

LEM U.S.A., INC.
TERMS AND CONDITIONS GOVERNING SALES

1. **Governing Provisions.** These terms and conditions (the "Agreement") constitute an offer by LEM U.S.A., Inc. ("Seller") to provide the goods and/or services described herein (the "Products") to the buyer to which this offer is addressed (the "Buyer"). The terms and conditions apply to the sales of all Products by Seller to Buyer. No modification, change, renunciation or waiver of any term or condition hereof or of any of Seller's rights or remedies hereunder shall be binding on Seller, unless Seller shall have expressly consented thereto in a writing signed by Seller's authorized officer, and any purported oral or other consent thereto shall have no force or effect. Seller agrees to provide the Products to Buyer only on the terms of this Agreement, notwithstanding any language in Buyer's purchase order, if one exists, or other writing or oral representation previously or hereafter received by Seller purporting to amend, modify or replace the terms of this Agreement with any different or additional terms or reciting that provision or delivery of the Products or any other action or inaction by Seller constitutes agreement or consent to such writing or additional or different terms. Buyer's customer service and technical service personnel do not have authority to change, modify or alter these terms and conditions. SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HERE IN.
2. **Acceptance.** Buyer shall be deemed to have made an unqualified acceptance of this Agreement and the terms and conditions herein, on the earliest to occur of the following: (a) Seller's receipt of a copy of this Agreement signed by Buyer; (b) Buyer's payment of any amounts due under this Agreement; (c) Buyer's delivery to Seller of any material to be furnished by Buyer; (d) Buyer's receipt of the Products; (e) Seller's placement of an order for Products; or (f) any other event constituting acceptance under applicable law.
3. **Orders.** Buyer's purchase orders must be made in writing, in a form acceptable to Seller. Seller reserves the right to reject any orders for any reason in its discretion. Buyer's orders will be subject to all provisions of these terms and conditions.
4. **Cancellation or Modification.** Buyer may alter, modify or cancel its order, reduce quantities, revise specifications or extend scheduled delivery only upon terms accepted by Seller in writing signed by Seller's authorized officer. In the event of such alteration, cancellation or modification, Buyer shall compensate Seller for all costs and damages resulting therefrom, including, but not limited to, out-of-pocket expenses, lost profit and allocable overhead.
5. **Returns.** No goods may be returned for credit without prior written consent of Seller and without first obtaining a Seller's returned goods authorization. Products which the Seller consents to have returned shall be shipped at Buyer's sole expense, prepaid F.O.B. the Seller's factory. All returns are subject to restocking fee of 20% of the invoiced amount, except where the Seller determines, in its sole discretion, the products are defective or were shipped incorrectly. All returned Product shall be unused and in original packaging provided. Any cost incurred by Seller to put returned Product in first class condition shall be charged to Buyer.
6. **Price Adjustments.** If, during performance of this Agreement, Seller's cost of performance hereunder is increased due to increases in state or federal taxes, duties, changes in governmental regulations, increases in cost of materials or increases in labor or other costs, then the prices which reflect such costs may be adjusted in proportion to such increase, effective on the date of such increase.
7. **Taxes.** Any manufacturer's tax, use tax, sales tax, excise tax, duty, customs agent or broker fees, freight costs, inspection or testing fees or any other tax, fee or charge of any nature whatsoever imposed in connection with or measured by the transaction between Seller and Buyer shall be promptly paid by Buyer in addition to the prices quoted or invoiced unless already included in quotation. Buyer agrees to hold Seller harmless from and against all taxes assessed against or in connection with the Products purchased by Buyer.
8. **Title and Risk of Loss.** Title and risk of finished and semi-finished materials shall pass to Buyer upon the earlier of Seller's delivery to carrier or delivery into storage, regardless of whether the transport medium or storage facilities are owned and/or operated by Seller or Seller charges Buyer for storage. All orders are F.O.B Seller's platform, and claims for damage in transit shall be made to the carrier by Buyer and not to Seller.
9. **Delivery.** Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. Seller's platform. Charges related to delivery from Seller to Buyer, or from Seller's supplier to Buyer, are not, unless specified, included in any quotations. Shipments will be made prepaid and charges added to Buyer's invoice.

10. **Packing.** Prices quoted provide for standard packing for domestic shipment only. If special packing is required for domestic shipment or for export shipment, refer to the Seller for price additions.

