



Document no:	<b>FIN00008</b>
Rev:	<b>A</b>
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### **TERMS AND CONDITIONS**

**UNLESS OTHERWISE EXPRESSLY AGREED TO IN WRITING BY IWAKI AMERICA INCORPORATED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE, ALL SALES MADE BY IWAKI AMERICA INCORPORATED ARE ACCEPTED WITH AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.**

1. **AGREEMENT.** The contract of sale resulting from Iwaki America Incorporated's documentation together with these terms and conditions ("Agreement") constitutes the entire agreement between the parties herein, except as modified in writing signed by both Iwaki America and the Purchaser. Any terms in a purchase order, irrespective of their materiality which are either different from or additional to Iwaki America conditions of sale, are objected to and are excluded unless Iwaki America expressly agrees in writing to such terms. Execution of such forms by Iwaki America to accommodate Purchaser's procurement or accounting procedures or to evidence agreed upon change orders shall not be construed as assent to Iwaki America conditions of sale. This Agreement shall be binding upon Purchaser and Iwaki America and on their successors and assigns.
2. **PROPOSAL OR QUOTATION.** A proposal shall not become binding upon Iwaki America until it has been executed and returned by Purchaser. An oral quotation shall not be considered an offer: only a written confirmation thereof incorporating Iwaki America's terms and conditions shall constitute an offer.
3. **CREDIT.** Credit terms of payment must have the approval of Iwaki America's Credit Department and must be specified in writing on Iwaki America invoice. The Purchaser grants to Iwaki America a security interest in all products and parts sold hereunder and all proceeds to secure the full payment and performance by the Purchaser of its liabilities and obligations to Iwaki America. The Purchaser acknowledges that this document or copies of this document or any other appropriate instrument may be filed by Iwaki America with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Iwaki America may request in order to perfect its security interest. If Purchaser's credit is found by Iwaki America to be unsatisfactory, Iwaki America may rescind or terminate a purchase agreement. If, at any time, the Purchaser's financial responsibility or financial condition becomes impaired or unsatisfactory to Iwaki America, Iwaki America reserves the right to stop shipment on notification to Purchaser. Iwaki America will notify Purchaser promptly of its decision to stop shipment and give an advance notice to the extent this is possible. In the absence of credit terms, sales are for cash.
4. **PAYMENT.** Specific terms of payment will be Net 30 days as set forth on the quotations and invoices submitted by Iwaki America. These terms and conditions constitute the final, complete and exclusive statement of the agreement between Iwaki America and the Purchaser.

**PAYMENT TERMS FOR IWAKI AQUATIC**

For Iwaki Aquatic system sales, payment terms as follows:

Billing/Payment for orders over \$100,000 below

Systems / Equipment	
Due with Signed Purchase Order	30%
Due NET 30 from shipment	50%
Due upon System Inspection & Training / NET 30	20%
Installation	
NET 30 from Completion	100%

Orders under \$100,000 are Net 30.

5. **INTEREST AND COSTS.** Purchaser agrees to pay interest at 1 ½% per month (to the extent permitted by law) on all delinquent balances if and when assessed by Iwaki America and any attorney's fees or court costs arising out of and made necessary in collection of its obligation to Iwaki America created by this agreement.
6. **TAXES.** Any federal, state or local tax assessment, fee, duty or charge hereafter imposed on or measured by the products purchased hereunder shall be for Purchaser's account unless Purchaser furnishes Iwaki America an acceptable exemption certificate from such tax, fee, duty or charge prior to shipment.
7. **CANCELLATION.** If Purchaser desires to cancel or change any portion of this agreement or purchase order, he must make such request in writing to Iwaki America. Iwaki America may, in its sole discretion, accept or reject any such request. If accepted, the Purchaser nonetheless must take delivery and make payment to Iwaki America for all material manufactured and in process of manufacture at time of notice, and all special materials ordered at time of notice and for which Iwaki America must take delivery, unless otherwise agreed by Iwaki America in writing. All such materials must be removed from Iwaki America's premises within 30 days after payment and payment will be

due at time of notice. Iwaki America also reserves the right to charge a cancellation fee in the event of cancellation by the Purchaser of any order placed in Iwaki America's shipping schedule and acknowledged by Iwaki America.

