



TDR Inc. TERMS AND CONDITIONS OF SALE

These terms and conditions of sale ("Terms and Conditions of Sale") apply to your purchase of products and/or service and support (the "Product") sold by TDR, Inc. By accepting delivery of the Product, you (the "Buyer") accept and are bound to these Terms and Conditions of Sale. If you do not wish to be bound by these Terms and Conditions of Sale, you must notify to TDR, Inc. and return your purchase as set forth herein.

1. **SELLER:** All references in this document to "Seller" shall include TDR, Inc. and/or any subsidiary or affiliate of TDR, Inc. (Including any division of the foregoing) performing any or all the scope hereunder, whether or not specifically identified herein.

2. **CONTROLLING PROVISIONS:** All sales made to Buyer by Seller are subject to these Terms and Conditions of Sale, which shall prevail over any inconsistent terms of Buyer's purchase order or other documents. No terms or conditions in any way altering or modifying these provisions shall be binding upon Seller unless they are specifically authorized in writing by Seller's authorized representative, and such additional or different terms are expressly objected to. No modification or alteration of these provisions shall result by Seller's shipment of goods following receipt of Buyer's purchase order, or other documents containing provisions, terms or conditions in addition to, in conflict with, or inconsistent with these provisions. There are no terms, conditions, understandings, or agreements other than those stated herein, and all prior proposals and negotiations are merged herein.

3. **PRICES:** Prices in quotations made by Seller are subject to change without notice, and all quotations expire and become invalid if not accepted within thirty (30) days from the quotation date of issue and thereafter subject to change or withdrawal. Prices shown do not include any sales, excise, or other governmental tax or charge payable by Seller to Federal, state or local authority. Any taxes now or hereafter imposed upon sales or shipments will be incremental to the purchase price, and Buyer shall reimburse Seller for any such tax or provide Seller with an acceptable tax exemption certificate. All prices and other terms provided to Buyer under this document shall be kept confidential except to the extent that a party is required by law to disclose the same.

4. **PAYMENT:** Unless otherwise agreed to by Seller, invoices issued by Seller shall be paid by Buyer within thirty (30) days of the date of the invoice. In addition, Seller may in its discretion require an advance deposit of up to 100% of the Seller's selling price for any order and/or specially manufactured goods ordered by Buyer hereunder. Time for payment shall be of the essence. Payment may be made by cash, check, wire transfer, direct deposit or credit card.

5. **SERVICE CHARGE AND COLLECTION:** A one percent (1%) per month (a rate of twelve percent (12%) per annum) service charge will be due and billed on past due amounts. Buyer shall be responsible for paying any costs associated with any collection effort, including, but not limited to, reasonable attorney fees as permitted by state law.

6. **SET-OFF PROHIBITED:** Buyer shall not apply any deduction, whether by way of set-off, counterclaim, discount, or otherwise, to the price of Seller's products or to any payment owed to Seller. Seller is entitled to payment in full for goods shipped.

7. **CREDIT APPROVAL:** All sales and shipments are subject at all times to credit approval by Seller.

8. **TAXES:** Buyer shall be responsible for payment of all taxes associated with the sale, delivery, storage, processing, use, or consumption of any of the products covered hereby.

9. **PERMISSIBLE VARIATIONS:** Variations in the products as to components, dimensions, quantity, and the like shall be permissible and shall not constitute cause for Buyer's rejection of any variations that fall within the applicable product specifications in effect at the time of manufacture.

10. **CHANGE ORDER:** Any change in Product specifications, quantities, destinations, shipping schedules, or any other aspect of the scope of supply may result in a price adjustment by Seller.

11. **INSPECTION AND ACCEPTANCE:** Any claim by Buyer based upon delivery of products that are of incorrect size, type, or quantity, or that have been damaged in shipment, ascertainable upon visual inspection thereof, must be presented to Seller or its representative within seven (7) days following date of receipt of such nonconforming or damaged products by Buyer. In the absence of any such claim within seven (7) days, Buyer's receipt of any products delivered hereunder shall be an unqualified acceptance and a waiver by Buyer of any and all claims related to incorrect size, type, or quantities or related to shipment damage. No claim of any kind, whether as to products delivered or for non-delivery of products, and whether or not based on negligence or other tort, shall be greater in amount than the purchase price of the products in respect of which such claim is made. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

12. **LIMITED WARRANTY:** Seller's Limited Warranty as in effect at the time of the acceptance of an order shall apply to such order and is incorporated by reference herein. A copy of such Limited Warranty is attached hereto.

13. **FORCE MAJEURE:** Seller shall not be liable for or be deemed to be in default on account of any failure to perform its obligations or attempt to cure any breach thereof if Seller has been delayed or prevented from doing so by any cause or condition beyond its reasonable control, including without limitation an act of God (e.g., fire, flood, inclement weather, epidemic, or earthquake); war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, embargo; governmental acts, orders, or restrictions; or the failure of suppliers or third persons.