11. **Production Schedules; Delay.** Seller shall not incur any liability or penalty for delays introduction or delivery due to state of war, riot, civil disorder, fire, strikes, work slow-downs, accidents, action of government or civil authority, delay in transportation, energy failure, equipment breakdown, delay of supplier, inability to obtain necessary labor, materials or manufacturing facilities, acts of God or other causes beyond the control of Seller. In the event of a delay resulting from any such cause, Seller shall perform such parts of the work as Seller is capable of performing and, even if Buyer places all or any part of the work elsewhere, Seller shall be entitled to resume such work as soon as practicable. All delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order and subject to availability of the Products ordered. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence. BUYER'S EXCLUSIVE REMEDY FOR DELAYS, AND FOR SELLER'S INABILITY TO DELIVER FOR ANY REASON, SHALL BE RESCISSION OF THE AFFECTED ORDER.

12. **Technical and Proprietary Information.** Any sketches, data sheets, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information. No use or disclosure of such sketches, models and samples, or any design or production techniques revealed thereby, shall be made without the express written consent of Seller. All rights, title and interest to any proprietary information of Seller, including, but not limited to, any developments, improvements or modifications of the Products, shall remain with or inure to Seller.

13. **Terms of Payment.** Standard terms of payment are cash in full within thirty (30) days after date of shipment of each unit of Product. Interest on unpaid balances to accrue at the rate of 1.5% per month. Buyer agrees to pay Seller's costs and reasonable attorney's fees incurred in collecting all unpaid amounts due hereunder. If, in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance. In the event of bankruptcy or insolvency of the Buyer, payments are due immediately.

If Buyer fails to pay Seller any sum when due under normal business conditions, then upon 14 calendar days written notice, the Seller may cancel any order of the Buyer then outstanding and shall receive reimbursement for its cancellation charges. Each shipment shall be considered a separate and independent transaction and payment shall be made accordingly. Products held for the Buyer shall be at the risk and expense of the Buyer unless otherwise agreed upon in writing. The Seller reserves the right to ship to its order and make collection by sight draft, C.O.D., or any other terms approved in writing by the Company's Credit Department.

14. **Security.** If, during the period of performance of this Agreement, Buyer's financial condition does not justify the terms of payment specified, Seller may demand, before proceeding with the work, full or partial payment in advance, satisfactory security or guaranties that invoices will be promptly paid when due or, at its option without prejudice to other lawful remedies, defer delivery of the Products or cancel this Agreement. As security for payment of any sum due or to become due hereunder, Seller shall have the right, if necessary, to retain possession of, and shall have a lien on, and a security interest in all Buyer's property in its possession and all Products sold to Buyer, wherever located, and documents relating to such Products now or herein after in the possession of or under the control of Buyer, title to which may have passed to Buyer, including without limitation, all inventories of the Products or any other product bearing any trademark of Seller, returns or repossessions and the proceeds of all the foregoing. Buyer hereby agrees to execute such security agreements and financing statements as Seller may reasonably request. The extension of credit or the acceptance of notes, trade acceptances or guaranties of payment shall not affect such security interest and lien.

15. **Rights Upon Default.** If any amount due Seller from Buyer under this or any other agreement shall remain unpaid when due, or if Buyer defaults in the performance of any covenant or condition of this Agreement, Seller shall have the right to terminate this Agreement, declare immediately due and payable all Buyer's obligations for the Products, retain possession of any work or materials owned by Buyer or furnished by or on behalf of Buyer, change credit terms with respect to any further work and suspend or discontinue any further work until overdue amounts are paid in full and cash or security satisfactory to Seller covering further work is deposited with Seller. The foregoing rights of Seller shall be in addition to, and not in substitution for, any other rights of Seller, and shall not in any way prejudice any claim or right of action which Seller may have under this Agreement. Buyer agrees to reimburse Seller for Seller's reasonable and necessary attorney's fees and other reasonable and necessary costs incurred by Seller in collecting any sums owed by Buyer to Seller in connection with this Agreement. Upon termination of this Agreement, for any reason, Seller shall have all the right and remedies provided by law, including, without limitation, the right of a secured party under chapter 409 of the Wisconsin Statutes or similar statute in the jurisdiction where Buyer is located or stores the Products.

