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## Terms and Conditions of Sale

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- 1. PRICES and DELIVERIES:** Prices and deliveries are based on LCI's evaluation of information supplied by Buyer to LCI prior to the date hereof. LCI may adjust price and/or delivery should Buyer or its agent make any modification in either the equipment or parts requested or the information supplied. The price set forth in this Proposal is based on ex. works at LCI's shop and does not include the costs of freight, applicable sales, excise, use or similar taxes, insurance, special packaging, consular fees, installation, engineering expenses for erection and start-up (See Term 7), or the cost of inspections, permits or inspection fees in connection with compliance with state or local laws, ordinances, codes or standards (See Term 10). While LCI will make a good-faith effort to meet the estimated delivery date, LCI expressly disclaims any guarantee of such delivery date, any obligation to take any extraordinary steps to meet such estimated delivery date (including the use of overtime labor), or any responsibility or liability for any damages incurred by Buyer on account of any delay in delivery. Buyer shall have no right to cancel this contract because of any such delay in shipment, except by mutual consent.
- 2. PAYMENT TERMS:** Unless otherwise expressly stated in writing by LCI, all payments are due thirty (30) days from the date of the invoice. If shipment is delayed by Buyer or at Buyer's request, shipment will be invoiced on the original shipping date, and payment shall become due thirty (30) days from such invoice date. In such event, Buyer shall additionally pay all reasonable warehousing and other expenses of LCI incident to such delay in shipment. Notwithstanding the above, if LCI at any time determines in its sole judgment that the financial condition of Buyer does not justify the extension or continuance of credit, LCI may withhold further production of shipment until payment in full or adequate assurances thereof have been received, require advance payment, and/or ship orders C.O.D. Late payment charges shall be charged on all payments not made when due at a rate of 1-1/2% per month (18% per annum); provided, however, that if such rate is in excess of the maximum contract interest rate permissible under the laws of the State or Country in which the Buyer's place of business is located, then interest shall be charged at that maximum permissible contract interest rate. Buyer agrees to pay the reasonable attorney's fees incurred by LCI in the collection of past due payments and account balances.
- 3. PASSING OF TITLE:** Title to the parts and equipment which are being sold to Buyer will pass to Buyer at the time of F.O.B. delivery to the carrier and Buyer shall assume all risk of loss at that time. Buyer hereby grants to LCI a security interest in all such parts and equipment to secure the payment of the purchase price and other fees or charges due to LCI hereunder. Buyer agrees to promptly execute any further documents deemed necessary by LCI to create or perfect this security interest.
- 4. LIMITED WARRANTY:** If all payments are made by Buyer when due, LCI warrants that any equipment or part manufactured by LCI will be free from defects in materials and workmanship for a period of twelve (12) months from the date of start-up or eighteen (18) months after date of shipment whichever is shorter. This warranty will not apply to any equipment or part that has not been properly installed, operated and maintained in conformity with instructions furnished by LCI, or to any equipment or part which has been misused or which has been modified, altered, repaired or replaced without the prior express written permission of LCI, or to any equipment or part manufactured and separately warranted by a party other than LCI. This warranty does not cover the effects of explosion, erosion or corrosion. The warranty period shall not be extended by reason of the replacement or repair of defective parts pursuant to this warranty. If any payment is not made by Buyer when due, LCI warrants that it has good title to the equipment or part, and that the equipment or part is sold "as is" with all faults. The foregoing warranties are exclusive and made only to the Buyer. **NO OTHER WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL EXIST IN CONNECTION WITH ANY OF THE GOODS OR SERVICES SUPPLIED HEREUNDER, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.** No employee, agent or other person is authorized to give any warranties on behalf of LCI in addition to or different from those herein given or to assume for LCI any other liability in connection with any of its products except in writing which is signed by an officer of LCI and expressly and intentionally gives such warranties or assumes such liability.



