



GENERAL. These Terms and Conditions govern the purchase of Products by Buyer from Water Star, Inc., an Ohio corporation ("WSI"). Terms of sale for WSI's service offerings are available from WSI upon request.

1. **Inconsistent Terms.** These Terms and Conditions supersede inconsistent terms and conditions in documentation submitted by Buyer to WSI. WSI EXPRESSLY CONDITIONS ITS OBLIGATION TO PERFORM ON BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

2. **Price.** WSI reserves the right to adjust the price(s) of Products quoted at the time of order in the event the price of raw materials for Products being ordered changes significantly between the time of initial quote and time of order. Prices do not include shipping charges (except as noted in section 7), or federal, state or local sales, duties, use or excise taxes.

3. **Changes and Corrections.** WSI may change the terms, conditions or pricing until it issues an order acknowledgement. Clerical errors are subject to correction at any time.

4. **Payment.** Unless otherwise agreed to between the parties in writing, payments are due NET 30 of each shipment, even if the shipment is part of a larger order. If Buyer delays shipment of product that is ready for shipment, the date of notice of readiness for shipment shall be deemed the date of shipment for payment purposes. All payments shall be in U.S. dollars. Credit terms may be withdrawn or changed at any time. Fabrication and delivery may be delayed if an account is delinquent. Buyer will pay all costs of collection including reasonable attorneys' fees and costs. Buyer has no rights of set-off.

5. **Order Modification.** If Buyer requests to modify its purchase order after WSI has sent Buyer an Order Acknowledgement form, Buyer shall compensate WSI for its reasonable expenditures made in reliance on the purchase order prior to its receipt of the modification request, including, without limitation, expenditures to design, procure or manufacture non-standard components or configurations. WSI shall use commercially reasonable efforts to mitigate such expenditures after its receipt of the modification request.

6. **Security Interest.** Buyer agrees to sign or authenticate, when requested by WSI, such documents as are necessary for WSI to acquire and perfect a security interest in Products sold hereunder to Buyer, together with all proceeds thereof, to secure Buyer's performance and payment of all amounts due on this sale. Buyer authorizes WSI to file a financing statement. WSI shall release its security interest upon receipt of full performance and payment. Notwithstanding, upon delivery WSI (i) cannot direct the disposition of the Products, (ii) cannot rescind the transaction, (iii) cannot prohibit the Buyer from using the Products in the ordinary course of

business, and (iv) has no other rights that would normally rest with the holder of a lien on the Products.

7. **Shipping and Performance.** Unless otherwise specified in writing by WSI, shipping terms are EX WORKS or Freight on Board WSI's Shipping Point, freight prepaid and added. WSI may make partial shipments. Performance and shipping dates referenced by WSI are approximate dates only. WSI shall not be liable for damages or penalty for carrier's delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of WSI. Buyer must inspect and report all claims for damages or incorrect charges within 10 days after Buyer's receipt of that particular shipment to carrier. Requests for proof of delivery must be received in writing within 30 days after receipt of the invoice for the Products.

8. **Title.** Title to Products will transfer to Buyer at the time of delivery to the carrier.

9. **Product Returns.** Due to the customized nature of the Products, all sales are final. Returns are only allowed subject to and in accordance with the applicable Product Warranty.

10. **Limited Product Warranty.** Water Star, Inc.'s standard manufacturer's limited warranty for the applicable Product, available from WSI upon request, is the sole and exclusive obligation to the Buyer for any Product sold under these Terms and Conditions, unless otherwise agreed to in writing.

11. **Limitation of Liability.** THE ABOVE-REFERENCED LIMITED PRODUCT WARRANTY IS EXCLUSIVE AND IS GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER REMEDIES. THESE ARE THE ONLY REMEDIES OF BUYER FOR ANY BREACH OF WARRANTY OR ANY OTHER CLAIM. WSI'S TOTAL LIABILITY ARISING OUT OF THE SUPPLYING OR USE OF PRODUCTS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE SHALL NOT IN ANY CASE EXCEED THE COST OF THE GOODS SOLD FOR WHICH ANY CLAIM IS MADE. IN NO CASE SHALL WSI BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL DAMAGES OR LOST PROFITS.