16. **Warranties and Remedy.** Seller warrants that the Products will conform to the specific description thereof in this Agreement and, to the extent of such description, will be free from defects in workmanship for a period of five years unless otherwise noted. Claims for defects, damages or nonconformance must be made by Buyer in writing within a period of ten days after discovery of such defect, damage or nonconformance. Failure of Buyer to make such claim within the warranty period shall constitute irrevocable acceptance of such Products and an acknowledgment by Buyer that the Products fully comply with the terms, conditions and specifications of this Agreement. Any Products proved to be defective or non-conforming within the ten-day period shall be reworked, if possible or replaced by Seller, at Seller's option and expense or, if rework or replacement is not possible, Seller will refund to Buyer any monies paid by Buyer to Seller in connection with the defective items. Such warranty satisfaction shall be available only if: (a) Seller is promptly notified in writing upon discovery of an alleged defect; and (b) Seller's examination of the Products discloses that any defect has not been caused by Buyer's misuse, neglect, improper maintenance, repair or alteration, or unusual deterioration or degradation of the Products due to physical environment. SELLER'S SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO SUCH REWORK, REPLACEMENT OR REFUND AT SELLER'S DISCRETION. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO THE PRODUCTS SHALL BE LIMITED TO THE MONIES PAID BY BUYER TO SELLER HEREUNDER FOR THE DEFECTIVE ITEMS. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES.

SELLER SHALL NOT BE LIABLE TO BUYER OR TO ANYONE CLAIMING UNDER BUYER FOR ANY OTHER OBLIGATIONS OR LIABILITIES INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR ANY UNDERTAKINGS, ACTS OR OMISSIONS HEREUNDER OR RELATING THERETO.

Except to the extent of the foregoing warranties, Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or others arising out of or in connection with the Products.

17. **DISCLAIMER OF IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.** SELLER AND BUYER AGREE THAT THE FOREGOING WARRANTIES IN SECTION 16 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES SELLER HEREBY DISCLAIMS. Any description of the Products, whether in writing or made orally by Seller or Seller's agents in connection with Buyer's order, is for the sole purpose of identifying the Products and shall not be construed as an expressed warranty.

18. **Assignment.** Buyer may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Seller. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Buyer and Seller, their successors and assigns.

19. **Compliance with Laws.** Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder.

20. **Miscellaneous.** The internal laws of the State of Wisconsin, including without limitation, the Uniform Commercial Code as adopted in Wisconsin, shall govern the rights and obligations of Seller and Buyer under this Agreement. Any failure by Seller to require performance of any provision of this Agreement will not operate as a waiver to require strict performance of the provision at a later time or prevent Seller from taking other action in the future. Seller reserves the right to correct clerical or similar errors relating to price or any other terms shown in this Agreement. Invalidity or unenforceability of any term or part of this Agreement shall not affect the validity or enforceability or the remainder of this Agreement. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Agreement or the relationship of the parties shall be brought in a court situated in the State of Wisconsin and both parties hereby irrevocably consent and submit to the jurisdiction of said court.

21. **Reservation of Rights.** Seller reserves for itself all rights not expressly granted in these terms and conditions, including, without limitation, the rights to add, delete and modify the Products, set and modify its prices for the Products, adopt, modify and enforce policies and programs related to the Products (including, without limitation its

terms and conditions, limited warranty and credit policy), and to control the brand image and use of the trademarks associated with the Products.

22. **FINAL WRITTEN EXPRESSION.** THIS AGREEMENT CONSTITUTES A FINAL WRITTEN EXPRESSION OF ALL OF THE TERMS BETWEEN SELLER AND BUYER AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN SELLER AND BUYER WHICH ARE NOT CONTAINED IN THIS AGREEMENT HAVE NO FORCE OR EFFECT. NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES OR USAGE OF TRADE SHALL BE RELEVANT OR ADMISSABLE TO SUPPLEMENT, EXPLAIN OR VARY ANY OF THE TERMS OF THIS AGREEMENT. ACCEPTANCE OF, OR ACQUIESCENCE IN, A COURSE OF PERFORMANCE RENDERED UNDER THIS OR ANY PRIOR AGREEMENT SHALL NOT BE RELEVANT OR ADMISSIBLE TO DETERMINE THE MEANING OF THIS AGREEMENT EVEN THOUGH THE ACCEPTING OR ACQUIESCING PARTY HAS KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND IN OPPORTUNITY TO MAKE OBJECTION. NO REPRESENTATIONS, UNDERSTANDINGS, OR AGREEMENTS HAVE BEEN MADE OR RELIED UPON IN THE MAKING OF THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN. ANY AND ALL PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS THAT DIFFER FROM THIS AGREEMENT SHALL HAVE NO FORCE OR EFFECT.

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