

Terms and Conditions of Sale  
Lumberg, Inc.

Updated December 1, 2017

All products or services (collectively the "Products") furnished by Lumberg, Inc. or its agents (hereinafter referred to individually and collectively as "Seller") shall be in accordance with the following terms and conditions unless set forth in a customer master agreement previously executed by and between Seller and Buyer.

**1. ORDERS AND SHIPMENTS**

Shipments, deliveries, payment terms and performance of work shall at all times be subject to the approval of Seller. Seller may, at any time decline to make any shipment or deliver or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Seller. All purchase orders placed by customer and accepted by Seller are non-cancelable (NC) and non-returnable (NR) unless otherwise negotiated between Seller and purchaser.

**2. PRICES**

All prices quoted by Seller are net. List prices are subject to change without notice. Prices stated on this form are contingent upon acceptance of delivery by the Buyer of all Products subject to this order within six (6) months and can be increased or decreased at Seller's option upon thirty (30) days written notice by Lumberg, Inc. or its agents. Subject to Section 1.

**3. PAYMENT**

Standard payment terms are net thirty (30) days from the date of invoice. In the event credit has not been established Seller reserves the right to require payment in advance of shipment. Any amounts not paid when due shall bear a late payment in the amount of 1 ½ % per month or at the highest rate permitted by law (whichever is less), from the date of shipment until paid. The Buyer agrees that such a charge is reasonable in the light of the anticipated actual harm caused by reason of the Buyer's delinquency, the difficulties of proof or loss, and the inconvenience of non-feasibility of Seller otherwise obtaining an adequate remedy. The Buyer further agrees that such a charge is not an agreement express or implied to give further time for payment. Notwithstanding anything else herein to the contrary, and in addition to the above referenced administrative charge, Buyer agrees to pay all costs of collection of delinquent accounts, including, without limitation, reasonable attorneys' fees, whether or not such collection efforts include the commencement of a lawsuit or a legal action.

**4. SOLVENCY**

Buyer's order will be deemed a representation that Buyer is solvent and able to pay for the Products ordered. If Buyer fails to make payments when due or if bankruptcy or insolvency proceedings are instituted buy or against Buyer, or if Buyer makes an assignment for the benefit of creditors, Buyer will be deemed to be in default and Seller will have the right to terminate its obligations by written notice to Buyer, but such termination will not affect Buyer's obligation to pay for Products delivered and works in progress.

**5. TAXES**

The Buyer shall promptly pay any taxes which Seller may be required to pay or collect under any existing or future law for the account of the Buyer. Virginia sales tax shall be added to shipments made within Virginia unless a valid resale certificate has been filed with Seller.

**6. TITLE/SHIPPING**

Unless otherwise provided on the face hereof, all Products furnished hereunder will be shipped "Ex-Works (EX-W)" INCOTERMS and title in, risk of loss, and the right of possession to such goods shall pass to the Buyer upon the Seller's delivery to carrier at Seller's shipping facility, and Seller is not responsible for damage or loss in transit, regardless of whether or not Buyer may have the right to reject or revoke acceptance of said Products. Seller can arrange for in-transit insurance at Buyers expense, but will not do so without Buyer's written instructions. Unless otherwise stated in contract documents, all goods will be shipped freight prepaid and billed. Charges for shipping may not reflect net transportation cost paid by the Seller. Buyer shall be responsible for all import requirements of any country into which it seeks to import the Products.

**7. MANUFACTURE**

Seller reserves the right to discontinue the manufacture of, or change or modify the design and/or construction of the Products sold pursuant to these terms and conditions, without incurring any obligation to Buyer.

**8. WARRANTY**

If the goods furnished to the Buyer shall fail due to defective material or workmanship, within six (6) months form the date of shipment, Seller shall replace such nonconforming goods or repair such Products without charge to the Buyer. This warranty does not apply if the Products have been damaged by accident, abuse, misuse, modification, or miss-application, i.e. by damage during shipment or by improper service. Without limiting the foregoing, it is expressly agreed that Seller shall have no liability whatsoever for consequential damages; and Buyer agrees to indemnify Seller against any and all costs, expenses, claims, and liabilities arising therefrom. The foregoing warranty is exclusive and no other warranty, whether express, implied, implied or statutory, including any warranty of merchantability or fitness for a general or particular purpose or design shall exist in connection with any of the Products supplied hereunder, and all such warranties are hereby expressly excluded. This warranty allocates the risk of the failure of goods between Seller and the Buyer as authorized by applicable law. No employee, agent, dealer, or other person is authorized to give any warranties on behalf of Seller or to assume for Lumberg, Inc. or its agents any other liability in connection with any of its goods, except in writing and signed by an officer of Seller.