8. **DELAYS.** All orders are accepted subject to Iwaki America's ability to make delivery at the time and in the quantities specific, and Iwaki America shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments. Purchaser shall be liable for any added expenses incurred by Iwaki America because of Purchaser's delay in furnishing requested information to Iwaki America, delay resulting from order changes by Purchaser, or delay in unloading shipments at delivery point.
9. **SHIPMENT.** Purchaser shall be liable for all the transportation charges and such charges may include, but is not limited to, carriers' charges for notification prior to delivery, demurrage, delay in unloading, diversion, or reconsignment.
10. **TITLE.** Title to product transfers at Iwaki America's shipping dock. Terms are ex works, Holliston, Massachusetts which will be clearly set forth in the shipment terms of the quotation and/or invoice. Purchaser is responsible for proper protection of product, placement, compliance with all regulations and ordinances, and will indemnify Iwaki America against all claims for personal injuries or property damage arising from the storage, use, maintenance or handling of such products.
11. **IN TRANSIT CLAIMS.** Claims for damage or shortage in transit must be made against the carrier by the Purchaser according to the ex-works terms of the agreement. Purchaser has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.
12. **CLAIMS.** Notice of claims against Iwaki America hereunder for any reason, must be made to Iwaki America in writing promptly after discovery and within any applicable warranty period. Failure to give such notice to Iwaki America shall constitute a waiver by Purchaser of any right later to assert such a claim.
13. **RETURNS.** Returned goods shall be accepted for credit only if in salable condition and only with evidence of Iwaki America's prior written consent. Credit will not be issued for product that is obsolete or was shipped by Iwaki America more than twelve months prior to its return. Iwaki America will assess charges for freight both ways and any costs necessary to restore such goods to the regular plant inventory. The amount of credit given will depend further upon the degree of salability of products accepted in opinion of Iwaki America. A minimum restock fee of 15% will be assessed to all returned goods.
14. **PATENTS.** Iwaki America agrees to defend against loss or damage arising out of any legal action for patent infringement in connection with the manufacture of its products, provided Iwaki America is notified promptly of any such action with complete information and is given an opportunity to defend.
15. **LIMITED WARRANTY STATEMENT; EXCLUSIVE REMEDY.** Iwaki America warrants equipment of its manufacture and bearing its identification to be free from defects in workmanship and material for a period of twenty four (24) months for MDM/MXM pumps, E-Class & IX Metering Pumps, Electronic Controls, and Aquatic Systems, and twelve (12) months for all other products from date of delivery from the factory or authorized distributor when such equipment is used and maintained under normal use and in accordance with instructions supplied by Iwaki America and for the purposes disclosed in writing at the time of purchase if any. Iwaki America's sole responsibility and liability, and the Purchaser's sole remedy, under this warranty shall be limited to the repair or replacement, ex-works, Holliston, Massachusetts, of any defective equipment or part which, having been returned to Iwaki America, transportation charges prepaid, has been inspected and determined by Iwaki America to be defective. Items sold by Iwaki America under other manufacturer's brands are covered by the manufacturer's warranty. Consumables, replaceable elastomeric parts and glass components, sensor membranes/caps, immersible/submersible electronic parts, filters, UV lamps and quartz sleeves, are expendable and are not covered by any warranty either expressed or implied (except E- Series metering pumps that are covered by a two (2) year bumper-to- bumper warranty). Abuse or improper handling or maintenance of parts or equipment will void this warranty.

**LIMITED WARRANTY; EXCLUSIVE REMEDY – IWAKI AQUATIC**  
Subject to the conditions and exclusions listed in this document, Iwaki Aquatic (IA) warrants that it will correct any part of the system, which fails due to defective materials or workmanship during the warranty period. Warranty period is 2 years (24 months). The warranty period shall end on the warranty expiration date entered at the time of acceptance by the Client, which shall not be greater than 30 days after installation is complete. Warranty work shall be performed by IA or its authorized representative who shall, at IA's election, repair or replace any part of the system, which has failed. All such repairs shall be free of all charges to the client, including labor and parts (except for disposable supplies as set out in the operator's manual).

**FeederBot units**

The warranty period for a FeederBot unit will vary based on the type of rack and system the unit will support. The warranty period will be documented at the time of sale.

All other Representations and warranties made by any person, including authorized representatives of IA, shall not be binding upon IA unless made in writing and approved by an IA officer.

