

SERVICE TERMS AND CONDITIONS
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1. Agreement. These Service Terms and Conditions, together with any other document(s) that Evoqua Water Technologies LLC (“Evoqua”) has attached hereto or executed that specifically reference these Service Terms and Conditions (such as a Purchase Order Confirmation, Quotation, Proposal, Standing Order, or Credit Application) (collectively, “Agreement”) constitute the entire binding agreement between Evoqua and you (“Buyer”) regarding the purchase of services from Evoqua (“Services”) and supersede all other agreements and understandings, whether written or oral, between the parties. Notwithstanding anything to the contrary, whether executing a Purchase Order, Quotation, Proposal, or Standing Order or by accepting the provision of the Services, Buyer agrees to be bound by and accept the terms and conditions contained in this Agreement. 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’s failure to object or Evoqua’s provision of Services, 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. The prices for the Services and any spare parts or other products supplied by Evoqua (“Products”) are the prices quoted by Evoqua in writing or, if none are quoted, the prices set out in Evoqua’s published price lists from time to time. All prices are subject to change without notice. Fuel surcharges will apply to all Service visits and are subject to change from time to time. All prices exclude applicable United States federal, state, and local 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 Services or billed separately to Buyer where Evoqua has the legal obligation to collect the taxes. Buyer must provide Evoqua with a resale/exemption certificate in order to avoid the withholding of applicable taxes. No refund or adjustment to previously withheld taxes will be made by Evoqua more than sixty (60) days after the invoice date. Proof of certification should be mailed to Evoqua, Attention: Credit and Collection Department.

3. Payment Terms. Payment may be made by credit card (at the time of order) or on open account (subject to credit approval). Provided that Buyer meets Evoqua’s credit requirements, payment will be due net thirty (30) days after the date of Evoqua’s invoice, unless otherwise agreed in writing. All payments must be made in U.S. Dollars. Evoqua reserves the right to charge at any time 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’s 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 service or shipment of Products until payment is received by Evoqua or further assurances asked for by Evoqua are received; or (iv) declare all outstanding sums immediately due and payable. 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, regardless of whether a lawsuit is commenced. 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 that all information Buyer has provided is true and correct.

4. 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, 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.

5. Delivery Terms; Title. Unless otherwise agreed by Evoqua in writing, all shipments will be delivered by Evoqua FOB origin. Title to and risk of loss or damage for all Products will pass to Buyer upon Evoqua’s delivery of the Products to the carrier. Buyer must inspect delivered Products and report claims for defects, damages, or shortages which are discoverable on a visual inspection in writing within ten (10) days of delivery or the Products will be deemed irrevocably accepted and such claims will be deemed waived. In all cases of damage and/or loss to Products in transit, Buyer will be responsible for making claim(s) against the carrier; provided, however, that Evoqua will provide reasonable assistance with damage and/or loss claims. Loss or damage will not relieve Buyer of any obligations for payment or obligations in this Agreement. Delivery dates provided by Evoqua are estimates only. Shipping, freight, handling, delivery, and insurance charges are the sole responsibility of Buyer and will be “pre-paid and add” or otherwise invoiced to Buyer.

6. Changes. After acceptance by Evoqua, Buyer’s order will not be subject to cancellation or reduction in the scope of Services without Evoqua’s 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. Notwithstanding the foregoing, either party may terminate the Services, with or without cause, upon not less than ninety (90) days’ prior written notice to the other party. Termination of the Services will not relieve Buyer of its obligation to pay for all Services performed by Evoqua and Products supplied to Buyer on or prior to the date of such termination. If Buyer terminates the Services for any reason other than Evoqua’s breach, Buyer will also pay Evoqua a cancellation fee equal to twenty percent (20%) of the amount that would be due for Services not yet performed, but cancelled hereunder.

7. 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 (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.

8. 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.

9. Limited Warranties; Limitation of Warranties.

Evoqua warrants to Buyer that Services provided by Evoqua will be performed with reasonable skill and care. The warranty period for Services is ninety (90) days from performance of service.

