New Account – Current Account – Credit Application

Name Date

Address

City State Zip

Phone Fax

Owner/Principals Name

Corpoation Fed ID# Partnership SS# Proprietorship SS#

Tax Exempt Form Attached ( ) Yes ( ) No Financial Statement Attached ( ) Yes ( ) No

Referneces

Major Trade References:

Name Phone
Address Fax

Name Phone
Address Fax

Name Phone
Address Fax

Bank Phone
Address Contact

Bonding Agent Phone
Address Contact

Bonding Surety
Address

See page 2 for Clow Water Systems Co. Terms and Conditions that must be signed and returned to the following address:

Clow Water Systems Company
Attn: Bernie Kenney – Credit Manager
P.O. Box 6001
Coshocton, OH 43812-6001
Phone: 740-622-6651 Fax: 740-622-8551

TERMS AND CONDITIONS OF SALE

1. ENTIRE AGREEMENT. Clow Water Systems Company (the "Seller"), a division of McWane, Inc., agrees to sell the goods covered herein (the "Goods") to Buyer on the following terms and conditions of sale (the "Terms and Conditions") which supersede any other or inconsistent terms of Buyer. This contract constitutes the entire agreement between parties with respect to the Goods, and this Agreement may not be modified, amended or waived in any way except in writing signed by an authorized representative of Seller. No representation, promise or term not set forth herein has been nor may be relied upon by Buyer. All references by Seller to Buyer's specifications and similar requirements are only to describe the products and work covered hereby and no warranties or other terms therein shall have any force or effect.

2. QUOTATIONS. Where this form is used by Seller to place a bid, the quotation stated herein is for prompt acceptance and is subject to change and/or withdrawal without notice. Prompt acceptance of all quotations and adherence to delivery schedules are material terms of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer's shipping instructions.

3. ACCEPTANCE. This order shall not be binding upon Seller until accepted by an authorized representative of Seller at its home office. Acceptance of orders, whether oral or written, is based on the express condition that Buyer agrees to all of these Terms and Conditions. Acceptance of delivery by Buyer will constitute Buyer's assent to these Terms and Conditions in their entirety.

4. DELIVERY. All prices are F.O.B. Seller's plant, unless otherwise specified by Seller. All shipping dates are approximate, and any time period indicated for a shipment shall not commence until receipt at Seller's plant of complete manufacturing, shipping, and credit information. Acceptance of shipment by designated shipper, allocation of Goods to Buyer at premises other than Seller's, delivery to Buyer's representative or designee, or mailing of an invoice to Buyer, whichever first occurs, shall constitute tender of delivery. Upon tender of delivery, title shall pass to Buyer, subject to Seller's right of stoppage in transit and to any interest of Seller reserved to secure Buyer's payment or performance, irrespective of any freight allowance or prepayment of freight. Goods held subject to Buyer's instructions, Goods for which Buyer has failed to supply shipping instructions, or in any case where Seller, in its sole discretion, determines any part of the Goods should be held for Buyer's account, Seller may invoice the Goods and Buyer agrees to make payment at the maturity of the invoice rendered. Goods invoiced and held at any location for whatever reason shall be at Buyer's risk and Seller may charge for (but is not obligated to carry) insurance, storage and other expenses incident to such delay at its prevailing rates. Partial deliveries shall be accepted by Buyer and paid for at contract prices and terms. When Buyer has declared or manifested an intention not to accept delivery , no tender shall be necessary but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver and such notice shall constitute a valid tender of delivery. In no event shall Buyer be entitled to make any deduction from any payment due hereunder by reason of loss or damage in transit. Upon the written request of Buyer, Seller, at its sole discretion, may agree as a service to Buyer to process Buyer's claim against the carrier for any loss or damage in transit, provided that such claim is received by Seller within five (5) days of the receipt of Goods. Any such claims must be accompanied by a delivery receipt, signed by carrier's agent at time of delivery, on which receipt the loss or damage has been noted. In the absence of directions, Goods will be shipped by the method and via carrier Seller believes dependable. Delivery by truck will be made to nearest points reasonably accessible by truck as determined by the driver. Buyer will furnish and pay for necessary labor to unload and store Goods. Buyer shall note loss or damage on truck shipments upon delivery ticket returned to Seller, or such claims shall be waived, Buyer must report any shortages within three days of receipt of the initial shipment.

