



ELSTER AMCO WATER, INC.  
GENERAL TERMS AND CONDITIONS OF SALE

1. General. The terms and conditions contained herein, together with any additional or different terms contained in Elster AMCO Water, Inc.'s "Proposal", if any, submitted to Purchaser (which Proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior communications and agreements regarding the order. Acceptance by Elster AMCO Water, Inc. of the order, or Purchaser's acceptance of Elster AMCO Water, Inc.'s Proposal, is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, payment for or acceptance of any performance by Elster AMCO Water, Inc. being acceptance. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser to which terms Elster AMCO Water, Inc. hereby objects. Unless the context otherwise requires, the term "Equipment" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by Elster AMCO Water, Inc. ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by Elster AMCO Water, Inc. under the order. As used herein, the term "Purchaser" shall include the initial end use of the Equipment and/or services; provided, however, that Paragraph 13(a) shall apply exclusively to the initial end user.

2. Prices.

(a) Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.

(b) Unless otherwise stated herein, Services prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.

(c) The price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Purchaser agrees to pay or reimburse any such taxes which Elster AMCO Water, Inc. or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide Elster AMCO Water, Inc. a copy, acceptable to the relevant governmental authorities of any such certificate or permit.

(d) The price includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of Elster AMCO Water, Inc.'s Proposal. Any change after that date in such duties, fees, or rates, shall increase the price by Elster AMCO Water, Inc.'s additional cost.

(e) If following the end of each year of the Agreement term, Elster AMCO Water, Inc., in its reasonable judgment and supported by reasonable documentation determines that increases in the costs of materials, including commodity price increases, used in the production of goods provided hereunder make the pricing then provided Purchaser economically unfeasible, the then current pricing shall be reopened for negotiation between the parties and if the parties cannot agree, within thirty (30) days of the end of the then current term year, upon new pricing to reflect the material cost increases, Elster AMCO Water, Inc., may, upon at least ninety (90) days prior written notice, terminate the Agreement.

(f) Notwithstanding anything herein, (i) if Purchaser intends to issue an order or similar request for Equipment or Services pursuant to or in connection with a solicitation, a request for proposal, a bidding procedure or other similar process (the "Bidding Process") in which Elster AMCO Water, Inc., participated or responded to, and if Purchaser does not issue an order or similar request for Equipment or Services, in connection with the Bidding Process within six months from the date Elster AMCO Water, Inc., submits a response or proposal to Purchaser in connection with the Bidding Process, then Elster AMCO Water, Inc., shall not be bound by the pricing submitted with its response or proposal and the Purchaser and Elster AMCO Water, Inc., shall then attempt to negotiate new pricing, provided, however, if the parties cannot agree upon pricing within eight months from the from the date Elster AMCO Water, Inc., submits a response or proposal to Purchaser in connection with the Bidding Process, then either party may terminate this Agreement upon thirty (30) days prior written notice and any other agreement entered into between the parties in connection herewith, and (ii) during the last ninety (90) days of a Proposal or order term or within the last ninety (90) days a Proposal or order is in effect, Purchaser shall not issue an order for or request shipment or delivery of a quantity of Equipment or the provision of Services that exceeds thirty percent (30%) of the aggregate of Equipment or Services, as the case may be, ordered or requested at the commencement of the term hereof or the initial issuance of the order without the prior written consent of Elster AMCO Water, Inc.

3. Payment.

(a) Unless specified to the contrary in writing by Elster AMCO Water, Inc., payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by Elster AMCO Water, Inc. in the Proposal.

(b) If in the judgment of Elster AMCO Water, Inc. the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, Elster AMCO Water, Inc. may require payment in advance, payment security satisfactory to Elster AMCO Water, Inc., or may terminate the order, whereupon Elster AMCO Water, Inc. shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date Elster AMCO Water, Inc. is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.

(c) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus Elster AMCO Water, Inc.'s attorneys' fees and court costs incurred in connection with collection.

#### 4. Changes.

- (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by Elster AMCO Water, Inc. and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change.
- (b) Elster AMCO Water, Inc. may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications. If Purchaser objects to any such changes, Elster AMCO Water, Inc. shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

#### 5. Delivery.

- (a) All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Equipment shipped from outside the continental United States is delivered F.O.B. United States port of entry. Purchaser shall be responsible for any and all demurrage or detention charges.
- (b) If the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, Elster AMCO Water, Inc. may move the Equipment to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.
- (c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for Elster AMCO Water, Inc.'s performance hereunder.
- (d) Claims for shortages or other errors in delivery must be made in writing to Elster AMCO Water, Inc. within ten days of delivery. Equipment may not be returned except with the prior written consent of and subject to terms specified by Elster AMCO Water, Inc.. Claims for damage after delivery shall be made directly by Purchaser with the common carrier

6. Title & Risk of Loss. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.

#### 7. Inspection, Testing and Acceptance.

- (a) Any inspection by Purchaser of Equipment on Elster AMCO Water, Inc.'s premises shall be scheduled in advance to be performed during normal working hours.
- (b) If the order provides for factory acceptance testing, Elster AMCO Water, Inc. shall notify Purchaser when Elster AMCO Water, Inc. will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.
- (c) If the order provides for site acceptance testing, testing will be performed by Elster AMCO Water, Inc. personnel to verify that the Equipment has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of Elster AMCO Water, Inc., acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted.

