



Terms and Conditions of Sale

- 1. Proposal; Exclusive Terms and Conditions**– Only a proposal that has been reduced to writing by Barclay Water Management, Inc. (“BWM”) shall be considered a proposal (“Proposal”). A Proposal shall not become binding upon BWM until it has been executed and returned to BWM by Purchaser. These Terms and Conditions of Sale (these “Terms and Conditions”), together with any Proposal are the exclusive terms between you, the purchaser, (“Purchaser”) and BWM (the “Agreement”) with respect to all chemicals, equipment, tanks, software (“Products”) and services, advice and instructions (“Services”) to be delivered or provided by BWM. Any modification of the Agreement, whether oral or written, and whether contained in a purchase order or otherwise, or whether by course of performance or usage of trade shall be void and of no force and effect unless specifically agreed to in writing and signed by an authorized representative of BWM. BWM’s Proposals are expressly limited to acceptance of the terms of the Agreement. Acceptance of the Products and Services shall constitute acceptance of the Agreement by Purchaser. All other terms in purchase orders, invoices, pre-printed forms or other related documents will be superseded by this Agreement. In the case of any conflict between these Terms and Conditions and the BWM Proposal, these Terms and Conditions shall prevail.
- 2. Prices** – Prices are subject to change without notice. Orders based on published prices and accepted for scheduled shipment will be invoiced at BWM’s applicable price in effect on the scheduled date of shipment, unless otherwise specifically noted on the order acknowledgement. Orders specifying palletizing or special packaging will involve special charges.
- 3. Payment; Credit** – Standard terms of payment shall be net thirty (30) days from the invoice date. Purchaser agrees to pay the amounts set forth in the Proposal to BWM’s location specified therein. Credit terms of payment must be approved by BWM’s Credit Department. If Purchaser’s credit is considered unsatisfactory in BWM’s sole

discretion, BWM may rescind or terminate the Agreement. If at any time Purchaser's financial responsibility becomes impaired or unsatisfactory to BWM, BWM reserves the right to stop shipment on notification to Purchaser, with a demand for payment in advance or at time of delivery for future deliveries or to require other security satisfactory to BWM and in the absence thereof, to cancel the unfilled portion of the Agreement. BWM will notify Purchaser promptly of its decision to stop shipments and give an advance notice to the extent possible.

4. **Interest; Costs; Taxes** – Purchaser agrees to pay interest at the rate of 1-1/2% per month (to the extent permitted by law) on all delinquent balances if and when assessed by BWM. Purchaser further agrees to pay any and all attorneys' fees, expenses and/or court costs arising out of and made necessary to collect all amounts due to BWM pursuant to the terms of the Agreement. Any federal, state or local tax assessment, fee, duty or charge hereafter due in connection with Purchaser's purchase and/or receipt of the Products and Services hereunder shall be paid by Purchaser unless Purchaser furnishes BWM with an acceptable exemption certificate from each such tax, fee, duty or charge prior to shipment.
5. **Operating Conditions** – BWM agrees to supply Products and Services pursuant to the terms of the Proposal. Water treatment chemicals, water test kits, and testing reagents will be supplied in quantities consistent with normal operating conditions and the terms of the Proposal. The Proposal may also provide for field and laboratory Services as needed to insure adequate supervision of the water treatment program. Water treatment feed/control equipment is not included but may be purchased separately. Minor, temporary upsets in plant water chemistry are allowable. However, continued malfunctioning of HVAC equipment or excessive water consumption will not obligate BWM to provide water treatment chemicals in excess of the quantity required under normal operating conditions. BWM will bring to your attention any conditions which may limit Products, Services, labor and materials supplied under the Agreement.
6. **Payment For Excessive Usage; Lost And Damaged Products; Payment For Unused Product** – If payment is a fixed amount, or based on Purchaser's usage or production

(and payment is not for the actual amount of Products delivered), then Purchaser shall pay for all Products (a) consumed as a result of a failure to comply with the terms of the “Operating Conditions” Section herein, or (b) lost or damaged after delivery to Purchaser, including loss from theft, force majeure, unexplained disappearance, damage, or otherwise (“Excessive Consumption”). BWM shall replace Products lost through Excessive Consumption and shall invoice Purchaser separately for such Products upon their delivery, which invoice shall be paid within thirty (30) days of its receipt. Upon termination or expiration of the Agreement, Purchaser shall pay BWM at then current prices for all unused Products. BWM shall not accept returns of unused Products.

