



**WARNING: U.S. FLOOD CONTROL CORP. ("USFC") DOES NOT GUARANTEE OR WARRANTY THE TIGER DAM™ SYSTEM AND RELATED PRODUCTS IN FLOODING CONTROL OR FLUID CONTAINMENT SITUATIONS. USFC'S LIABILITY TO PURCHASER FOR ANY SUCH USE IS HEREBY STRICTLY LIMITED. SEE PAGE TWO OF THIS DOCUMENT FOR DETAILS**

1. **Purchase:** Upon the execution of this Agreement by Purchaser, USFC agrees to supply and sell, and Purchaser agrees to purchase, the Product in accordance with these terms and conditions. "Product" means the goods described in the invoice above, and this "Agreement" consists of the invoice and these terms and conditions. USFC's shipment of the Product to Purchaser pursuant to this Agreement shall constitute acceptance by Purchaser of this Agreement, even if this Agreement is not expressly executed by the Purchaser above. This Agreement supersedes any purchase order or other terms and conditions issued by Purchaser at any time, and such are of no force or effect concerning the purchase and sale of Products to Purchaser.
2. **Delivery, Risk of Loss and Title:** USFC shall use commercially reasonable efforts to deliver the Products to Purchaser on the delivery date specified by USFC. For domestic customers, Products are supplied to Purchaser EXW (*Incoterms 2010*) at the place of delivery to carrier, and Purchaser is responsible for all loading, shipping, duties and other costs from that point. For overseas customers, Products are supplied to Purchaser DAT (*Incoterms 2010*), at the inbound terminal, and USFC is responsible for all loading and shipping cost to that point. Legal title shall transfer to Purchaser upon the transfer of the risk of loss pursuant to such *Incoterms 2010*, but USFC hereby retains a lien upon, and a reversionary interest to, all Products until Purchaser has paid USFC therefore, in full.
3. **Price and Payment:** Purchaser shall pay the purchase price, applicable taxes, shipping and related costs in the amount and manner specified in this Agreement, including any deposit required by USFC. Unless otherwise provided, Purchaser shall pay this invoice within thirty (30) days of receipt thereof by Purchaser. Interest shall accrue and be payable by Purchaser on any overdue and unpaid amounts at the rate of One and a half (1.5%) percent per month, compounded, not to exceed Eighteen (18%) percent per annum, which is payable by Purchaser without the necessity of demand.
4. **Warrant Disclaimer:** U.S. Flood Control Corp., the manufacturer of the Products, gives a limited 5-year Warranty for the Products, as posted at [www.usfloodcontrol.com](http://www.usfloodcontrol.com) ("Warranty"). **USFC MAKES NO REPRESENTATION, WARRANTY OR CONDITION WITH RESPECT TO ANY PRODUCT INCLUDING WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY OR INFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER THIRD PERSON RIGHTS, WHETHER ARISING BY LAW, USAGE OR TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE, REGARDING ANY PRODUCT OR ANY SERVICES PERFORMED BY USFC OR ITS REPRESENTATIVES, AGENTS OR CONTRACTORS. USFC'S ENTIRE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY, FOR ANY DEFECT IN THE PRODUCT WHATSOEVER, IS THE WARRANTY, AND PURCHASER HEREBY WAIVES ANY AND ALL RIGHT OF ACTION AGAINST USFC, AND RELEASES USFC FROM ANY AND ALL LIABILITY ARISING AT LAW OR UNDER THIS AGREEMENT, RELATING THERETO, HOWSOEVER ARISING.**
5. **Indemnification:** The Purchaser is hereby liable to and agrees to indemnify, defend and hold harmless USFC and its affiliates, and each entity's respective officers, directors, employees, representatives, agents and contractors ("USFC Parties"), from and against any and all actions, causes of actions, claims, demands, liabilities, losses, judgments, settlements, damages or expenses including legal fees and costs on a solicitor and his own client indemnity basis ("Claim") made by or awarded to any third person, which and USFC Party may at any time incur or become subject to, whether based in whole or in part in contract, tort, negligence, breach of statute or any other theory of law, arising from any of the following: (i) death or bodily injury, or loss of or damage to real, tangible or intangible personal property, including data and digital information, caused or contributed to by use of a Product by, or the acts or omissions of, Purchaser or its employees, customers, contractors, representatives or agents; (ii) failure by Purchaser to perform any obligations under any agreement or legal obligation it may have with or to any third person; (iii) failure by Purchaser to adhere to any applicable law or statutory or regulatory obligation; or (iv) failure to adhere to any obligation, or the breach or incorrectness of any representation or warranty, by Purchaser under this Agreement. USFC shall promptly notify the Purchaser in writing of any such Claim it receives and shall promptly tender to the Purchaser control of the defense of any such Claim with counsel of its choice, at Purchaser's own expense. In no event shall Purchaser compromise or settle such Claim that in any way prejudices USFC without USFC's prior written consent in its discretion.
6. **Limitation of Liability:** *UNDER NO CIRCUMSTANCES WILL THE USFC PARTIES OR ANY OF THEM BE LIABLE TO PURCHASER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONTINGENT, EXEMPLARY, PUNITIVE, AGGRAVATED, CONSEQUENTIAL OR EQUITABLE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF USE OR LACK OF AVAILABILITY OF FACILITIES, FIDUCIARY OBLIGATIONS, RESTITUTIONARY LIABILITIES OR ANY OTHER ECONOMIC LOSS WHATSOEVER, HOWEVER CAUSED AND WHETHER OR NOT FORESEEABLE, OR FOR CONTRIBUTION OR INDEMNITY IN RESPECT THEREOF, EVEN IF THE USFC PARTIES OR ANY OF THEM HAVE BEEN INFORMED IN ADVANCE OR OUGHT REASONABLY TO HAVE KNOWN OF THE POTENTIAL FOR SUCH DAMAGES. THE ENTIRE CUMULATIVE LIABILITY OF THE USFC PARTIES, AND THE EXCLUSIVE RECOURSE OF THE PURCHASER, IN THE EVENT OF ANY CLAIM BY PURCHASER, SHALL BE LIMITED IN THE AGGREGATE (REGARDLESS OF THE NUMBER OF CLAIMS) TO THE ACTUAL PROVEN DIRECT DAMAGES SUFFERED BY THE PURCHASER AND SHALL NOT EXCEED IN ANY EVENT THE AMOUNT OF THE TOTAL PURCHASE PRICE ACTUALLY PAID BY PURCHASER TO USFC FOR THE PRODUCT FROM WHICH SUCH DAMAGE IS ALLEGED TO HAVE ARISEN. NO LEGAL ACTION OR PROCEEDING MAY BE BROUGHT BY PURCHASER AGAINST ANY OF THE USFC PARTIES MORE THAN TWELVE (12) MONTHS AFTER THE FACTS GIVING RISE TO THE CAUSE OF ACTION HAVE OCCURRED, REGARDLESS OF WHETHER THOSE FACTS BY THAT TIME ARE KNOWN TO, OR OUGHT REASONABLY TO HAVE BEEN DISCOVERED BY, PURCHASER. THE FOREGOING LIMITATIONS OF LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION OR BASIS OF LIABILITY, INCLUDING WITHOUT LIMITATION STATUTE, CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, BREACH OF A FUNDAMENTAL TERM OR FUNDAMENTAL BREACH. THE LIMITATION OF LIABILITY PROVISIONS OF THIS AGREEMENT REFLECT AN INFORMED VOLUNTARY ALLOCATION OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THE PRODUCTS AND THE PERFORMANCE BY USFC OF ITS OBLIGATIONS AND RESPONSIBILITIES AND SUCH VOLUNTARY RISK ALLOCATION REPRESENTS A MATERIAL PART OF THE AGREEMENT REACHED BETWEEN PURCHASER AND USFC IN RESPECT OF THE PRODUCTS.*
7. **No Waiver:** The failure of either party to insist upon or to enforce strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement, will not be interpreted or construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right or remedy in that or any other instance.
8. **Assignment:** USFC may assign this Agreement to a third person upon prior written notice to Purchaser. Purchaser may assign this Agreement to a third person upon IFC's prior written consent, not to be unreasonably withheld.
9. **Force Majeure:** In the event of war, fire, flood, strike, labor trouble, breakage of equipment, accident, riot, acts of governmental authority, Acts of God or contingencies beyond the reasonable control of the party affected, interfering with the then current producing, supplying, transporting, or consuming practices of the party respecting the Products, or in the event of inability to obtain on terms deemed by IFC to be practicable any raw material (including energy source) used in connection therewith, the quantity of goods provided for in this Agreement shall be reduced by the amount so affected during the period of such events without liability, but the Agreement shall otherwise remain unaffected USFC's decision as to what quantities are affected shall be final and binding.
10. **All notices and communications addressed by this purchase agreement are deemed to have been made and accepted by the vendor, in Houston, TX, Charles Deady, President. Any dispute arising under or in**