**Limitation of Liability**

IA liability hereunder shall be limited to the part of the system, which has failed.

The warranty shall remain in force so long as:

No repairs or modifications have been made to the system by anyone other than an authorized IA representative.

The system has been operated using only IA accessories.

The system was installed within three months of delivery and was installed by an authorized IA representative.

All recommended Client maintenance procedures as described in the operator's instruction manual have been properly administered.

Any replacements by IA do not extend the original warranty period.

A warranty repair shall be considered successful when IA demonstrates by appropriate test or process that the system is operating in accordance with its performance specifications. In a case where an extended period of time is needed to assess performance specifications (such as biofiltration), any payments will be due 30 days from completion of work.

IA reserves the right to make any changes in the design or construction of this system at any time, with prior written approval by the Client

**Exclusions**

The warranty excludes malfunctions resulting from:

Operating conditions other than as recommended by IA,

Failure on the part of the Client to timely perform routine Client maintenance, troubleshooting or repairs as described in the operator maintenance manual.

Damage caused by Client's misuse or operating outside of conditions prescribed in the operator's manual.

Damage resulting from movement of system by Client not supervised by IA. Acts of nature including, but not limited to, flood, earthquake, tornado, hurricanes and other natural or manmade disasters.

Acts of war, vandalism, sabotage, arson or civil commotion.

Electrical surge and sprinkler damage.

Use of accessories not having the grade, quality and composition as defined in the operator's manual.

User's modification of the system unless authorized, in writing, by IA.

**System Retrofits**

IA has no obligation under this Agreement to make changes in design or construction to IA systems covered by this Agreement. However, Client shall allow IA, at IA expense, to retrofit components or make design changes, which improve system reliability but do not adversely affect system performance characteristics.

**Non-Warranty Repairs**

IA shall conduct non-warranty repairs, at its location, or on site, at a rate to be mutually agreed upon, in writing.

**EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IWAKI AMERICA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT, ANY WARRANTIES AS TO DESCRIPTION OR QUALITY AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, USE OR TRADE. THE EXPRESS WARRANTIES MADE HEREUNDER ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.**

**TO THE EXTENT PERMITTED BY LAW, IWAKI AMERICA WILL NOT BE LIABLE TO THE PURCHASER OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LOSS OF REVENUE, WHETHER ARISING OUT OF ANY OF THE PRODUCTS OR PARTS PURCHASED FROM IWAKI AMERICA OR OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**16. REPAIR WARRANTY.**

a. Product repaired under warranty – Replacement parts will carry a six (6) month limited warranty from the date of shipment from the factory or Authorized Distributor or the balance of the original warranty, whichever is longer.

b. Product repaired out of warranty – Replacement parts will carry a six (6) month limited warranty from the date of shipment from the factory or Authorized Distributor.

**17. PROPRIETARY MARKINGS.** The Purchaser agrees to ensure that all copyright, trademark and other proprietary notices of Iwaki America affixed to or displayed on the products or any parts thereof will not be removed or modified.

**18. EXPORT PROHIBITION.** The Purchaser acknowledges that its exportation of the products or any parts thereof sold hereunder may be subject to compliance with various export laws, rules and regulations which restrict the export of certain products and technical data. Accordingly, the Purchaser warrants and represents that it will not export the products or any parts thereof sold hereunder outside the United States, either directly or indirectly, and shall not disclose technical data in any form to a foreign person (including foreign persons employed by the Purchaser), without full compliance of applicable export laws, rules and regulations. Proof of compliance is the sole responsibility of Purchaser and must be provided to Iwaki America upon request prior to acceptance of orders or shipment of products.

**19. AGENT'S AUTHORITY.** The Purchaser agrees that no agent, employee or representative of Iwaki America has authority to bind Iwaki America to any affirmation, representation, or warranty concerning any of products or any parts thereof other than those warranties expressly set forth herein.

**20. SOLE AGREEMENT.** This Agreement is intended by the parties hereto as a final and complete expression of their agreement with respect to the products and any parts thereof sold hereunder, and shall supersede all prior understandings, writings, negotiations and agreements with respect thereto. The terms and conditions set out herein may be amended only by a writing signed by duly authorized agents of both parties hereto.