7. **Safety Data Sheet (“SDS”)** – BWM will provide Purchaser with a SDS with information concerning the material and precautions to be taken in the material’s storage and handling. Purchaser shall be solely responsible for reviewing the SDS, taking the required precautions disclosed in the SDS, and training its personnel who may be handling or be exposed to the material.
8. **Shipment** – BWM will select the method of shipment and routing when transportation charges are for account of BWM. When shipping instructions are specified by Purchaser, all costs will be for the account of Purchaser. The foregoing includes, but is not limited to, carrier’s charges for notification prior to delivery, demurrage, delay in unloading, diversion or re-consignment.
9. **Delays** – All orders are accepted subject to BWM’s ability to make delivery at the time and in the quantities specified, and BWM shall not be liable for damages, for failure to make partial or complete shipment or for any delay in making shipments. Purchaser shall be liable for any added expenses incurred by BWM because of Purchaser’s delay in furnishing requested information to BWM, delay resulting from order changes by Purchaser, or delays in unloading shipments at the delivery point.
10. **Title; Transit Claims** – Title to Products (other than software and leased equipment, pumps and tanks) transfers to Purchaser FOB shipping point. Upon delivery, Purchaser is responsible for the proper placement of Products and compliance with all

regulations and ordinances. Title of software, leased equipment and tanks shall remain with BWM. Purchaser will indemnify, defend, and hold BWM harmless against all claims, damages and expenses (including attorneys' fees) for personal injuries or property damage arising from the receipt, storage, use or handling of such Products. Claims for damage or shortage in transit must be made against the carrier by the owner of the shipment according to the FOB terms of the Agreement. Purchaser has the responsibility to inspect shipments upon receipt of Products to identify any such damage or shortage and to make sure that the appropriate notation is made on the delivery tickets or inspection report furnished by the local agent of the carrier in order to support a claim.

11. Product Returns; Disposal.

(a) Non-Warranty Returns: Products which are not returned pursuant to a warranty claim, may only be returned with BWM's prior written approval which shall be in its sole discretion and will be subject to BWM's acceptance that such Products are in salable condition. Returns accepted by BWM which are made pursuant to Section 20(a) will receive a credit only. BWM will assess charges for freight both ways and costs necessary to restore such Products to BWM's warehouse inventory. If products are determined not to be saleable, Purchaser will be assessed the cost of disposing of the Products. The amount of credit given will depend upon the degree of salability of the Products as determined in BWM's sole discretion.

(b) Warranty Returns: Products returned pursuant to a warranty claim made by Purchaser in accordance with the requirements of Section 25, shall be returned immediately upon discovery and, in any event, prior to the expiration of the Warranty Period. Warranty claims shall specify in detail how the Products are nonconforming to BWM's published specifications. With respect to any chemicals or other materials which are subject to a warranty claim, Purchaser will first return a sample of the chemicals and materials to BWM for testing and BWM will inform Purchaser if additional samples are needed or whether the remaining chemicals and materials should be returned to BWM or disposed by Purchaser. Purchaser shall be responsible

for disposal of any chemicals, materials, residue or waste from the Products (including containers) in accordance with applicable laws. Purchaser hereby shall indemnify, defend, and hold BWM harmless from and against all third-party claims or liabilities, costs, damages and expenses (including attorneys' fees) that BWM may suffer as a result of Purchaser's breach or default of this Section.

