



## TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

PLEASE CAREFULLY READ AND UNDERSTAND THE TERMS AND CONDITIONS FOR THE SALE OF THE PRODUCTS PURCHASED BY THE BUYER (THE "AGREEMENT"), SPECIALLY BUT NOT LIMITED TO, ITS WARRANTIES, EXCLUSIONS, DISCLAIMERS AND PRIVACY POLICY THAT MAY BE LOCATED UNDER A DIFFERENT TAB OF THE WEBSITE LOCATED AT [WWW.QMDRAIN.COM](http://WWW.QMDRAIN.COM) (THE "SITE"). BY USING THE SITE OR PURCHASING THE PRODUCTS, THE BUYER INDICATES THAT HE/SHE HAS READ, UNDERSTOOD AND ACCEPTED TO BE BOUND BY ALL OF THE PROVISIONS OF THE AGREEMENT AS OF THE PURCHASE DATE. BUYER ALSO UNDERSTANDS THAT THE PROVISIONS OF THE AGREEMENT MAY BE MODIFIED BY SELLER, FROM TIME TO TIME, WITHOUT THE PRIOR WRITTEN NOTICE PROVIDED TO BUYER.

**1. Purchase Orders.** The Buyer shall send the Seller in writing a Purchase Order for the purchase of the Products subject to the Seller's written approval. Once the Seller approves the Purchase Order, Seller will issue a Sales Order which is final and the Buyer cannot cancel the Purchase Order thereafter. Each separate Purchase Order once accepted by the Seller shall become part of the Agreement, and be governed by the provisions of the Agreement.

**2. Sale of Products; price.** The Seller shall sell to the Buyer and the Buyer shall purchase from the Seller the Products in the quantities and prices as stated in the invoice issued by the Seller (the "**Invoice**"). The price, design and specifications of the Products may be modified by the Seller from time to time with no advance notice to the Buyer. Unless otherwise stated in the Invoice, the Buyer shall pay all taxes and third-party expenses imposed on, in connection with, or measured by the transaction contemplated by the Agreement in addition to the prices set forth in the Invoice. The Buyer or any Distributor, Sales Representative or Reseller may not sell the Products through internet unless previously approved in writing by the Seller (please refer to QM Internet Selling Rules). Buyer, Distributor or Sales Representative shall refrain from selling the Products to the countries or individuals included in the U.S. List of Banned Countries and any amendment made to such list by the U.S. government.

**3. Invoices; Payment and collection charges.** Unless Buyer is given credit by the Seller which is subject to Seller's prior written approval, payment for the Products is in U.S. Dollars, to be made in full prior to the delivery of the Products. If credit is given by Seller to Buyer in writing, the payment for the Products is in U.S. Dollars and due as indicated in Seller's Invoice. The Buyer shall pay a delinquency charge of the lesser of (a) one percent (1%) per month or (b) the highest rate allowed under applicable law on all overdue amounts until the amounts are paid. When payment is obtained through an attorney or collection agency, the Buyer agrees to pay all costs and expenses incurred in the collection of the Invoice, including but not limited to court's costs, reasonable attorney's fees, collection agency's fees.



**4. Delivery; Title; and Risk of Loss.** Unless otherwise stated in the Invoice, the Seller shall deliver the Products FOB at the Seller's facility according to the Incoterms 2010 as published by the International Chamber of Commerce. Title of the Products will not pass to the Buyer until the Seller has received the full payment of the Invoice and such funds are made available to the Seller. Risk of loss of the Products will pass to the Buyer upon delivery of the Products by the Seller; the Buyer will be liable for any loss or damages to the Products until the Buyer makes the payment in full of the Invoice owed to the Seller. Any stated delivery dates are approximate. The Seller will not be liable for any losses, damages, penalties, or expenses for failure to meet any delivery date. Upon request by the Seller the Buyer is required to provide proof of insurance of the Products.

**5. The Seller's Limited Warranty.** The Seller's limited warranty (the "**Limited Warranty**") applies only to the Products purchased by the Buyer directly from the Seller or Distributor(s) or Sales Representatives, if any, during the term of five (5) years as of the date of the Invoice. This Limited Warranty is not transferable. This Limited Warranty does not cover labor charges or associated costs for damages occurred to the Products: (a) by normal tear and wear, accident, abuse, misuse, fire, insects and/or animals, the use of abrasive products; hard water, improper storage, improper handling, improper maintenance, or improper installation; (b) when not used/installed in a bathroom/shower by a professional/licensed plumber or tile installer (the Seller recommends the Buyer to check the local/State plumbing codes prior to the installation of the Products); and (c) when the Products have been altered, changed or modified from their original condition when bought directly from the Seller or Distributor or Sales Representative, if any. **The Limited Warranty does not apply to any resale of the Products and excludes any labor charges and/or damages incurred in the installation, repair, replacement, removal, shipping, and handling of the Products, or any other expense/damage related to the Products. The Warranty is only limited to the repair or replacement of part(s) or the Product at Seller's option, and in no event will the Seller's liability exceed the price of the Products (as indicated in the Invoice), which gave rise to the claim or cause of action.** The original Invoice issued to the original Buyer, as a proof of purchase, must be made available to the Seller for all warranty claims.

