contemplated hereunder. Moreover, Buyer agrees to take all reasonable steps necessary to prevent general disclosure of the Confidential Information.

Buyer acknowledges and agrees that Seller shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Section 15. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15 but shall be in addition to all other remedies available at law or equity. The provisions of this Section 15 shall survive the sale of Products hereunder.

15. BUYER'S PROPERTY

Any property of Buyer placed in Seller's custody for performance of this contract will not covered by Seller's insurance, and no risk is assumed by Seller in the event of loss or damage to such property for any reason, including, without limitation, by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of Seller.

16. MANUALS, BROCHURES, INSTRUCTIONS

Any and all operating manuals, instructions, brochures, warnings or the like concerning the Products supplied hereunder are supplied merely as an aid to Buyer and because of periodic changes, are not represented to be accurate, complete or sufficient. Buyer warrants that it will accurately transcribe such manuals, instructions, brochures or warnings to appropriate languages and dialects so that its employees and all third party users of the Products will be properly informed of all the contents thereof. Buyer will indemnify and hold harmless Seller against all liabilities and expenses (including attorney fees) arising out of the use of the Products by Buyer or a third party in any case where Buyer fails to make available adequate warnings, labels, manuals and instructions concerning the proper and normal use of the Products.

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17. BUYER'S MANUALS AND BROCHURES

Buyer shall communicate to Seller any special needs, pictorials, labels, warning signs, instructions, or language required for the manuals and brochures used for the Products. Buyer agrees to pay a reasonable surcharge for additional manuals, special manuals, and brochures.

18. SEVERABILITY

If any provision of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.

19. ATTORNEYS' FEES

Buyer shall reimburse Seller for all reasonable attorneys' fees and collection costs incurred by Seller to enforce its rights against Buyer under this Agreement.

20. ASSIGNMENT

Neither this Agreement nor Buyer's rights or obligations hereunder may be assigned by Buyer without the prior written consent of Seller. Any such consent to assignment shall not release Buyer from liability for its obligations under this Agreement.

21. GOVERNING LAW/VENUE

The terms of this Agreement shall be governed by the laws of the State of Illinois (without regard to conflict of laws provisions). The parties agree that any action or proceeding to enforce or arising out of this Agreement shall be commenced only in state or federal courts located in Chicago, Illinois. The parties consent to such jurisdiction, agree that venue will be proper in such courts and waive any objections based upon *Forum Non Conveniens*. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any action under this Agreement in any other jurisdiction.

22. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding among the parties and supersedes any prior understanding and/or written or oral agreements among them with respect to the subject matter of this agreement.