#### 8. Warranties and Remedies (unless otherwise stated).

- (a) Equipment and Services Warranty. Elster AMCO Water, Inc. warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, Spare Parts and Refurbished or Repaired Parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Remedy Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.
- (b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to Elster AMCO Water, Inc. promptly after such discovery and within the applicable Warranty Remedy Period, Elster AMCO Water, Inc. shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Elster AMCO Water, Inc. promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Elster AMCO Water, Inc. will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.
- (c) Exceptions. Elster AMCO Water, Inc. shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-Elster AMCO Water, Inc. supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. Elster AMCO Water, Inc. shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to Elster AMCO Water, Inc.'s instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by Elster AMCO Water, Inc. but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.
- (d) Software Warranty and Remedies. Elster AMCO Water, Inc. warrants that, except as specified below, the Software will, when properly installed, execute in accordance with Elster AMCO Water, Inc.'s published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to Elster AMCO Water, Inc. promptly after such discovery and within that period, including a description of the

nonconformity and complete information about the manner of its discovery, Elster AMCO Water, Inc. shall correct the nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at Elster AMCO Water, Inc.'s facility necessary corrected or replacement programs. Elster AMCO Water, Inc. shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. Elster AMCO Water, Inc. does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Purchaser, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND Elster AMCO Water, Inc.'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

#### 9. Certificate of Conformity

Elster AMCO Water, Inc. hereby certifies that the order described heron has been processed to conform with all the applicable specifications called for on the purchase order.

#### 10. Patent Indemnity.

(a) Elster AMCO Water, Inc. shall defend at its own expense any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by Elster AMCO Water, Inc. (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given Elster AMCO Water, Inc. prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.

(b) Elster AMCO Water, Inc. shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by Elster AMCO Water, Inc.; (ii) any Equipment or Process supplied according to a design, other than an Elster AMCO Water, Inc. design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of Elster AMCO Water, Inc..

(c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, Elster AMCO Water, Inc. shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF Elster AMCO Water, Inc. AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

(d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that Elster AMCO Water, Inc. is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by Elster AMCO Water, Inc. or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against Elster AMCO Water, Inc., Purchaser shall defend and indemnify Elster AMCO Water, Inc. in the same manner and to the same extent that Elster AMCO Water, Inc. would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

#### 11. Limitation of Liability.

(a) In no event shall Elster AMCO Water, Inc., its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. Elster AMCO Water, Inc.'s liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed one-half (1/2) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim.

(b) All causes of action against Elster AMCO Water, Inc. arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof.

(c) In no event, regardless of cause, shall Elster AMCO Water, Inc. be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/Services.

12. Laws and Regulations. Elster AMCO Water, Inc. does not assume any responsibility for compliance with federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Equipment or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, Elster AMCO Water, Inc. assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Article 4. Nothing contained herein shall be construed as imposing responsibility or liability upon Elster AMCO Water, Inc. for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. This Agreement shall be governed by the laws of the State of New York, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding New York law with respect to conflicts of law. Purchaser agrees that all causes of action against Elster AMCO Water, Inc. under this Agreement shall

be brought in the State Courts of the State of New York, or the U.S. District Court for the Southern District of New York. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

13. OSHA. Elster AMCO Water, Inc. warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, Elster AMCO Water, Inc. will replace the affected part or modify it so that it conforms to such standard or regulation. Elster AMCO Water, Inc.'s obligation shall be limited to such replacement or modification. In no event shall Elster AMCO Water, Inc. be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser, or the alteration of the Equipment by any party other than Elster AMCO Water, Inc..

14. Software License.

(a) Elster AMCO Water, Inc. owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by Elster AMCO Water, Inc.; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The Purchaser's right to use the Software shall terminate immediately when the specified equipment is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with Elster AMCO Water, Inc.'s prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Elster AMCO Water, Inc. the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

15. Inventions and Information. Unless otherwise agreed in writing by Elster AMCO Water, Inc. and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with Elster AMCO Water, Inc.. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of Elster AMCO Water, Inc.. Purchaser shall not, without Elster AMCO Water, Inc.'s prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

16. Force Majeure. Elster AMCO Water, Inc. shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate Elster AMCO Water, Inc. for such delay.

17. Cancellation. Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by Elster AMCO Water, Inc. attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

18. Termination. No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by Elster AMCO Water, Inc. of Purchaser's written notice specifying such default, Elster AMCO Water, Inc. shall have failed to initiate and pursue with due diligence correction of such specified default.

19. Export Control.

(a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by Elster AMCO Water, Inc. or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

(b) If applicable, Elster AMCO Water, Inc. shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by Elster AMCO Water, Inc.. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by Elster AMCO Water, Inc. without liability for damages of any kind resulting from such cancellation. At Elster AMCO Water, Inc.'s request, Purchaser shall provide to Elster AMCO Water, Inc. a Letter of Assurance and End-User Statement in a form reasonably satisfactory to Elster AMCO Water, Inc..



20. Assignment. Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of Elster AMCO Water, Inc. shall be void.

21. Nuclear Insurance - Indemnity. For applications in nuclear projects, the Purchaser and/or its end user customer shall have complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify Elster AMCO Water, Inc., its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.

22. Resale. If Purchaser resells any of the Equipment, the sale terms shall limit Elster AMCO Water, Inc.'s liability to the buyer to the same extent that Elster AMCO Water, Inc.'s liability to Purchaser is limited hereunder.

23. Entire Agreement. This Agreement constitutes the entire agreement between Elster AMCO Water, Inc. and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between Elster AMCO Water, Inc. and Purchaser other than those set forth herein or herein provided.