



**HISCO / HAWAII IRRIGATION SUPPLY COMPANY, INC.**

**OAHU**

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**MAUI**

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## **TERMS AND CONDITIONS**

### **1. PRICES AND TERMS**

**PRICES** All prices are set forth on the face of the Invoices. Unless specifically included, the prices do not include present or future sales, use, excises, value added or similar taxes and where applicable, such taxes shall be billed as a separate item and paid for by Buyer. In no event shall Seller be responsible for any taxes arising out of the materials sold as evidenced by this invoice.

**TERMS** TERMS ARE SET FORTH AS FOLLOWS UNLESS OTHERWISE AGREED UPON, IN WRITING, FROM SELLER. Claims must be made within three days after delivery. Merchandise returned for credit may be subject to a 15% handling charge. Seller reserves title to these goods until paid for in full. In the event it becomes necessary to file suit to enforce payment, such suit may be brought in Oahu County, Hawaii at sellers option and Hawaii Irrigation Supply Company, Incorporated will be entitled to recover all collection costs, attorney's fees and interest at **18%** annual percentage rate, on all amounts found to be due and payable. All transactions are deemed made, payable and due, at Hawaii Irrigation Supply Company, Incorporated's principal place of business at Honolulu, HI.

**BUYER AND SELLER AGREE** that in the event Buyer fails to pay Seller within 30 days, interest at **18%** annual percentage rate on all amounts outstanding and not paid as hereinabove shall accrue and shall be payable to Seller. In the event that legal action is necessary to enforce the terms of this Agreement, or any other agreements entered into between Buyer and Seller, or to collect any amounts due and owing under terms of said agreements, Buyer agrees to pay such additional sums as the court may deem as reasonable attorney's fees, court costs and expert witness fees.

### **2. TRANSFER OF TITLE**

All sales are made FOB point of shipment with freight allowed to common free delivery point nearest destination within the United States. **BUYER SHALL GIVE SHIPPING INSTRUCTIONS TO SELLER WITHIN A REASONABLE AMOUNT OF TIME SO THAT ORDERS FOR SHIPMENTS CAN BE MADE.** This agreement is not assignable by Buyer to any succeeding entities without the prior written approval of Seller. Should Buyer become insolvent, file bankruptcy, make assignment for the benefit of creditors, or fail to provide reasonable security as provided for in the Hawaii Commercial Code, this Contract shall be deemed to have been breached, and all sums and amounts owing thereunder shall become immediately due and payable at the

option of Seller which options may be exercised in writing, and such time as said amounts are collected at the maximum rate allowed by law. In addition to any other right which Seller may have under any law, Seller may suspend shipment of any goods for which the Seller has not already received payment whenever Buyer is in default under this or any other contract of sale between Buyer and Seller.

### **3. DELIVERY**

Shipping dates given in advance of actual shipment are estimates by the seller and shall not be deemed to represent fixed or guaranteed shipping dates. Acts of civil or military authority, governmental priority or other allocations or control, fire, strike or other labor difficulties, riot or other civil disobedience, insolvency or other inability to perform by a manufacturer, delay in transportation of any other commercial impracticability may extend shipping dates. In the event of such delay, the date of delivery of performance shall be extended for a period equal to the time lost by reason of delay. In no event shall Seller be responsible for any damages or losses occasioned by Buyer by reason of such delays and Buyer agrees to indemnify and hold harmless Seller from any claim of third parties regarding said delays.

### **4. PAYMENT AND FINANCIAL CONDITION**

Each shipment of deliveries shall be deemed to have been sold under a separate and independent contract. Any order for goods by Buyer shall constitute a representation that Buyer is solvent. If in the judgement of Seller, the financial condition of Buyer at the time of manufacture or shipment, does not justify the terms of payment specified, Seller has the right to require from Buyer full or partial payment or other adequate assurance of performance before manufacture or shipment. Seller reserves the right to suspend its performance until such payment or adequate assurance of performance has been received.

### **5. WARRANTIES**

Goods distributed by Seller are the products of reputable manufacturers. Seller shall use its best efforts to obtain from each manufacturer, in accordance With the manufacturer's warranty (copies of which will be furnished upon request) or customary practice, the repair or replacement of goods that may prove defective in material or workmanship. In the sole discretion of Seller, it may, in lieu of performing repairs or being responsible for the cost of repair or replacement of goods, refund to Buyer the cost of the particular item which has been alleged as defective. **THE FOREGOING SHALL CONSTITUTE THE**

**EXCLUSIVE REMEDIES OF THE BUYER AND THE REMEDY CHOSEN SHALL BE AT THE SOLE DISCRETION OF SELLER.** Except as to title, there are no warranties whether written, oral, implied or statutory relating to the described goods which extend beyond that described in this paragraph.

### **6. LIMITATION OF LIABILITY**

Seller's liability on any claim for loss or damage arising out of this Contract or from the performance or breach thereof or connected with supplying of any goods hereunder, or their sale, resale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price allowable to such goods or part thereof included in the claim. The Seller shall not, under any circumstances be liable for any labor charges without the prior written consent of Buyer. Seller shall not in any event, be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds for special, consequential, incidental or penal damages, including, but not limited to, loss of profits or revenue, loss of use of the product or any associated product, cost of capital, cost of substitute products facilities or services, down time costs or claims of customers of the Buyer for such damages.

Seller assumes no responsibility of the adequacy of performance of engineering, design or specifications furnished by Buyer.

### **7. TERMINATION**

Buyer may terminate an order only by consent of Seller based upon payment to Seller of reasonable and proper termination charges.

### **8. RETURNED GOODS**

**All returned merchandise must be accompanied by the original sales receipt.** **Regular Stocking Material:** Goods may not be returned without the prior consent of Seller, in writing, and all goods returned will be assessed a restocking charge of twenty percent (20%) of the sale value, before tax, on all regularly stocked material. **Special Order Material** (non-stocked or special-order material): Goods may not be returned without the prior consent of Seller, in writing and a restock charge will be computed using the manufacturer's restock charge, any return freight charges, plus 10% for Seller's handling charge. Seller's handling charge will be based on the sale value for the returned material less any sales tax.

Buyer acknowledges that he has received a full and completed copy of this Contract and Buyer further agrees to abide by all terms and conditions of this Agreement.