Seller makes no representation that Products comply with any present or future federal, state, or local regulation or ordinance. Compliance is the Buyer's responsibility. The use of Seller's goods should be in accordance with the provisions of the National Electric Code, U.L. and/or other industry or military standards that are pertinent to the particular end use. Installation or use not in accordance with these codes and standards could be hazardous, and Buyer hereby agrees to indemnify Seller against any and all claims of loss or damage, and/or costs and expenses related to defending against such claims, which arise from or in connection with the use or installation of goods not in accordance with the above referenced codes and standards.

**9. CLAIMS**

All Products shall be inspected by the Buyer when received, and every claim on account of defective material, workmanship, or shortages, or of any other cause shall be deemed waived by the Buyer unless make in writing and received by Seller within thirty (30) days from the date of receipt of such goods to which such claim relates. Upon receipt of such claim Seller shall be given reasonable opportunity to inspect such goods. No goods shall be returned to Seller without written authorization by Seller. Returned goods shall be sub-

ject to 25% and/or \$25.00 minimum restocking charge and returned freight will be at the Buyer's expense. No claim of any kind, whether as to goods delivered or for non-delivery of goods shall be greater in amount than the purchase price of the goods in respect of which such damages are claimed. Materials being returned due to order entry and/or shipping errors on the part of the Seller will be credited at full value providing the materials are returned within thirty (30) days from the date of the original shipment.

#### **10. CHANGE DELIVERIES**

Request for a scheduled delivery change will be deemed waived by Buyer unless Seller is notified in writing ten (10) days prior to the original scheduled delivery.

#### **11. DAMAGES**

It is expressly agreed that section 6 and 7 states the Buyer's sole and exclusive remedy for any breach of warranty and/or any claim for personal injury, property damage, or commercial loss, whether sounding in contract, tort, strict liability, or negligence, based on any defect in any goods of Seller. Without limiting the generality of the preceding sentence, it is expressly agreed that either Lumberg or its agents shall not be responsible for any direct, indirect, special, or consequential damages whatsoever, including any labor or other costs incurred by the Buyer as a result of such defect or incident to the repair or replacement or inability to use any goods.

#### **12. FORCE MAJEURE**

Seller shall be excused for any delay in performance due to acts of God, war, riot, embargo, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, strikes, differences with workmen, delayed transportation, shortage of fuel, labor or materials, or any circumstantial cause beyond the control of Lumberg, Inc. or its agents in the reasonable conduct of business.

#### **13. INDEMNIFICATION**

Buyer does hereby agree to defend, indemnify, and hold the Seller, directors, employees, agents accountants, attorneys, successors, insurance companies, and all other persons acting for, under or in concert with other, past and present, harmless of and from any and all claims, demands, actions, causes of action obligations, damages, liabilities, loss, cost or expenses, including attorney's fees of any kind or nature, whatsoever, arising out of or related to the sale, resale, use or application of the products or any part thereof.

#### **14. MODIFICATION OF AGREEMENT**

This agreement cannot be modified in any way, except in writing, signed by the parties herein.

#### **15. WAIVER**

Waiver by Lumberg, Inc. or its agents of a breach of any of the terms and conditions set forth above shall not be construed as a waiver of any other or subsequent breach.

#### **16. JURISDICTION AND DISPUTES**

These terms and conditions shall be governed in accordance with the law of the Commonwealth of Virginia. All disputes under these terms and conditions shall be resolved by the state or federal courts of the Commonwealth of Virginia and the parties all consent to the jurisdiction of such courts, agree to accept service process by mail, and hereby waive any jurisdiction or venue defenses otherwise available.

#### **17. HEADINGS**

The headings used herein are for convenience only and shall not be used to vary, supplement, or construe the meaning of the text herein.

#### **18. TERMS AND CONDITIONS LUMBERG, INC.**

Terms and Conditions Lumberg, Inc. or its agents accept orders only upon the foregoing terms and conditions, which shall prevail notwithstanding any variance with the terms and conditions of any order submitted by the Buyer. Acceptance of delivery of the goods shall be deemed agreement herewith by the Buyer.

Lumberg, Inc. North Chesterfield, VA 23236, USA