5. TERMS OF PAYMENT. Terms to Buyers whose credit has been approved in writing by Seller are net cash 30 days after date of invoice, unless otherwise agreed in writing by Seller. Seller shall have the right to make partial shipments and payment therefor shall be due 30 days thereafter. If, at any time or for any reason, Seller shall have cause to question Buyer's ability to perform, Seller may demand such assurances of Buyer's performance as Seller shall deem necessary in its discretion, including payment in advance for all shipments. If Buyer fails within 10 days of Seller's demand to provide Seller with such assurance, Seller shall be entitled to cancel any order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and may proceed to collect, without limitation, any sums due and owing, its reasonable cancellation charges and all damage resulting from Buyer's default. In the event of bankruptcy or insolvency of Buyer, or in the event of any proceeding brought against Buyer, voluntarily or involuntarily, under bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time and shall receive reimbursement for its reasonable and proper cancellation charges. If Buyer fails to make payment for the Goods when due, Buyer's account shall be deemed delinquent and Buyer shall be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount. Buyer shall be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorney's fees.

6. CANCELLATION, CHANGES AND RETURNS. This order is not subject to cancellation, change or return unless agreed to in writing by an authorized representative of Seller. At Seller's option, Buyer may be charged for any costs incurred by Seller prior to or as a result of such cancellation, change or return. In the event of any change, Seller shall be entitled to revise its prices and delivery dates to reflect such change. When Seller's agreement is obtained, Seller will accept returned material for credit if, in its sole discretion, it finds such material to be standard stock and in good condition. Such credit shall be the invoice price less 35% on acceptable goods, and less all shipping and handling charges. In all other cases, the credit in Seller's sole discretion shall be the scrap value of the Goods, less shipping and handling charges.

7. DELAY IN OR PREVENTION OF PERFORMANCE. Seller shall not be liable for any expense, loss or damage resulting from delay in delivery or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, lack of or inability to obtain materials, fuels, supplies or equipment, riots, accidents, transportation delays, acts or failures to act of any government or of Buyer, or any other cause whatsoever, provided that such cause is beyond the reasonable control of Seller; and Seller shall have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect increases occasioned by such delay. Acceptance by Buyer of any Goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such Goods. If delivery is delayed or interrupted for any such cause, Seller may store the Goods at Buyer's expense and risk, and Seller may charge Buyer therefor a reasonable storage rate. If Seller is delayed in proceeding with production or otherwise because it is awaiting Buyer's approval or acceptance of designs, drawings, prints, engineering or technical data, or is awaiting Buyer's approval or acceptance of the Goods, Seller shall be entitled to an adjustment in price commensurate with any increase in Seller's cost of production and any other losses and expenses incurred by Seller attributable to such delays.

8. DEFERRED DELIVERY. Any deferred delivery request by Buyer shall be subject to Seller's written approval. If such approval is given, Seller shall have the right to charge Buyer for the completed portion of the order and to warehouse all completed Goods at Buyer's expense and risk of loss. Seller also reserves the right, at its option, as to any uncompleted portion of the order to cancel said uncompleted portion in accordance with Paragraph 6 above, or to revise its prices and delivery schedules on the portion not completed to reflect its increased costs and expenses attributable to the delay.

9. WARRANTY AND LIMITATION OF LIABILITIES AND BUYER'S REMEDIES. Seller warrants that the Goods delivered hereunder shall be of the kind described in the within agreement and free from defects in material and workmanship under conditions of normal use. Seller reserves the right to make any modifications required by production conditions to the information set forth in Seller's catalogues and advertising literature. Seller shall not be liable or responsible, however, for (A) any defects attributed to normal wear and tear, erosion or corrosion or improper storage, use or maintenance, or (B) defects in any portion or part of the Goods manufactured by others. If (B) above is applicable, Seller will, as an accommodation to Buyer, assign to Buyer any warranties given to it by any such other manufacturers. Any claim by Buyer with reference to the Goods for any cause shall be deemed waived by Buyer unless submitted to Seller in writing within ten (10) days from the date Buyer discovered, or should have discovered, any claimed breach. Buyer shall give Seller an opportunity to investigate.

