

## CAL-WEST RAIN, INC. — TERMS AND CONDITIONS

This Terms and Conditions ("Terms and Conditions") is effective upon execution by Customer of the Quote Sheet by and between Cal-West Rain, Inc., a California corporation ("CWR") and the other Party named on the Quote Sheet ("Customer") to provide the services ("Service") and materials ("Material") specified on the Quote Sheet. As used herein, the term "Party" can refer to either CWR or Customer as the context dictates, and the term "Parties" refers to both Cal-West Rain and Customer.

**QUOTE SHEET:** These Terms and Conditions accompany and are incorporated by reference into a quote sheet ("Quote Sheet") which provides the following information: The Customer, The Price (or the rates in the case of a time and materials agreement), Description of the Service and Material, Timeline of Performance Collectively, the Quote Sheet and these Terms and Condition make up the entire agreement ("Agreement") of the Parties.

**ACCEPTANCE OF AGREEMENT:** By presenting the Agreement to Customer, CWR is making an offer that Customer can accept by executing the Quote Sheet and returning the entire Agreement to CWR. If the Agreement is not returned to CWR within fifteen (15) days of the date on the Quote Sheet, the Agreement is withdrawn and shall be null and void. No obligations exist for CWR until it is in receipt of the Agreement with the executed Quote Sheet. The date the Quote Sheet is accepted by CWR is the "Effective Date" of the Agreement.

**MATERIAL SUPPLIED PER CUSTOMER SPECIFICATIONS:** To the extent any Material is supplied based on Customer specifications, Customer is responsible for such specifications it has supplied to CWR for the Material ("Specifications"). Provided that CWR produces Material consistent with the Specifications, it shall have no responsibility for any design defect related to the Specifications.

**TAXES:** Any tax or other governmental charge upon the production, sale, or shipment of the Material imposed by federal, state, municipal, or other authorities shall be added to the price to be paid by Customer.

**TERMS OF PAYMENT:** All invoices are due in thirty (30) days of the date shown on the invoice. Starting on thirty-first day and on that same date on each month thereafter, there shall be added to the balance owing a carrying fee of the principal balance of the invoice multiplied one and one-half percent (1.5%).

**ORDER CANCELLATION:** Customer may cancel this Agreement within thirty (30) days of the Effective Date; however, there will be a restocking charge of twenty percent (20%) for the price of any Material (unless such Material has not been ordered). Additionally, Customer shall pay for any Service performed or direct cost incurred by CWR between the Effective Date and the date CWR receives written notice of the cancellation.

**BANKRUPTCY/INSOLVENCY:** If Customer is subjected to bankruptcy, a receivership, an assignment for the benefit of creditors, or CWR has reasonable belief that Customer is insolvent, CWR may solely at its discretion cancel the Agreement with Customer, stop manufacturing the Material, refuse shipment of the Material, stop delivery of any Material in transit, and reclaim any Material for which payment has not been made.

**TITLE:** Title to the Materials described herein shall remain in CWR's name until paid for in full by Customer. Delivery shall not transfer title; only full payment of the Price shall transfer title. However, risk of loss shall vest in Customer at the time of delivery and installation, if any, of the Material at CWR's location.

**PERFORMANCE/FORCE MAJEURE:** CWR shall make reasonable effort to perform the Agreement within the Time of Performance set forth on the Quote Sheet based on the Effective Date. However, CWR shall not be liable for any delay or default when occasioned by act of God, war, riot, disease, supply chain interruptions or any other cause of any kind or extent beyond its control ("Force Majeure"). No liability shall be sustained by CWR by reason of its not timely providing the Material or portion thereof when affected by any occurrence beyond its control. CWR shall promptly notify Customer in writing of any delay or default in performing any aspect of this Agreement as soon as reasonably practical. Once the Force Majeure is no longer affecting performance, the Parties shall mutually agree on a new Timeline of Performance.

**INSPECTION:** Upon delivery (and installation if part of the Agreement), the Material shall be inspected by Customer. Failure to inspect within ten (10) business days after receipt shall constitute a waiver of Customer's right of inspection and shall be equivalent to acceptance of the Material by Customer. If there are non-conforming aspects to the Material, Customer shall identify those and, once those are corrected, Customer will then have five (5) additional days for inspection, after which the Material will be deemed accepted.

