

## Lake Shore Electric Terms and Conditions of Sale

**LEGAL EFFECT:** The following terms and conditions are a part of this order. Additional or different terms of Buyer's purchase order or other form of acceptance or any other form of Buyer are rejected in advance and shall not become a part of the Order. Seller's quotation is an offer to sell under the terms and conditions stated herein. All offers to purchase by Buyer or orders or contracts of sale resulting from such Quotations are subject to final acceptance in writing by an Officer of the Seller. Seller's rights and remedies under this Quotation and the Order are in addition to, not in substitution of, all other rights and remedies available to Seller under any applicable provision of law, regulation or court decision. Seller may suspend its performance of the Order if Buyer defaults in the performance of its duties under the Order or under any other agreement between the Buyer and Seller. No employee, agent, dealer, or distributor of Seller has any authority to change or enlarge the terms of this Quotation or the Order. No change shall be valid unless it is in writing and signed by an authorized Officer of Seller. In the event that any provision of these terms and conditions is deemed to be invalid or unenforceable, the parties agree that such invalidity or unenforceability shall not invalidate or render unenforceable the remainder of these terms and conditions, and the remaining terms and conditions shall continue in full force and effect. Unless otherwise mutually agreed, the terms of any Order resulting from this Quotation shall be interpreted and enforced in accordance with the laws applicable in the State of Ohio.

**SCOPE OF SUPPLY:** As an equipment supplier, Seller will provide equipment per (1) Seller's quotation only, or (2) where approved in writing by an Engineer of Seller, per the technical portion of the specifications as submitted, clarified and approved by Seller. Any terms and conditions other than those stated herein are excluded. Buyer is fully responsible for (including payment of the cost of) installation of all equipment sold under this order.

**ASSIGNMENT:** No assignment or transfer of interests of any part of this contract shall be valid without the expressed written consent of both parties.

**CANCELLATION:** Buyer cannot cancel or alter the Order without the Seller's written consent. If Seller grants such consent, Buyer will reimburse Seller for all of Seller's losses and expenses caused by such cancellation or alteration, including without limitation all of Seller's additional costs caused by changes in design or specifications, or by product revisions, and all consequential damages incurred by Seller as a result of such cancellation or alteration. If Buyer cancels the Order, Buyer shall pay Seller (i) a minimum cancellation charge of 45 percent of the purchase price for stocked product; and (ii)

a minimum cancellation charge of 50 percent of the purchase price for a made-to-order product, and (iii) a minimum cancellation charge of 75 percent when canceled 8 weeks prior to shipment, and (iv) 95 percent cancellation fee 4 weeks prior to shipment, and (v) any additional damages and expenses described in this paragraph that exceed the minimum percentage of the purchase price.

**PRICES:** Unless otherwise mutually agreed in writing, prices quoted by the Seller shall be firm for a period of 30 days after quotation, or, after receipt of an acceptable purchase order from the Buyer, for the duration of the contract, not to exceed one year after the Seller's receipt of the purchase order. Seller requires a minimum billing amount of \$150.00.

**TERMS OF PAYMENT:** Unless otherwise mutually agreed, the terms of payment shall be 100% net 30 days after shipment, paid from the Seller's invoices, contingent on approval by the Seller's Credit Manager. For orders that exceed \$100,000, milestone payments are required and shall be 1) 10% at PO acceptance, 2) 20% with first submittal, 3) 20% at release to production and 4) 50% net 30 days after shipment, paid from Seller's invoices. These terms apply to partial and complete shipments. Buyer agrees to make full payment under these terms without setoff. Monies held beyond these terms may be subject to interest at the maximum legal rate and may result in lien proceedings or the termination of warranties and suspension of services. If, in Seller's judgment, Buyer's financial condition at the time the equipment is ready for shipment does not warrant the extension of credit to Buyer, Seller may require full payment, in cash or via letter of credit, prior to making shipment. If Seller does not receive full cash payment within fifteen (15) days after it notifies Buyer that such payment is required and that the equipment is ready for shipment, Seller may cancel the Order as to any unshipped item. In that event, Buyer will pay Seller the cancellation charges, damages and expenses, as described under CANCELLATION. Buyer will pay all costs and expenses, including reasonable attorney fees, incurred by Seller in collecting any amounts due, including interest, if any proceeding is initiated by or against Buyer under any Bankruptcy, insolvency, and/or collection activities. Quote terms maybe revoked for accounts in excess of established credit limits or accounts with past-due balances.

