

## TERMS AND CONDITIONS OF SALE

**1. Agreement.** These Terms and Conditions of Sale, together with any other document(s) that Evoqua Water Technologies LLC ("Evoqua") has attached hereto or executed that specifically reference these Terms and Conditions of Sale (such as a Purchase Order Confirmation, Quotation, Proposal, Standing Order, Credit Application, or Letter of Authorization) (collectively, "Agreement") constitute the entire binding agreement between EVOQUA and you ("Buyer") regarding the purchase, use, and/or resale of products, services, and support from EVOQUA (collectively, "Products") and supersede all other agreements and understandings, whether written or oral, between the parties. No additions, conditions, amendments, alterations, or modifications by Buyer or any other person, whether oral or contained in any other documents submitted from Buyer to EVOQUA will be binding on EVOQUA, regardless of EVOQUA failure to object or EVOQUA shipment of Products, unless otherwise agreed to in writing and signed by EVOQUA. THIS AGREEMENT WILL APPLY UNLESS BUYER HAS A SEPARATE WRITTEN AGREEMENT WITH EVOQUA THAT EXPRESSLY REPLACES THIS AGREEMENT.

**2. Price.** All prices exclude applicable United States federal, state, and local taxes as well as any applicable foreign taxes, which will be the responsibility of Buyer and unless Buyer is exempt therefrom and EVOQUA has received proper documentation therefor, such taxes will be added to the price of the Product or billed separately to Buyer where EVOQUA has the legal obligation to collect the taxes.

**3. Payment Terms.** Payment is due net thirty (30) days after the date of EVOQUA invoice, unless otherwise agreed in writing. All payments must be made in U.S. Dollars. EVOQUA reserves the right to charge a monthly service charge of one percent (1%) or the highest rate allowed by law, whichever is lower, on accounts that are not paid when due, effective as of the first day after the due date. If Buyer fails to fulfill the terms of payment or does not meet EVOQUA continuing credit requirements, EVOQUA will have the option to do one or more of the following: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any shipment until payment is received by EVOQUA or further assurances asked for by EVOQUA are received; (iv) declare all outstanding sums immediately due and payable; or (v) require payment for all Products delivered hereunder to be made by irrevocable letter of credit in a form approved by EVOQUA. Nothing contained herein will release Buyer from any previous obligation. Buyer will be liable to EVOQUA for all costs incurred by EVOQUA in its collection of any amounts owing by Buyer which are not paid when due, including collection agencies' and attorneys' fees and expenses. All orders are subject to current credit approval. From time to time, EVOQUA may review Buyer's creditworthiness. Buyer agrees to provide EVOQUA with all credit information reasonably requested, and Buyer represents and warrants to EVOQUA now, and each time Buyer places an order, that all information Buyer has provided is true and correct.

**4. Electronic Orders.** The parties shall convey transactional information electronically via an Electronic Data Interchange ("EDI") at the STX12 4010 standard. Accordingly, each party shall use commercially reasonable efforts to provide and/or receive, as appropriate, invoicing, acknowledgments, confirmations and payment (810, 850, 855, and 856) via EDI, preferably transmitted via Global Healthcare Exchange ("GHX").

**5. Force Majeure.** Neither party assumes liability or will be liable to the other party for any failure or any delay in fulfilling its obligations hereunder caused, in whole or in part, directly or indirectly, by fires, natural disasters, strikes, shortages of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargoes, government orders or directives, pandemic, outbreak of infectious disease or any other public health crisis, terrorist activities, or any other circumstance beyond the reasonable control of such party. EVOQUA may at its option suspend deliveries while such event or circumstance continues, apportion available inventory between its customers as it determines, or terminate this Agreement with immediate effect by written notice to Buyer.

