

TERMS AND CONDITIONS OF SALE

1. Contract and acceptance.

The Terms and Conditions of sale set forth herein and all drawings specifications, descriptions and other documents attached hereto and incorporated herein by reference constitute the entire agreement between LEWA, INC. („Seller“) and Buyer. This agreement supercedes all prior correspondence negotiations discussions representations and offers between the Seller and Buyer to the extent that they conflict with or are in addition to the terms contained herein. All orders taken by Seller's sales representatives or distributors are subject to acceptance at Seller's head office in Holliston, Massachusetts. SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. The Terms and Conditions of Seller's Proposal (if any) and Acknowledgement shall prevail over any conflicting or different terms in Buyer's Order unless Buyer notifies Seller in writing of its objections thereto within 15 days from receipt of Seller's Acknowledgement. The failure of Seller to object to any provision in conflict herein whether contained on Buyer's Purchase Order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance of any such conflicting provision.

2. Terms of payment.

The Terms of payment are net 30 days from the date of invoice, subject to approval of Seller's Credit Department unless special arrangements are made and noted.

3. Shipping schedule.

Shipment dates are approximate, representing Seller's best judgment at the time of quotation. Estimations of shipping dates are made in good faith, but they are NOT guarantees and are not the essence of an order. a) Seller reserves the right to make shipment in lots. Upon shipment of each lot, Seller shall have the right to immediately invoice appropriate portion of the total selling price. b) Seller in its sole discretion shall have the right to manufacture the products provided hereunder as far in advance of its estimated shipping schedule as it deems appropriate. c) Should shipment be held beyond scheduled date for the convenience of Buyer, the Seller reserves the right to bill immediately for the goods and to charge Buyer for all expenses incident to such delay, including storage of the goods. d) Seller will not be responsible for deviations in meeting specified shipping schedules nor for any losses or damage to Buyer (or any third person) occasioned by deviation in the performance or the non performance of any of Seller's obligations under this contract or by loss of or damages to the Products when caused directly or indirectly by or in any manner or arising from any casualty, riots, acts of Buyer, strikes, or by other labor difficulties, shortages of labor, supplies, and transportation facilities or any other similar or different cause or causes beyond its reasonable control or the reasonable control of its suppliers or subcontractors. Seller reserves the right to ship in advance of any Buyer request dates, except those dates stipulated „not before“.

4. Price quotations.

All quotations expire 30 calendar days from the date hereof unless withdrawn sooner. Prices of products scheduled for shipment more than 12 months after the date of Buyer's order shall be subject to escalation.

5 Taxes.

Seller's prices do not include any applicable sales, use, excise or similar taxes. If, under law or governmental regulation, the Seller is required to pay or collect any tax upon the products included in this order or predicated upon, measured by or arising from the sale, transportation, delivery, use or consumption of said products, whether directly or indirectly, the price to be paid by the Buyer shall be increased by the amount of any such taxes. Buyer shall immediately, upon Seller's request, pay such taxes to Seller.

6. Cancellation.

Buyer shall have no right to cancel all or any portion of this order unless it pays for all costs already incurred by Seller, including the price of any goods or services required to fill this order already committed to by Seller and a reasonable allowance for overhead and profit.

7. Changes.

Seller shall have the right to charge Buyer for increased costs resulting from increased or decreased quantities in an accepted order, changes in schedule or changes in materials or services, initiated by the Buyer.

8. Warranties.

The Seller warrants that the new products covered by this contract conform to any applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship for a period of 12 months from the date of installation or 18 months from the date of shipment, whichever period first expires. For repaired parts, warranty is 6 months. If, within that period, the Seller receives from Buyer written notice of any alleged defect in or nonconformance of any such product, then Buyer shall at Seller's request, return the part or product F.O.B. Holliston, Massachusetts, Seller's Factory, and if the Seller agrees that the product does not conform or is found to be defective in material or workmanship, shall repair or replace the defective part or product at Seller's option and expense, or repay to Buyer the full price paid for such part or product by Buyer. Any repayment of purchase price shall be without interest. Seller's sole responsibility and Buyer's exclusive remedy hereunder shall be limited to such repair. Replacement or repayment of the purchase price as above provided. Products and accessories supplied by Seller hereunder which are not of the Seller's manufacture are warranted by Seller only to the extent Buyer or Seller is able to obtain warranty service or compensations from the manufacturers thereof.

9. There are no other warranties, express, statutory or implied, including those of merchantability and of fitness for purpose, nor any affirmation of fact or representation, which extends beyond the description of the face hereof.

The Warranties of Seller do not cover and Seller makes no warranty with respect to:

- Failures not reported to Seller within the warranty period specified above;
- Failures or damage due to misapplication, abuse, improper installation, abnormal conditions of temperature, water, dirt, or corrosive matter;
- Failures due to operation above rated capacities or in an otherwise improper manner;
- Products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller;
- Products damaged in shipment or storage or otherwise without fault of Seller;
- Labor and/or material expenses incurred by Buyer which relate in any manner to any allegedly defective products unless Buyer incurs such expense under express written authorization from Seller; and
- Parts which are subject to normal wear, and/or tear, are scheduled for routine replacement within the guarantee period and/or parts subject to the effects of corrosion or deterioration by chemical or other action.

