

TERMS AND CONDITIONS OF SALE

1. **CONTRACT SCOPE AND ACCEPTANCE.**

1.1 The Terms and Conditions of sale set forth herein, and all drawings, specifications, descriptions and any other documents attached hereto and made a part hereof constitute the entire agreement between **LEWA-NIKKISO AMERICA, INC.** ("Seller") and Buyer (collectively, the "Agreement"). These General Terms and Conditions ("T&C's") shall apply to the sale and/or provision of any equipment, materials, items, products, components, parts, systems, drawings, specifications and any related services (the "Goods") offered for sale or provided by the Seller to the Buyer. They apply to all requests made by the Buyer for quotations or offers and to any offers made by Seller and are an integral part of any order ("Order") placed by the Buyer with Seller. All Orders taken by Seller's sales representatives or distributors are subject to acceptance by Seller's corporate office in Holliston, Massachusetts. **SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ACKNOWLEDGMENT OF, AND AGREEMENT WITH, THE TERMS AND CONDITIONS CONTAINED HEREIN.** These T&C's, and any conditions contained in Seller's Proposal (if any) and Acknowledgment shall prevail over any conflicting terms in Buyer's Order unless Buyer notifies Seller in writing of its objections thereto within fifteen (15) days of receipt of Seller's Acknowledgment and such objections and/or exceptions are expressly accepted in writing by Seller. No terms and conditions contained in Orders, prior offers or any other document issued by the Buyer shall be binding on the Seller, even if they have not been expressly rejected. The failure of either Party hereto, at any time, to enforce any of these General Terms and Conditions shall not be construed to be a waiver of the right of such Party thereafter to enforce any terms and conditions.

1.2 No order, amendment thereof, addition or a complement thereto shall be binding on the Seller unless expressly accepted in writing in the form of a Change Order approved by the Seller.

1.3 If individual terms of these T&C's cannot be applied for any reason whatsoever, all other terms and conditions will remain unaffected.

2. **TERMS OF PAYMENT.** The terms of payment are net thirty (30) days from the date of invoice unless special arrangements are made and approved in writing by Seller. Payment shall be made in United States currency. Buyer agrees to pay interest equal to current prime interest rate (as defined by the Federal Reserve Bank) plus 1.5% per month on all unpaid balances. Buyer agrees to pay all legal and/or other charges necessary for the Seller to collect all or any unpaid balances after ninety (90) days from the date of Seller's invoice.

3. **SHIPPING SCHEDULE**

3.1 Shipment dates are approximate and represent 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.

3.2 Seller reserves the right to make shipment in lots. Upon shipment of each lot, Seller shall have the right to immediately invoice an amount representing that appropriate portion of the total selling price.

3.3 Seller shall have the right to manufacture the Goods to be provided pursuant to these T&C's as far in advance of its estimated shipping schedule as it deems appropriate in its sole discretion. Seller reserves the right to ship in advance of any Buyer request dates, except those dates stipulated "not before".

3.4 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 but not limited to storage of the Goods.

3.5 Seller will not be responsible for deviations in meeting specified shipping schedules nor for any losses, claims or damages to Buyer (or any third person) occasioned by deviation in the performance or the non-performance of any of Seller's obligations hereunder, or by loss of or damages to the Goods when caused directly or indirectly by, or in any manner 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 Seller's reasonable control or the reasonable control of its suppliers or subcontractors.

4. **PRICE QUOTATIONS.** All price quotations expire thirty (30) calendar days from the date of the quote unless withdrawn sooner. Prices of Goods scheduled for shipment more than twelve (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 Goods 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/STOP WORK ORDERS.** Cancellations of the Order may be accepted only with the express written approval of the Seller. Further, Buyer shall have no right to cancel all or any portion of the Order unless it pays for all costs already incurred by Seller, including the price of any Goods or services required to fill the Order already committed to by Seller as well as 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 any Goods, materials or services initiated by the Buyer.

8. **WARRANTIES.**

The Seller warrants that **new Goods** covered by these T&C's conform to the applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship for a period of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment, whichever period expires first. **Repairs utilizing new parts** carry a one (1) year limited warranty against defects in materials. **Repairs utilizing refurbished parts** carry a ninety (90) day limited warranty against defects in materials. The **Labor** warranty is (90) days.

8.2 If, within these stated warranty periods, the Seller receives from Buyer written notice of any alleged defect in or nonconformance of any such Good or part, then Buyer shall, at Seller's request, return the Good or part F.O.B. Holliston, Massachusetts, Sellers Factory. If the Seller agrees that the Good or part does not conform or is found to be defective in material or workmanship, Seller shall repair or replace the defective Good or part at Seller's option and expense. Seller's sole responsibility, and Buyer's exclusive remedy hereunder, shall be limited to such repair or replacement as provided herein.

8.3 Goods, products and accessories supplied by Seller hereunder which are not of the Seller's manufacture are warranted by Seller only to the extent that Buyer or Seller is able to obtain warranty service or compensations from the manufacturers thereof.

8.4 **THERE ARE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY AND OF FITNESS FOR PURPOSE.**

8.5 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;
- Goods or products which have been in any way tampered with, modified or altered by anyone other than an authorized representative of Seller;
- Goods or 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 Goods or products unless Buyer incurs such expense under express written authorization from Seller; and
- Goods and/or parts which are subject to normal wear and tear, are scheduled for routine replacement within the guarantee period, and Goods and/or parts subject to the effects of corrosion or deterioration by chemical or other action.

