

Terms and Conditions

DEFINITIONS

Buyer: The Party listed on Schedule A that enters into Purchase Order with Vendor

Vendor: Party selling Material or Services

Purchase Order: Agreement between Seller and Buyer for Material or Services

1. **OFFER AND ACCEPTANCE** - This Purchase Order constitutes an offer from Buyer that is expressly limited to the Terms and Conditions contained herein. By accepting this Purchase Order or executing work in connection with and in accordance with this Purchase Order, the Vendor accepts the Terms and Conditions included herein. The Terms and Conditions of this Purchase Order are those that apply to the purchase of materials, items, products, or components (hereinafter referred to as "Material") or the services to be provided by Vendor pursuant to the Purchase Order ("Services"). All exhibits, attachments, technical specifications, drawings, notes, instructions, or information referenced in the Purchase Order are incorporated herein by reference. These Terms and Conditions control unless they are specifically varied or contradicted by one of the following methods in the listed order of precedence: i) varying terms on the face of this Purchase Order, ii) Buyer Supplemental Terms and Conditions if attached and referenced as part of this Purchase Order, or iii) another valid contract between the Buyer and the Vendor to which this Purchase Order applies. All other prior oral or written statements varying the Purchase Order are specifically rejected and disclaimed. Buyer shall have the right to make changes, additions or alterations in the items, quantities, destination, specifications, drawings, designs or delivery schedules contained in this Purchase Order. The parties agree to undertake an appropriate adjustment in Price (as defined herein) and delivery time where Vendor's direct costs or delivery schedule are materially affected by such changes. Any request by Vendor for an adjustment in Price or terms must be made within 30 days of any such change. All changes and adjustments to Price and/or terms, if any, must be in writing and signed by a duly authorized representative of Buyer.
2. **DELIVERY** – Time is of the essence with respect to delivery of Materials or performance of Services. Delivery must be made or Services performed within the time stated on the Purchase Order or Buyer reserves the right to cancel the Purchase Order for delay without cost to Buyer regardless if such delay is directly or indirectly caused by, or in any manner arises from, fires, floods, accidents, riots, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, pandemics or epidemics or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond the control of Vendor. Upon such cancellation, Seller shall indemnify and hold Buyer harmless for any damage, liability, loss or expense incurred as a result of Seller's failure to make delivery or perform within the time specified in the Purchase Order. Buyer shall be entitled to add late delivery or performance penalties on the Purchase Order.
3. **TERMINATION.** Buyer may terminate this Purchase Order for breach of a material term or condition by giving fourteen (14) days' written notice identifying specifically the basis for such notice, unless the party receiving the notice cures such breach within the fourteen (14) day period. Notwithstanding the foregoing, Buyer may terminate this Purchase Order without penalty or further obligation to Vendor at any time for any or no reason upon thirty (30) days' prior written notice to Vendor.
4. **TERMS OF PAYMENT-** All invoices will be dated the date of shipment of Materials or performance of Service. Unless otherwise agreed to in writing by Buyer, (a) payment terms are 2%/10 days, net 60 days from date of each invoice, (b) and except as provided in Sections 1 and 5, the price ("Price") contained in the Purchase Order is firm and (c) back charges will not be accepted by Buyer. Vendor warrants that the Price for the Material or Services is no less favorable than that currently extended by Vendor to any other customer for the same or similar goods in similar quantities or the performance of similar services. Typographical or clerical errors in quotations are subject to correction by Buyer.
5. **PERCENTAGE OF COMPLETION CERTIFICATE.** For any Purchase Order in excess of \$50,000, Buyer shall have the right, at its sole discretion, from time to time or on a monthly or other basis, to require Vendor to complete a percentage of completion report ("Report"). The Report shall be on a form acceptable to Buyer and shall include such photos and/or backup documentation as required by Buyer. In the event of Vendor's failure to (a) submit a Report when due or (b) include photos and/or backup documentation acceptable to Buyer, Buyer shall have the right to take a .2% discount ("Discount") off the total Price for each such failure; provided, however, that such Discount shall not in the aggregate exceed 1% of the Price.
6. **DRAWINGS** – Vendor shall submit approval drawings and documents to Buyer's Engineering Department prior to performing any manufacturing when specified on the Purchase Order. Manufacturing of any Material shall not commence

until Vendor receives written approval from Buyer when specified on the Purchase Order. Notwithstanding any other provision of this Purchase Order to the contrary, Buyer shall have the right to cancel the Purchase Order at any time prior to approval of drawings upon two (2) days written notice.