## Terms and Conditions of Sale (continued)

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5. **LIMITATION OF REMEDIES:** Buyer's sole and exclusive remedy in respect of any claim against LCI for breach of warranty or in respect of any claim against LCI based on or relating to any defect in any product delivered by LCI, whether such claim sounds in contract, tort, strict liability or negligence and whether such claim is for property damage, personal injury, commercial loss or other monetary loss, shall be, at LCI's option, the repair or replacement of the defective part F.O.B. LCI's Charlotte, North Carolina facility or some other facility deemed suitable by LCI or, if in LCI's judgment, remedying the warranted defect by repair or replacement would be commercially impractical, the refund to Buyer of that part of the invoice price for the defective part which has been theretofore paid by Buyer, LCI SHALL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, including any lost profits, interruption of operations, personal injury, property damage, labor, shipping or other costs incurred by Buyer as a result of such defect or incident to the repair or replacement of, or inability to use, any product of LCI.
6. **MANNER OF SUBMITTING CLAIMS:** Any claim based on a defect in any part or equipment sold pursuant to this Proposal, shall be made in writing to LCI's offices in Charlotte, North Carolina, within thirty (30) days after Buyer does, or reasonably should, discover the defect, and within twelve (12) months from the date of start-up, or 18 months after date of shipment, whichever is shorter. Buyer must specify with particularity each claimed defect or other breach of warranty and must allow LCI a reasonable opportunity to inspect for such defects. Buyer shall be barred from any remedy if Buyer fails to make claim within the appropriate period and in the manner provided herein.
7. **ENGINEERING SERVICES:** Unless otherwise expressly and specifically stated in writing by LCI, Buyer shall have the full responsibility for the erection and start-up of the equipment being sold to Buyer and shall bear all expenses related thereto. If Buyer desires the services of a LCI Engineer in connection with the erection, installation or start-up of the equipment, or if the services of a LCI Engineer are necessary after the machinery is installed, Buyer shall pay for such services at LCI's then-prevailing rates and, in addition, shall pay for the Engineer's travel and living expenses while away from Charlotte, North Carolina.
8. **CONFIDENTIAL INFORMATION:** Buyer acknowledges that LCI has a proprietary interest in all information, technical data, designs, drawings, specifications, and memoranda relating to the equipment or parts furnished Buyer by LCI and the processes with respect to the operation thereof (all of the above hereinafter referred to as "Information"), that such information is a unique, valuable and special business asset of LCI, and that LCI would be seriously and irreparably harmed by the disclosure or misuse thereof. Buyer agrees that it will not use the information for any purpose other than the installation, servicing and operation of the equipment and parts furnished by LCI, that it will not copy any part of the information or disclose any part of the information to any person or entity other than its employees who need such information to perform their work, and that it will return all copies of information to LCI upon request. Buyer additionally agrees that it will use reasonable care to assure that its employees, subcontractors, and suppliers do not disclose any part of the information to any person or entity or appropriate any part of the information to their own use.
9. **PATENTS:** LCI shall indemnify and hold harmless Buyer from any liability or cost arising out of any suit, action or claim for the infringement of any patent or patent rights which are or may be asserted against Buyer because of the design, nature or structure of any standard-design LCI product. Buyer shall indemnify and hold LCI harmless from any liability or cost arising out of any suit, action or claim for the infringement of any patent or patent rights which are or may be asserted against LCI because of the design, nature, structure or use of any product ordered or contracted for which is manufactured or fabricated, in whole or in part, according to designs or specifications furnished by Buyer or which is modified at the request of the Buyer and shall indemnify and hold LCI harmless from all claims for loss or damage, and from all court costs, attorneys' fees and other expenses paid or incurred by or imposed upon LCI in connection with the defense of any action brought against LCI by reason of LCI's performance of any such order for Buyer. Upon request by LCI, Buyer will undertake, at its own cost and expense, the defense of any such action which may be brought against LCI.



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## Terms and Conditions of Sale (continued)

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10. **GOVERNMENTAL REGULATION:** All acts in fulfillment of this contract done outside of North Carolina are intended and shall be construed as being interstate commerce and not as business done by LCI as a foreign corporation in any other state, and no claims or rights to the contrary shall be asserted. LCI makes no warranty or representation that any part or equipment will conform to any state or local laws, ordinances, codes or standards, except as otherwise particularly specified and agreed upon between Buyer and LCI in a writing signed by both parties which expressly modifies this Term 10. LCI's prices do not include the cost of any related inspections or permits or inspection fees. These Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the State of North Carolina.

11. **FORCE MAJEURE:** The parties shall be excused from the duty to render timely performance of any obligation hereunder if such inability to perform is caused directly or indirectly by any act of God, flood, war, riot, fire, accident, explosion, labor trouble, act of government, delay or default by sub-contractor or supplier of materials or services, transportation difficulty, the existence of any circumstance making performance commercially impractical or any other cause beyond the parties' reasonable control; provided, however, that the obligation to pay moneys due under this contract shall not be excused for any reason, including the foregoing.

12. **SOFTWARE LICENSE:** The equipment may include certain Software. LCI retains all rights, title and interest in the Software, including copyright and trade secret protection. LCI hereby grants to Buyer a non-exclusive, nontransferable right and license to use the Software in connection with its operation of LCI equipment, subject to these terms and conditions. Buyer may copy the Software to prepare modifications and derivative works for its own internal use in connection with the LCI equipment; LCI retains title to any modifications and derivative works and shall have the right of access upon reasonable notice. Buyer may not use the Software for any other purpose. LCI may offer enhanced versions of the Software to Buyer, but has no obligation to do so. This License shall be effective until terminated by LCI upon notice to Buyer should Buyer breach any of the terms and conditions of sale, or should Buyer attempt to transfer the Software to a third party. Upon such termination, Buyer shall promptly return the Software and all related documentation to LCI.

13. **MERGER AND MODIFICATION:** These Terms and Conditions of Sale contain the entire understanding and agreement between Buyer and LCI with respect to the subject matter hereof and supersede any prior written or oral understanding or agreements respecting the subject hereof. It is expressly agreed that these Terms and Conditions of Sale shall supersede any prior or subsequent written forms sent to or from the Buyer or the Seller by the other party. These terms and conditions may not be altered, modified, or waived except by a writing signed by both Buyer and LCI which expressly so modifies or waives a particular term hereof.