



## TERMS AND CONDITIONS OF SALE

**WARRANTY DISCLAIMER.** Yardney Water Management Systems, Inc. (Yardney) makes no express or implied warranties, including without limitation those of merchantability or fitness for a particular purpose or related to design, workmanship, materials, or otherwise, with regard to goods and products sold by, but not manufactured by, Yardney. With regard to goods and products manufactured by Yardney, see paragraph 8 below. **Yardney makes no other express or implied warranties with respect to such goods.**

Any description of goods on the face of this document is for the sole purpose of identifying them and does not constitute a warranty of any kind.

**1. Acceptance of Terms.** This agreement consists of the following Terms and Conditions as well as the information set forth on the face of this document. By accepting delivery of the goods shown on this document, purchaser acknowledges that he has read and agrees to all Terms and Conditions of this agreement (hereafter the "Yardney Terms and Conditions"). If the purchaser has submitted to Yardney a credit application, the terms and conditions contained therein are incorporated as if fully set forth herein. No Terms or Conditions herein or in the Yardney Credit Application may be changed except by written consent of either an Officer or the Manager of Credit Services of Yardney. Any counter offers with terms and/or conditions different from the Yardney Terms and Conditions, and the terms and conditions accompanying or incorporated into any purchase order submitted by purchaser, are expressly rejected.

**2. Terms of Payment.** Unless otherwise indicated by Yardney on the face of this document, the total purchase price reflected by this document is due and payable within 30 days. All payments hereunder must be in US dollars and made in cash or by check or money order. All invoices which are not paid within 30 days, and credit accounts which are delinquent, shall be assessed a 1-1/2% service charge (or the highest legal rate under applicable state law) for each month the invoice is not paid or the account is delinquent. No contractor or other discounts apply unless expressly set forth on the face of this document. No credit terms apply unless expressly set forth on the face of this document. Purchaser shall have no right to set-off against payment hereunder any amount which Yardney may owe purchaser. Any sales taxes will be reflected on the face of this document and added to the total purchase price.

**3. Terms of Delivery.** Unless the purchaser and Yardney agree in writing otherwise, all shipments are F.O.B. point of original shipment. The risk of loss of goods, in the event of a breach or otherwise, passes to the purchaser upon Yardney's delivery of the goods to the carrier for shipment. The purchaser shall provide Yardney with the exact address of the place of delivery. Transportation charges when made freight prepaid by Yardney will be charged on the invoice as freight and

handling. Transportation charges in all other cases will be paid by the purchaser directly to the carrier.

**4. Shortages.** Shortage claims will not be considered unless made in writing within 10 days of the purchaser's receipt of the goods. Freight shortage or damage claims must be filed with the carrier.

**5. Returns.** Yardney will accept returned goods only if Yardney shipped them from its warehouse in error, under special circumstances expressly acknowledged by Yardney in writing, or pursuant to Paragraph 9 below.

All return requests, other than requests pursuant to the Limited Warranty (see paragraph 8 below) must be made within 10 days of receipt of shipment and must be approved by Yardney in writing. All written approvals will include the issuance of a Returned Goods Authorization Number. This number must be clearly marked on the outside of all cartons containing returned goods. All approved returns not caused by Yardney's shipping error will be subject to handling and restocking charges and must be in new, clean, resalable condition with freight prepaid. Yardney will deduct the amount of all proper approved returns from the invoice or account of purchaser, less any transportation, restocking and/or handling charges. Yardney will refuse and return to the purchaser any goods returned to Yardney without prior written approval and a valid return authorization number clearly marked on each carton. Goods returned to the purchaser for failure to observe this policy shall remain the purchaser's responsibility.

**6. Non-Standard Products.** Non-standard, special order or custom-made products are not subject to cancellation or return once the order has been placed by the purchaser. The purchaser shall be responsible for all costs Yardney has incurred on any non-standard, special order, or custom order that is cancelled.

**7. Products not Manufactured by Yardney.** All products not manufactured by Yardney carry the original manufacturer's warranty which excludes freight and /or labor (copies on request). Yardney makes no express or implied warranties, including any warranties of merchantability or fitness for particular purpose or related to design, workmanship, materials, or otherwise, with respect to products not manufactured by Yardney. Synergy Backwash Controller includes an 18 month warranty from shipment date.