7. **SPECIFICATIONS** - All Material furnished must be new, of the highest quality and in strict accordance with Buyer specifications and descriptions included as part of this Purchase Order. In the absence of Buyer specifications, Material shall be provided in strict accordance with Vendor's specifications and representations made by Vendor's sales personnel, agents and representatives, or as published in Vendor's literature. Material will be subject to Buyer's inspection and rejection or approval as provided in this Purchase Order. All rejected Material will, at the option of Buyer, either be returned to the Vendor at Vendor's sole cost and expense, or will be held by Buyer for disposition at the Vendor's risk and expense. Vendor agrees to bear the sole cost of all warranty repairs (including removal and transportation costs) for Material that fails at the location of a customer of Buyer.

8. **INSPECTIONS** - , Buyer shall have full access to Vendor's premises and may, at its sole discretion, perform an in-process inspection and final inspection of all Material prior to shipment upon two (2) days prior written notice. Vendor shall notify Buyer's Engineering Department of the status two (2) weeks before any Material is ready to ship. Buyer may, at its sole option, elect to allow Vendor's photos and internal quality inspection documents to substitute for Buyer's in-person inspection. Regardless of the method of inspection, if given written notice of an authorization requirement by Buyer at any time before shipment, Vendor shall not ship any Material without written authorization from Buyer. In the event of Vendor's failure to comply with this Section 8, Buyer shall have the right to take a Discount off the total Price on any related invoices in an amount not to exceed 2% of the Price.

9. **WARRANTIES** - With respect to Material and notwithstanding payment hereunder or any prior inspection, Vendor warrants to Buyer and Buyer's customers during the Warranty Period: (a) the Material shall be free from defects in workmanship and material and shall be new and of the highest quality; (b) Buyer shall receive title to the Material free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (c) the Material shall be merchantable, safe and fit for the Buyer's intended purposes, which purposes have been communicated to Vendor; (d) the Material shall be adequately contained, packaged, marked and labeled; and (e) the Materials shall be manufactured in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification, including, but not limited to, the Occupational Health and Safety Act, the Fair Labor Standards Act and any law or order pertaining to discrimination.

With respect to Services and notwithstanding payment hereunder, Vendor warrants to Buyer and Buyer's customers during the Warranty Period that all Services will be performed: (a) with due professional care; (b) in a workmanlike, professional, timely and diligent manner; (c) in accordance with all applicable industry standards and industry best practices; (d) by qualified workers experienced in performing the Services; (e) in strict conformance with applicable specifications and industry performance criteria; and (f) in conformance with this Agreement and in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards and any law or order pertaining to discrimination.

These warranties shall be in addition to all other warranties, whether express, implied or statutory. Buyer's approval of Vendor's design, material, process, drawing, specifications or the like shall not be construed to relieve Vendor of the warranties set forth herein. "Warranty Period" shall mean 12 months from the date the Material is put into service by the ultimate end user or the performance of the Service.

10. **BREACH OF WARRANTY** - If Buyer experiences any defect, failure or non-conformity of the Material during the Warranty Period or the breach of any warranty related to the Services, Buyer shall have the right, at its sole option, to take the following actions: (a) require Vendor to cure defects in the Material within a reasonable period, determined by Buyer in its sole discretion given the urgency of the given situation; (b) require Vendor to repair or replace the defective goods in whole or in part at Vendor's sole expense, including all shipping, transportation and installation costs; (c) Buyer may cure defects and recover the total cost from Vendor; (d) Buyer may replace the defective Material with similar items from another supplier and recover the total cost from Vendor or (e) Buyer may have the Services performed by another provider and recover the total cost from Vendor.

