



TERMS AND CONDITIONS OF SALE

1. DEFINITIONS.

For purposes of these Terms and Conditions of Sale, the following capitalized terms shall have the meanings set forth below. Defined terms may be used in the singular or plural, as the context requires.

"Agreement" means these Terms and Conditions of Sale, together with any (i) Quote issued by Seller and accepted by Buyer, whether such acceptance is express, implied, or evidenced by performance, and any written amendments thereto executed by an authorized officer of Seller; or (ii) purchase order acceptance or acknowledgement.

"Buyer" means the distributor purchasing Products from Seller for resale in the ordinary course of Buyer's business and not for Buyer's own internal use, including Buyer's successors and permitted assigns.

"Confidential Information" means all information disclosed by or on behalf of Seller, whether before or after the date of any Quote, that is confidential, proprietary, or not generally known to the public, including without limitation pricing, cost data, designs, specifications, drawings, processes, trade secrets, technical information, business plans, customer information, and manufacturing know how.

"Distributor" means Buyer in its capacity as an independent reseller of Products to third party end users.

"End Customer" means any third party purchaser or user of Products supplied by Buyer.

"Products" means all goods, materials, equipment, assemblies, components, parts, and related items manufactured, sold, supplied, or distributed by Seller, together with any associated documentation.

"Quote" means any written quotation, proposal, estimate, or offer issued by Seller that references or incorporates these Terms.

"Seller" means Lufkin Mfg., including its divisions, affiliates, successors, and permitted assigns.

"UCC" means the Uniform Commercial Code as adopted in the State of Texas.

Buyer acknowledges and agrees that Buyer is an independent distributor and reseller and not an agent, franchisee, joint venturer, or representative of Seller. No authority to bind Seller is granted or implied.

Headings are for convenience only and shall not affect interpretation. The words *"including"* and *"includes"* shall be deemed to be followed by the phrase *"without limitation."*

2. ENTIRE AGREEMENT; ACCEPTANCE; REJECTION OF BUYER TERMS. This Agreement constitutes the complete, final, and exclusive statement of the terms governing the sale of

Products by Seller to Buyer and supersedes all prior or contemporaneous agreements, negotiations, understandings, representations, or communications, whether oral or written, relating to the Products. Seller's issuance of a Quote constitutes an offer expressly conditioned upon Buyer's acceptance of this Agreement in its entirety. Seller expressly rejects, and objects to as material alterations under the UCC, any additional, different, or inconsistent terms or conditions contained in any purchase order, confirmation, acknowledgment, invoice, specification, electronic transmission, or other communication from Buyer, whether or not Seller specifically objects thereto. No such Buyer terms shall become part of the Agreement by implication, performance, or otherwise. Buyer accepts this Agreement by any of the following acts: acceptance of a Quote, issuance of a purchase order, authorization to proceed with manufacture, acceptance of delivery, resale or use of Products, or failure to object in writing prior to performance. To the extent these Terms and Conditions are issued with a purchase order acceptance or acknowledgement, following issuance of terms and conditions by Buyer, these Terms and Conditions will constitute a rejection of Buyer's terms and conditions in their entirety and a counteroffer. Seller's performance shall not constitute acceptance of Buyer's terms and conditions. No amendment, modification, waiver, or supplement shall be binding unless set forth in a written instrument signed by an authorized officer of Seller. No course of dealing, course of performance, or usage of trade shall modify or supplement this Agreement.

3. PRICES; QUOTES; COST ADJUSTMENTS. Prices stated in any Quote are firm only for the period expressly stated therein, or if no period is stated, for fourteen (14) calendar days from the date of issuance. Quotes automatically expire thereafter without notice. Seller reserves the right, upon written notice, to adjust pricing to reflect increases in the cost of raw materials, components, labor, energy, freight, tariffs, duties, insurance, regulatory compliance, or other inputs beyond Seller's reasonable control, particularly for shipments scheduled more than thirty (30) days after order acceptance or delayed due to Buyer's actions or omissions. Unless expressly stated otherwise, prices exclude all taxes, duties, freight, insurance, installation, and ancillary charges, all of which shall be borne by Buyer.

