



Standard Conditions of Sale

I. GENERAL: All references to M.W. Watermark, LLC (or any derivative thereof) shall mean M.W. Watermark, LLC Corporation and all references to Buyer herein shall mean the customer named in a purchase order, quotation or proposal. All quotations from M.W. Watermark, LLC shall be considered solicitations of offers. All purchase orders placed by Buyer shall be considered offers, which can only be accepted upon written notice thereof from M.W. Watermark, LLC. Buyer shall either sign M.W. Watermark, LLC's quotation, or in the alternative, issue a purchase order containing necessary information, such as site name, price schedule, type and quantity of product, requested delivery date and delivery instructions. Notwithstanding any terms or conditions that may be included in Buyer's purchase order form or other communications, M.W. Watermark, LLC's acceptance is conditional upon Buyer's assent to the terms and conditions set forth herein. It is agreed that sales are made only on the terms and conditions herein and any other terms or conditions shall not become a part of the agreement unless expressly agreed to in writing by M.W. Watermark, LLC. M.W. Watermark, LLC's failure to object to any terms or conditions contained in Buyer's purchase order or other communication shall not be deemed to be acceptance of such terms or conditions. The terms and conditions set forth herein shall be deemed incorporated (as though set forth in full) into any agreement entered into between M.W. Watermark, LLC and Buyer unless otherwise noted in writing. M.W. Watermark, LLC reserves the right, without any increase in price, to modify the design and specifications of M.W. Watermark, LLC products, provided that the modification does not adversely affect the original performance specifications as specified by M.W. Watermark, LLC or as requested by Buyer. Shipments, deliveries and performance of work shall at all times be subject to the approval of M.W. Watermark, LLC's Credit Department. M.W. Watermark, LLC may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to M.W. Watermark, LLC.

II. PRICES, TERMS OF PAYMENT & TAXES: (a) **PRICES:** Unless expressly stated to be firm for a definite period, offers are subject to change without notice, and in all cases are subject to withdrawal at any time before acknowledgment by Buyer. Under no condition will a quotation from M.W. Watermark, LLC remain in effect for longer than sixty (60) days unless otherwise agreed to in writing by M.W. Watermark, LLC. If a price is stated in the quotation, it is based upon shipment of the quantities and quality requested by Buyer and on the basis of M.W. Watermark, LLC's internal delivery schedule at the time of preparation of said quotation. (b) **TERMS OF PAYMENT:** Unless otherwise stated in a quotation, payments against invoices shall be due and payable thirty (30) days from the date of shipment, regardless of the date upon which Buyer receives the invoice from M.W. Watermark, LLC. If in M.W. Watermark, LLC's opinion, Buyer's financial condition does not justify continuation of production or shipment on the terms of payment specified, M.W. Watermark, LLC may, upon written notice to Buyer, cancel or suspend any outstanding order or part thereof, unless Buyer shall promptly pay for all goods delivered or shall make advance payments to M.W. Watermark, LLC as it, at its option, shall determine. If Buyer delays shipment for any reason, date of readiness for shipment shall be deemed to be the date of shipment for payment purposes. If Buyer delays manufacture for any reason, a payment shall be made based on purchase price and percentage of completion, with the balance payable in accordance with the terms as stated. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to M.W. Watermark, LLC's right to immediate payment, be increased by 1½% per month on the unpaid balance, not to exceed the maximum amount permitted by law. If at any time in M.W. Watermark, LLC's judgment Buyer may be or may become unable or unwilling to meet the terms specified herein, M.W. Watermark, LLC may require satisfactory assurance or full or partial payment as a condition to commencing, or continuing manufacture, or in advance of shipment. (c) **TAXES:** Except for the amount, if any, of tax stated in a M.W. Watermark, LLC quotation, the prices set forth therein are exclusive of any amount for federal, state, local, excise, sales, use, property, in-country, import, VAT or similar taxes or duties. Such prices also exclude permit, license, customs and similar fees levied upon shipment of M.W. Watermark, LLC products.