**8. Limited Warranty for Products Manufactured by Yardney.** Yardney warrants that all products manufactured by Yardney will be free of defects in material and workmanship, excluding paint and coatings, for a period of one (1) year from shipment date (the "Limited Warranty"). The Limited Warranty does not cover the effects of normal wear and tear, abuse, abrasion, corrosion, extreme temperatures and/or improper storage, installation, or use, or force majeure. The Limited Warranty is in lieu of all other warranties, express or implied, and Yardney makes no other

express or implied warranties, including any warranty of merchantability or fitness for a particular purpose, with respect to such products. The purchaser acknowledges that the Limited Warranty is Yardney's only warranty. No verbal agreement(s) or representations by Yardney's agents or employees constitute a warranty of any kind. The purchaser acknowledges that all non-standard, special order or custom-made products have been produced by Yardney in reliance on specifications and information provided by purchaser. The Limited Warranty is for the benefit of only the original purchaser, and may not be transferred or assigned. Yardney only warrants the actual product and is exclusive of all freight and/or labor.

**9. Purchaser's Remedy under One-Year Warranty.** If it becomes apparent within the one-year warranty period of the Limited Warranty that a product manufactured by Yardney is in breach of the Limited Warranty, the purchaser must notify Yardney promptly in writing and request return of the goods and a Returned Goods Authorization Number pursuant to paragraph 5 above. After receiving Yardney's approval described in paragraph 5 above, the purchaser may return such product directly to the place of shipment. Yardney shall inspect properly returned products. If the returned products are determined by Yardney to be in breach of the Limited Warranty, Yardney at its own discretion shall replace or repair the returned products, free of all charges except transportation costs. The correction of any defects by repair or replacement shall fulfill all of Yardney's obligations and liabilities under the Limited Warranty and this agreement. The purchaser's sole remedy for breach of the Limited Warranty is the foregoing repair or replacement of the defective product. Without limitation of paragraph 13 below, Yardney shall not be liable for special, consequential or incidental damages in any claim, action, suit or proceeding arising under the Limited Warranty. Returned products which are not determined defective shall be returned to purchaser and shall remain the purchaser's responsibility, including transportation costs.

**10. Events Which Void Limited Warranty.** The following events or occurrences shall terminate the Limited Warranty, and shall relieve Yardney from any further responsibility thereunder: (a) purchaser's failure to promptly notify Yardney of unsatisfactory operation, defects or any improper or unauthorized installation, maintenance, use, repair or adjustments; (b) the alteration or modification by any person other than Yardney of products manufactured or supplied by Yardney, and (c) operation of products manufactured or supplied by Yardney in a manner other than as specified in written instructions supplied with such products by Yardney.

**11. Force Majeure.** Yardney shall not be liable for any expense, loss, or damage resulting from force majeure, including without limitation delay or prevention of performance caused by fires; floods; Acts of God; strikes; labor disputes; labor

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shortages; lack of or reasonable inability to obtain materials, fuel, supplies, or equipment; riots; thefts; accidents; transportation delays; an act or failure to act by the Government; a major equipment breakdown; variations in water quality or temperature; or any other cause beyond the reasonable control of Yardney.

**12. Disclaimer of Damages for Improper Use.** Yardney shall not be responsible for damage to its products, or damage caused by its products, resulting from improper installation and use, maintenance, unintended use or attempts to operate such products beyond their mechanical or electrical capacity, intentionally or otherwise, or any unauthorized repair or modification of its products.

**13. Disclaimer for Incidental, Special and Consequential Damages.** In no event will Yardney be liable, whether arising under contract, tort, strict liability, any statutory remedy, or any other cause of action whatsoever, for labor costs, loss of anticipated profits or goodwill, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruption, cost of purchase or replacement power, claims of customers, cost of money, loss of use of capital or revenue, fines or penalties assessed or levied against purchaser based on the operation, non-operation, or use of the goods, or for any special, incidental, or consequential loss or damage of any nature, arising at any time from any cause whatsoever.

**14. Field Repairs.** Any in-field repairs of products claimed by purchaser to be in breach of the Limited Warranty must be approved by Yardney prior to repairs being performed. Any in-field repairs performed for any other cause, or not approved in advance by Yardney, will void the Limited Warranty in full.

**15. Alterations to Products.** Any alterations to products performed during while the Limited Warranty is in effect will void the Limited Warranty and relieve Yardney from all liability under the Limited Warranty.

**16. Limitation of Liability.** Notwithstanding any other provision of this agreement, Yardney's cumulative maximum liability under this agreement arising from any cause whatsoever, including but not limited to breach of contract, quasi-contract, tort (including negligence), strict liability, any other statutory remedy, breach of warranty, or any other cause or form of action whatsoever will not exceed the purchase price.

**17. Catalog.** All information, recommendations and suggestions appearing in Yardney's catalog and web page are based upon tests and data believed to be reliable. However, it is the purchaser's responsibility to determine the suitability of Yardney's products for each application. Yardney reserves the right to change the prices set forth in its catalog at any time and without notice to the purchaser or other customers. The catalog is not a part of this agreement.