**TAXES:** Seller's quoted prices do not include any present and future sales, use, occupation, license, excise, and other taxes, permits, tariffs, duties, or fees with respect to the sale, delivery or use of the equipment. Any applicable taxes or fees will be charged at rates in effect at time of shipment. Seller is required by law to collect all applicable sales and use taxes unless an appropriate exemption certificate is provided by the Buyer.

Seller's quoted prices include all taxes and permits applicable throughout the manufacturing process.

SHIPMENT: Except as otherwise mutually agreed, domestic shipment will be EXW, Seller's point of shipment, international shipments will be FCA Seller's point of shipment. Buyer will pay all transportation charges. Seller's quoted prices are based on shipment immediately upon readiness, with no delays or storage. Work which has been suspended or stored for the Buyer's convenience may be billed in place, and applicable storage charges shall accrue. If Buyer does not furnish exact shipping instructions, Seller will select, in its discretion, the means of shipment. Seller will not be liable for any loss resulting from such selection. The time of delivery is an estimate only, and Seller may change such time if Seller does not receive the information and approvals necessary to proceed with the manufacture of the equipment. Buyer agrees to inspect all deliveries immediately. Any claim for shortages or damage must be made in writing within twenty-four (24) hours after Buyer receives a shipment, and if not made, shall be deemed waived. Any other claim by Buyer, other than claims under the WARRANTY stated below, shall be made within fifteen (15) days after Buyer receives shipment, and if not made shall be deemed waived. Seller is not responsible for loss or damage in transit after having received an "In Good Order" receipt from the carrier. Buyer will make all claims for loss or damage in transit against the carrier.

SHIPMENT UPON READINESS: Seller's quoted prices are based on shipment immediately upon readiness, with no delays or storage. Work that has been suspended or stored for the Buyer's convenience shall be billed in place, and applicable storage charges shall accrue. Promise date, shipment date or completion of manufacture date of the equipment may be changed only with Seller's written consent. If shipment is delayed at Buyer's request, Buyer will make any payments due under the Order as if the equipment has been shipped on the date when it was ready for shipment. If completion of manufacture is delayed at Buyer's request, Seller may require payment according to percentage of completion. Buyer shall have the risk of loss with respect to equipment held for Buyer, and Seller may charge Buyer for storage.

INSURANCE: Buyer shall bear all risk of and responsibility for damage or loss to the equipment after Seller delivers the equipment to the carrier at its point of shipment. Buyer agrees to provide and maintain adequate insurance for the equipment supplied under the Order to fully protect Seller's interest during the time between delivery and final payment. Loss or damage by fire or other causes during such period shall not relieve Buyer from its obligations under the Order. Upon request, Seller will provide Buyer with its standard ACORD Certificate of Insurance. Seller cannot name others as additional insureds.

TITLE AND LIEN RIGHTS: If Buyer defaults in its obligations under the Order before the price (including any notes given therefore) of the equipment has been fully paid in cash, Seller may take any and all actions permitted by law to protect its interests including, where permissible, repossession of such equipment. Seller agrees to indemnify Buyer from liens filed by Seller's workforce or subcomponent vendors. Seller's statements of conditional, partial or complete lien waivers, consistent with payments received, will be furnished on request. The furnishing of such waivers shall not be a condition precedent to payment. Buyer agrees to cooperate fully with Seller in the filing of any financial statements or other documents necessary to perfect such interests and liens.