III. SHIPMENT: The anticipated shipment date set forth in the quotation is approximate and subject to change. Notwithstanding other limitations set forth by M.W. Watermark, LLC, M.W. Watermark, LLC shall not be liable for any delays in shipment which are caused by events beyond the control of M.W. Watermark, LLC including, but not limited to, delays caused by inaccurate or incomplete data furnished by Buyer, changes or revisions in the work to be performed, tardy approval of shop drawings by Buyer, acts of Buyer or Buyer's agent, accidents, strikes, inability to obtain labor or materials, or delay in transportation. M.W. Watermark, LLC shall have the right to extend the anticipated shipment date for up to ten (10) calendar days, for any reason, provided M.W. Watermark, LLC shall give Buyer written notice of such delay at least seven (7) days prior to the scheduled shipping date. Equipment or parts will be crated for domestic truck shipment at M.W. Watermark, LLC's expense; however, M.W. Watermark, LLC assumes no responsibility for loss of, or damage to the equipment after delivery to the carrier, who shall be deemed to be acting as agent for Buyer, and the equipment shall thereafter be at the Buyer's sole risk. It is M.W. Watermark, LLC's policy to ship its equipment "Bill Collect," and the motor freight company will mail their invoice(s) directly to Buyer's billing address, unless otherwise agreed in writing. If shipment of the products is delayed upon request of Buyer, or as a result of any conduct of Buyer or Buyer's agents, M.W. Watermark, LLC shall not be liable for damage to the products occurring during storage. Buyer shall reimburse M.W. Watermark, LLC upon demand by M.W. Watermark, LLC for any costs incurred by M.W. Watermark, LLC in connection with said storage, including steps taken to protect the products from the elements. Any delay in shipment requested or caused by Buyer or its agents will not affect the terms of payment as provided herein. Buyer shall be responsible for the payment of any additional cost of shipping occasioned by the delay.

IV. TITLE & RISK OF LOSS: M.W. Watermark, LLC's prices are F.O.B. Factory unless otherwise explicitly noted in the quotation and are exclusive of taxes, shipping and insurance. Title to all goods and risk of loss, deterioration or damage shall pass to Buyer upon tender to the carrier; except that a security interest in the products or any replacement shall remain in M.W. Watermark, LLC's name, regardless of mode of attachment to realty or other property, until the full purchase price has been fully paid in cash. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect M.W. Watermark, LLC's interest by adequately insuring the products against loss or damage from any external cause with M.W. Watermark, LLC named as insured or co-insured. Any claim by Buyer against M.W. Watermark, LLC for shortage or damage occurring prior to delivery must be made in writing within ten (10) calendar days after receipt of shipment and accompanied by an original transportation bill signed by the carrier noting that carrier received goods from M.W. Watermark, LLC in the condition claimed. M.W. Watermark, LLC shall have the right to ship all goods at one time or in

portions, within the time for shipping provided in such order, unless specifically requested in writing by the Buyer that these shipments be made in total. Any shipments returned to M.W. Watermark, LLC as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by M.W. Watermark, LLC. Additionally, once Buyer has been notified that its order is available for shipment, if Buyer requests that the products not be shipped until a later date, the products will be stored at the Buyer's risk and expense until permission to ship to the jobsite is given by Buyer.

V. ERECTION: Unless otherwise agreed in writing, products are assembled, installed and/or erected by and at the full expense of Buyer.

VI. CANCELLATION & BREACH: Buyer agrees that M.W. Watermark, LLC products are specially manufactured goods that are not suitable for sale to others in the ordinary course of business. Therefore, purchase orders placed with M.W. Watermark, LLC cannot be canceled without recourse, nor shipments of goods made up, or in process, be deferred beyond the original shipment dates specified, except with M.W. Watermark, LLC's written consent and upon terms which shall indemnify M.W. Watermark, LLC against all loss. In the event of cancellation or the substantial breach of the agreement between Buyer and M.W. Watermark, LLC, including without limitation, failing to make payment when due, Buyer agrees that M.W. Watermark, LLC will suffer serious and substantial damage which will be difficult, if not impossible, to measure, both at the time of entering the agreement and as of the time of such cancellation or breach. Therefore, the parties agree that upon such cancellation or breach, the Buyer shall pay to M.W. Watermark, LLC the sums set forth below which M.W. Watermark, LLC and Buyer do hereby agree shall constitute agreed and liquidated damages in such event:

- a. If cancellation or breach shall occur after the acceptance of the purchase order but prior to mailing of general arrangement drawings by M.W. Watermark, LLC to Buyer, liquidated damages shall be 10% of the selling price.
- b. If cancellation or breach shall occur within thirty (30) days from the mailing of general arrangement drawings by M.W. Watermark, LLC to Buyer, the liquidated damages shall be 30% of the selling price.
- c. If the cancellation or breach occurs after thirty (30) days from the mailing of general arrangement drawings by M.W. Watermark, LLC to Buyer, but prior to notification that the order is ready for shipment, the liquidated damages shall be the total of 30% of the selling price plus the expenses incurred, cost of material, and reasonable value of the work expended to fill the respective order by M.W. Watermark, LLC's engineers and other employees, agents and representatives after the mailing of general arrangement drawings by M.W. Watermark, LLC to Buyer. All sums will be determined at the sole reasonable discretion of M.W. Watermark, LLC provided, however, that the total liquidated damages under this provision shall not exceed the total selling price.
- d. If cancellation or breach shall occur after M.W. Watermark, LLC has notified Buyer that the order is ready for shipment, then the liquidated damages shall be the total selling price.

VII. DRAWINGS & SPECIFICATIONS: In the event that drawings are sent to Buyer for approval after an order is placed, the drawings must be returned marked "Approved" or "Approved As Noted" within twenty (20) working days after receipt unless otherwise noted. In the event that Buyer's written comments are not given within the twenty (20) day period, M.W. Watermark, LLC shall deem the items approved.

VIII. CORRECTIVE WORK & "BACK CHARGES": In no event shall any work be done, or services or material be purchased or expense otherwise incurred by the Buyer for the account of M.W. Watermark, LLC until after full and complete particulars (including an estimate of material cost) have been submitted in writing and approved in writing by M.W. Watermark, LLC. M.W. Watermark, LLC must be given the opportunity to discuss and research alternative methods to lower the costs involved in such corrective work. Unless agreed-upon in writing by M.W. Watermark, LLC, M.W. Watermark, LLC will not be liable for labor costs, overhead, administrative costs, interest or any other consequential or indirect costs Buyer incurs. Returned items will not be accepted unless M.W. Watermark, LLC has previously agreed to such return in writing and supplied written return-shipment instructions to Buyer.

IX. SELECTION OF MATERIALS: Because all M.W. Watermark, LLC products are specially manufactured products, the material make-up of many of M.W. Watermark, LLC's products varies from project to project. The determination of the materials' suitability and adaptability (including without limitation, paints and/or coatings) to the specific needs of the Buyer is solely the Buyer's choice and responsibility.

X. CONFIDENTIAL INFORMATION & IMPROVEMENTS: The design, construction, application and operation of M.W. Watermark, LLC's products and services embody proprietary and confidential information; therefore, Buyer will maintain this information in strict confidence, will not disclose it to others and will only use this information in connection with the use of the products or to facilitate the provision of services sold by M.W. Watermark, LLC. Buyer will not copy or reproduce any written or printed materials or drawings furnished to Buyer by M.W. Watermark, LLC. Buyer agrees to immediately return all confidential material to M.W. Watermark, LLC if requested in writing by M.W. Watermark, LLC. Buyer will not copy the products or make any design drawings of the products and will not permit others to copy or make any design drawings of the products. M.W. Watermark, LLC shall have a royalty-free license to make, use and sell, any changes or improvements in the products invented or suggested by Buyer or its employees. Buyer acknowledges that a remedy at law for any breach or attempted breach of this Section will result in a harm to M.W. Watermark, LLC for which monetary damages alone will not be adequate. Buyer covenants and agrees that neither it nor any of its affiliates will oppose any demand for specific performance and injunctive and other equitable relief in case of any such breach or attempted breach. Notwithstanding anything to the contrary herein, M.W. Watermark, LLC may seek enforcement of any breach of this Section without the necessity of complying with the provisions regarding resolution of disputes herein.