Provided that Seller is furnished prompt notice by Buyer of any defect and an opportunity to inspect the alleged defect as provided herein, Seller shall, at its option and in its sole discretion either: (i) repair the defective or non-conforming Goods, (ii) replace the nonconforming Goods, or part thereof, which are sent to Seller by Buyer within sixty days after receipt of the Goods at Buyer's plant or storage facilities, or (iii) if Seller is unable or chooses not to repair or replace, return the purchase price that has been paid and cancel any obligation to pay unpaid portions of the purchase price of nonconforming Goods. In no event shall any obligation to pay or refund exceed the purchase price actually paid. Repair and/or replacement as provided above shall be at Seller's plant and shipped FOB Plant unless otherwise agreed to by Seller. Transportation charges for the return of the Goods or part thereof to Seller shall be prepaid by Buyer, unless otherwise agreed to in writing by Seller. Seller shall, in no event, be responsible for any labor, removal or installation charges that may result from the above-described repair and/or replacement of any Goods. The foregoing warranty does not cover failure of any part or parts manufactured by others, the failure of any part or parts from external forces, including but not limited to earthquake, installation, vandalism, vehicular or other impact, application of excessive torque to the operating mechanism or frost heave. The exclusive remedy of Buyer and the sole liability of Seller, for any loss, damage, injury or expense of any kind arising from the manufacture, delivery, sale, installation, use or shipment of the Goods and whether based on contract, warranty, tort or any other basis of recovery whatsoever, shall be, at the election of Seller, the remedies described above. The foregoing is intended as a complete allocation of the risks between the parties and Buyer understands that it will not be able to recover consequential damages even though it may suffer such damages in substantial amounts. Because this Agreement and the price paid reflect such allocation, this limitation will not have failed of its essential purpose even if it operates to bar recovery for such consequential damages.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY LAW. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, SHALL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF USE OF THE GOODS OR OTHER PROPERTY EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL , COST OF SUBSTITUTE GOODS, DOWNTIME, OR THE CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES. SELLER SHALL NOT BE LIABLE FOR AND BUYER AGREES TO INDEMNIFY SELLER FOR ALL PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LIABILITY RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF BUYER.

In any contract by Buyer for resale of the Goods Buyer shall effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from the handling, possession or use of the Goods, and shall exclude, as against Seller, any liability for special or consequential damages.

10. PATENTS. If any claim is made against Buyer based on a claim that any of the Goods constitute an infringement of any U.S. Letter Patent, Buyer shall notify Seller immediately. Seller shall have the right, with Buyer's assistance, if required, but at Seller's expense, to conduct settlement negotiations of any litigation. If any of the Goods are held to infringe any U.S. Letter Patent, and their use is enjoined or, if as a result of a settlement, Seller deems their continued use unadvisable and provided that Buyer has given Seller the immediate notice provided for above and has used the Goods only in accordance with the provisions of this order and shall not have altered or changed them in any material way, Seller shall, at its option and expense, procure for Buyer the right to continue using the Goods, modify the Goods so that they become non-infringing, replace the Goods with non-infringing Goods of substantially equal quality, or replace the Goods and refund the purchase price, less reasonable depreciation. The foregoing states Seller's entire liability for patent infringement.

11. CONTROLLING LAW. This Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio. **Any claim by Buyer arising hereunder shall be tried in the courts of Ohio to which jurisdiction Buyer hereby submits.**

12. ARBITRATION; DISPUTE RESOLUTION; PRESERVATION OF FORECLOSURE REMEDIES. At the option or election of Seller, any dispute, claim or controversy ("Dispute") between Seller or Buyer relating to the transactions contemplated by this agreement, including without limitation any claim based on or arising from an alleged tort, shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). Defenses based on statutes of limitation and similar doctrines shall be applicable in any such proceeding, and the commencement of an arbitration proceeding under this Agreement shall be deemed the commencement of an action for such purposes. The arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the AAA. The AAA shall designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Each of Seller and Buyer shall designate, within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated shall select a third arbitrator from the eight remaining candidates.

13. WAIVER. No delay or failure by Seller to exercise any right or remedy under these Terms and Conditions shall be construed to be a waiver thereof. Waiver by Seller of any breach shall be limited to the specific breach so waived and shall not be construed as a waiver of any subsequent breach.

14. ASSIGNMENT. Buyer may not assign this order or any rights hereunder without the prior written consent of Seller. This Agreement, and the Terms and Conditions contained herein, are enforceable, however, against the successors and assigns of Buyer.

15. TAXES. Seller's prices do not include sales, use, excise or other similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future such tax shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with all tax-exemption certificates required by the taxing authorities, at the time of sale.

16. CUMULATIVE NATURE OF REMEDIES. All remedies of Seller set forth herein shall be cumulative and shall be in addition to any other remedies available to Seller, whether at law, equity or otherwise.

I/we hereby authorize Clow Water Systems Company to investigate the references listed on the attached page pertaining to my/our credit and financial responsibility. **Our signature also constitutes acceptance of all of Clow Water Systems Company's Terms and Conditions of Sale as shown above, for all current and future orders and sales. These Terms and conditions may not be amended, modified, terminated or revoked except by a written document signed by an authorized representative of Clow Water Systems Company**

Date _____ Company _____

Signature _____ Title _____