

STANDARD TERMS OF SALE

These Standard Terms of Sale ("**Terms**") are entered into by and between OGI Process Equipment, Inc. (hereinafter "**OGI**" or "**Seller**") and _____ (hereinafter "**Buyer**") on this ____ day of _____, 20___. OGI, Seller and/or Buyer are hereinafter sometimes referred to individually as a "**Party**," or, collectively, as the "**Parties**." The Parties intending to be legally bound, hereby agree and stipulate:

1. **Other terms and conditions void.** These Terms supersede all other prior, contemporaneous and/or subsequent terms and conditions and are inferior only to conflicting terms in Seller's Quotation. The Parties specifically agree that any other form terms and conditions that may be attached or referred to are rejected and void and of no force and effect, even if not in conflict with these Terms. These Terms constitute the sole terms and conditions of the agreement between the Parties.

2. **Prices.** All prices and payments herein are in U.S. Dollars. Seller's acceptance of an order from Buyer is, at all times, subject to credit approval by OGI and continued creditworthiness of Buyer. Prices are EXW (Seller's facility in Sand Springs, Oklahoma) Incoterms® 2010 and do not include sales, excise, use, value-added or other similar taxes or duties now in effect or hereafter levied. Unless specifically required by law, all such taxes or duties are to be reported and paid directly by Buyer to the taxing authority. Where taxes are required by law to be collected by Seller, Buyer may avoid paying such taxes by providing Seller with a tax exemption certificate acceptable to the taxing authority. Price does not include insurance costs, transportation charges (such as freight, insurance, weighing or measuring, shipping, storage, packing, handling, demurrage or similar charges), engineering documentation, special packaging, marketing or testing, or raw material surcharges and any and all such charges are for the account of Buyer and may be added to the price or billed separately at the option of Seller. Buyer shall pay all such charges, whether invoiced at the time of sale or thereafter. All prices of Seller are firm upon Seller's issuance of an acknowledgment of a specific purchase order or release from Buyer authorizing production of goods and receipt of the first payment. Prior to Seller's acknowledgment, prices are not firm due to fluctuating price of materials and components. If a price change occurs on Seller's acknowledgment, Buyer may, within ten (10) days of issuance of the acknowledgment, cancel the order, in writing. If no written cancellation occurs within the time specified, the acknowledgment price is deemed accepted. Prices for "blanket purchase orders" are not firm.

3. **Changes and Cancellation.** Subject to receipt of Seller's express, written consent, and Buyer's payment to Seller of change or cancellation charges described herein, Buyer may request changes or cancellation of an order. Notice of proposed changes or cancellation shall be timely given by Buyer to Seller, in writing. Upon receipt of a proposed change or cancellation Seller shall determine, based upon work scheduling and materials already purchased or dedicated to the production of the goods, what charges or changes in price and delivery date the requested changes or cancellation will cause and so advise the Buyer. Upon receipt of notification of the charges or change in price or delivery Buyer shall have forty eight (48) hours to notify Seller of Buyer's acceptance or rejection thereof. The Parties acknowledge that the goods are custom built goods made especially for Buyer and that it is costly and inefficient to halt work or production. Therefore, Seller shall not suspend production of the goods pending Buyer's acceptance or rejection of the change in price or delivery. Seller's cancellation terms may include payment by Buyer to Seller of the full price of the order less any material, labor or other costs saved through mitigation. No waiver or modification of any of these Terms shall be effective unless acknowledged in writing and approved by an authorized officer of OGI.

4. **Payment.** Unless otherwise agreed by Seller in writing, the payment due Seller from Buyer is as set forth on Schedule 1 attached hereto and made a part hereof. If the order includes multiple goods or "units," Seller may invoice each unit separately as it achieves the milestones described on Schedule 1. Charges for supplemental services or parts, labor or materials other than new unit purchases are due in full net ten (10) days from Seller's invoice date. Payment requirements are not subject to Paragraph 10. Past due invoices are subject to late charges of 1-1/2% per month. If Buyer does not make payments as defined in Seller's quotation and this matter is placed with an attorney for collection, all reasonable costs, including attorney's fees, whether or not such collection results in litigation, will be charged against and paid by Buyer.