XI. FIELD SERVICE: Field Service included in the quotation will only be scheduled upon written request and may be subject to credit approval. Should the Buyer have outstanding balances due M.W. Watermark, LLC, no startup / field service will be scheduled until such payments are received by M.W. Watermark, LLC. The Buyer assumes all responsibility for the readiness of the system when it requests startup service. Should M.W. Watermark, LLC's Field Service Engineer arrive at the jobsite and determine that the system cannot be started up within a reasonable time, M.W. Watermark, LLC shall have the option to bring the Field Service Engineer home and bill the Buyer for time, travel and living expenses. Additional field service is available from M.W. Watermark, LLC at the prevailing per-diem rate at the time of the request for service plus all travel and living expenses, portal-to-portal. A purchase order or change order will be required prior to scheduling this additional service.

XII. LIMITATION OF LIABILITY: Unless expressly agreed to in writing by M.W. Watermark, LLC, all damages not direct and actual in nature, including without limitation, consequential, incidental, exemplary and punitive damages, shall be expressly prohibited damages. Such prohibited damages include, but are not limited to, lost rent or revenue; rental payments; costs (increased or not) of administration or supervision; costs or delays suffered by others unable to commence work or provide services as previously scheduled for which a party to this contract may be liable; increased costs of borrowing funds devoted to the project (including interest); delays in selling all or part of the project upon completion; damages caused by reason of Force Majeure or acts

of God (with the broadest statutory or court of law definition possible); termination of agreements to lease or buy all or part of the project, whether or not suffered before completion of services or work; forfeited bonds, deposits, or other monetary costs or penalties due to delay of the project; interest for any reason assessed to Buyer; increased taxes (federal, state, local, or international) due to delay or recharacterization of the project; lost tax credits or deductions due to delay; impairment of security; attorney and other legal fees for any reason assessed to Buyer, loss of use of the Equipment or any associated Equipment, costs of substitute Equipment, facilities or services, down time costs, claims of customers of Buyer for such other damages; or any other indirect loss arising from the conduct of the parties. M.W. Watermark, LLC only agrees to responsibility for damages from proven negligent and willful acts of its direct employees only.

XIII. APPLICABLE LAWS & GOVERNING LAW: To the best of M.W. Watermark, LLC's knowledge, M.W. Watermark, LLC products comply with most laws, regulations and industrial practices; however, M.W. Watermark, LLC does not accept responsibility for any state, city or other local law not specifically brought to M.W. Watermark, LLC's attention. For OSHA compliance, (1) M.W. Watermark, LLC is only liable for those OSHA standards, which are in effect as of the date of the quotation, and to the extent they are applicable to the performance by M.W. Watermark, LLC. (2) M.W. Watermark, LLC is only responsible for the physical characteristics of the product(s) and not for the circumstances of the use of the product(s). (3) M.W. Watermark, LLC's liability through any noncompliance to OSHA shall be limited to the cost of modifying the product(s) or replacing the non-complying product(s) or component(s) after receipt of prompt written notice of noncompliance. The rights and obligations of Buyer and M.W. Watermark, LLC shall be governed by and interpreted in accordance with the substantive laws of the state of Michigan including the uniform commercial code of Michigan, excluding conflicts of law and choice of law principles.