4. PAYMENT TERMS; CREDIT; COLLECTION. Unless otherwise agreed in writing by Seller, payment of all invoices is due thirty (30) days from invoice date. Seller may modify or revoke credit terms at any time in its sole discretion. Amounts not paid when due shall accrue interest at the maximum rate permitted by law from the due date until paid. Buyer shall be liable for all reasonable costs incurred by Seller in collecting overdue amounts, including attorneys' fees, court costs, and collection expenses. Buyer expressly waives all rights of setoff, deduction, recoupment, or counterclaim. Disputes relating to one invoice shall not excuse payment of any other invoice. Credit card payments are subject to a processing fee of four percent (4%) or the maximum amount permitted by law.

5. SECURITY INTEREST; RIGHTS UPON DEFAULT.

Buyer hereby grants to Seller a continuing first priority purchase money security interest in all Products sold or to be sold by Seller to Buyer, whether now existing or hereafter arising, and in all proceeds, replacements, accessions, and products thereof, as security for the prompt and complete payment and performance of all obligations of Buyer to Seller, whether existing now or arising in the future. Buyer authorizes Seller to prepare, execute, and file financing statements and amendments, including those that describe the collateral as all assets or all personal property of Buyer, and agrees that such filings may be made without Buyer's signature to the fullest extent permitted by applicable law. Upon the occurrence of any default by Buyer, Seller shall have all rights and remedies available under the Uniform Commercial Code and other applicable law, including the right to repossess the Products without judicial process where permitted by law, and Buyer shall cooperate fully in such efforts. All rights and remedies of Seller shall be cumulative and may be exercised singularly or concurrently, without waiver of any other right or remedy.

6. TAXES; TITLE; RISK OF LOSS. Buyer shall be solely responsible for and shall promptly pay all sales, use, excise, value added, customs, duties, tariffs, and other taxes or governmental charges arising out of or relating to the sale, purchase, possession, use, resale, or disposition of the Products, excluding taxes imposed on Seller's net income. Unless otherwise expressly agreed in writing, title to and risk of loss for the Products shall pass to Buyer upon delivery of the Products to the carrier at Seller's facility, F.O.B. Seller's plant.

7. DELIVERY; ALLOCATION; FORCE MAJEURE. All delivery dates provided by Seller are estimates only and are not guarantees. Seller shall not be liable for any delay in delivery or failure to deliver on any estimated date. In the event of a shortage of Products, raw materials, or manufacturing capacity, or in the event of any force majeure event, Seller may allocate available Products among its customers, including Seller's affiliates, in such manner as Seller determines to be reasonable and equitable under the circumstances. Seller shall not be liable for any failure or delay in performance caused, in whole or in part, by events beyond Seller's reasonable control, including but not limited to acts of God, fire, flood, earthquake, labor disputes, strikes, lockouts, governmental actions or regulations, shortages of materials or utilities, transportation interruptions, supplier failures, or similar events (each, a "**Force Majeure Event**").

8. INSPECTION; ACCEPTANCE. Buyer shall inspect all Products promptly upon delivery and in no event later than five (5) business days thereafter. Buyer shall provide Seller with written notice of any rejection, specifying in reasonable detail the alleged nonconformity or defect, within such inspection period. Failure to provide timely written notice shall constitute irrevocable acceptance of the Products and a waiver of all claims based on defects that would have been discoverable upon reasonable inspection.

9. LIMITED WARRANTY; DISCLAIMER.

Seller warrants solely to Distributor, and not directly to End Customer, that the Products shall conform in all material respects to the applicable quotation or order acknowledgment and shall be free from defects in material and workmanship under normal and intended use for a period of one (1) year from the earlier of (i) the

date the Product is first placed into service or (ii) the date of manufacture (the "**Warranty Period**").