**18. Breach and Remedies.** Any failure by the purchaser to tender full payment when due, or any wrongful rejection or repudiation of the Yardney Terms and Conditions shall constitute a material breach, and shall entitle Yardney to pursue any or all of its remedies under the Uniform Commercial Code and applicable state law. Yardney's remedies are cumulative and shall include without limitation: (a) Withholding delivery of

products; (b) Stopping delivery by the carrier; (c) Reselling the products and recovering damages; (d) Recovering damages for non-acceptance and/or nonpayment; (e) Canceling this agreement; and, (f) Reclaiming delivered products.

**19. No Waiver.** Any delay or failure by Yardney to enforce or pursue any or all of its remedies upon a breach by purchaser shall not be construed as a waiver of Yardney's rights under this agreement or applicable state law. Any waiver of Yardney's rights or claims under this agreement must be in writing signed by Yardney and given in exchange for valuable consideration.

**20. Assignment and Delegation.** No right or interest under this agreement may be assigned by either party without the written consent of the other party. No duty or obligation under this agreement may be delegated by either party without the written consent of the other party. Any assignment or delegation not consented to in writing is void.

**21. Entire Agreement.** The Yardney Terms and Conditions set forth herein and the Yardney Credit Application, if applicable, constitute the entire agreement between purchaser and Yardney and supersede any prior or contemporaneous representations or agreements, written or oral. No additional oral or written terms, including any attempts by purchaser to modify the Yardney Terms and Conditions or any other document relating to this sale, shall become a part of this agreement without the express written consent of Yardney.

**22. Severability.** If any part of this agreement is deemed unenforceable for any reason, the remainder of the agreement and the Yardney Terms and Conditions shall remain in full force and effect.

**23. Governing Law.** This agreement shall be construed under and controlled in all respects by the law of the state of California without regard to conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this agreement.

**24. Disputes.** If there is any dispute about or involving this agreement, purchaser agrees that the dispute shall be governed by the laws of the State of California, USA, without regard to conflict of law provisions and purchaser agrees to exclusive personal jurisdiction and venue in the state and federal courts of the United States located in the State of California, City of Riverside.

**25. Headings.** All headings are organizational devices only. They are not intended by the parties to have any legal import.

**26. Attorney's Fees.** In the event that Yardney is the prevailing party in any action or proceeding to enforce its rights under or arising from this agreement, Yardney shall be entitled to its actual attorney's fees and court costs, unless the law of the forum state requires that the prevailing party or either party be entitled to attorneys' fees, in which event the Yardney Terms and Conditions are modified to incorporate the forum state's requirements.

**27. Inspection and Rejection of Non-Conforming Goods.** Purchaser has the right to inspect the products delivered pursuant to paragraph 3 promptly upon receipt, but not later than two (2) days following receipt. Purchaser, at its sole option, may inspect all or a sample of

such products, and may reject all or any portion of the products if it determines the products are nonconforming or it is apparent that the products are in violation of the Limited Warranty. If purchaser rejects any portion of such products for such reasons, purchaser has the right, effective upon written notice to Yardney, to: (a) rescind its order in its entirety; (b) accept such products at a reasonably reduced price mutually agreeable to purchaser and Yardney; or (c) reject such products and require replacement of the rejected products. If purchaser requires replacement of such products, Yardney shall, at its expense, within the original lead time and dependent upon Yardney production work load replace the nonconforming products and pay for all transportation charges for the return of the same and the delivery of replacement products. If Yardney fails to timely deliver replacement products, purchaser's sole remedy shall be to terminate its order. Any inspection by purchaser under this paragraph shall not prejudice the right of purchaser to conduct further inspections after Seller has carried out its remedial actions.

**28. Intellectual Property.** Yardney does not grant to purchaser any license or other right to any non-public, confidential or proprietary information of Yardney, nor to any other intellectual property of Yardney including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, trade dress, trademarks, service marks, or other intellectual property. Title to, ownership of, and all applicable rights in, non-public, confidential or proprietary information of Yardney and intellectual property of Yardney shall at all times remain in Yardney and shall not at any time be transferred or assigned to purchaser. Purchaser covenants not to reverse engineer or reproduce Yardney's products, combine Yardney's products with other goods for sale or distribution, or produce, sell, distribute, or market goods competitive with Yardney's products. Purchaser shall indemnify and hold harmless Yardney for all losses or damages, including attorneys' fees, incurred by Yardney as a result of violation of this paragraph.

**29. Acceptance of Terms and Conditions of Sale.** Yardney's performance is conditioned upon purchaser's assent to the Yardney Terms and Conditions. Yardney hereby gives notice of its objection to any additional or different terms or conditions contained in any purchaser acceptance, purchase order, acknowledgment, or other document.

Phone: 951.656.6716

Toll-Free: 800.854.4788

Fax: 951.656.3867

info@yardneyfilters.com

[www.yardneyfilters.com](http://www.yardneyfilters.com)