21. **MODIFICATIONS.** The Purchaser agrees that it will not attempt to modify the products or any parts thereof sold hereunder in any way or to reserve assemble or reverse compile such products or any parts thereof. Modifications to the product void warranties.
22. **RIGHTS TO TECHNOLOGY.** Any and all intellectual property rights in the products or any parts thereof sold hereunder will remain the sole and exclusive property of Iwaki America. Iwaki America retains the entire right, title and interest in and to any and all intellectual property rights in such products and any parts thereof, including but not limited to, all trade secret, patent, copyright and trademark rights associated with such products and any parts thereof. No express or implied license is granted to the Purchaser relating to any of the products or parts thereof sold hereunder except for use of such products and parts in conformity with the use of the products and parts as intended by Iwaki America.
23. **LAW.** This Agreement shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without taking into account any choice of law provisions. The U.N. Convention on Contracts for the International Sale of Goods does not apply. The Purchaser hereby (a) irrevocably and unconditionally submits for itself and its property, in any legal action or proceeding relating to or arising out of this Agreement, to the exclusive jurisdiction and venue of the courts of the Commonwealth of Massachusetts, the courts of the United States of America in Massachusetts and the appellate courts from any thereof, and (b) agrees that any such action or proceeding may be brought in such courts.
24. **GOVERNMENTAL REGULATIONS.** Iwaki America warrants that it shall comply with each applicable code, law, regulation or ordinance of the United States, a state or any other governmental authority or agency and each applicable Executive Order in all material respects in the manufacture or sale of the items covered by this Agreement and warrants that the equipment, supplies and/or articles covered thereby conform with all such applicable requirements in all material respects. The Equal Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans set forth in 41 CFR 60-250.0(a), 41 CFR 60-3005(a), the affirmative action clause for individuals with disabilities, set forth in 41 CFR 60-741.5(a) and related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this Agreement. By accepting this Agreement, Iwaki America certifies that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.
25. **DRAWING APPROVAL** For Iwaki Aquatic systems, prior to commencement of building your custom system, Iwaki America (IA) will submit drawings to the Customer. The goal is to identify areas of coordination and to make clear the location, size, quantity and other aspects of systems within IA's scope of supply. It is the responsibility of the Customer to review and approve, in writing, such drawings prior to finalizing the system and project plan. Customer agrees to provide written sign-off of drawings in a timely manner. IA will not begin production until signed drawings have been received. Customer acknowledges delays in approving drawings may necessitate revisions to the project plan, including the project timetable. Customer is responsible for any costs, plus 10%, incurred by IA as a result of any changes/modifications or additional installation requirements resulting from errors and/or omissions in the Customer-Approved Drawings, or resulting from customer changes to the drawing subsequent to Customer approval.

#### **Facility Readiness**

Prior to the previously mutually agreed upon delivery, the Customer's facility must be adequately prepared for receipt of the system. In order to facilitate the process, IA has developed a Facility Readiness Checklist and Schedule. Customer's written certification of the completed checklist is required, in accordance with the project plan, prior to the scheduled shipment and installation dates.

#### **Delivery and Storage Fees**

Date of shipment to be coordinated with Buyer during Kick-Off Meeting or other formal, coordinated exchange of requirements (e.g. email, letter, etc...) Scope of work for both Buyer and Seller to be agreed during this meeting and to form the basis for agreement on the delivery date. If Buyer cannot accept the delivery with 30 days of the agreed upon date, the Buyer agrees to pay storage fees at Sellers cost plus 15%.

#### **Delivery and Installation**

IA will arrive on site contiguous with receipt of goods in order to assist in receipt, offload and placement of equipment. Installation will commence immediately unless other arrangements are agreed in writing between Buyer and Seller in advance of shipment.

#### **Change Orders**

Customer changes to an existing purchase order and/or contract must be accepted, in writing, by both parties, using a Change Order Form. When properly executed by both parties, the change order shall become part of the purchase order and/or contract with no requirement of any additional amendment. Customer is responsible for all change order fees, which will be outlined in the change order itself.

<b>Rev.</b>	<b>ECO No.</b>	<b>Revision date</b>	<b>Revised by:</b>	<b>Description of Change</b>
Rev.A	N/A	12/13/2022	JB	First document. First issue
Rev.B				
Rev.C				
Rev.D				
Rev.E				