

## TERMS AND CONDITIONS OF SALE

1. **Applicability.** These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of goods (“**Goods**”) and services (“**Services**”) by National Certified Fabricators, Inc., dba Griswold Water Systems (“**GWS**”), to the buyer of Goods and Services, as applicable (“**Buyer**”) named on the corresponding purchase order or other order form (the “**Purchase Order**”). Notwithstanding anything herein to the contrary, if a separate written agreement signed by both parties is in existence covering the sale of Goods and Services covered hereby, then the terms and conditions of such agreement shall prevail to the extent that they are inconsistent with these Terms.

(a) The accompanying quotation, confirmation of sale or invoice, as applicable (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase (including, without limitation, any terms and conditions set forth on any Purchase Order) regardless of whether or when Buyer has submitted its Purchase Order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

(b) If applicable, then, notwithstanding anything to the contrary contained in this Agreement, GWS may, from time to time, change the Services without the consent of Buyer, provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

2. **Delivery of Goods and Performance of Services.** The Goods will be delivered within a reasonable time after the receipt of Buyer’s Purchase Order therefor, subject to availability of finished Goods. GWS shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the parties, GWS shall deliver the Goods to the delivery point set forth in the corresponding Sales Confirmation (the “**Delivery Point**”) using GWS’ standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within ten (10) days of GWS’ written notice to Buyer that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and shall unload and release all transportation equipment promptly, so that GWS incurs no demurrage or other expense. GWS may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the corresponding Purchase Order.

(a) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to GWS’ notice that the Goods have been delivered at the Delivery Point, or if GWS is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations, then: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; (iii) GWS, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and (iv) GWS shall have the right to charge Buyer a late fee equal to one percent (1%) of the aggregate Price of the applicable Goods for each month (or applicable portion thereof) that such delivery is delayed.

(b) If applicable, then GWS shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only. With respect to any Services, Buyer shall: (i) cooperate with GWS in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by GWS, for the purposes of performing the Services; (ii) respond promptly to any GWS request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for GWS to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as GWS may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. **Non-Delivery.** The quantity of any installment of Goods as recorded by GWS on dispatch from GWS’ place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. GWS shall not be liable for any non-delivery of Goods unless Buyer gives written notice to GWS of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received. Any liability of GWS for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer’s exclusive remedies for any non-delivery of Goods.

4. **Shipping Terms.** Delivery of the Goods shall be made FOB GWS’ location, unless otherwise expressly set forth on the face of the corresponding Sales Confirmation.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to GWS a lien on and first priority security interest (with priority over all other liens, claims and encumbrances) in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code. GWS may file a financing statement for such security interest and Buyer shall execute such statements and other documentation necessary to perfect GWS’ security interest in such Goods. Buyer also authorizes GWS to execute, on Buyer’s behalf, such statements or other documentation necessary to perfect GWS’ security interest in such Goods. GWS shall be entitled to all applicable rights and remedies of a secured party under applicable law.

6. **Buyer’s Acts or Omissions.** If GWS’ performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, then GWS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

(a) If Buyer timely notifies GWS of any Nonconforming Goods, then GWS shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods or (ii) credit or refund the Price (as defined below) for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to GWS’ facility located at the address set forth in the corresponding Sales Confirmation. If GWS exercises its option to replace Nonconforming Goods, then GWS shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Point.

(b) Buyer acknowledges and agrees that the remedies set forth in this Section 6(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to GWS.

7. **Price.** Buyer shall purchase the Goods and Services, as applicable, from GWS at the price(s) (the “**Price(s)**”) set forth in GWS’ published price list in force as of the date that GWS accepts the corresponding Purchase Order therefor. If the Price(s) should be increased by GWS before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased Price(s) were originally inserted herein, and Buyer shall be billed by GWS on the basis of such increased Price(s). If applicable, Buyer agrees to reimburse GWS for all reasonable travel and out-of-pocket expenses incurred by GWS in connection with the performance of the Services. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, GWS’ income, revenues, gross receipts, personal or real property or other assets.

## 8. Payment Terms.

(a) Unless otherwise expressly set forth on GWS’ invoice, Buyer shall pay all invoiced amounts due to GWS within thirty (30) days from the date of GWS’ invoice. Buyer shall make all payments hereunder by wire transfer, check or other payment method authorized by GWS in writing, and in each case, in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse GWS for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which GWS does not waive by the exercise of any rights hereunder), GWS shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with GWS, whether relating to GWS’ breach, bankruptcy or otherwise.