BUYER AGREES TO INDEMNIFY AND HOLD WSI HARMLESS FROM ALL CLAIMS, DEMANDS, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES, MADE BY THIRD PARTIES AGAINST WSI RELATING TO BUYER'S MODIFICATION OF THE GOODS AFTER DELIVERY BY WSI, OR THE USE OF THE GOODS IN A MANNER OUTSIDE THE SPECIFICATIONS THAT WSI'S PRODUCT WAS DESIGNED TO ACHIEVE. BUYER SHALL ALSO PAY ANY COSTS AND



EXPENSES INCURRED BY WSI TO ENFORCE BUYER'S OBLIGATIONS.

BUYER AND WSI AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

12. **Indemnification.** WSI shall indemnify, defend and hold Buyer harmless from and against any claim, demand, cause of action or liability for direct damage arising from WSI's negligence or intentional misconduct in connection with its provision of Products to Buyer, subject to the limitations noted above. WSI shall also indemnify Buyer for costs and damages finally awarded in any suit against Buyer or its vendees if upon a finding that the design or construction of the goods as furnished infringes a U.S. patents (except if the infringement occurs as a result of request by Buyer to include a specific design or modification into the goods) and provided that Buyer promptly advises WSI of the claim and provides WSI the right to defend and settle the case at its own expense.

13. **Insurance.** WSI shall maintain Worker's Compensation, Employer's Liability, Auto Liability and General Liability and Casualty insurance coverage, as well as other coverage of a nature in accordance with, and in amounts commensurate with, standard industry practice. All policies are written by carriers with A.M. Best ratings of A- or higher.

14. **Rights in Intellectual Property.** All intellectual property rights in goods and services provided by WSI are vested solely and exclusively in Water Star, Inc. No intellectual property rights in goods or services are assigned, licensed or transferred hereunder.

15. **Force Majeure.** WSI is not liable for any delay or failure to perform where, in WSI's sole judgment, such timely performance is commercially impracticable, or where such delay or failure to perform is caused by conditions beyond WSI's control, including, without limitation, acts of God, acts of governmental authorities, changes in applicable law, fire, flood, labor dispute, shortage, insurrection, war, or terrorism.

16. **Choice of Law; Disputes.** The validity, performance, construction and effect of this Agreement shall be governed by and construed under the laws of the State of Ohio and the United States of America, without giving effect to the principles of conflict of laws. This Agreement expressly excludes the provisions of the United Nations Convention on Contracts for the International Sale of Goods. WSI and Buyer agree to make a good faith attempt to settle any dispute arising under this Agreement. To the extent they are unable to resolve a dispute informally, the parties agree to make a good faith attempt to resolve the dispute by mediation in Cleveland, Ohio.

17. **Severability.** If any provision of this agreement is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.

18. **Legal Compliance.** WSI and Buyer shall comply with all applicable federal, state and local laws, including, without limitation, the United States Foreign Corrupt Practices Act and Executive Orders 11246 and 13201.

19. **Ethics Compliance.** WSI strives to conduct business in accordance with the principles of WSI's parent company, Tennant Company's, Business Ethics Guide, available at www.tennantco.com. If you believe that WSI has not lived up to these principles, you can anonymously report your concerns by using a toll-free hotline: 1-877-774-6504.

20. **Assignment.** This Agreement is not assignable without the prior written consent of WSI. Assignment without such consent is void.

21. **No Waiver.** Either party's failure to enforce any term or condition in this agreement shall not be construed as a waiver of any right available to either party hereunder.

22. **Contacts.** For all inquiries, call WSI Customer Service at 440-996-0800, or write to the following address: Water Star, Inc., 18650 Industrial Circle, Parkman, Ohio 44080, Attn: Water Star Customer Service.