Non-Evoqua 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 Buyer to submit warranty claims regarding such Products to Evoqua, which will then proceed against the original manufacturer on behalf of Buyer 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 Products. Evoqua warrants to Buyer that Products manufactured by Evoqua that are sold to Buyer will be free from defects in material and workmanship under normal use and service at the time of shipment from Evoqua. The warranty period for Products (other than parts) shipped by Evoqua without any installation by Evoqua is one (1) year. The warranty period for Products (other than parts) installed at a customer site by Evoqua is the lesser of one (1) year from the date of installation or fifteen (15) months from the date of shipment. The warranty period for spare and replacement parts is ninety (90) days from the date of shipment or, if installed by Evoqua, the lesser of ninety (90) days from the date of installation or one hundred eighty (180) days from the date of shipment.

Evoqua will have no warranty obligation whatsoever with respect to any damage 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 consumables and accessories; (iii) usage not in accordance with Product instructions; (iv) failure to perform required preventive maintenance; or (v) servicing or repair not authorized by Evoqua. The limited warranty furnished hereunder does not extend to damage to items purchased hereunder (i) resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by Evoqua, or (ii) caused by improper use or installation, or improper thermal or electrical capacity. In addition, the limited warranty is conditioned upon proper storage, installation, use and maintenance of the Product in accordance with applicable written recommendations of Evoqua.

Notice of a defective Product or Service must be given to Evoqua in writing within ten (10) days following the discovery of such defect. Evoqua's SOLE LIABILITY under the warranty will be, at Evoqua's option, to either (i) replace or repair the defective Product(s) or re-perform the Service or (ii) refund or credit the purchase price of such defective Product(s) or the price paid for such Service to Buyer.

EVOQUA'S LIMITED WARRANTY HEREUNDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY EVOQUA AND EVOQUA 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 OR SERVICE WILL MEET BUYER'S REQUIREMENTS. Any oral or written statement concerning the Products or Services inconsistent with the limited warranty set forth above will be of no force or effect.

Buyer will be responsible for reimbursement of Evoqua's reasonable travel and other expenses incurred in providing on-site warranty and out of warranty services.

10. Limitation of Actions. Any actions or claims by Buyer regarding the Services must be brought within twelve (12) months after the date the Services were performed by Evoqua. However, any billing disputes must be made within one (1) month of the applicable invoice date or will be deemed to be waived.

11. Returns. All returns are subject to Evoqua's Returned Material Authorization Policy.

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

13. Confidential Information. Except for information that Buyer demonstrates was in Buyer's possession prior to receipt from Evoqua, Buyer agrees that all information of Evoqua, whether written or oral, that is furnished by Evoqua to Buyer concerning the business and affairs of Evoqua or is learned by Buyer during discussions or communications between Buyer and Evoqua, is proprietary to Evoqua, and Buyer will hold such information in confidence and will not use or disclose such information without Evoqua's prior written consent, except for the fulfillment of this Agreement.

14. Limitation of Liabilities and Remedies.

Under no circumstances will Evoqua or its affiliates have any liability for damage to a facility or property due to floods or leaks caused by or related to the Services or Products provided hereunder. All water systems must be protected from water hammer, have required safety relief valves, vacuum breakers and leak detectors. Floors and walls must be sealed and sloped to adequate floor drains. In addition, Buyer is responsible for meeting all federal, state, and local laws, rules, and regulations regarding the monitoring of supplied equipment, including ozone equipment.

UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES 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'S LIABILITY RELATING TO ITS SALE OF PRODUCTS OR PROVISION OF SERVICES TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PARTICULAR PRODUCTS OR SERVICES 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.

