

TERMS AND CONDITIONS

- 1. DEFINITIONS** – The following words shall have the meanings indicated: (i) “Customer” means the person, partnership, company, or corporation procuring Products and/or Services from CH₂O, Inc., (ii) “CH₂O” means CH₂O, Inc., a Washington State corporation, and its assigns, (iii) “Products” means all goods, materials, chattels, equipment, and machinery to be provided to Customer by CH₂O; and (iv) “Services” means any information, materials, or services to be provided to Customer by CH₂O.
- 2. APPLICABLE CONDITIONS** – The Terms and Conditions on the face of this invoice and as set forth below shall constitute the contract between CH₂O and Customer and shall govern the sale or rental of Products and/or Services covered by this invoice. No other terms and conditions whatsoever shall be controlling unless CH₂O and Customer have heretofore entered into a formal written contract for a specified term and have specified that these Terms and Conditions do not apply. In such latter event, the terms and conditions of such formal written term contract shall govern.
- 3. PAYMENT** – Customer agrees to make payment at CH₂O’s location and at the time specified in this document, in lawful United States dollars. CH₂O may, in its sole discretion, require such other payment terms, as it deems appropriate. A finance charge of 1% per month (12% APR) will be assessed on all past due accounts. Interest charged on a past due invoice will be assessed from the date on which that invoice was written.
- 4. PRICE** – Unless otherwise specified in writing, this sale is entered on CH₂O’s records subject to delivery when available and at CH₂O’s prices in effect at date of shipment. In the event of Government action, order, or request which, prior to delivery, prevents CH₂O from adjusting or continuing in effect, the price herein quoted CH₂O shall have the right to cancel this contract.
- 5. WEIGHTS** – CH₂O’s weights shall govern, except that in case of proven error, no adjustment shall be made.
- 6. TAXES** – CH₂O may at any time include in or add to the price, all taxes, excises, or other charges imposed by law on or incident to the production, sale transportation, or use of the Products and/or Services.
- 7. TRANSPORTATION CHARGES** – CH₂O may at any time add to or deduct from the price the amount of any increase or decrease in transportation charges paid by CH₂O on shipments under this sale.
- 8. MEANS OF TRANSPORTATION** – CH₂O may select the most economical means of transportation. If Customer desires a means of transportation other than that selected by CH₂O, but satisfactory to CH₂O, any extra cost incurred by reason of using such other means shall be paid by Customer. Unless goods are sold on a delivered basis, transportation charges do constitute a part of the price.
- 9. TRANSPORTATION RISKS AND CLAIMS** – Risk of loss and title to Products transfers to Customer upon delivery at the F.O.B. point identified on the reverse side of this document. On receipt of title, Customer is responsible for proper protection of Products and compliance with all regulations and ordinances and will indemnify CH₂O against all claims for personal injuries or property damage arising from the storage use or handling of such Products. Claims for damage or shortage in transit must be made by Customer against the carrier. Customer has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.
- 10. DAMAGE CLAIMS** – CH₂O’s liability for damages and remedies against CH₂O shall be limited to return of the purchase price of the particular delivery with respect to which such damages are claimed. The foregoing constitutes the exclusive remedy against CH₂O and entire liability of CH₂O in connection with such delivery. Failure to make a claim in writing against CH₂O within 10 days after arrival of the Products thereof at destination shall constitute an irrevocable acceptance of the Products. Any action for breach of contract concerning this invoice must be commenced within one year after the cause of action has occurred.
- 11. WARRANTY-LIABILITY** – CH₂O PROVIDES THESE PRODUCTS AND/OR SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS, UNLESS OTHERWISE SPECIFIED IN WRITING. CH₂O MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, UNLESS OTHERWISE SPECIFIED IN WRITING. TO THE FULL EXTENT PERMISSIBLE BY LAW, CH₂O DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ASSUMES ALL RESPONSIBILITY AND LIABILITY AND AGREES TO HOLD CH₂O HARMLESS FOR LOSS OR DAMAGE RESULTING FROM STORAGE, HANDLING, OR USE OF THE PRODUCTS OR THEIR CONTAINERS OR FOR LOSS OR DAMAGE RELATED TO SERVICES PROVIDED BY CH₂O. TO THE FULL EXTENT PERMISSIBLE BY LAW, CH₂O WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE, INSTALLATION, OR OPERATION OF PRODUCTS MADE AVAILABLE BY CH₂O OR SERVICES PROVIDED BY CH₂O, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, UNLESS OTHERWISE SPECIFIED IN WRITING.