9. **CLAIMS, SHORTAGES, AND RISK OF LOSS.**

9.1 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.

9.2 Any notices of shortages or other errors must be made in writing to Seller within fifteen (15) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by Buyer.

9.3 Risk of loss for damages to the Goods sold hereunder passes to Buyer upon delivery by Seller to the carrier regardless of F.O.B. point. Title to the Goods 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 Goods.

10. **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 the 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.
11. **ACCEPTANCE.** Final acceptance or rejection of the Goods shall be made promptly after delivery to Buyer. Unless earlier rejected, the Goods shall be deemed by the Parties to be formally accepted and conforming to Order requirements within thirty (30) days after delivery to Buyer. Upon acceptance of each unit of the Goods, Buyer expressly waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any alleged defect or nonconformance which may become apparent in the Goods after acceptance shall be subject to the provisions of Section 8 hereinabove.
12. **RETURNED GOODS.** The Seller reserves the right to refuse returned Goods unless such return is authorized in advance by Seller. A restocking charge will be levied on all returned goods.
13. **SUBSTITUTIONS.** 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 proration hereunder.
14. **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 the Seller 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.
15. **PATENT INDEMNITY.**
15.1 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 Goods furnished by Seller hereunder, provided that 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 Goods, apparatus or part furnished by Seller, or by replacing same with non-infringing Goods, apparatus or parts, or by removing the alleged infringing Goods, apparatus or parts and refunding the applicable purchase price.
15.2 On any Goods or products supplied by Seller made to the Buyer's design or the design of which has been modified by the Buyer, or used in a manner other than that approved by the Seller, the above 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.
16. **LIMITATION ON LIABILITY.** Notwithstanding anything contained herein to the contrary, Seller's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance under these T&C's or the provision of the Goods provided and/or contemplated hereunder shall not exceed the purchase price hereunder. In no event shall Seller, its affiliates, subsidiaries, suppliers, subcontractors or agents be liable to Buyer for any punitive, special, indirect, incidental or consequential damages of any kind or character, including but not limited to, loss of use of production facilities or equipment, lost profits or revenue, property damage (including property damage arising out of causes of action based on strict liability), expenses incurred in reliance on Sellers performance hereunder, or lost production, whether suffered by Buyer or any third party ("Consequential Losses").
17. **SPECIFIC DESIGN RECOMMENDATIONS.** If before or during its performance under these T&C's, the Buyer obtains specific design and/or engineering assistance from Seller insofar as the compatibility or use of the Goods 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 third parties in reliance on such assistance.
18. **EQUIPMENT MODIFICATION.** In the event that (a) the Buyer modifies the Goods or any product sold pursuant to these T&C's or the Order without the express written consent of the Seller; or (b) the Buyer fails to implement any changes in the Goods or product directed by the Seller; or (c) any Goods or any product to be furnished under these T&C's or the Order are made in accordance with drawings, samples or manufacturing specifications provided by or designated by the Buyer, then Buyer agrees to indemnify and hold harmless the Seller from all claims, demands, actions or causes of action or costs and expenses incurred in connection therewith, whether in contract, tort or admiralty.
19. **MISCELLANEOUS PROVISIONS**
19.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and the parties hereby submit to the jurisdiction of the courts of the Commonwealth of Massachusetts.
19.2 **Entire Agreement; No Third Party Beneficiaries.** This Agreement, including any Exhibits or Attachments referred to herein, constitutes the entire agreement and understanding between the Seller and the Buyer with respect to the subject matter herein and all understandings and agreements heretofore had between the Seller and the Buyer are merged into this Agreement. This Agreement shall not be modified, altered or amended except as specifically provided for herein or by mutual written agreement of authorized representatives of the Parties hereto. 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 Agreement. This Agreement is not intended to confer upon any person other than the Parties any rights, remedies or other benefits hereunder. Accordingly, the Seller owes no duty or obligation to any such third parties pursuant to the terms of this Agreement and shall not be responsible for any claims made and/or damages asserted by any such third parties.
19.3 **No Waiver.** The failure of either Party at any time to require performance by the other Party of any provisions hereof shall in no way affect the full right to require such performance at any time thereafter; nor shall the waiver by either Party of a breach of any provision hereof be taken as held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. 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 herein or as an acceptance of any such conflicting provision.
19.4 **Notices.** Except as otherwise provided in this Agreement, all notices sent or required to be sent hereunder shall be sent hereunder by registered or certified mail, postage prepaid, addressed as follows: to LEWA-NIKKISO AMERICA, INC. at: 132 Hopping Brook Road, Holliston, Massachusetts 01746 and to the Buyer at the address that Buyer shall designate in writing.
19.5 **Force Majeure.** Neither Party shall be liable for any delay in the performance of any obligation hereunder or any loss resulting therefrom due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, labor disputes, fires, floods, riots, civil disturbances, or war, and the performance of any such obligation shall be postponed for a reasonable period of time during the continuation of any such cause.
19.6 **Severability.** If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
19.7 **No Joint Venture.** The relationship between Seller and Buyer is that of vendor and vendee. No agency, partnership, joint venture or employment relationship is created between the Parties by this Agreement.