12. Modification – If Purchaser desires to cancel a part of the Agreement or modify the Agreement, Purchaser must make such request in writing to BWM. BWM may, in its sole discretion, accept or reject any such request. Notwithstanding BWM's agreement to cancel or modify any terms of the Agreement, Purchaser must take delivery and make payment to BWM for all: (a) material that has been manufactured or is in the process of being manufactured at the time of notice, and (b) all special materials ordered at the time of notice. Payment will be due at the time that BWM receives notice of the cancellation or modification request. All such materials must be removed from BWM's premises within thirty (30) days after payment. BWM also reserves the right to charge a cancellation fee in the event of cancellation by the Purchaser of an order that has already been placed in BWM's shipping schedule and acknowledged by BWM.

13. Limitation Of Liability – In no event will BWM be liable for incidental, special, indirect, consequential, indirect, lost profits, exemplary or punitive damages arising from the products or services, irrespective of whether the claim rises from actual or alleged breach of warranty, indemnification obligations, breach of agreement, tort, product liability, negligence, contribution or any legal theory. Under no circumstances will BWM's liability, if any, exceed the lesser of: (i) purchaser's actual damages or (ii) the amounts received by BWM from purchaser for the products or service which are the subject of the claim.

14. Indemnification – To the fullest extent permitted by law, Purchaser hereby agrees to indemnify, defend, and hold harmless BWM and its officers, directors, shareholders, employees, servants, and agents from and against any and all claims, liabilities, and expenses of any nature whatsoever, including, but not limited to attorney's fees, with respect to any claims of any nature (a) arising from or caused in whole or in part by any

negligent act or omission, or willful misconduct of Purchaser; or (b) arising from or in connection with the breach of any obligation of Purchaser as set forth in the Agreement.

15. Warranties – BWM warrants that (a) its chemical products shall conform to BWM’s standard product specifications in effect at the time of shipment, (b) its services shall be performed in a good and workmanlike manner, (c) its equipment shall be free from material defects in workmanship and materials for a period of 12 months from the date of shipment, and (d) its products and equipment sold shall be transferred with good title free of liens. BWM’s liability under this warranty is limited to replacement of nonconforming product, repair, or replacement of defective items, or, a refund of or invoice credit for the product or service price during the warranty period set forth herein. For products not manufactured by BWM, the sole warranty available shall be the manufacturer’s transferable warranty, if any. BWM makes no warranties with respect to water system biohazards from waterborne pathogens, including but not limited to *Legionella* bacteria or health risks therefrom. BWM cannot guarantee that the risk of the presence of *Legionella* or the risk of legionellosis has been reduced or eliminated by reason of the Products or Services provided by BWM. BWM does not and cannot guarantee that water quality within the assessed systems will meet governmental or trade standards. **BWM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Except for the limited expressed warranties provided herein, BWM makes no warranty, whether expressed or implied or arising by operation of law, course of dealing, usage of trade or otherwise in connection with BWM’s products or services. Notwithstanding anything to the contrary herein, in no event will BWM be liable for incidental, special, indirect, consequential, indirect, lost profits, exemplary or punitive damages.

16. Purchaser Obligations – BWM shall be relieved of its warranty obligations hereunder in the event of Purchaser’s failure: (a) to operate the systems treated with BWM’s Products and all related equipment and processes within control parameters or, if none, within industry customary operating conditions; (b) to maintain its systems in good operating

order and repair; (c) to follow BWM's recommendations or to fulfill its responsibilities for system operation; (d) to communicate to BWM hidden or not obvious system, process, or equipment conditions affecting BWM's Products or (e) to provide complete and accurate system data.

17. Ownership; Return; Use of Equipment, Tanks, and Containers – Title to, and ownership of, all SAFE® tanks, pumps, and equipment shall remain the property of BWM unless expressly otherwise stated by BWM in writing. Leased tanks, pumps and equipment are leased to Purchaser during the applicable term. SAFE® tanks owned by BWM shall be used only for the storage of Products sold by, or approved by, BWM. SAFE® tanks and other equipment owned by BWM shall be returned immediately upon termination of the Agreement or within thirty (30) days of a demand by BWM.