10. Claims, shortages, and risk of loss.

Any claims for loss, breakage or damages (obvious or concealed) are Buyer's responsibility and should be made to the carrier. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims.

- Any notices of shortages or other errors must be made in writing to Seller within 15 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by Buyer.
- Risk of loss for damages to the products sold hereunder passes to Buyer upon delivery by Seller to the carrier regardless of F.O.B. point. Title to the products sold hereunder passes to Buyer upon payment of the full purchase price. Buyer agrees to execute such documents as Seller requests to protect Seller's interest in the products.

11. Transportation charges and allowances.

All prices are F.O.B. Factory. No freight is allowed unless stated in Seller's proposal. If Seller's proposal states that freight is allowed, all prices are F.O.B. Factory, with most economical surface transportation allowed. If the quoted price includes transportation, Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical. Added costs due to special routing requested by the Buyer are chargeable to the Buyer. Under no circumstances is any freight allowance which is absorbed by Seller to be deducted from the selling price. If the quoted price includes transportation, no reduction will be made in lieu thereof whether Buyer accepts shipment at factory, warehouse, freight station, or otherwise supplies its own transportation.

12. Returned goods.

The Seller reserves the right to refuse returned goods unless authorized in advance. A restocking charge will be levied on all returned goods.

13. Hazardous or toxic materials notice.

The Commonwealth of Massachusetts Right to Know Law requires that a Material Safety Data Sheet be on file for each hazardous or toxic substance used or stored in the workplace. It is the policy of LEWA, INC. not to handle any unknown or potentially hazardous or toxic substances without prior written approval from our Safety Committee. Therefore, all goods returned for any reason must be thoroughly cleaned and any hazardous or toxic substances completely removed and/or neutralized.

14. Patent indemnity.

Seller agrees that it will indemnify Buyer for all damages or costs resulting from any suit or demand alleging infringement of any United States patent by the products furnished by Seller under this proposal, if Seller is notified promptly in writing of such suit or demand and gives adequate authority, information and assistance for the defense of same and provided further that Seller at its own option and expense shall have the right to settle such suit or demand either by procuring for the Buyer the right to continue using the apparatus or part thereof furnished by Seller: or by replacing same with non infringing apparatus. or by removing the alleged infringing apparatus and refunding the purchase price. On any product supplied by Seller made to the Buyer's design or design of which has been modified by the Buyer, or used in a manner other than that approved by the Seller, this indemnification clause does not apply. Seller's sole responsibility and the Buyer's exclusive remedy for any such suit or demand shall be as set forth in this paragraph.

15. Limitation on liability.

Notwithstanding anything to the contrary contained in this contract. Seller's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of this contract or the products covered hereunder shall not exceed the purchase price hereunder. In no event shall Seller be liable for any special, indirect, incidental or consequential damages of any character, including, but not limited to, loss of use of productive facilities or equipment, lost profits, property damage (including property damage arising out of causes of action based on strict liability) expenses incurred in reliance on Seller's performance hereunder, or lost production, whether suffered by Buyer or any third party.

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16. Specific design recommendations.

If before or during the performance of this contract the Buyer obtains specific design and/or engineering assistance from Seller insofar as the compatibility or use of the Products with elements or systems not supplied by Seller, it is understood and agreed by Buyer that such specific design and/or engineering assistance is provided as a service, even if Seller receives compensation therefore, and that Seller makes no warranties of any nature whatsoever with respect to the accuracy of such specific design and/or engineering assistance or with respect to any actions taken by Buyer or any others in reliance on such assistance.

17. Modification, rescission and waiver.

This contract may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized employee of Seller at its principal office of 132 Hopping Brook Road, Holliston, MA 01746.

18. Miscellaneous.

Seller reserves the right to furnish substitutes for materials which cannot be reasonably obtained because of any restrictions, voluntarily or compulsorily established by or in connection with any governmental authority or program. In all cases, the materials of construction are subject to verification and acceptance by Buyer. Seller may during any periods of shortage, due to causes beyond control of Seller or its suppliers, prorate its supply of products among all of its Buyers in such manner as may be deemed equitable in the sole judgment of Seller. Seller shall not incur any liability to Buyer because of any prorations hereunder.

- a) This contract is intended by the parties as a final expression of their agreement and a completed and exclusive statement of the terms thereof. The parties shall not be bound by any agent's or employee's representation promise or inducement not set forth in this contract.
- b) No course of prior dealings between the parties and no usage of trade shall be used to supplement, explain or vary any of the terms of this contract.
- c) The rights and duties of the parties and construction and effect of all provisions hereof shall be governed by and construed according to the internal laws of the Commonwealth of Massachusetts. Failure of Seller to insist in any one or more instances upon the performance of any of the terms and conditions of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term condition or right hereunder and shall not affect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

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