11. **INTELLECTUAL PROPERTY** - Vendor agrees to defend, protect and hold harmless at its own expense, Buyer, its clients and the users of Buyer's products (each, an "Indemnified Party"), against any suit, damage, claim or demand brought against any Indemnified Party that any Material furnished under this Purchase Order constitutes an infringement of any patent

or intellectual property, provided that Vendor is notified in writing of such suit within 10 days after service of process therein on any Indemnified Party, and all papers therein are delivered to Vendor and Vendor is given the authority, information, and assistance to defend against the suit. Notwithstanding the foregoing, Buyer shall indemnify and hold Vendor harmless for any expense or loss resulting from any claim of infringement of patents or trademarks arising from compliance with Buyer's designs or specifications.

12. **SPECIAL EQUIPMENT** - All tools, dies or any equipment furnished to Vendor by Buyer, or specifically paid for by Buyer, shall be the property of the Buyer and subject to return by the Vendor upon demand by Buyer without additional cost. Said tools, dies and equipment supplied by Buyer shall be used only for filling Buyer orders.

13. **SHIPMENT** – Unless otherwise stated, all Prices in the Purchase Order are F.O.B. Vendor shipping point. Method and route of shipment are at the discretion of Buyer, . All monies collected from carriers or transportation companies through claims for reparation based on a lower rate of classification than that applied to this Purchase Order or in effect on the date of this Purchase Order shall be paid to Buyer. Identification of the goods to the contract shall occur as each shipment is placed in the hands of the carrier. Where a carrier is specified by Buyer, all Materials must be forwarded by the particular route named; otherwise the difference in transportation charges and cartage cost will be for the Vendor's account. No charge will be allowed for cartage or boxing unless agreed to in writing by Buyer. A packing slip must be enclosed with each shipment of the Material under this Purchase Order and must show the Buyer order number and parts number.

14. **CONFIDENTIALITY.** Vendor shall maintain the confidentiality of (a) all records, documents, information, specifications and data made available to it by Buyer pursuant to this Purchase Order and (b) any information relating to any portion of Buyer's or Buyer's customer's business that Vendor may acquire during Vendor's performance hereunder. In the event that a separate non-disclosure agreement exists between the Buyer and the Vendor, applicable to this purchase order, the terms of the separate non-disclosure agreement shall govern the confidentiality obligations of the parties to this Purchase Order.

15. **NON-INTERFERENCE.** Vendor shall not interfere nor take any actions to interfere with any business relationships between Buyer and any employee, contractor, customer, client, supplier, vendor or provider of Buyer.

16. **INDEMNIFICATION-** Vendor shall indemnify and hold Buyer, its customers and its affiliates and their respective directors, officers, employees and agents, harmless from all damages, liability, losses and expenses (including reasonable attorney's fees and expenses) arising out of claims, proceedings or lawsuits of third parties based on, attributable to or involving the Material purchased hereunder or its use, handling, or operation.

17. **ARBITRATION AND GOVERNING LAW** - Any controversy or claim arising out of or relating to the Purchase Order and these Terms and Conditions or the performance or breach thereof that cannot be settled by the officers of each party shall be settled by arbitration in accordance with the then current rules and procedures of the American Arbitration Association-International Centre of Dispute Resolution. Buyer shall have the right and option, in its sole discretion, to pursue arbitration in either the New Jersey regional office of AAA-ICDR, located at Somerset County, New Jersey, USA or in a AAA-ICDR office located in any jurisdiction in which Vendor may be located. The Purchase Order and these Terms and Conditions shall be construed, and the respective rights and duties of Buyer and Vendor shall be determined, according to the laws of the State of New Jersey.