**6. Disclaimer of Warranty.** The Seller disclaims and excludes from the Agreement any and all warranties representations or conditions, whether express or implied, including warranties, representations or conditions of merchantability or fitness for a particular purpose arising by statute, by law or from a course of dealing or usage of trade. The Limited Warranty replaces any all other warranties of the Products. The Buyer hereby acknowledges and expressly agrees that the Seller makes no other warranty of any kind whatsoever, whether written, oral, express or implied. **Notwithstanding anything contained in the Agreement or otherwise, the Seller will not be liable under the Agreement or under any contract or rule of law or equity, (including without limitation those relating to breach of contract, tort, negligence, gross negligence, strict liability or other legal or equitable theory) for any direct or indirect, compensatory, incidental, punitive, exemplary or consequential loss, claim or damages (including without limitation personal damage or loss of life) or for damages arising from the loss of profits or loss of business related to the Products.**



**7. Return of Products.** All claims must be submitted in writing to the Seller by the Buyer within five (5) business days as of delivery of the Products by email to [orders@qm-us.com](mailto:orders@qm-us.com), subject to the Seller's prior written approval. Upon approval by the Seller, all returned Products must be accompanied by a Return Products Authorization (“**RGA**”) number. Please send an email to the Seller to [orders@qm-us.com](mailto:orders@qm-us.com) to request an RPA number that must be obtained within 30 days from the date of the Invoice. The Products must be returned within thirty (30) days as of the Invoice date only for replacement or exchange after obtaining an RGA number. The returned Products must be packaged as to protect the Products and its/their packaging. The Buyer is required to clearly mark the RGA number on the outside of the shipping box and to include a copy of the original Invoice in the package. All the returned Products must be shipped prepaid and fully insured to the location indicated in the Invoice. The Buyer is advised to use FedEx or UPS or any reputable courier with insurance for returns. The Seller cannot be responsible for lost or damaged packages.

**(A)** The Buyer is required to return the Products in new and resalable condition in the original packaging. Products damaged or showing signs of use are not returnable. Items missing will be subject to additional charges. The Buyer is required to return all paperwork, including warranties and instructions, along with the original packaging. The Buyer is required to place the Products' box into a shipping box (plastic bags are not sufficient packaging). The Buyer cannot put any stickers, labels, tape, or marks on the original Product's packaging. In the event the Seller determines the Product is defective, then the Seller shall provide the Buyer with a label for return shipping along with the RGA. In the event the Seller determines the product is not defective, the return of the Products may be subject to a restocking and handling fee of a minimum of twenty percent (20%) of the price as indicated in the Invoice, and in addition, all applicable charges for labor, freight and others.

**8. Limitation of Actions.** No action arising out of or relating to the Agreement or the transactions it contemplates may be commenced against the Seller more than twelve (12) months after the basis for such claim could reasonably have been discovered.

**9. Security Interest.** The Buyer hereby grants to the Seller a security interest in the Products sold to the Buyer under the Agreement and any proceeds therefrom (including accounts receivable), until payment in full for the Products has been received by the Seller and the funds are made available to the Seller. The Buyer shall sign and deliver to the Seller any document to perfect this security interest that the Seller reasonably requests.

**10. Intellectual Property of the Seller.** (a) The Buyer acknowledges and agrees that any and all right, title and interest in and to any and all Trademarks and Patents and other proprietary rights that are related in any way to the production, manufacture, marketing, sale and distribution of the Products, are either exclusively owned by the Seller or its Affiliated companies, and the Seller may, in its sole discretion, seek to secure and maintain any such rights for the sole benefit and ownership of the Seller and/or its Affiliated companies. The Buyer agrees that his/her/its use of the Trademarks and Patents shall not create in his/her/its



favor any right, title or interest therein, but such use shall inure to the benefit of the Seller and/or the Affiliated companies; (b) the Seller grants to the Buyer a royalty free, non-exclusive license to use the Trademarks, solely for the purposes of advertising, marketing, and sale of the Products; (c) the Buyer shall promptly notify the Seller if any of its Trademarks and/or Patents are being infringed and shall assist the Seller and/or Affiliated companies, when requested by either or both of them, to protect or obtain protection for any of the Seller's and/or Affiliated companies' rights in the Trademarks and/or Patents; (d) The Buyer agrees not to contest any of the Trademarks and/or Patents either during or after the currency of the Agreement; (e) the Buyer shall include and shall not modify the packaging in which the Products are contained nor shall it alter, obscure or remove any of the Trademarks, or any markings, colors or other insignia contained on or in or affixed to Products.

