



1406 Hutton Drive | Carrollton, TX 75006  
Office (972) 446-1655 | Fax (972) 446-1684  
www.EGWUSA.com

## EGW Standard Terms and Conditions of Sale

These terms and conditions govern the sale of Products (“Product or Products”) and provisions of services (“Services”) by EGW Utilities, Incorporated and its affiliates (“EGW”), as well as by third party vendors and/or service providers of EGW. These terms and conditions (“Agreement”) take precedence over Buyer’s supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither EGW’s commencement of performance or delivery shall be deemed or construed as acceptance of Buyer’s supplemental or conflicting terms and conditions. EGW’s failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer’s acceptance of the Products and/or Services from EGW shall be deemed to constitute acceptance of the terms and conditions contained herein. EGW reserves the right to change or modify these Terms and Conditions for any reason and without notice.

- 1. Orders:** All orders placed by Buyer are subject to acceptance by EGW. No order placed with EGW shall be considered accepted until acknowledged in writing by a duly authorized representative of EGW. After acceptance, Orders may not be cancelled or rescheduled without EGW’s written consent. All orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. EGW may in its sole discretion allocate Product among its Buyers. EGW may designate certain Products and Services as non-cancelable, non-returnable, non-reschedulable (“NCNR”) and the sale of such Products and Services shall be subject to the special terms and conditions contained in EGW’s “Non-Standard/NCNR Product Buyer Acknowledgement” form, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.
- 2. Prices:** The prices of the Products are those prices specified on the front of the invoice. Pricing for undelivered Products may be increased in the event of an increase in EGW’s cost, change in market conditions or any other causes beyond EGW’s reasonable control. Price quotations shall automatically expire in fifteen (15) days from the date issued, or as otherwise stated in the quotation.
- 3. Taxes:** Unless otherwise agreed to in writing by EGW, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold EGW harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on EGW’s invoice.
- 4. Payment & Terms:** Payment may be made by check, money order, credit card, or wire transfer (all fees are borne by the Buyer). Where EGW has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice, without offset or deduction, unless otherwise stated. On any past due invoice, EGW may impose interest at the rate of one and a half percent [1.5%] per month. If Buyer fails to make each payment when it is due, EGW reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which EGW has extended credit to Buyer. In the event of default by Buyer, EGW shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs.



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5. **Delivery and Title:** All shipments will be made FOB: Shipping Point, and all charges will be “prepaid and add,” unless otherwise noted. All Products are shipped by Ground transport unless authorized otherwise in writing. Hazardous materials are shipped to limited areas only. Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. EGW’s lead times are estimates only. All “In Stock” claims and lead times are made assuming that Products are “Subject to Prior Sale”. EGW is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of EGW, nor shall the carrier be deemed an agent of EGW. A delayed delivery of any part of an Order does not entitle Buyer to cancel other deliveries.
6. **Inspection, Acceptance & Returns:** Inspection, Acceptance & Returns are the Buyer’s responsibility. Buyer should inspect all Products upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to EGW within five (5) days of receipt of the Products. If no such claim is submitted within the required time frame, Buyer will be deemed to have irrevocably accepted the Products. Buyer must check with its EGW representative and obtain written approval before returning any products to EGW. All returns must be approved by EGW in writing, and will not be accepted without a return authorization (RA) number that may be issued by EGW at its sole discretion. All returns may be subject to a restocking fee, which will be determined by EGW at its sole discretion. Returned Products must be in original shipping cartons, in resalable condition, and shall be returned freight prepaid in the manner specified by EGW. No credit shall be allowed for Products returned which are found not to be in first class resalable condition after testing, count and inspection by EGW or the Manufacturer. For all Products that pass inspection, Buyer shall be credited at the invoiced price or the prevailing price, whichever is lower, less any restocking fee and the original outgoing freight. Products not eligible for return shall be returned to the Buyer freight collect. Non-Stock/Non-Standard/ Special Order Products will only be accepted for return with written consent from the Manufacturer. All Custom Designed/Manufactured/Specified Products are considered NCNR (non-cancelable, non-returnable, non- reschedulable). EGW also reserves the right to designate certain Non-Stock/Non-Standard/ Special Order Products as NCNR at its sole discretion.
7. **Limited Warranty:** EGW will transfer to Buyer any Product warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. EGW warrants to Buyer that Products purchased hereunder will conform to the applicable manufacturer’s specifications for such products and that any value-added work performed by EGW on such Products will conform to applicable Buyer’s specifications. If EGW breaches this warranty, Buyer’s remedy is limited to (at EGW’s election) (1) refund of Buyer’s purchase price for such Production (without interest), (2) repair of such Products, or (3) replacement of such Products; provided that such Products must be returned to EGW, along with acceptable evidence of purchase, within 20 days from date of delivery, transportation charges prepaid. No warranty will apply if the Product has been subject to misuse, neglect, accident or modification, or “normal wear & tear.”



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SAVE AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, EGW MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

8. **Limitation of Liabilities:** BUYER SHALL NOT BE ENTITLED TO, AND EGW SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF BUYERS, PUNITIVE DAMAGES, IPR INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM EGW FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD EGW HARMLESS FROM ANY CLAIMS, LOSSES, EXPENSES, ATTORNEY'S FEES, DAMAGES, DEMANDS, JUDGEMENTS, CAUSES OF ACTION, LIABILITY OF TORT, CONTRACT OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER BASED ON (a) EGW'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN EGW, or (c) USE IN COMBINATION WITH OTHER PRODUCTS.
9. **Export Control:** Buyer certifies that it will be the recipient of the Products to be delivered by EGW. Buyer acknowledges that the Products are subject to the export/import control laws and regulations of various countries, including the Export Administration Laws of the United States. Products sold by EGW cannot be transferred, sold or re-exported to any part on the Entity List or Restricted Person List of the U.S. Department of Commerce Bureau of Industry and Security, any party designated by the U.S. Treasury Department's Office of Foreign Assets Control, and any party debarred or sanctioned for proliferation or terrorism reasons by the U.S. State Department.
10. **Use of Products:** Products sold by EGW are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that EGW and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold EGW and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.



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11. **Force Majeure:** EGW is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond EGW's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing EGW from performance and barring remedies for non-performance. In an event of force majeure condition, EGW's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting EGW to any liability or penalty. EGW may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.
12. **Technical Assistance or Advice:** If technical assistance or advice are offered or given to Buyer, such assistance or advice is given free of charge and only as an accommodation to Buyer. EGW shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of EGW's representatives in connection with the Products or Services constitute a representation or warranty, express or implied.
13. **General:** (a) The laws of the State of Texas will exclusively govern any dispute between EGW and Buyer, (b) Jurisdiction and Venue- Any disputes will be adjudicated in courts located in Dallas County, TX. (c) Buyer may not assign this Agreement without the prior written consent of EGW. EGW or its affiliates may perform the obligations under this Agreement. This Agreement is binding on successor and assigns, (d) Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.