10. "All sales and transactions evidenced by this invoice/agreement are deemed to have been made and accepted by the vendor in Hahnville, St. Charles Parish, Louisiana. Any dispute arising under or in conjunction with this invoice/agreement, or related to any matter which is the subject of this invoice/agreement, shall be determined in accordance with the laws of the State of Louisiana, and shall be subject to the exclusive jurisdiction of, and brought in, the Twenty-Ninth Judicial District Court of the Parish of St. Charles, State of Louisiana."

11. **Severability:** If any provision of this Agreement is judged by any Court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

12. **Contra Preferentum Disclaimer and Legal Advice:** The parties hereby acknowledge and agree that this Agreement shall be construed neither against nor in favour of either party, but rather in accordance with the fair and purposive meaning hereof. Each party hereby acknowledges that it has had the opportunity to seek independent legal advice respecting this Agreement, that it is a sophisticated contracting party, and that each provision of this Agreement is enforceable against it pursuant to its terms.

13. **Entire Agreement:** This Agreement sets forth the entire agreement and supersedes any and all prior agreements between the parties, or any purchase order or other terms and conditions issued by Purchaser, with respect to the subject matter hereof. No amendment to this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both such counterparts when exchanged between the parties via facsimile transmission or otherwise, shall constitute one instrument. Pursuant to Section 1, Purchaser expressly agrees that supply of the Products to Purchaser in accordance with this Agreement shall constitute acceptance by Purchaser of this Agreement.