**11. Confidentiality.** To the extent authorized by the law, the parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other. Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties during the Term of this Agreement and for a period of five (5) years after the termination of this Agreement, provided that the recipient party's obligation shall not apply to information that: (a) is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure; (b) is already in the recipient party's possession at the time of disclosure thereof; (c) is or later becomes part of the public domain through no fault of the recipient party; (d) is received from a third party having no obligations of confidentiality to the disclosing party; and (e) is independently developed by the recipient party; or is required by law or regulation to be disclosed.



(A) For purposes of this Agreement “Confidential Information” shall include but not be limited to any trade secret, proprietary or confidential information concerning the organization, business or finances of the parties, with respect to existing and future products and services, designs, methods, formulas, drafts of publications, research, know-how, techniques, systems, databases, processes, software programs or code, developments or experimental work, works of authorship, customer lists and/or customer information, business plans, marketing plans, financial information, sales techniques, projects, salaries and/or pay rates, or personnel information, and all other plans and proposals placed in any type of medium whether written, tangible, or digital.

(B) Each of the parties acknowledges that all Confidential Information, together with all notes, reports, graphics, and records relating thereto, and all copies, in written, digital or in any medium, including but not limited to reproductions or other medium containing such Confidential Information, electronic versions and facsimiles thereof, are the party’s exclusive property. Each party shall return to the other party all such Confidential Information, without retaining any copies, notes or extracts, promptly upon the party’s request or upon the termination of the business relationship between them, regardless of the reason for the termination

(C) The parties may disclose the Confidential Information to its employees, agents in a limited manner and as necessary in carrying out their duties consistent with this Agreement provided that such individuals or third parties sign a confidentiality agreement in the same terms as set forth in this Agreement. The party may not use the Confidential Information of the other party for its own benefit or the benefit of anyone other than for the party that owns the Confidential Information and without such party’s express written authorization.

(D) In the event that Confidential Information is required to be disclosed pursuant to subsection 13(C) and to the extent authorized by the law, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

**12. Independent Contractors.** This Agreement is not an employment contract nor joint venture or partnership agreement between the Seller and the Buyer. The relationship between the parties is that of seller and buyer and not principal and agent and, accordingly, any purchase of or the Products by the Buyer or any agreement or commitment made by the Buyer to any person, firm or corporation with respect hereto is made by the Buyer for his/her/its own account as principal. The Buyer is an independent contractor purchasing the Products for its own account and is not obliged to account to the Seller for any profits earned by he/she/it on sales. The Buyer shall have no right or authority to execute any agreement or give any warranty or statement in the name of or on behalf of the Seller.

**13. Governing Law and Designation of Forum.**

(A) The laws of the State of Florida (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to the Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement. The law of the State of



Florida is the governing law and the Convention for the International Sales of Products shall not apply.

**(B)** A party bringing a legal action or proceeding against the other party arising out of or relating to the Agreement or the transactions it contemplates must bring the legal action or proceeding in any state court of the State of Florida sitting in Broward County. Each party to the Agreement consents to the exclusive jurisdiction of the state courts of the State of Florida sitting in Broward County and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this agreement or the transactions it contemplates.

**14. Notices.** Any notices required or authorized to be given hereunder shall be in writing and shall be delivered by DHL or Federal Express or by any courier to the addresses of the Buyer and the Seller as indicated in this Agreement, or to such other addresses as the parties may hereinafter communicate to each other in writing. Such notice shall be deemed given three (3) days from the day delivered by DHL or Federal Express or by any courier.

**15. Force Majeure.** The Seller will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond the Seller's reasonable control, which reasons shall include but not be limited to fire, strikes, epidemics, or governmental measures. Upon prompt notice from the Seller to the Buyer, the Seller shall be excused from such performance to the extent of such prevention, restriction or interference, provided that the Seller shall use its best efforts to avoid or remove such cause(s) of nonperformance and shall continue performance hereunder with the utmost dispatch whenever such cause(s) is/are removed. In the event that the Seller is prevented from performing its obligations hereunder by reason of force majeure for a continuous period of more than thirty (30) days, then the Seller may terminate the Agreement.

**16. Assignment; Delegation.** The Buyer may not assign any of its rights under the Agreement or delegate any performance under the Agreement, except with the prior written consent of the Seller. Any purported assignment of rights or delegation of performance in violation of this section is void. The Seller may assign any of its rights under the Agreement or delegate any performance under the Agreement to any Affiliated company.

**17. Recovery of Expenses.** In any adversarial proceedings between the parties arising out of the Agreement or the transactions it contemplates, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs, including reasonable legal fees and expenses.

**18. Entire Agreement.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all other agreements, whether written or oral, between the parties.

**19. Amendments.** The Seller is hereby authorized to amend the provisions of this Agreement, from time to time, with no advance notice to the Buyer whether in writing or otherwise.