

**AQUATURBO SYSTEMS, INC.  
TERMS AND CONDITIONS OF SALE**

1. **GOVERNING TERMS:** These Terms and Conditions shall exclusively govern the sale of equipment, components and related services by AQUATURBO SYSTEMS, INC. ("AQUATURBO") to Purchaser. Acceptance of AQUATURBO'S offer or counteroffer by acknowledgment is expressly limited to these terms and conditions and those stated in any AQUATURBO proposal or acknowledgment. AQUATURBO hereby gives notice of objection to any different, or additional terms which may be proposed or contained in any document forwarded by Purchaser. No other terms or conditions or modification of these terms shall be binding upon AQUATURBO unless specifically accepted in writing by an authorized representative of AQUATURBO. Merely signing a purchase order or other document as a condition of payment shall not be deemed a specific acceptance of terms therein by AQUATURBO. The terms and conditions in an AQUATURBO proposal or acknowledgment take precedence if inconsistent with those stated below.

2. **PRICING:** Unless otherwise stated herein, prices quoted are valid for acceptance within 90 days of an AQUATURBO proposal, and are based upon our not being forced to withhold shipment beyond 180 days of Purchase Order date, or final submittal approval date, (if submittals approvals are required). If Purchaser causes or requests delays in manufacture or shipment beyond twelve (12) months from acceptance of an AQUATURBO proposal, AQUATURBO shall have the right to a price increase based on actual escalation in labor, material, overhead, and component costs, and the right to payment of reasonable storage costs, if applicable.

3. **PAYMENT TERMS:** AQUATURBO will extend credit to Purchaser and accept payment of the full net invoice price within thirty (30) days of receipt by Purchaser, subject to a satisfactory credit check and approval by the AQUATURBO Credit Department. Should any investigation reveal grounds for insecurity of payment at any time, AQUATURBO reserves the right to demand payment terms which adequately assure AQUATURBO of Purchaser's expected payment or to withhold shipment until such terms are reached or payment is received. Late payments shall be subject to a 1.5% per month finance charge.

4. **TAXES:** Purchaser shall pay directly or reimburse AQUATURBO for payment of any and all applicable sales, use, excise or other taxes. Purchaser is responsible for and bears the risk of establishment of a valid exemption from any tax, and shall indemnify, defend and hold AQUATURBO harmless from any loss, cost or expense relating to exemptions.

5. **SHIPPING:** All equipment and components will ordinarily be shipped in one lot by the lowest cost method at the discretion of AQUATURBO. Additional shipments requested by Purchaser shall be subject to additional shipping and handling charges. All shipments shall be F.O.B. AQUATURBO'S plant. Delivery to the carrier shall constitute delivery to Purchaser for purposes of transfer of risk of loss or damage in transit and meeting Purchaser's schedule. Purchaser is responsible for obtaining cargo insurance and shall pursue any loss or damage claims solely with the carrier.

6. **DELIVERY DATES:** Acceptance of Purchase order is contingent upon our not being forced to withhold shipment beyond 180 days of Purchase Order date, or final submittal approval date, (if submittals approvals are required). All delivery dates are approximate and subject to revision due to engineering approval delays, availability of materials and components, and other causes beyond AQUATURBO'S control, including unusual weather conditions, acts of God or government, accidents, any labor dispute (including lockouts), or damage or breakdown at AQUATURBO'S plant. AQUATURBO will use its best efforts to meet promised delivery dates, but under no circumstances shall AQUATURBO be liable for any direct, or indirect, consequential, incidental, liquidated or other damages for delay in delivery.

7. **FIELD SERVICE:** When included in a contract, "Field Service" refers to the services of an AQUATURBO factory-trained representative at the site of end-use for initial installation, inspection, start-up observation and operator training and for subsequent investigation of warranty issues, operational difficulties and Purchaser complaints or requests for post-warranty service. Purchaser acknowledges that AQUATURBO Field Service representatives are non-union technical advisors only and shall make all arrangements necessary with labor unions for their presence on the site. No contractual warranty or indemnity relating to Field Service is extended by AQUATURBO, nor are its Field Service representatives authorized to bind AQUATURBO with any oral representations or statements in conflict with or addition to the governing contract terms or any manuals or instructions provided by AQUATURBO. This paragraph shall apply to any and all initial and subsequent Field Service provided by AQUATURBO relating to the equipment sold to Purchaser.

8. **CANCELLATION:** Purchaser may not cancel or terminate its order without the written consent of AQUATURBO and payment of its associated costs, overhead and losses, including anticipated profit. If Purchaser is subject to a termination for convenience provision in the prime contract, AQUATURBO will consider deferral of payment pending resolution of Purchaser's claim.