18. Installation And Maintenance of Tanks and Equipment – Purchaser shall be responsible for the installation and maintenance of all water treatment equipment owned by Purchaser. With respect to any equipment provided by BWM, Purchaser shall not remove or deactivate or cause to not be removed or deactivated any safety features or secondary containment. Purchaser hereby shall indemnify, defend, and hold harmless BWM from and against all damages, expenses (including attorneys' fees) that BWM may suffer as a result of Purchaser's breach of its obligations under this Section.

19. Term And Termination – The initial term of the Agreement will be set forth in the applicable Proposal. Unless otherwise noted in the applicable Proposal the initial term shall terminate on the first anniversary of the date of the Proposal following which the Agreement shall automatically renew for successive terms of one (1) year each, unless either party provides a 30-day written notice of its intent to terminate the Agreement. From time to time, pricing adjustments may be required at the time of renewal. The Agreement and any order or delivery of Products or any Services may be terminated or suspended as follows: (a) by either party if any proceeding under bankruptcy or insolvency laws is brought by or against the party; (b) by a party if the other party defaults in its material obligations and such default is not cured within thirty (30) days of receipt of written notice specifying in detail the default; (c) by BWM if it has

reason to doubt the ability or willingness of Purchaser to pay for the Products; (d) by BWM if Purchaser fails to follow recommendations of BWM or fails to exercise, in BWM's opinion, good Product stewardship; (e) by BWM if the sale or use of any of the Products might violate any intellectual property rights; or (f) by either party with a sixty (60) day written notice to the other party. In the event of termination, Purchaser will pay BWM all amounts due for all Products and Services ordered prior to the date of termination. In the event of termination, all obligations that by their nature should survive the termination of this Agreement shall continue.

20. Water Management Programs – In the event Purchaser has purchased a water management program (“WMP”), BWM will provide a WMP risk assessment document, which is intended to be a working document (the “Program”) to help Purchaser with the implementation of program recommendations for Purchaser's water systems. Purchaser owns the WMP, is responsible for updating the WMP as needed, and is responsible for implementing or acting on any and all recommendations presented by BWM.

(a) BWM is not responsible or liable for any elements of, and Purchaser assumes sole responsibility for, all requirements set forth in the Purchaser's program including but not limited to the implementation, management or confirmation of the Program.

(b) BWM makes no promises, warranties or guarantees with respect to water system biohazards from waterborne pathogens including but not limited to *Legionella* bacteria or health risks related thereto. BWM does not and cannot make any promise, guarantee or warranty that the risk of the presence of *Legionella* or waterborne pathogens, or that the risk of legionellosis or disease has been reduced or eliminated by reason of the Program or any related services provided.

(c) BWM is not liable for any penalties or fines assessed by any governing authority or agency.

(d) BWM will perform the Service in a professional and workmanlike manner.

(e) BWM makes no promise, warranty or guarantee as to the completeness of the information in connection with the Program which is in part based upon limited

information provided to BWM by the Purchaser. BWM is not responsible for any errors, omissions, misleading statements, the use of any information, product, method or equipment, and Purchaser must make its own determination as to accuracy and suitability of provided information. BWM will exercise reasonable care but disclaims all liability for any losses that may be suffered through reliance upon the completeness of the information upon which BWM has no control.

(f) All WMP recommendations are based on current published guidelines and literature. Local regulations supersede any recommendations made by WMP.

