

## AQUA-HOT PURCHASE ORDER TERMS AND CONDITIONS

**ACCEPTANCE:** Seller's acceptance of Buyer's purchase order relating to offered products or services is expressly made conditional on Seller's acceptance of these terms and conditions, which are in lieu of and supersede any additional or different terms and conditions contained in buyer's purchase order or other document or communication pertaining to buyer's order for the products or services.

**RISK OF LOSS:** From and after delivery of the product sold by Seller to Buyer to a common carrier, all risks of loss or damage to the product shall be borne solely by the Buyer. Invoices for each shipment must be mailed to Buyer's accounting department not later than one day following shipment. Shipments must contain packing list giving description of material, quantity and purchase order number. All shipments are F.O.B. Seller's shipping point. Products must be shipped by the particular route, method and carrier as stated in this Purchase Order. In the event that Seller fails to ship goods on or before any scheduled shipping date, Buyer shall have the right to specify a more rapid method of shipment than was specified originally and Seller shall bear, at no additional cost to Buyer, any increased costs occasioned thereby.

**PAYMENT TERMS:** Unless otherwise indicated, terms will be Net 30 Days, from date of invoice.

**PRICES:** Prior to acceptance of Buyer's Order, prices quoted are subject to change upon written notice, if component suppliers increase their prices to Seller, or if Buyer changes its design requirements.

**TAXES:** Prices quoted do not include taxes or other assessments with respect to the Product. Any applicable Sales, Use, or Federal Excise taxes shall be shown separately on the invoice.

**DELIVERY DATE:** Time is of the essence and if delivery of Products is not completed by the time promised, the Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this Purchase Order by notice effective when received by Seller, as to stated items not yet shipped and to purchase substitute items and charge the Seller with any loss incurred. The on time window is three days before the requested delivery date and zero days after the requested delivery date.

**TERMINATION:** Due to the importance to both parties regarding timing and performance, cancellation must be supported by good and reasonable cause. Notice to terminate this agreement, by either party, must be given in writing to the other party a minimum of 30 days prior to the desired termination date. Buyer will be entitled to compensation and expenses incurred through the effective date of termination. Upon Buyer's request, Seller shall preserve, protect and deliver to Buyer, at Buyer's expense, materials on hand, work in progress and completed work, both in its own and in the suppliers' plants.

**CONFIDENTIALITY:** Seller shall not disclose to any third party any information pertaining to the goods provided or services performed hereunder or pertaining to Buyer's business or operations which Seller obtains or has access to in connection herewith, without the prior written consent of Buyer.

**GOVERNING LAW:** All matters pertaining to this purchase order shall be governed by and construed in accordance with the laws of the State of Colorado. Seller consents to jurisdiction in federal and state courts within the State of Colorado.

**FORCE MAJEURE:** The Seller shall not be liable for loss or damage due to delay or prevention of manufacturer or delivery resulting from any cause beyond the Seller's reasonable control which may be due to, or caused by, but shall not be limited to, the following events or requirements: Any regulation, order, act instruction, or priority request of any federal, state or local government, civil or military authority, acts of God, acts or omissions of the Buyer, fire, flood, weather, or requirements necessitated by such events, strikes, embargoes, war, declared or undeclared, delays or shortages in transportation caused by such events, all of which shall be included within the definition of Force Majeure as used herein.

**INDEMNIFICATION:** If any work under this order is to be performed on the Buyer's premises, the Seller agrees to hold Buyer harmless from and indemnify Buyer and others against damages, claims and expenses arising out of such work and based upon personal injuries, deaths, property damage and other matters for which the Seller, its employees or sub-contractors are to any extent legally liable; and, prior to commencement of such work, to furnish to the Buyer certificates of insurance indicating that Seller and its subcontractors have adequate Public Liability, Property, Damage and Workmen's Compensation Insurance.

**SPECIFICATIONS:** All goods and services furnished pursuant to this Purchase Order shall strictly conform to the specifications, descriptions and warranties set forth in this Purchase Order. No change in this Purchase Order shall be made except upon written application to, and subsequent written authority of Buyer.

**WARRANTIES:** Seller expressly warrants that all Goods covered by this Purchase Order will: (a) conform to any and all final specifications, drawings, plans, instructions, samples or other description, whether expressed or implied, furnished by Buyer or by Seller, (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose for which Buyer intends to use such Goods, the Goods will be fit for such particular purpose, (c) be new and merchantable, and (d) be of good material and workmanship and free from defects, whether latent or patent. The foregoing warranty shall survive Buyer's inspection, acceptance, use and subsequent dispossession or sale of the Goods. Seller hereby extends to Buyer any and all warranties received from Seller's suppliers and agrees to enforce such warranties on Buyer's behalf. All Seller's warranties shall run to

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Buyer, its successors, assigns, customers and users of products sold by Buyer. Seller agrees to promptly correct all defects in any Goods not conforming to the foregoing warranties, or replace such Goods, without expense to Buyer, when notified by Buyer. In the event of Seller's failure to correct or replace such defective or non-conforming Goods, Buyer may, after reasonable notice to Seller, make such correction or replacement at Seller's expense.

The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope herein or otherwise provided by Seller to Buyer or otherwise provided by law, including, but not limited to, any and all warranties provided in the Uniform Commercial Code. Seller shall compensate, indemnify and hold Buyer harmless from and against any and all damages, including incidental and consequential damages, claims, liabilities, and expenses (including court costs and attorneys' fees) arising out of or relating to or resulting in any way from a breach of any warranty, whether express or implied, or from any act or omission of Seller, its officers, agents, employees or subcontractors. If inspection discloses that a portion of the goods received are not in accordance with the specifications or descriptions thereof, Buyer shall have the right to cancel any unshipped portion of this order. Payment for goods or services furnished or performed pursuant to this order shall not constitute acceptance thereof by Buyer and such payments shall be deemed to have been made without prejudice to any and all claims Buyer may have against Seller.

The remedies hereinabove provided to Buyer are not exclusive and are in addition to all other remedies available to Buyer pursuant to law, this Purchase Order or otherwise. In the event of breach of warranty, Buyer shall be entitled to all rights and remedies available at law, including but not limited to credit, replacement or repair of defective goods at Buyer's option, costs of removal of the goods from any component, assembly or system into which the goods may have been incorporated, and reinstallation of non-defective goods, and cost of return of the goods. Seller shall also reimburse Buyer for any incidental and consequential damages caused by such nonconforming goods including, but not limited to costs, expenses and losses incurred by Buyer: (a) in inspecting, sorting, repairing or replacing such goods; (b) resulting from any production interruptions; (c) conducting any recall campaigns or other corrective actions and (d) claims for personal injury or property damage. Seller must receive prior approval from Buyer before any changes are made to Goods including, but not limited to, material substitution, that could result in performance or aesthetic differences. Without prior approval from Buyer, Goods may be considered out of specifications.