14. **HANDLING AND USE OF PRODUCTS:** Even if Seller offers directions, recommendations, or suggestions for the use of products delivered hereunder, it is solely Buyer's responsibility to determine whether products are suited for Buyer's specific needs, and there are no representations or warranties except as set forth herein. Buyer assumes full responsibility for compliance with all governmental laws, rules, and regulations governing, and assumes all risks and liabilities arising from, unloading, discharge, storage, handling, installation, and use of Seller's products, including use of Seller's products as part of or in connection with other equipment or materials. Buyer agrees to indemnify Seller, its agents, and employees for any and all claims, liabilities, and expenses (including, but not limited to, reasonable attorney fees) arising out of or caused by the failure to comply with the terms set forth herein or to follow instructions, warnings, or recommendations furnished by Seller in connection with any products delivered hereunder.

15. **BUYER COMPLIANCE WITH LAWS:** Buyer warrants and represents that it is and will continue to be in compliance with all laws (including without limitation (a) all applicable rules, regulations, codes, plans, injunctions, judgments, orders, decrees, and rulings, (b) the U.S. Foreign Corrupt Practices Act and all other applicable laws prohibiting bribery and other corrupt practices, and (c) antitrust laws, and all other competition laws) of federal, state, local, and foreign governments (and all agencies thereof). Buyer agrees to indemnify Seller for any and all losses incurred by Seller (including, but not limited to, reasonable attorney fees) for Buyer's breach of this paragraph.

16. **LIMITATION OF ACTIONS:** No action arising out of these Terms and Conditions of Sale shall be brought by Buyer against Seller more than one (1) year after the accrual of the cause of action therefor.

17. **CHOICE OF LAW:** This agreement and the transactions contemplated hereby shall be governed in all respects by the laws of the State of Texas, without reference to its choice of law principles.

18. **RETURNS; RESTOCKING CHARGES:** Seller reserves the right to reject the return of any products sold pursuant to this agreement. Buyer may return any Product Which Seller customarily stocks if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Buyer's surplus job returns, and those not meeting (i) and (ii), above, will be evaluated on an individual basis after Buyer has contacted Seller's authorized representative for prior written permission and shall be returned only with Seller's consent. Special orders, custom or semi-custom orders, or non-stock items are non-returnable, non-refundable, and non-cancellable. Except for items Seller stocks which meet (i) and (ii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

19. **DISCLAIMER:** Buyers agree that they are purchasing Seller's products with the knowledge that they are only to be used

in the manner described in their product description. Buyers agree that Seller is in no way liable to Buyers should Buyers choose to use Seller's products in any manner beyond the set specific specifications as listed in the product descriptions including but not limited to those listed in the TDR ULTRA Product Data Sheet, TDR SW Product Data Sheet, TDR Detention/Retention System Product Data Sheet, CIRBSA ASTM C76 Product Data Sheet, TDR PE4710 Product Technical Data Sheet, TDR Advance Sewer Pipe Product Specification Sheet, TDR Ultra Fact Sheet, Ultra Spec Sheet, and Ultra Data Sheets as listed on its website and in its product catalog. Buyers acknowledge that they have reviewed all the information provided on Seller's website and in its product catalog and are therefore responsible for any consequences that result from breaching these provisions. The website, product catalog, and the information they contain are made available "AS IS," without warranty of any kind, either express or implied. Seller may make improvements or changes in the products described on the website at any time. These changes may result in modifications of features or specifications without notice. Seller is not liable for any product defects or failures caused after shipment by: (a) improper installation (including, without limitation, misalignment), (b) use in improper applications or conditions or in conjunction with improper materials (including, without limitation, improper lubricants, pastes, solvents or sealants), (c) contact with aggressive chemical agents, (d) freezing or overheating of liquids in the product, or unusual pressure surges or pulsation, (e) vibration, (f) temperature shocking, (g) U.V. degradation, (h) failure to adhere to Seller's instructions concerning the proper handling, installation, testing, and use of the product, (i) failure to adhere to applicable standards set forth by local laws, codes, or regulations and the applicable industry standards, or (j) any other improper activities not listed above or damage caused by the fault or negligence of anyone other than the Seller or Seller's Agents and Employees.

20. **Limitation of Liability:** Seller's aggregate liability arising out of or related to this Agreement shall not exceed one times (1X) the amount paid by Buyer under this Agreement, regardless of the form of the action or theory of recovery, even if that party has been advised of the possibility of those damages. **NEITHER PARTY SHALL BE LIABLE TO OTHER PARTY FOR SPECIAL DAMAGES, AS DEFINED BELOW, THAT ARE CAUSED BY EITHER PARTY'S GROSS NEGLIGENCE AND/OR INTENTIONAL OR WILLFUL MISCONDUCT, AND IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (COLLECTIVELY REFERRED TO AS "SPECIAL DAMAGES") OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY WHO IS LIABLE HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

21. **ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded, or otherwise altered except by a written modification signed by the Seller. All transactions shall be governed solely by the terms and conditions contained herein.