This warranty is intended as a pass-through warranty and may be passed through by Distributor solely to its End Customer to the extent permitted herein. Buyer will cause its End Customer to agree that it will submit all warranty claims exclusively to Distributor, and Distributor shall be responsible for presenting any such claims to Seller in accordance with Seller's warranty procedures. Seller shall have no obligation to any End Customer or other subsequent purchaser of the Products except through Distributor.

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, ALL OF WHICH ARE WAIVED AND DISCLAIMED.

Exclusions. Seller shall have no responsibility or liability for any defect or nonconformity in Products resulting from misuse, abuse, negligence, improper installation, unauthorized modification, improper maintenance, normal wear and tear, or compliance with designs, specifications, or instructions provided by Buyer, End Customer or any third party.

10. EXCLUSIVE REMEDY. Seller's sole and exclusive obligation, and Buyer's sole and exclusive remedy, for any breach of warranty or other claim relating to the Products shall be, at Seller's option, repair of the defective Product, replacement of the defective Product, or refund of the purchase price paid for the affected Product. The remedies set forth herein are exclusive and shall not be deemed to have failed of their essential purpose.

11. TOOLING; MATERIALS; INTELLECTUAL PROPERTY. All tooling, molds, dies, fixtures, materials, and manufacturing aids used by Seller in connection with the manufacture of the Products shall remain the sole property of Seller unless otherwise expressly agreed in writing. Seller retains all right, title, and interest in and to all intellectual property, know how, processes, and designs developed or used in connection with the Products. Buyer represents and warrants that any intellectual property, designs, or specifications supplied by Buyer do not infringe the rights of any third party and shall be solely responsible for any claims arising therefrom.

12. INDEMNIFICATION. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, employees, and agents from and against any and all claims, demands, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to Buyer's use, resale, distribution, or modification of the Products, Buyer's breach of this Agreement, or Buyer supplied designs, specifications, or intellectual property. Seller shall have the right to control the defense and settlement of any such claim.

13. LIMITATION OF LIABILITY. In no event shall Seller be liable for any incidental, consequential, indirect, special, or punitive damages, including lost profits, loss of business, or loss of goodwill, regardless of the theory of liability and even if Seller has been advised of the possibility of such damages. Seller's total

cumulative liability arising out of or relating to the Products or this Agreement shall not exceed the amounts actually paid by Buyer for the specific Products giving rise to the claim. Any action or proceeding against Seller must be commenced within one year after the cause of action accrues.

14. CONFIDENTIALITY. Buyer shall maintain the confidentiality of all nonpublic, proprietary, or confidential information disclosed by Seller and shall use such information solely for purposes of performing under this Agreement. Buyer shall not disclose such information to any third party without Seller's prior written consent. These confidentiality obligations shall survive termination or expiration of this Agreement indefinitely.

15. INSOLVENCY; TERMINATION. Seller may terminate this Agreement immediately upon written notice if Buyer becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it any bankruptcy or insolvency proceeding, or undergoes a change of control that Seller reasonably determines to be materially adverse to Seller's interests.

16. ASSIGNMENT. Buyer may not assign, delegate, or transfer this Agreement or any rights or obligations hereunder without Seller's prior written consent. Any attempted assignment or transfer in violation of this Article shall be null and void ab initio and of no force or effect.

17. GOVERNING LAW; VENUE. Any dispute, claim, or controversy arising out of or relating to these Terms, including any questions regarding its existence, validity, or termination, shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of law principles. The parties agree that the exclusive jurisdiction and venue for any legal action arising out of or relating to these Terms shall be the state or federal courts located in Harris County, Texas. Each party irrevocably submits to the personal jurisdiction of such courts and waives any objection based on improper venue or inconvenient forum. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

18. SEVERABILITY; SURVIVAL. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by law or judicially modified to reflect the parties' original intent, and the remaining provisions shall continue in full force and effect. The invalidity of any provision shall not impair the enforceability of any other provision or defeat the essential commercial purpose of this Agreement. All provisions that by their nature should survive termination or expiration shall so survive.