**6. Delivery Terms; Title.**

- Products not requiring installation shipped via Parcel, LTL, FTL, and Container. Unless otherwise agreed by EVOQUA in writing, all shipments to points in the U.S. (including any Buyer-requested expedited and overnight deliveries) will be delivered by EVOQUA FOB Destination and all shipments to points outside the U.S. will be delivered by EVOQUA DAP Destination (as such term is defined in INCOTERMS® 2020). All additional delivery requirements, including, but not limited to, lift gate or inside delivery, must be communicated to EVOQUA upon submission of Buyer's purchase order. Title to and risk of loss or damage for all Products will pass to Buyer upon EVOQUA delivery of the Products to the destination. Delivery dates provided by EVOQUA are estimates only. Shipping, freight, and handling charges are the sole responsibility of Buyer and will be "pre-paid and add" or otherwise invoiced to Buyer.
- Products requiring installation shipped via "White Glove" Carrier. Unless otherwise agreed by EVOQUA in writing, all shipments to points in the U.S. will be delivered by EVOQUA FOB Destination, via EVOQUA pre-approved "White Glove" carrier. All additional delivery requirements, including, but not limited to, lift gate, inside delivery, unpackaging, debris haul away must be communicated to EVOQUA upon submission of Buyer's purchase order. Title to and risk of loss or damage for all Products will pass to Buyer upon EVOQUA delivery of the Products to the destination. Delivery dates provided by EVOQUA are estimates only. Shipping, freight and handling charges are the sole responsibility of Buyer and will be "pre-paid- and add" or otherwise invoiced to Buyer.

**7. Inspection/Acceptance; Installation; Returns.** Buyer must inspect delivered Products for defects, damage, or shortages which are discoverable upon visual inspection and determine if refusal is required at time of delivery or the Products will be deemed irrevocably accepted and such claims will be deemed waived. Buyer will be solely responsible for installation and servicing of the Products (except to the extent Buyer purchases such services from EVOQUA). If no damages, defects or shortages are noted at time of delivery, the terms and conditions for returning any Products purchased from EVOQUA will be those contained in EVOQUA Returned Material Authorization Policy ("RMA") in effect as of the date of shipment of the Products to Buyer.

**8. Changes.** After acceptance by EVOQUA, Buyer's order will not be subject to cancellation or reduction in any amount without EVOQUA written consent. Any other changes to an order requested by Buyer will require the prior written approval of EVOQUA, which approval may be subject to price adjustments as determined on a case-by-case basis.

**9. Medical Devices.** If any of the Products are medical devices, Buyer acknowledges that it is familiar with the U.S. Safe Medical Devices Act of 1990 as amended (the "Devices Act") and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify EVOQUA within ten (10) days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on Buyer and/or EVOQUA (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration (the "FDA") within seventy-two (72) hours (or such shorter time as required by law), in which case, such notice will be delivered to the FDA and EVOQUA within said period). Buyer will maintain adequate tracking for the Products to enable EVOQUA to meet the FDA requirements applicable to the tracking of medical devices.

**10. Regulatory Disclaimer.** Although Evoqua has required registrations, approvals and licenses (e.g., U.S. 510(k) pre-market notifications) for all or substantially all of its systems, the purchase of parts and system components from Evoqua does not provide 510(k) compliance or compliance under any other law, rule or regulation for Buyer's system.

**11. Limited Warranty.** Subject to the terms below, Evoqua warrants that its products and services (the "Products") will conform to Evoqua's written specifications (where applicable) and will be free from defects in material and workmanship under normal use and service for the following periods (the "Warranty Period").

**Endoscope reprocessors and associated equipment, irrigation pumps, kiosks and servers:** fifteen (15) months from date of shipment from Evoqua or one (1) year from the date of installation, whichever occurs first.

**Consumables, accessories, and Product service parts,** including but not limited to, endoscope hook-ups, filters, printers, printer supplies, test strips, accessory bags, and service parts for Products: ninety (90) days from the date of installation or one hundred twenty (120) days from the date of shipment, whichever occurs first.

**Disposable products:** warranted for single use. The Warranty Period will not in any case exceed the expiration date on the Product label.