5. **Packaging and Delivery.** Seller determines date of delivery. Goods shall be identified, packaged and labeled in accordance with standard labeling of Seller. Special packaging or labeling shall be an additional charge to Buyer. Buyer assumes responsibility for compliance with all U.S. federal, state and local laws governing exports and re-exports from the United States in connection with the sale and use of the goods as well as all export and import duties, fees, permits, licenses, etc. Seller's standard delivery terms are EXW (Sand Springs, OK) Incoterms® 2010 with risk of loss passing to Buyer once the unit is placed at disposal of the Buyer and title passing from Seller to Buyer once the goods are paid for in full. If Seller arranges for delivery, Seller shall use all reasonable efforts to comply with Buyer's request as to method of transportation, but Seller reserves the right, if such method of transportation is not available, to use an alternate method of transportation, whether or not at a higher rate. If Seller arranges for delivery of the goods as requested by Buyer, Seller is entitled to add its standard fee as a handling charge. In any such case, Seller shall notify Buyer of any such charges as promptly as possible.

6. **Delayed Delivery.** Buyer may make arrangements with Seller to delay delivery but such arrangements shall not delay required payments or the effectiveness of other rights or obligations described hereunder, including warranty. If Buyer desires to delay delivery, it shall notify Seller in writing and if Seller agrees, Seller will advise Buyer, in writing, of the delay terms (i.e., storage costs, etc.), if any.

7. **Storage.** Should storage be requested by Buyer, upon notification by Seller of readiness to ship, final invoicing will be generated based on notification that the goods are ready to ship and must be paid in full within terms irrespective of when the goods actually ship. In addition, storage fees of four percent (4%) of the entire purchase order amount per month (pro-rated for partial months) will be invoiced monthly until the goods ship. Storage fee invoices are due upon receipt and must be paid prior to shipment. Goods will not ship if there are any outstanding past due invoices. Further, if the goods are stored after delivery to Buyer for more than three (3) months prior to installation and start-up, the goods must be inspected by OGI or OGI's authorized representative at Buyer's expense prior to installation and start-up, or the warranty will be null and void. If OGI determines that damage, if any, occurred during storage, repairs must be made prior to installation and start-up solely at Buyer's expense.

8. **Adequate Assurance.** Nothing contained herein impairs either Party's right to request and obtain adequate assurances of performance from the other Party.

9. **Damage and Acceptance.** If any goods arrive at Buyer's destination in a damaged condition or should a shortage exist, the damage or shortage shall immediately be reported to the delivering carrier and the Seller. In case of damaged goods, a joint inspection of the loaded car, truck or barge shall be arranged with representatives of the carrier and Seller. Where the carrier's equipment cannot be held for inspection, the goods shall be unloaded, protected and held for joint inspection. Before unloading, the alleged damage or shortage shall be photographed and be noted on the carrier's delivery receipt and signed by the carrier's agent. Unless Buyer gives Seller notice in writing stating with specificity all defects and nonconformities upon which Buyer relies to support rejection within thirty (30) days of delivery, the goods shall be deemed conforming and accepted. If Buyer rejects any tender of the goods and if requested by Seller, Buyer shall return them to Seller, pursuant to Seller's direction. When any goods shall have been altered from their original state without Seller's approval, Buyer shall be deemed to have accepted such goods.

10. **Force Majeure.** Neither Party shall be liable in damages nor have the right to terminate the agreement between the Parties for any delay in performing hereunder if such delay or default is caused by conditions beyond its control, including, but not limited to acts of God, governmental restrictions, limitation or regulation, wars, labor or materials shortages, supplier or material provider delivery delay, breach of contract or refusal to deliver, insurrections and/or any cause beyond the reasonable control of the Party whose performance is affected. The Parties hereby expressly acknowledge the priority of maintaining continuous product flow and availability. Should a situation beyond a Party's control cause such a delay, the delivery terms shall be adjusted to reflect a delivery date that is expeditious but reasonable upon removal of the circumstances which caused the delay. Any Party seeking to invoke this provision shall advise the other Party in writing before the date performance is due and recite the specific circumstances which exist that will delay performance.

11. **Expertise.** Seller is not an engineering firm. Seller may be generally aware of the intended application of the goods, but is not aware of and has made no studies to determine specifications, requirements, standards, limitations, tolerances or safety factors for Buyer's application. It is expressly understood that any technical information furnished by Seller with respect to the production or use of its goods is given without charge, and Seller assumes no obligation or liability for the information given or results obtained, all such information being given and accepted at Buyer's risk. It is Buyer's responsibility to be familiar with state and local laws, codes, permit requirements, ordinances, local conditions, environment and applications for the goods and advise Seller, in writing, of any issues or requirements. In the ordinary course of business Seller may subcontract portions of the work to be performed to persons or entities with experience in the field for which said work is assigned.

