

TERMS AND CONDITIONS

1. **DEFINITIONS** – The following words shall have the meanings indicated: (i) “Buyer” means the person, partnership, company, or corporation procuring the Products from the Seller, (ii) “Seller” means CH₂O, Inc., a Washington State corporation, or its subsidiaries, affiliates, or assigns, (iii) “Products” means all goods, materials, chattels, equipment, and machinery to be provided by Seller.
2. **APPLICABLE CONDITIONS** – The terms and conditions on the face of this invoice and as set forth below shall constitute the contract between Seller and Buyer and shall govern the sale of goods covered by this invoice. No other terms and conditions whatsoever shall be controlling unless Seller and Buyer have heretofore entered into a formal written contract for a specified term covering the sale of such goods. In such latter event the terms and conditions of such formal written term contract shall govern.
3. **PAYMENT** – Buyer agrees to make payment at Seller’s location and at the time specified in this document, in lawful money of the United States. Seller 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 on the face of this invoice, this sale is entered on our records subject to delivery when available and at Seller’s prices in effect at date of shipment. In the event of Government action, order, or request which, prior to delivery, prevents Seller from adjusting or continuing in effect, the price herein quoted Seller shall have the right to cancel this contract.
5. **WEIGHTS** – Seller’s weights shall govern, except that in case of proven error, adjustment shall be made.
6. **TAXES** – Seller 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 goods.
7. **TRANSPORTATION CHARGES** – Seller may at any time add to or deduct from the price the amount of any increase or decrease in transportation charges paid by Seller on shipments under this sale.
8. **MEANS OF TRANSPORTATION** – Seller may select the most economical means of transportation. If Buyer desires a means of transportation other than that selected by Seller, but satisfactory to the Seller, any extra cost incurred by reason of using such other means shall be paid by Buyer. 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 Buyer upon delivery at the F.O.B. point identified on the reverse side of this document. On receipt of title, the Buyer is then responsible for proper protection of Products and compliance with all regulations and ordinances and will indemnify Seller 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 Buyer against the carrier. Buyer 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** – Seller’s liability for damages and remedies against the Seller 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 the Seller and entire liability of the Seller in connection with such delivery. Failure to make a claim in writing against the Seller within 10 days after arrival of the goods thereof at destination shall constitute an irrevocable acceptance of the goods. 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** – SELLER WARRANTS THAT THE GOODS SHALL BE OF THE QUALITY AND SPECIFICATIONS STATED HEREIN. EXCEPT AS SO WARRANTED THE GOODS COVERED BY THIS INVOICE ARE SOLD AS IS. SELLER MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED, COVERING THE GOODS. BUYER ASSUMES ALL RESPONSIBILITY AND LIABILITY AND AGREES TO HOLD SELLER HARMLESS FOR LOSS OR DAMAGE RESULTING FROM STORAGE, HANDLING OR USE OF THE GOODS OR THEIR CONTAINERS. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.
12. **INDEMNITY** – Buyer assumes complete responsibility for, and agrees to defend, indemnify and hold Seller, its officers, directors, agents, and employees 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 sold by Buyer after the Products are delivered to Buyer, or upon Seller’s delivery to carrier at shipping point, whether or not said Products are handled, stored, or used singly or in conjunction with other Products provided, however, this paragraph shall not operate to relieve Seller from liability resulting solely from Seller’s negligent acts or omissions.

- 13 **EXCUSES FOR NONPERFORMANCE** – No liability, except Buyer’s liability for payment of goods 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. Seller shall endeavor to allocate any available goods among the Buyers, including its own divisions and departments.
- 14 **CONTAINERS** – All containers used for shipment of Seller’s Products become the property of Buyer at the time of delivery. As to containers on which Buyer has paid a deposit, Buyer 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, Seller may refuse to accept the same and retain the deposit as compensation.
When returning empties, Buyer must tag each container to show number, consignor, and consignee. The Buyer should also put all container numbers on bill of lading and shipping papers and mail to Seller’s plant where shipment originated. This is essential to identify containers and issue proper credit to Buyer.
Buyer agrees to unload railroad cars and trucks furnished by Seller 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 Buyer’s possession, Buyer assumes full responsibility for use and condition thereof.
- 15 **BUYER’S REPRESENTATIONS** – Buyer 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 Seller’s recommendations and applicable governmental laws and regulations. Buyer 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. Buyer further agrees to deliver the most recent edition of such Product literature to its customers and to maintain a written record of such deliveries. Buyer shall only sell to those who in the best judgment of Buyer can handle, use, store, transport and dispose of Products safely.
- 16 **SECURITY INTEREST** – Buyer hereby grants to Seller and Seller hereby retains a security interest in all Products furnished by Seller and the proceeds thereof, until the purchase price thereof is fully paid.
- 17 **ASSIGNABILITY** – This Agreement may be assigned by the Seller, but shall not be assignable by the Buyer without the prior written consent of the Seller and any purported assignment without such consent shall be void.
- 18 **ATTORNEYS’ FEES** – If any action or proceeding is brought by Seller or Buyer 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 attorney’s 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 RCW 7.06 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, Inc. recommends that testing for pathogens be incorporated in the facility’s water management plan. CH₂O, Inc. has provided this material as a general reference for those who are establishing a pathogen control program. We make 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, Inc. in connection with the sale and performance of CH₂O products shall be the property of CH₂O, Inc. and shall be preserved in strictest confidence by the customer and shall not be used or disclosed by the 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, the customer shall insure that such third persons hold such information in strictest confidence.