18. **SET-OFF** – Buyer shall have the right to reduce and set-off against amounts payable hereunder, any indebtedness or other claim which Buyer or any affiliate may have against Vendor under this Purchase Order or any other agreement between the parties.

19. **NO ASSIGNMENT-** The Purchase Order and these Terms and Conditions are not transferable by either party without the prior written consent of the other party, except that Buyer may assign this agreement without Vendor's consent if the assignment is to an affiliate or if the assignment is carried out as part of a merger, restructuring, reorganization or sale or transfer of all or substantially all of Buyer's assets.

20. **MISCELLANEOUS** - The Purchase Order and these Terms and Conditions are the sole and exclusive statements of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any other document received from Buyer or submitted to Vendor. The Purchase Order and these Terms and Conditions contain the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Buyer of any provision of the Purchase Order or these Terms and Conditions or any breach hereof shall constitute or be deemed to be a waiver of any

such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of the Purchase Order or these Terms and Conditions. If any clause or portion hereof or thereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing the Purchase Order or these Terms and Conditions.

21. TAXES – The Price is exclusive of any city, state, federal or foreign excise taxes, duties and customs, including, but not limited to, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. All taxes associated with payment for goods and services hereunder will be the independent responsibility of Vendor or Buyer as required by law and neither party is responsible to the other for payments or reimbursement of amounts incurred thereunder.

22. INSURANCE – Vendor shall maintain, at its sole cost, and shall require any subcontractors it may engage to maintain, the occurrence form of insurance coverage set forth below at all times that the Purchase Order is in effect. Buyer shall be named as an additional insured under the Comprehensive General Liability and Auto Liability policies. All coverage shall be obtained from Best “A” VII, or better, rated carriers satisfactory to Buyer. In the event Vendor purchases or maintains insurance policies with limits that are greater than the limits required by this Purchase Order, the maximum limits of such policies shall be fully available to Buyer. Vendor shall deliver an original Certificate of Insurance to Buyer whenever requested. Such certificate shall provide that any change restricting or reducing coverage or the cancellation of any policies under which certificates are issued shall not be valid as respects Buyer’s interests therein unless Buyer has received thirty (30) days’ notice in writing of such change or cancellation. Required insurance: Worker’s Compensation Insurance as required by laws and regulations applicable to and covering employees of Vendor engaged in the performance of work under this Purchase Order.

- a. Employers’ Liability Insurance protecting Vendor against common law liability for employee bodily injury with a limit of not less than \$1,000,000.
- b. Comprehensive General Liability Insurance including but not limited to products/completed operations, blanket contractual and independent coverages with limits of liability not less than \$5,000,000 combined single limit for bodily injury and property damage per occurrence.
- c. Automobile Liability Insurance including owned, non-owned and hired vehicle coverage with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage per occurrence.

23. HEALTH AND SAFETY - Vendors engaged by Buyer are required to maintain a comprehensive health and safety policy that complies with all applicable laws, regulations, and industry standards. The health and safety policy shall include but is not limited to identification of health and safety hazards specific to the Vendor’s work; procedures for assessing and controlling such risks; requirements and provision of personal protective equipment (PPE) and safety gear; emergency response procedures; training and competency requirements and reporting mechanism for incidents, accidents, and hazards. The policy shall outline the Vendor’s commitment to providing a safe and healthy work environment for their employees and those affected by their activities. Vendor shall indemnify, defend and hold harmless Buyer from any claims, liabilities, damages, or losses arising from or related to Vendor’s failure to comply with any applicable health or safety requirements or standards.



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Schedule A

AquaShield™, Inc.
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Hixson, Tennessee 37343

Barnes International, LLC
14 Chestnut Street
Rockford, IL 61102

Fluid Quip KS, LLC
1940 S. Yellow Springs Street
Springfield, OH 45506

Harn RO Systems Inc.
310 Center Court
Venice, Florida 34285

Komline-Haselden, LLC
474 Deanna Lane
Charleston, South Carolina, 29492

Komline-Sanderson Corporation
12 Holland Avenue
Peapack, NJ 07977