**Service:** ninety (90) days from performance of service.

Non-Company Products:

Any Products not manufactured by Evoqua will carry the original manufacturer's warranty, copies of which are available on request. Unless otherwise advised, Evoqua will permit the customer to submit warranty claims regarding such Products to Evoqua, which will then proceed against the original manufacturer on behalf of the customer in accordance with such manufacturer's warranty policy. However, Evoqua takes no responsibility for enforcing such warranty. EVOQUA MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT NOT MANUFACTURED BY EVOQUA.

EVOQUA will have no warranty obligation whatsoever with respect to any damage to a Product caused by or associated with: (i) external causes, including, without limitation, accident, vandalism, natural disaster, acts-of-God, power failure, or electric power surges; (ii) abuse, misuse, or neglect of the Product or use of unauthorized third party filters or other consumables and accessories or chemistries that have not been validated by EVOQUA; (iii) usage not in accordance with Product instructions; (iv) failure to perform required preventive maintenance; or (v) servicing or repair not authorized by EVOQUA. Any oral or written statement concerning the Products inconsistent with the warranty set forth herein will be of no force or effect. Any Products returned due to a defect will be subject to the RMA. EVOQUA SOLE LIABILITY under the warranty will be, at EVOQUA option, to either replace or repair the defective Product(s) or refund or credit the purchase price to Buyer. This will be customer's exclusive remedy for a covered defect.

In order to recover under the warranty, the customer must notify Evoqua of the defect (describing the problem in reasonable detail) prior to the expiration of the Warranty Period and within thirty (30) days of discovery of the defect. Upon receiving Evoqua's official "Returned Material Authorization" (RMA), the customer must promptly return the defective Product to Evoqua (or the service center indicated on the RMA), freight and insurance prepaid. Evoqua will not be responsible for any damage during shipment.

EVOQUA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, AND EVOQUA DOES NOT REPRESENT OR WARRANT THAT ANY PRODUCT WILL MEET BUYER'S REQUIREMENTS.

**12. Trademarks; Copyrights.** Buyer may not use the EVOQUA name or any EVOQUA trademark, service mark, logo, or copyrighted work for any purpose.

**13. No License.** The sale of its Products by EVOQUA does not constitute a license, implied or otherwise, for the use of any patents or know-how of others, nor does it constitute a license, implied or otherwise, on patents or know-how of EVOQUA, except to the extent that the intended use of such Product by Buyer itself is covered by the claims of a EVOQUA patent.

**14. Confidential Information.** Except for information that a party demonstrates was in its possession prior to receipt from the other party, each party agrees that all non-public information, whether written or oral, that is furnished by one party to the other concerning its business and affairs, technology, products or services, or is

learned by a party during discussions or communications between the parties, is proprietary to the disclosing party, and the receiving party will hold such information in confidence and will not use or disclose such information without the disclosing party's prior written consent, except for in connection with the fulfillment of this Agreement.

**15. Limitation of Liabilities and Remedies.** UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. BUYER AGREES THAT UNDER NO CIRCUMSTANCES WILL EVOQUA LIABILITY FOR DIRECT DAMAGES RELATING TO ITS SALE OF PRODUCTS TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PARTICULAR PRODUCTS INVOLVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

**16. Indemnity.** To the fullest extent permitted by law, Buyer will indemnify, defend, and hold harmless EVOQUA, including EVOQUA's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") arising out of a third party claim to the extent caused by: (i) Buyer's modification of or addition to any Product(s); (ii) Buyer's breach of this Agreement; (iii) Buyer's negligence or willful misconduct; or (iv) Buyer's failure to abide by any applicable laws, rules, regulations, and orders. EVOQUA will indemnify, defend, and hold harmless Buyer, including Buyer's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and permitted assigns, from and against any Liabilities arising out of a third party claim for bodily injury to or property damage to the extent caused by EVOQUA's negligence or willful misconduct; or to the extent caused by EVOQUA's failure to abide by any applicable laws, rules, regulations, and orders. EVOQUA is not required to indemnify Buyer to the extent that any claim arises out of use of a Product by any person or entity other than in accordance with EVOQUA-approved Product labeling, including, without limitation, any restrictions on re-use of Products. EVOQUA shall have the sole authority to direct the defense of and settle any claim for which it is providing indemnification. EVOQUA's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying EVOQUA of any claim, and (b) providing reasonable cooperation in the defense of any claim.