12. **Express Limited Warranties and Limitation of Remedies.** Seller guarantees the goods it manufactures, as stated herein, to be free from defective materials and workmanship for a period of eighteen (18) months from notification that the goods are ready to be shipped or twelve (12) months from start-up, whichever occurs first. If Seller provides replacement parts for goods on which the initial warranty period has expired; the warranty on those replacement parts is ninety (90) days from the date of shipment from Seller. During the warranty period, Seller will repair or replace, at its sole discretion, any good of Seller's manufacture which has proven to be defective within the warranty period stated, either in materials or workmanship. Upon identification of a potential defect, Buyer must immediately notify Seller in writing and provide Seller an opportunity through its representatives or designee to inspect the materials or workmanship in question. With regard to components sold by the Seller which are not of its manufacture and not part of the original manufactured unit, those components are subject to the warranty given by the manufacturer of the component. Specifically, Seller does not warrant components which it does not manufacture, therefore repair or replacement of those components will be in accordance with the terms of the component manufacturer's warranty, and Seller must authorize return of such material prior to its return shipment. Buyer shall bear the expense of packing and shipping proposed defective parts and components and the expense of installing replacement parts. This warranty does not cover normal wear and tear and is rendered void by improper installation, application, negligence, incorrect wiring, abuse, misuse or operation other than in accordance with the Seller's and component manufacturer's operating instructions. Approved warranty claims on component parts will be credited to Buyer's account only upon receipt of corresponding credit from the component manufacturer. This warranty is provided to the original Purchaser and is not transferable. **SELLER WARRANTS THAT THE GOODS WERE MANUFACTURED ACCORDING TO THE SPECIFICATIONS SET FORTH HEREIN. NO OTHER WARRANTY IS MADE AND IN THE EVENT THE GOODS FAIL TO CONFORM TO SPECIFICATIONS, SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, EXPENSE OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES DIRECTLY OR INDIRECTLY ARISING BECAUSE OF THE GOODS OR THEIR USE. ALL WARRANTIES, EXPRESS OR IMPLIED, AND REMEDIES ARE LIMITED TO THOSE CONTAINED IN THESE TERMS, ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. REMEDIES FOR ANY BREACHES OR CLAIMS ARE LIMITED EXCLUSIVELY TO THOSE CONTAINED HEREIN. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THESE TERMS. IF BUYER IS NOT THE END USER OF THE GOODS, IT SHALL TAKE STEPS TO ADVISE THE END USER OF THE DISCLAIMERS AND LIMITATIONS CONTAINED HEREIN.**

13. **Water Quality.** If the goods purchased hereunder include any of Seller's water heating units, then Buyer agrees to maintain water quality at a level that will not damage the water heating unit, and any damage caused directly or indirectly by water hardness, pH, or chlorides is outside the scope of Seller's Warranty and is the sole responsibility of Buyer. Furthermore, location of the water heating unit, securing local permits and compliance with local laws and codes is the responsibility of Buyer. Buyer must ensure that proper electrical, fuel, water, stack tie-in, combustion air and space requirements, all as set forth in Seller's specifications, are provided.

14. **Indemnity and Subrogation Waiver.** Nothing contained herein impairs or infringes upon the Parties' legal rights to seek indemnification in the proper circumstances from the other. The Parties mutually waive subrogation rights against the other for purposes of claims made concerning the goods for which insurance coverage is applicable.

15. **Claims and Arbitration and Statute of Limitations.** Any proceeding for breach of the agreement of the Parties or these Terms or any other right arising from or in connection with any performance of the Parties cannot be filed or maintained, unless (i) it is commenced within one (1) year after notice that the goods are ready for shipment, (ii) Buyer has given timely written notice to Seller of its claim as provided herein, and (iii) Buyer deposits any unpaid portion of the purchase price for goods with the tribunal pending final adjudication. An action shall accrue no later than notice that the goods are ready for shipment. Provided, however, notwithstanding the foregoing, a claim based

upon the warranty granted may be commenced before the appropriate tribunal within one (1) year of discovery of the alleged deficiency during the warranty period. Unless otherwise agreed in writing, any controversy or claim arising out of or relating to the agreement of the Parties, or the terms hereof, including warranty claims, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in Tulsa, Oklahoma, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Costs (including the fees of the American Arbitration Association and the costs and expenses of the arbitrators) shall be divided equally between the Parties. Attorney's fees are not awardable to the prevailing Party and each Party shall bear its own attorney's fees and costs. The decision shall be made by a panel of three (3) arbitrators and shall be a reasoned award.