**RETURNS:** No returned Material will be accepted without prior written approval of CWR once delivered. No Material may be shipped back to CWR without its written authorization. Any credit for returned Material shall be based upon the Material being received by CWR in resalable condition, as determined solely by it. The credit will be the lower of the purchase price or the current market price.

**LIMITED WARRANTY:** CWR shall pass through to the Customer any manufacturer's warranty it has received for any Material supplied. As far as Service is concerned, there is a one (1)-year warranty starting on the day that Service is complete that the Service provided was up to the standard in the community for such work. Finally, CWR warrants that any Material it has fabricated will perform properly for the use intended for a period of one (1) year, provided it is used by the Customer as instructed and is not damaged by forces beyond the control of CWR. CWR has no liability for any mistake, error, or omission in any Specifications provided by the Customer. Further, Customer agrees that CWR shall not be liable for any defect in any material provided to CWR by Customer, whether or not such defect was apparent or otherwise.

**THE WARRANTIES SET FORTH IN THIS SECTION ARE CWR'S SOLE AND EXCLUSIVE WARRANTIES. CWR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL, WRITTEN INFORMATION OR ADVICE GIVEN BY CWR SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. NO WARRANTY EXISTS UNDER ANY CIRCUMSTANCES TWELVE (12) MONTHS AFTER DELIVERY OF THE MATERIAL. WARRANTY IS CONTINGENT UPON PROPER USE AND MAINTENANCE OF THE MATERIAL.**

**LIMITATION OF LIABILITY:** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CWR'S LIABILITY UNDER THIS TERMS AND CONDITIONS SHALL BE LIMITED TO REPAIR OF THE MATERIAL OR RESUPPLY OF A LIKE QUANTITY OF NON-DEFECTIVE MATERIAL. FURTHER, CWR SHALL HAVE NO LIABILITY UNLESS THE LIABILITY RESULTED SOLELY FROM THE BREACH OF ITS LIMITED WARRANTY. FINALLY, IT IS AGREED THAT NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OR LOSS OF PROFITS FOR ANY ALLEGED NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY THEORY OTHER THAN THE LIMITED LIABILITY SET FORTH ABOVE. NO PERSON HAS THE AUTHORITY TO WAIVE, ALTER OR ADD TO THE PRINTED PROVISIONS OF THIS WARRANTY OR TO MAKE REPRESENTATION OF WARRANTY NOT CONTAINED HEREIN.

**JURISDICTION AND VENUE:** This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to the principles of conflicts of law that would require the application of the laws of any other jurisdiction. The Parties hereby submit to the exclusive jurisdiction of the United States federal and state courts located in Fresno County, California, with respect to any dispute arising under this Agreement.

**COMPLETE TERMS AND CONDITIONS OF PARTIES/AMENDMENT:** Once this Quote Sheet has been signed and delivered by Customer, it represents the final exclusive understanding of the Parties to all terms and conditions related to the Agreement. It replaces completely any prior agreement(s), whether in writing or verbal. This Agreement can only be amended by a subsequent writing signed by the Parties.

**ATTORNEYS' FEES:** In the event any dispute arises regarding this Agreement and its obligations or benefits, the prevailing Party in such dispute shall be allowed, in addition to any other recovery, its reasonable attorneys' fees and costs in pursuing its rights under the Agreement.

**SECURITY TERMS AND CONDITIONS:** To secure payment and performance of all of Customer's current and future obligations to CWR under this Agreement, Customer hereby grants to CWR a purchase money security interest in the Material covered by this Agreement. Such security interest shall only terminate once the full price has been paid for the Material.

**AUTHORITY TO SIGN:** By signing the Quote Sheet and initialing these Terms and Conditions, Customer's signatory is warranting that they possess the power necessary to bind Customer to this Agreement.

**THE ENTIRE TERMS ARE FOUND ON THE CWR WEBSITE AND ARE INCORPORATED HEREIN AS IF SET FORTH HEREIN**

Accepted by Customer: Contact Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Company: \_\_\_\_\_ Contact Phone Number: \_\_\_\_\_

Please return completed form to: Cal-West Rain, Inc., Attn: Terms and Conditions, P.O. Box 306, Kerman, CA 93630