15. Indemnity. 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") that relates to: (i) Buyer's modification of or addition to any Product(s) or misuse or abuse of the Products; (ii) Buyer's breach of this Agreement; (iii) Buyer's negligence, gross negligence or willful misconduct; or (iv) Buyer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Products or Services. 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, gross negligence or willful misconduct. Evoqua is not required to indemnify Buyer to the extent that any claim arises out of Buyer's gross negligence or willful misconduct or use of a Product by any person or entity other than in accordance with Evoqua's-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 Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

16. 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. Each party is responsible for the direction and compensation, and is liable for the actions of, its employees and subcontractors.

17. Headings. The section headings used herein are for convenience of reference only and do not form a part of this Agreement, and no construction or inference will be derived therefrom.

18. Governing Law/Venue. This Agreement, any sales hereunder, and any claim, dispute, or controversy between Buyer and Evoqua arising from or relating to this Agreement, its interpretation, or the breach, termination, or validity thereof, will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts-of-law rules. Any and all disputes arising under this Agreement will be dealt with under the exclusive jurisdiction and exclusive venue of the federal or state courts located in Allegheny County, Pennsylvania, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

19. Modification and Waiver. Except as otherwise provided in Section 1 of this Agreement, no purported amendment or modification of any provision hereof will be binding unless set forth in writing and signed by an officer of each party. No waiver of any provision hereof will be effective unless in writing and signed by an officer of the waiving party. 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 or of the same circumstance or event upon any recurrence thereof. 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.

20. 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.

21. Supplemental Terms. On custom orders and certain special orders, additional terms and conditions may apply. Such terms and conditions, if applicable, will be set forth in Evoqua's Quotation or Service Proposal and will be deemed a part of this Agreement.

22. 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. 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 and Services 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 and Services. 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.

23. Audits. Until the expiration of four (4) years after the furnishing of Services 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 Services 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 Services 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 Services furnished in connection with such subcontract.

24. 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 notify Buyer of any change in the status of the representations and warranties set forth above.

25. Interruption/Delay. If Buyer is not ready for Service and/or Buyer’s equipment is not accessible upon arrival of Evoqua’s service technician(s), or Service is interrupted (beyond the control of Evoqua) during a Service call, the technician(s) will leave the site and an additional charge reflecting the additional travel and labor will be assessed against Buyer.

26. Work Hours. Quoted prices assume Services performed during normal working hours. Any Services performed by Evoqua outside normal working hours will be charged at standard overtime rates in effect at the time such Services are provided.

27. Local Regulations. If Evoqua is required for any reason to use local union personnel of any trade, hiring and payment for the required union personnel will be the sole responsibility of, and handled by, Buyer. It will not be Evoqua’s responsibility to pay salary, benefits, or other compensation of any kind to the union.

28. Layout Approval. Prior to acceptance of a Service proposal, a proposed room layout and installation flow diagram may be provided to Buyer, provided that Buyer has provided a scaled drawing of its water room to Evoqua. Upon agreement of such layout by both Evoqua and Buyer (and fulfillment of any other pre-contract requirements), the purchase order will be accepted.

29. Exchange Carbon and DI Tanks. In the event the Services include Carbon and/or DI Tank exchanges:

- (a) All such Tanks remain the property of Evoqua.
- (b) Unless otherwise agreed to by Evoqua in writing, the Tanks will be exchanged in accordance with Evoqua’s standard exchange policy. Evoqua’s standard exchange policy provides for servicing of each Tank at least once every six months or when the quality control monitor/indicator or other form of manual testing indicates a service exchange is required.
- (c) All Tanks (except those with monthly rental fees) must not be on Buyer’s site for more than six (6) months without Evoqua’s prior written approval. If Buyer does not provide a purchase order for replacement of the Tanks at or prior to the six month interval, Evoqua will remove the Tanks with no liability to Buyer. Buyer agrees that Evoqua has the right to enter any premises where the Tanks are located to recover such Tanks.

30. Miscellaneous.

- (a) Buyer is responsible for the disposal of any refuse generated during the Services.
- (b) Buyer agrees to provide site parking for Evoqua service vehicles.