(c) Each issuance of a Purchase Order to GWS shall constitute Buyer’s representation and warranty that Buyer is solvent and is able to pay for the Goods and Services identified in such Purchase Order in accordance with the terms of this Agreement. Buyer shall furnish GWS with statements accurately and fairly evidencing Buyer’s financial condition as GWS may, from time to time, reasonably request. Throughout the term of this Agreement, Buyer shall be in compliance with all obligations to Buyer’s creditors as and when such obligations are due and owing in the ordinary course of Buyer’s business. Buyer shall notify GWS in writing immediately of any and all events that have had or may have a material adverse effect on Buyer’s business or financial condition, including, without limitation, any change in management, sale, lease or exchange of a material portion of Buyer’s assets, a change in control of Buyer, or the breach of any loan covenants or other material obligations of Buyer to its creditors. If, at any time, GWS determines in its sole discretion that Buyer’s financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to GWS’ other rights under this Agreement, at law or in equity, GWS may without liability or penalty, take one or more of the following actions: (i) on written notice to Buyer, modify the payment terms specified hereunder for outstanding and future purchases of Goods and Services, including requiring Buyer to pay for Goods and Services on a cash in advance or cash on delivery basis; (ii) reject any Purchase Orders received from Buyer; (iii) cancel any previously accepted Purchase Orders, including any Sales Confirmations; (iv) delay or withhold any further shipment of Goods or provision of Services, as applicable, to Buyer; (v) stop delivery of any Goods in transit or Services in progress and cause any Goods in transit to be returned to GWS; (vi) terminate this Agreement upon written notice to Buyer; or (vii) accelerate the due date of all amounts owing by Buyer to GWS. No action taken by GWS under this Section 8(c), nor any failure of GWS to act under this Section 8(c), constitutes a waiver by GWS of any of its rights and remedies under this Agreement, at law or in equity, including its right to enforce Buyer’s obligation to make payments as required hereunder.

## 9. Limited Warranty.

(a) GWS, in its sole and absolute discretion, may offer to Buyer certain limited warranties for certain Products and/or Services, as applicable, pursuant to corresponding written limited warranties for such Products and/or Services, as applicable, in effect from time to time (collectively, "GWS Warranties").

(b) EXCEPT FOR THE APPLICABLE GWS WARRANTIES DISCUSSED IN SECTION 9(a), GWS MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(c) Products manufactured by a third party ("Third Party Products") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the GWS Warranties. For the avoidance of doubt, GWS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(d) The GWS shall not be liable for a breach of any applicable GWS Warranties unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to GWS within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, GWS is given a reasonable opportunity after receiving the notice of breach of such applicable GWS Warranties to examine such Goods and Buyer (if requested to do so by GWS) promptly returns such Goods to GWS' place of business at GWS' cost for the examination to take place there; and (iii) GWS reasonably verifies Buyer's claim that the Goods or Services, as applicable, are defective.

(e) The GWS shall not be liable for a breach of any applicable GWS Warranties if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow GWS' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of GWS.

(f) Subject to Section 9(d) and Section 9(e) above, with respect to any such Goods during the corresponding warranty period, GWS shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part); or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if GWS so requests, Buyer shall, at GWS' expense, return such Goods to GWS. Subject to Section 9(d) and Section 9(e) above, with respect to any Services subject to a claim under an applicable GWS Warranty, GWS shall, in its sole discretion, (x) repair or re-perform the applicable Services or (y) credit or refund the price of such Services at the pro rata contract rate.

(g) THE REMEDIES SET FORTH IN SECTION 9(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND GWS' ENTIRE LIABILITY FOR ANY BREACH OF THE APPLICABLE GWS WARRANTIES. IN THE EVENT THAT THE TERMS AND CONDITIONS SET FORTH IN THIS SECTION 10 CONFLICT WITH THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE GWS WARRANTIES, THE TERMS AND CONDITIONS MOST FAVORABLE TO GWS SHALL GOVERN AND CONTROL.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, TO THE EXTENT ALLOWED BY APPLICABLE LAW: (A) IN NO EVENT SHALL GWS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT GWS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; AND (B) IN NO EVENT SHALL GWS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO GWS FOR THE GOODS AND SERVICES SOLD HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE CLAIM.

11. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. GWS may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

12. **Termination.** In addition to any remedies that may be provided under these Terms, GWS may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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.

13. **Waiver.** No waiver by GWS of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by GWS. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this 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.

14. **Confidential Information.** All non-public, confidential or proprietary information of GWS, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by GWS to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by GWS in writing. Upon GWS' request, Buyer shall promptly return all documents and other materials received from GWS. GWS shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. **Force Majeure.** The GWS shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of GWS 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), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

16. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of GWS. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

19. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

20. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California, in each case located in Orange County, California, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

21. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice"), shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

22. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

24. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.