XIV. DISPUTE RESOLUTION: Any issue, claim or dispute ("Action") that may arise out of or in connection with the project referenced in the quotation and which Buyer and M.W. Watermark, LLC are not able to resolve by good faith negotiations, shall be submitted to mediation. Both parties shall choose a mediator and said mediator will decide the forum most convenient for both parties. Both parties agree to reasonably attempt to resolve all Actions via this medium. If mediation shall fail, the Action shall be submitted to binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes), and judgment on the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof. The parties agree to use mediation then arbitration to resolve such Action in lieu of litigation. In the event that an Action is brought, the prevailing party shall be entitled to be reimbursed for, and/or have judgment entered with respect to, all of its costs and expenses, including reasonable attorney's fees' and legal expenses.

XV. PATENTS: M.W. Watermark, LLC shall indemnify Buyer against any judgment for damages and costs which may be rendered against Buyer in a suit brought on account of the alleged infringement of any United States patent by any product supplied by M.W. Watermark, LLC, unless (a) the alleged infringement occurs as a result of any alteration or modification to the product or the use of the product in combination with the products or services of any party other than M.W. Watermark, LLC, or (b) the product was made in accordance with materials, designs or specifications furnished or designated by Buyer, in which case Buyer shall indemnify M.W. Watermark, LLC against any judgment for damages and costs which may be rendered against M.W. Watermark, LLC in any suit brought on account of the alleged infringement of any United States patent by such product or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and an opportunity be given to such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. M.W. Watermark, LLC shall in no event be liable to Buyer for special, indirect, incidental or consequential damages arising out of allegation of patent infringement.

XVI. MECHANICAL WARRANTY: All Equipment sold pursuant to this quotation are warranted to be free from defective material and workmanship, under normal use and service, for a period of twelve (12) months from date of shipment to Buyer's jobsite ("Warranty Period"). In the event that defects develop during the Warranty Period, under normal and proper use, M.W. Watermark, LLC is to be notified promptly in writing, and upon receipt of its written consent, the products are to be returned promptly to M.W. Watermark, LLC, F.O.B. M.W. Watermark, LLC's factory. If M.W. Watermark, LLC's inspection indicates defective material or workmanship, the parts will, at M.W. Watermark, LLC's option, either be repaired or replaced without charge. In the case of components purchased by M.W. Watermark, LLC and incorporated in the Equipment, M.W. Watermark, LLC's Mechanical Warranty is limited to the component manufacturer's warranty. In addition to any other limitation or disclaimer with respect to this Mechanical Warranty, M.W. Watermark, LLC shall have no liability with respect to any of the following: failure of the products, or damages to them, due to Buyer's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in M.W. Watermark, LLC's O&M manuals); any products that have been altered or repaired in any way without M.W. Watermark, LLC's prior written consent; any products damaged while in transit or otherwise by accident; decomposition of products by chemical action, erosion or corrosion or wear to products caused by abrasive materials. Service calls during the Warranty Period, when requested by Buyer and where no evidence of defective material or workmanship is found, will be at Buyer's expense. M.W. Watermark, LLC shall not be held liable for any further cost, expense, or labor to replace Equipment or replaceable parts. All indirect damages are hereby limited pursuant to the Limitation of Liability clause herein and shall continue for the duration of the Warranty Period.

THE FOREGOING MECHANICAL WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, WHICH ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW. ALL WARRANTIES AND OBLIGATIONS OF M.W. WATERMARK, LLC SHALL TERMINATE IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS OR ANY OTHER AGREEMENT BETWEEN THE PARTIES OR IF BUYER FAILS TO PAY ANY CHARGES DUE M.W. WATERMARK, LLC.

XVII. MISCELLANEOUS: The parties agree that the foregoing constitutes the entire agreement between Buyer and M.W. Watermark, LLC and that there are no other agreements, terms or conditions, expressed or implied, unless otherwise agreed to in writing. This document may not be modified or superseded other than by an instrument in writing signed by both Buyer and M.W. Watermark, LLC. This document shall be binding upon and inure to the benefit of Buyer and M.W. Watermark, LLC and their heirs, assignees, legal representatives and the project Owner for the project referenced in the quotation. The invalidity or non-enforceability of any particular provision of this document shall not affect the other provisions hereof, and this document shall be construed in all respects as if such invalid or unenforceable provisions were omitted.