

**AQUA SMART, INC.**  
**General Terms and Conditions**

**1. APPLICABILITY:** These terms and conditions of sale (these "Terms") are applicable to each sale of goods ("Goods") by Aqua Smart, Inc. ("Seller") to you ("Customer") and along with those in any purchase order, bill of lading or invoice provided by Seller relating to a specific sale (a "P.O.") and in any binding sales contract between Seller and Customer covering such a sale ("Sales Contract") comprise the entire and complete agreement relating to such sale (the "Agreement") and supersede all other agreements, understandings or communications. With respect to any sale of Goods, should a conflict exist between these Terms and any applicable P.O. or Sales Contract, the terms in the P.O. or Sales Contract shall control. Any terms and conditions proposed by Customer in any manner at any time will not be binding on Seller unless expressly agreed to in a writing signed by Seller's representative.

**2. DELIVERY; SHIPPING TERMS; QUANTITY; TITLE AND RISK OF LOSS:** Unless otherwise agreed in writing, Seller shall cause the Goods to be delivered to the delivery address mutually agreed to by Seller and Customer (the "Delivery Point") using Seller's standard methods for packaging and shipment. Customer, and not Seller, will be responsible for the receipt and unloading of Goods at the Delivery Point. Delivery shall be made FOB Delivery Point, unless otherwise agreed in writing by Seller. If Seller delivers to Customer a quantity of Goods of up to ten percent more or less than the quantity ordered, Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall and shall pay for such Goods the applicable price adjusted pro rata up or down, as applicable. Title, free and clear of all liens arising by or through Seller, and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point.

**3. PAYMENT TERMS, INTEREST & COLLECTION COSTS:** Payment is due in full, without setoff, and in accordance with the time for payment indicated in the applicable P.O. or Sales Contract (and if none is so stated, then within ten days after the earlier of the Customer's receipt of the Goods or Seller's invoice therefore). If Customer fails to make timely payments, Customer shall pay Seller interest, at the lower of one and one-half percent per month and the maximum lawful interest rate which may be assessed, on unpaid past-due amounts accruing from their due dates until the date paid. Notwithstanding anything to the contrary, if Seller retains an attorney to enforce the Agreement in response to a breach by Customer, Customer shall pay to Seller all reasonable attorneys' fees, costs and expenses actually incurred in collecting all amounts due. Customer grants Seller a purchase money security interest in the Goods purchased by Customer, wherever located, and whether now existing or hereafter arising or acquired from time to time, as well as all proceeds thereof (including insurance proceeds), to secure amounts due or to become due from Customer to Seller for or with respect to such Goods, including amounts due under this paragraph, and Seller is authorized to file from time to time financing statements or related items as Seller deems appropriate to perfect or evidence the same.

**4. LIMITED WARRANTY; INSPECTION AND REJECTION OF NON-CONFORMING GOODS; CUSTOMER REMEDY:** Seller warrants to Customer that the Goods when shipped will meet in all material respects Seller's specifications therefore and otherwise be free from any material defects in materials (the "Limited Warranty"). **EXCEPT FOR THE WARRANTY IN THE PRECEDING SENTENCE, SELLER DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL REPRESENTATIONS AND WARRANTIES REGARDING THE GOODS OF ANY NATURE OR KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY REGARDING MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.** Customer agrees to inspect the Goods upon receipt. Customer will be deemed to have accepted the Goods in good order and without any defect or breach of warranty unless it notifies Seller in writing of any "Nonconforming Goods" (defined below) within thirty days of receipt, which writing specifies with reasonable particularity the basis for nonconformance. "Nonconforming Goods" means Goods which fail to meet the Limited Warranty. With respect to any Nonconforming Goods, if Customer timely notifies Seller of the same, Seller shall, in its sole discretion and as Customer's sole and exclusive remedy, (i) promptly replace at Seller's cost the Nonconforming Goods with conforming Goods, or (ii) credit or refund the purchase price for such Nonconforming Goods, together with the reasonable shipping and handling expenses actually incurred by Customer in connection therewith. If requested by Seller as a condition to such replacement, refund or credit, Customer shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to Seller's designated location.