21. Regulatory Requirements – Purchaser shall be responsible for complying with all laws (including, but not limited to, all local regulatory requirements) related to the installation, registration, labeling and operation of all Products after delivery of such Products, and Purchaser hereby agrees to indemnify, defend and hold harmless BWM from and against all damages and expenses (including attorneys’ fees) that BWM may suffer as a result of Purchaser’s breach of its obligations under this Section. In the event of a change in regulations during the course of the Agreement, Purchaser will be responsible for any additional costs or permit requirements including, but not limited to, costs associated with additional: (i) water sampling, (ii) services, (iii) paperwork, or (iv) project management. BWM will monitor the requirements and notify Purchaser of any relevant changes that may affect the BWM’s Products or Services, and any related additional costs.

22. General.

(a) This Agreement does not cover services following an actual or alleged Incident (defined hereunder) in connection with the Customer’s water systems. However, such Incident response services may be provided following the execution of a separate Incident Response Agreement. “Incident” is an actual or suspected case of Legionnaires’ Disease associated with a customer’s building water system. The presence of *Legionella* bacteria in a water system or a positive *Legionella* test is not an Incident.

(b) BWM shall not be liable for defaults hereunder caused by floods, fires, storms,

pandemics, or other acts of God, by war or act of public enemy (or civil disturbance), strikes, lockouts, shortages of labor or raw materials and supplies (including fuel) or production facilities, transportation service or equipment shortages or failures, actions of any governmental authority or other conditions beyond BWM's reasonable control ("Force Majeure"). BWM shall apportion deliveries of Products on an equitable basis in its sole discretion.

(c) This agreement shall be governed by and shall be construed by the laws of the commonwealth of Massachusetts. All legal actions arising out of or related to the agreement shall be filed and conducted exclusively in a state or federal court in Massachusetts of competent jurisdiction and venue. Purchaser hereby waives any and all rights to a trial by jury of any claim arising in connection with the agreement. Purchaser will pay all costs and expenses, including reasonable attorney's fees, incurred by BWM in enforcing the terms of the agreement.

(d) The appearance, availability, or use of third-party URLs or hyperlinks referenced or included anywhere in any BWM documentation, communications, or on BWM's website does not constitute an endorsement by, nor does it incur any obligation, responsibility or liability on the part of BWM, any of its successors

(e) and assigns, and any of their respective officers, directors, employees, agents, representatives, licensors, advertisers, suppliers, and operations service providers.

(f) If the BARCLAY STAR® program (the "Reporting Program") license is purchased, BWM hereby grants a limited, nonexclusive, nontransferable license to Purchaser to use the Reporting Program for the water management of one building or multiple buildings located on one campus. The Reporting Program may be used only by Purchaser's employees or agents and may not be donated, sold, distributed, or commercially exploited in any form. Purchaser may not alter, delete or conceal any copyright or other notices contained in the Reporting Program, including notices on any materials Purchaser downloaded, displayed, printed or reproduced therefrom. Purchaser shall not, nor will Purchaser allow any third party (whether or not for Purchaser's benefit) to reproduce, modify, create derivative works from, display, perform, publish, distribute,

disseminate, broadcast or circulate to any third party, or otherwise use, any materials without the expressed prior written consent of BWM.

(g) Notices shall be in writing and sent to the parties at the addresses stated in the Proposal or to any other address specified by a party by written notice. All notices hereunder shall be in writing and may be emailed if from BWM to Purchaser or mailed, by registered, certified or overnight mail, postage prepaid, return receipt requested or sent by national overnight courier to the party's address as set forth on the signature page of the Agreement, or to the party's last known address, if different. Notices shall be deemed to be given five (5) days after the date of mailing in the manner stated above.

(h) Except to its Affiliates as defined herein, this Agreement may not be assigned, in whole or part, by either party without the prior written consent of the other. This Agreement is binding upon and inures to the benefit of each party's respective successors or assigns, subject to the consent requirements of this Section. Any entity acquired by Customer which is under an existing contract with BWM will automatically be subject to the terms of this Agreement, unless otherwise elected by BWM. Affiliate is defined as any legal entity that, directly or indirectly, (i) is owned and/or controlled by, (ii) owns and/or controls, or (iii) is under common ownership and/or control with, a party.