

TERMS AND CONDITIONS OF SALE

1. **Application of Terms.** The Proposal by UNDERGROUND REPUBLIC WATER WORKS, INC. ("Seller") and these Terms and Conditions of Sale (collectively, the "Terms") constitute terms and conditions upon which Seller agrees to sell goods or accepts an order to purchase goods, as applicable. THESE TERMS ARE THE ONLY TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE PARTIES. ANY AND ALL ADDITIONAL OR DIFFERENT TERMS, WHETHER IN A PURCHASE ORDER OR OTHER DOCUMENT GIVEN BEFORE OR AFTER THIS ACKNOWLEDGEMENT OR QUOTATION, ARE SPECIFICALLY REJECTED AND SHALL NOT BECOME PART OF THE AGREEMENT UNLESS AGREED TO IN WRITING BY SELLER.
2. **Delivery/Shipping/Risk of loss.** Unless otherwise expressly agreed, all goods are shipped F.O.B. Seller's warehouse within ten (10) days of the date set forth on the front side of the applicable Acknowledgment or Quotation. All goods will be shipped according to shipping instructions provided by the buyer ("Buyer") or, if none, by the best route and mode of transportation as determined by Seller in its discretion. Notwithstanding any other provision of these Terms, risk of loss shall transfer to Buyer at the time the goods are shipped.
3. **Goods Damage.** Upon receipt of goods, Buyer shall inspect the same for damage before execution of the shipping receipt accompanying such goods. If there is any damage to any goods, Buyer must file a claim immediately with the carrier or Seller, as applicable. Any and all claims for damage or discrepancy between a shipping invoice and goods delivered or others errors must be made at the time of delivery. Failure to so make a claim shall be deemed full acceptance of the goods delivered and a waiver of any and all such claims.
4. **Payment.** Payment terms are set forth on the front page of the applicable Acknowledgment or Quotation. If any sums due to Seller are not paid when due, interest shall accrue thereon at the rate of 1.5% per month until paid in full. Payment is to be made in Santa Clara County, California, and any action to collect any sums due under this Agreement may be brought in Santa Clara County, California, and the parties consent to jurisdiction and venue in such County. In any action or proceeding to enforce or construe this Agreement, the prevailing party shall be entitled to recover their actual attorney's fees and costs.
5. **Expenses.** If so requested by Seller, Buyer shall prepay the transportation, insurance charges and other expenses connected with the delivery of goods hereunder and add a separate charge, which represents such prepaid charges, to the shipping invoice accompanying the goods shipped.
6. **Taxes and Duties.** Buyer shall pay all excise, privilege, sales and value-added taxes and all custom duties, levies and other governmental charges, however designated, imposed by any governmental authority arising from the sale or the exportation or importation of the goods, and Buyer shall indemnify and hold Seller harmless from and against any and all expenses, costs, liabilities and claims arising out of or relating to Buyer's failure to fulfill such obligation.
7. **Termination.** Seller reserves the right to terminate the agreement of the parties by written notice to Buyer if Buyer fails to make payment within the time specified or fails to accept delivery within the time specified.
8. **Limited Warranty.** Seller is the supplier of the goods and is not responsible for manufacturing, development and installation of the goods. Seller warrants that it will ship the goods ordered. Seller makes no warranty that the goods will meet the requirements of Buyer or any particular drawing, design or application. GOODS AND COMPONENT PARTS OF GOODS MAY BE SUBJECT TO A SEPARATE MANUFACTURER'S WARRANTY, AND ANY SUCH WARRANTY IS THE EXCLUSIVE WARRANTY WITH RESPECT TO SUCH GOODS AND THEIR COMPONENTS. SELLER PASSES THROUGH AND ASSIGNS TO BUYER THE WARRANTIES OF THE APPLICABLE MANUFACTURER OF THE GOODS AND THEIR COMPONENTS TO THE EXTENT SUCH WARRANTIES ARE ASSIGNABLE. If Buyer believes any goods do not comply with such warranty, Buyer shall, within the warranty period, report the purported defect to Seller and the manufacturer and cooperate fully with Seller and the manufacturer in determining the conditions and cause of any purported defect and, thereby, obtain returned goods authorization. If it is determined the alleged defect occurred as a result of misuse, neglect, improper installation, repair, alteration, application or accident, unusual physical or electrical stress or improper handling or maintenance procedure, any warranty shall be void and ineffective.
9. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY SELLER OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE OVERRIDDEN, EXCLUDED AND DISCLAIMED.
10. **Exclusive Remedy and Damage Limitation.** In the event Buyer establishes a breach of the above warranty, Buyer's exclusive remedy against Seller, and Seller's sole liability, is, at its option, the replacement of the defective goods or the refund of the purchase price therefor. In no event shall Seller be liable for damages in excess of the purchase price of the goods or \$50,000.00, whichever is less. **FURTHER, SELLER IS NOT RESPONSIBLE FOR ANY REMOVAL OR REINSTALLATION LABOR COSTS INCURRED IN REPLACING DEFECTIVE COMPONENT PARTS.**
11. **No Consequential Damages.** SELLER SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF GOODWILL, PROFITS, USE OF MONEY OR USE OF GOODS, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.
12. **Force Majeure.** Except for payment obligations, neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts or materials. If any of these causes continues to prevent or delay performance for more than ninety (90) days, the affected party may terminate the agreement between the parties, in whole or in part, effective immediately upon notice to the other party.
13. **Waiver.** Failure by Seller to strictly enforce any Terms shall not be deemed a waiver of such provision or create a course of dealing between the parties pursuant to which performance is not required.
14. **Dispute resolution.** Any action arising out of the agreement between the parties, except as otherwise provided herein, shall be resolved by binding arbitration held with the JAMS in Santa Clara County, California.
15. **Governing law.** The agreement shall be governed by the laws of the State of California, excluding its conflict of law rules.
16. **Security Interest.** Buyer grants to Seller a security interest in the goods purchased and all other assets of Buyer in Seller's possession, including without limitation, plans and drawings, for the performance of all of Buyer's obligations to Seller.
17. **Construction Materials Provisions.** To the extent that materials or products furnished by Seller are intended by Buyer to be incorporated into a construction work of improvement, Buyer shall fully and promptly furnish to Seller any and all information requested for the proper filling out and service of a preliminary 20-day notice under the Mechanic's Lien Laws. Buyer shall assign to Seller any and all mechanic's lien, stop notice, bond claims or rights that Buyer has or may have with respect to the project under the Mechanic's Lien and Stop Notice Laws pertaining to public or private construction, or against contract proceeds or retainages payable to Buyer with respect to such project. In no event shall the assignment release Buyer of the underlying obligation to pay Seller the entire debt owed to Seller. Further, Buyer's assignment to Seller of the claims or security given to Seller or that Seller may have received from Buyer. To the extent there are monies due for materials furnished by Seller to Buyer on a particular construction project, Seller agrees upon Buyer's request, to execute documents and perform any acts necessary or appropriate to perfect or pursue such claims or rights, or to permit Buyer to perfect or pursue such claims or rights whether in Seller's name or otherwise. Buyer agrees to indemnify, defend, and hold Seller harmless from any claims, liabilities, causes of action, expenses, including attorneys' fees arising out of or in connection with any services, materials, supplies, or equipment provided by Buyer.
18. **Entire Agreement.** Seller's applicable Quotation or Acknowledgment, together with any applicable goods specifications, and these Terms constitute the entire agreement of the parties and may not be amended except in writing signed by both parties.