16. **Applicable Law, Jurisdiction and Venue.** Unless otherwise agreed in writing, the agreement of the Parties, these Terms and all ancillary services or sales shall be governed, construed and enforced under the law of the State of Oklahoma including the Uniform Commercial Code in force on the initial date of the Agreement, without regard to its conflict of law rules and except as provided herein. The U.N. Convention on the International Sale of Products shall not apply. State courts in Tulsa County, Oklahoma and federal courts in the Northern District of Oklahoma shall have exclusive jurisdiction over the Parties and the claims arising under the Agreement and these Terms, subject to the arbitration provisions contained herein.

17. **Mutual Confidentiality and Intellectual Property Obligations.** The Parties shall keep confidential and not, either during or after the term of these Terms or any purchase order, except as required in the course of its performance hereunder or with the prior written consent of the other Party, communicate or divulge to, or use for their own benefit or the benefit of any other person, firm, association or corporation, any confidential or proprietary information of the other Party, including but not limited to the contract documents and information concerning (i) technical information in respect to the goods and services of either Party, including any inventions, discoveries, improvements, processes, business methods, product design information, engineering drawings, patents and applications for patents, copyrightable work, software, including object and source code, and related trade secrets; and (ii) business information in respect to the goods and services of either Party, including the names and contact information for the existing and potential customers, market research and studies, future plans, business affairs, pricing, margins, discounts and costs (the "**Confidential Information**"). The Parties acknowledge and agree that the Confidential Information may include information that it develops as well as information that it learns from the other Party. All records, files, memoranda, reports, price lists, customer lists, drawings, plans, sketches, documents, software, including object and source code equipment, and the like, relating to the business of the other Party, which Party shall use or prepare or come into contact with shall remain the sole property of that other Party and shall be returned to the other Party upon request or termination of these Terms or any purchase order, together with all copies thereof. Seller hereby grants to Buyer a fully paid, non-transferable, non-exclusive and perpetual license of any of Seller's intellectual property necessary to operate the goods in the original configuration that existed on the date the goods were ready to ship. The Parties agree that any ideas, concepts, developments, discoveries, inventions, improvements, designs or techniques ("**Developments**") developed jointly by Buyer and Seller after start up of the goods shall be jointly owned and may be exploited independently by either Party. Prior to start up all Developments are solely the property of Seller. Developments independently made by either Party after start up belong exclusively to the developing Party.

18. **Sales Tax Exemption.** If exempt, Buyer is responsible for providing proof of sales tax exemption. It is the intention of the Parties that Buyer pay sales tax, unless exempt. The Parties agree that if not invoiced at the time of sale, Buyer will subsequently pay sales tax when invoiced, net ten (10) days, even though it may not occur until after shipment of the goods.

19. **Liability Insurance.** Seller shall maintain a policy of insurance or other appropriate and lawful protection for all worker's compensation claims as required by law, a policy of public liability insurance with limits of coverage not less than \$1,000,000.00 and a policy for products and completed operations of not less than \$5,000,000.00.

20. **Merger.** The agreement of the Parties as reflected in the face of the Purchase Order, the Seller's Quotation and the Terms contained herein constitute the entire and exclusive agreement of the Parties. These agreements form a binding contract and cannot be cancelled for convenience without the mutual consent of both Buyer and Seller. No oral or written prior or contemporaneous agreements or representations were made or relied upon by the Parties. The agreement of the Parties, may only be modified or amended as provided herein.

"SELLER"

"BUYER"

OGI PROCESS EQUIPMENT, INC.

[COMPANY NAME]

By: _____
Dana S. Weber, President and CEO

By: _____
(Print Name and Title)

SCHEDULE 1

Pursuant to Paragraph 4. of the Standard Terms of Sale to which this Schedule 1 is attached, the following is the schedule of progress payments due from Buyer to Seller for the production of goods sold hereunder:

QuikWater brand products

50% of total unit price due with purchase order

40% of total unit price due upon notification by Seller of readiness to ship, Net 10 days

10% of total unit price due upon delivery and acceptance; acceptance not to exceed 30 days from delivery

TERI brand products

25% of total unit price due when Buyer-approved drawings are returned to Seller, Net 10 days

50% of total unit price due upon Seller's receipt of major materials, Net 10 days

20% of total unit price due upon start of fabrication, Net 10 days

5% of total unit price due upon notification by Seller of readiness to ship, Net 30 days