9. **GOVERNMENT STANDARDS:** AQUATURBO'S equipment will be designed and manufactured to comply with federal government occupational safety, noise, sanitation and health standards. Purchaser is solely responsible for compliance of the equipment and its operation with any state or local laws, codes, ordinances, or regulations, unless specifically identified by AQUATURBO in its proposal.

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**10. LIMITED WARRANTY:** AQUATURBO warrants that the equipment and components furnished will be and remain free from defects in workmanship and materials and perform the general process function intended, solely under the conditions defined by AQUATURBO, for a period of (a) (36) months from completion of installation, start-up or acceptance of the equipment, or (b) (42) months from the date of shipment from AQUATURBO'S factory, whichever expires first. AQUATURBO will replace, modify or repair, at its sole option, any such defective component or equipment at no charge provided that AQUATURBO is notified promptly in writing of any claimed defect and, if requested by AQUATURBO, any part or component is returned to AQUATURBO, freight pre-paid. AQUATURBO will provide on-site Field Service when reasonably assured of payment therefore if this warranty does not apply or when such service is required in its judgment. This warranty does not apply to any defect or malfunction arising out of failure to store, install, operate or maintain the equipment in accordance with instructions by AQUATURBO or its operation under conditions other than those defined by AQUATURBO. This warranty does not apply to any defect or malfunction arising from chemical corrosion or deterioration caused by chemical effects. Any unauthorized modification or alteration of the equipment or repair or replacement of components may void this warranty, at the sole option of AQUATURBO.

**THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ANY OTHERS, INCLUDING IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**11. EXCLUSIVE REMEDIES:** Purchaser acknowledges that its sole and exclusive remedies for breach of the limited Warranty shall be replacement or repair by AQUATURBO of any defective part or component, and payment of the reasonable out-of-pocket costs incurred in connection with replacement or repair if such costs are approved in advance by AQUATURBO. This remedy does not include any other consequential, incidental, special or other form of damages or extraordinary costs for removal or re-installation, such as crane rental or structural alteration or demolition, necessitated by factors over which AQUATURBO has no control such as building design or configuration.

**12. LIMITATION OF LIABILITIES:** AQUATURBO shall not be liable in contract, tort or otherwise, for any form of consequential, incidental, punitive, or liquidated damages, loss of use, cost of cover, extraordinary removal or re-installation costs, or governmental fines or penalties arising out of failure of its equipment to perform or be free from defects, late shipment, errors or omissions in Field Service or any other breach or failure to perform whatsoever. Under no circumstances shall AQUATURBO'S total liability of any type exceed the purchase price.

**13. INDEMNIFICATION:** AQUATURBO shall indemnify Purchaser from and against any claims, suits, or demands by others for property damage, personal injury or death arising out of the sole fault or neglect of AQUATURBO in the design or manufacture of its equipment, or for damages for patent infringement arising solely out of equipment or components designed and supplied by AQUATURBO. This indemnity obligation shall be void unless Purchaser provides prompt written notice to AQUATURBO of any occurrence which may require indemnification, Purchaser permits AQUATURBO to assume the defense and settlement of any claim, suit, or demand, and Purchaser cooperates in all respects with AQUATURBO in defense and settlement.

**14. TITLE:** Notwithstanding delivery or installation, title to all equipment furnished shall remain solely with AQUATURBO until Purchaser pays the full purchase price. Until such time, AQUATURBO may enter the premises where such equipment is then located and repossess and remove such equipment by any lawful means as AQUATURBO'S personal property. Purchaser agrees to do all acts deemed necessary or desirable or requested by AQUATURBO to maintain AQUATURBO'S rights in, and title to, such equipment.

**15. GOVERNING LAW:** The transaction between Purchaser and AQUATURBO shall be deemed to be made under, and its terms shall be governed by, construed and enforced in accordance with the laws of the State of Arkansas without regard to its conflict of laws provisions.

**16. ARBITRATION:** Any controversy or claim arising out of or relating to this contract or its breach shall be settled by arbitration conducted in Little Rock, Arkansas, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and Arkansas law. Judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

**17. ASSIGNMENT:** Purchaser shall not assign any of its rights or obligations without the express prior written consent of AQUATURBO, which consent may be withheld, delayed or conditioned in AQUATURBO'S sole discretion. The transaction between Purchaser and AQUATURBO shall not be construed to confer or create a third-party beneficiary relationship with any other entity.