- 12 **INDEMNITY** – Customer assumes complete responsibility for, and agrees to defend, indemnify, and hold CH₂O, its officers, directors, agents, and employees, and its subsidiaries, affiliates, and assigns, harmless from all claims, demands, actions, causes of action, including attorney’s fees and actual costs incurred as a result thereof, on account of injury to any person or any property damage, arising out of the handling, transportation, storage, possession, processing, further manufacture or other use or resale of the Products after the Products are delivered to Customer, or upon CH₂O’s delivery to carrier at shipping point, and/or arising out of the provision of Services by CH₂O to Customer. This paragraph shall not operate to relieve CH₂O from liability resulting solely from CH₂O’s negligent acts or omissions.
- 13 **EXCUSES FOR NONPERFORMANCE** – No liability, except Customer’s liability for payment of Products and/or Services previously delivered, shall result from delay in performance, or nonperformance, caused by circumstances beyond the control of the party affected, including, but not limited to, Acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, plant shutdown, government actions or inability to obtain goods, equipment or transportation. The affected party may omit purchases or deliveries during the period of continuance of such circumstances and the contract quantity shall be reduced by the quantities so omitted. CH₂O shall endeavor to allocate any available Products and/or Services among Customers, including its own divisions and departments.
- 14 **CONTAINERS** – All containers used for shipment of CH₂O’s Products become the property of Customer at the time of delivery. As to containers on which Customer has paid a deposit, Customer may elect to return such containers for the deposit paid, provided said containers are empty, in good condition, have not contained any other material or Product and are returned within ninety (90) days from the date of sale. If they are not returned in accordance with the foregoing conditions, CH₂O may refuse to accept the same and retain the deposit as compensation. When returning empties, Customer must tag each container to show number, consignor, and consignee. Customer should also put all container numbers on bill of lading and shipping papers and send to CH₂O’s plant where shipment originated. This is essential to identify containers and issue proper credit to Customer. Customer agrees to unload railroad cars and trucks furnished by CH₂O within the free time specified by tariffs on file with applicable regulatory bodies and to pay any charges resulting from its failure in this regard. When containers, cars, and trucks are in Customer’s possession, Customer assumes full responsibility for use and condition thereof.
- 15 **CUSTOMER’S REPRESENTATIONS** – Customer agrees that the Products will be used, handled, stored, transported and disposed of in such manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with CH₂O’s recommendations and applicable governmental laws and regulations. Customer agrees to instruct its employees with respect to and make certain that they know and understand procedures necessary to enable them to comply with the requirement set forth herein and to make certain that they are adequately trained to handle emergency situations arising from the use, handling, storage, transportation and disposition of the Products. Customer further agrees to deliver the most recent edition of such Product literature to its customers and to maintain a written record of such deliveries. Customer shall only sell to those who in the best judgment of Customer can handle, use, store, transport and dispose of Products safely.
- 16 **SECURITY INTEREST** – Customer hereby grants to CH₂O, and CH₂O hereby retains a security interest in, all Products furnished by CH₂O and the proceeds thereof, until the purchase price thereof is fully paid.
- 17 **ASSIGNABILITY** – This Agreement may be assigned by CH₂O, but shall not be assignable by Customer without the prior written consent of CH₂O, and any purported assignment without such consent shall be void. However, in the event that Customer is acquired by another legal entity, assignment shall be automatic.
- 18 **ATTORNEYS’ FEES** – If any action or proceeding is brought by CH₂O or Customer against the other party to enforce any of the terms or conditions of this invoice, or to secure damages for any breach thereof, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including damages and reasonable attorneys’ fees, incurred by the prevailing party in connection with such action or proceeding.
- 19 **APPLICABLE LAW-ENTIRETY** - The construction performance and completion of this invoice and the contract made hereunder is to be governed by the laws of the State of Washington. The parties expressly agree that jurisdiction for any litigation, or claim of relief, arising from or otherwise related to this agreement shall be in the courts of the State of Washington, and the venue shall be Thurston County. In addition, the parties agree that any dispute arising from, or relating to, this agreement shall be decided by mandatory arbitration. The arbitration shall be governed by the rules and procedures as stated in the Washington State Courts Superior Court Mandatory Arbitration Rules and shall be binding on both parties without the right of appeal. No modification or release shall be effective unless in writing signed by the other party and specifically stating it is such modification of release.
- 20 **WATERBORNE PATHOGENS** - Legionella bacteria and other pathogens may be present in water systems. Application of a microbiocide does not guarantee the absence of such pathogens, nor is it possible or reasonable to eliminate all risk of infection. Users should develop a comprehensive water management plan in accordance with ANSI/ASHRAE Standard 188, OSHA guidelines (OSHA Technical Manual Section III: Chapter 7), and other guidelines applicable to the specific facility/system. CH₂O recommends

that testing for pathogens be incorporated in the facility's water management plan. CH₂O has provided this material as a general reference for those who are establishing a pathogen control program. CH₂O makes no claims that any, or all, of the suggestions will prevent disease, nor do we assume any liability for damages associated with such outbreaks.

- 21 **CONFIDENTIALITY** – Customer, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from or created by CH₂O in connection with the sale and performance of CH₂O Products and/or Services shall be the property of CH₂O and shall be preserved in strictest confidence by Customer and shall not be used or disclosed by Customer to third persons except to the extent that such use or disclosure is necessary for the proper performance of the product. If disclosure to third persons is necessary, Customer shall insure that such third persons hold such information in strictest confidence.