**17. Independent Contractors.** No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between EVOQUA and Buyer. Buyer and EVOQUA are independent contractors. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is or will claim to be a legal representative, partner, agent, or employee of the other party.

**18. Export.** Buyer acknowledges that the Products sold under this Agreement, and the transaction contemplated by this Agreement, which may include technology and software, are subject to United States customs and export control laws and regulations and may also be subject to the customs and export laws and regulations of the country in which the Products are received. Buyer acknowledges and agrees that it is Buyer's sole responsibility to comply with and abide by those laws and regulations as applicable. Further, Buyer acknowledges and agrees that under United States law, the Products shipped pursuant to this Agreement may not be sold, leased, or otherwise transferred to restricted countries, any person or entity on the Specially Designated Nationals and Blocked Persons List published by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or utilized by restricted end-users or an end-user engaged in activities related to weapons of mass destruction, including, without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, or chemical or biological weapons.

**19. Governing Law/Venue.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction. Any dispute arising out of or relating to this Agreement will be brought in the courts of the Commonwealth of Pennsylvania, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

**20. Dispute Resolution.** The parties shall attempt in good faith to resolve, through direct negotiation, any dispute between them arising out of or in connection with this Agreement. If the matter is not resolved by negotiation within thirty (30) days, the parties will refer the dispute to their respective senior executives. Neither party shall take any further step in relation to such dispute unless said senior executives fail to resolve the matter through negotiation within an additional thirty (30) days. Nothing in this Section 19 shall prevent a party from (i) obtaining urgent injunctive relief or (ii) exercising any right under this Agreement to preserve its rights under this Agreement. If dispute resolution negotiations are unsuccessful within the time periods herein, the parties may submit the dispute for non-binding mediation at a location acceptable to both parties using a neutral mediator having experience with the industry (with costs shared equally); or as a last resort if mediation is unsuccessful, by litigation.

**21. Waiver.** Any waiver will be limited to the circumstance or event specifically referenced in the written waiver document and will not be deemed a waiver of any other term of this Agreement. The failure of either party to enforce any provision of this Agreement at any time will not be construed to be a waiver of such provision nor of the right of such party thereafter to enforce such provision.

**22. Validity.** If any provision of this Agreement is held to be invalid or unenforceable in any respect, the remaining terms and conditions of this Agreement will remain in full force and effect as if such invalid or unenforceable provision had not been included herein.

**23. Anti-Kickback Statute - Discounts.** It is the intent of Buyer and EVOQUA to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively, as applicable. Buyer's price may constitute a 'discount or other reduction in price' under the Anti-Kickback Statute. EVOQUA will provide Buyer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Buyer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of Products. Buyer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third party reimbursement programs, including Medicare and Medicaid. Buyer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

**24. Audits.** Until the expiration of four (4) years after the furnishing of Products pursuant to this Agreement and in accordance with the provisions of Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. §1395x(v)(1)(I)), EVOQUA will make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Comptroller General of the United States (the "Comptroller General"), or any of their duly authorized representatives, upon request, this Agreement, and the books, documents, and records of EVOQUA that are necessary to certify the nature and extent of the costs of the Products furnished in connection with this Agreement. EVOQUA further agrees that if it carries out any of the duties of this Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization will make available to the Secretary, the Comptroller General, or any of their duly authorized representatives, upon request, the subcontract, and the books, documents, and records of such subcontractor that are necessary to verify the nature and extent of the costs of the Products furnished in connection with such subcontract.

**25. Federal Program Participation.** EVOQUA represents and warrants that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the “**Federal Healthcare Programs**”); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last five (5) years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last five (5) years in Federal Healthcare Programs. EVOQUA will promptly notify Buyer of any change in the status of the representations and warranties set forth above.