**5. TO THE EXTENT PERMITTED BY APPLICABLE LAW, (A) NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, FOR OR ARISING OUT OF OR RELATING TO ANY GOODS PURCHASED BY CUSTOMER OR SELLER'S SALE THEREOF OR A BREACH OF THE AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, (B) SELLER'S LIABILITY WITH RESPECT TO GOODS SOLD SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SELLER FOR SUCH GOODS, AND (C) ANY CLAIM BY CUSTOMER FOR OR RELATED IN ANY WAY TO GOODS PURCHASED OR TO BE PURCHASED FROM SELLER OR THE DELIVERY OR LACK OF DELIVERY THEREOF SHALL BE DEEMED WAIVED AND RELEASED BY CUSTOMER UNLESS PRESENTED IN WRITING TO SELLER AND FILED IN A COURT OF COMPETENT JURISDICTION WITHIN 1 YEAR FROM THE EARLIER OF THE DATE THE GOODS WERE ORDERED BY CUSTOMER OR THE DATE THE GOODS WERE DELIVERED.**

**6. HAZARDOUS MATERIALS:** The Goods may be or contain dangerous or hazardous materials or substances, and Customer assumes upon receipt of the Goods all risks and liabilities of any nature or kind arising from or related to the same, including but not limited to handling, storage or use. Customer shall comply with all applicable laws, regulations and ordinances, and upon and after Customer's receipt, Customer shall take all necessary, appropriate and/or legally required

precautions and actions to safely, legally and properly receive, store, handle, use, transfer, or ship the Goods and will indemnify, defend and hold harmless Seller from and against any claims, suits, liabilities and damages brought against or incurred or sustained by Seller from any failure to do so.

**7. TERMINATION:** In addition to any remedies that may be afforded Seller, Seller in its discretion may terminate the Agreement or any sales order or suspend any sales or deliveries of Goods with immediate effect upon written notice to Customer, if Customer fails to pay any amount when due hereunder or becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**8. WAIVER:** No waiver by Seller of any of the provisions of the Terms or the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**9. CONFIDENTIAL INFORMATION:** Customer agrees that all specifications, materials, components, recipes and formulas of or relating to the Goods or the manufacture thereof, including but not limited to the specific materials or components comprising the Goods, the relative concentrations thereof, and the processes, methods or order of combining or blending the same, and the pricing or other terms of the Agreement, is/are confidential information of and belonging to Seller, regardless of how disclosed or made available or accessible by Seller to Customer, whether orally or in written, electronic or other form or media, may be used by Customer solely in connection with the Agreement, and may not be disclosed or used by Customer for any other purpose, unless expressly authorized by Seller in writing; provided, however, that such confidential information shall not include information that is now in or hereafter enters the public domain through no act or omission of Customer or its affiliates, agents or representatives or is rightfully obtained by Customer from a third party with no duty to disclose the same. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller containing confidential information. This paragraph shall survive any termination of the Agreement, and Seller shall be entitled to injunctive relief for any violation of this paragraph without any need to prove irreparable harm or put up a bond.

**10. FORCE MAJEURE:** Seller shall not be liable or responsible to Customer, nor have defaulted, breached or have liability under the Agreement, for shipping or delivery delays, for loss or damage in transit, or for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent any of the same is caused by or results from acts, omissions, occurrences, events or circumstances beyond Seller's reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting shippers, carriers or transportation generally, inability or delay in obtaining adequate or suitable labor, transportation, shipment or materials, acts or omissions of third parties or telecommunication breakdown or power outage. If Seller experiences a shortage of Goods due to force majeure or otherwise, Seller may, without liability or penalty, make partial shipments of Goods to Customer or otherwise allocate Goods in amounts determined by Seller.

**11. GOVERNING LAW; JURISDICTION; VENUE:** All matters arising out of or relating to the Terms or the Agreement is governed by and construed in accordance with the laws of the State of Georgia, U.S.A., without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action or proceeding arising out of or relating to the Agreement or goods or product delivered pursuant to the Agreement shall be instituted in a federal or state court located in Chatham County, Georgia, and each party irrevocably submits to the exclusive jurisdiction and venue of and in such courts in any such suit, action or proceeding.

**12. NOTICES; SEVERABILITY; SURVIVAL; AMENDMENT:** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Time is of the essence, and Sections 3, 4, 5, and 8 through 12, inclusive, of these Terms as well as any provisions in these Terms which by their nature should apply beyond their terms, will remain in force after any termination or expiration hereof. These Terms may only be amended in a writing which specifically and expressly states that it amends these Terms and is signed by Seller and Customer.