PATENT INFRINGEMENT: Seller will defend Buyer and the user of the equipment to the extent of any rightful claim that any equipment and parts of Seller's manufacture furnished under the Order infringe upon any published United States patent, and Seller will pay all damages and costs awarded by a court of competent jurisdiction with respect to such claim. The Buyer or user must promptly notify Seller of any such claim and cooperate fully with Seller in the defense of such claim, or Seller will have no duty under this paragraph. Buyer will defend and indemnify Seller against patent infringement claims relating to equipment and parts that are not manufactured by Seller to the same extent as Seller agrees to defend and indemnify Buyer with respect to patent infringement claims relating to equipment and parts of Seller's manufacture.

DESIGN RIGHTS: Seller sells and transfers ownership of the agreed equipment and services only; not the design rights, development data, patents, tooling, patterns, methods or copyrights. All such rights in data are expressly reserved. In lieu of such rights, Seller will provide use of such form, fit and function information as is necessary for the Buyer's approval, installation, fit-up and operation of the equipment.

WARRANTY: Seller warrants equipment (and its component parts) of its own manufacture against defects in materials and workmanship under normal use and service for one (1) year from the date of installation or start-up, or for eighteen (18) months after the date of shipment, whichever occurs first. Seller does not warrant accessories or components that are not manufactured by Seller; however, to the extent possible, Seller will assign to Buyer its rights under the original manufacturer's warranty, without recourse to Seller. Buyer must give Seller notice in writing of any alleged defect covered by this warranty (together with all identifying details, including the serial number, the type of equipment, and the date of purchase) within thirty (30) days of the discovery of such defect during the warranty period. No claim made more than 30 days after the expiration of the warranty period shall be valid. Guarantees of performance and warranties are based on the use of original equipment manufacturer (OEM) replacement parts. Seller assumes no responsibility or liability if alterations, non-

authorized design modifications and/or non-OEM replacement parts are incorporated. If requested by Seller, any equipment (or its component parts) must be promptly returned to Seller prior to any attempted repair, or sent to an authorized service station designated by Seller, and Buyer shall prepay all shipping expenses. Seller shall not be liable for any loss or damage to goods in transit, nor will any warranty claim be valid unless the returned goods are received intact and undamaged as a result of shipment. Repaired or replaced material returned to customer will be shipped EXW (Domestic Shipments) or FCA (International Shipments), Seller's factory. Seller will not give Buyer credit for parts or equipment returned to Seller and will not accept delivery of any such parts or equipment unless Buyer has obtained Seller's approval in writing.

The warranty extends to repaired or replaced parts of Seller's manufacture for ninety (90) days or for the remainder of the original warranty period applicable to the equipment or parts being repaired or replaced, whichever is greater. This warranty applies to the repaired or replaced part and is not extended to the product or any other component of the product being repaired.

Repair parts of its own manufacture sold after the original warranty period are warranted for a period of one (1) year from shipment against defects in materials and workmanship under normal use and service. This warranty applies to the replacement part only and is not extended to the product or any other component of the product being repaired. Seller may substitute new equipment or improve part(s) of any equipment judged defective without further liability. All repairs or services performed by Seller, which are not covered by this warranty, will be charged in accordance with Seller's standard prices then in effect.

THIS WARRANTY IS THE SOLE WARRANTY OF SELLER AND SELLER HEREBY EXPRESSLY DISCLAIMS AND BUYER WAIVES ALL OTHER WARRANTIES EXPRESSED, IMPLIED IN LAW OR IMPLIED IN FACT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's sole obligation under this warranty shall be, at its option, to repair or replace any equipment (or its component parts) which has a defect covered by this warranty, or to refund the purchase price of such equipment or part. Under the terms of this warranty, Seller shall not be liable for (a) consequential, incidental, collateral, special or liquidated losses or damages; (b) equipment conditions caused by normal wear and tear, abnormal conditions of use, accident, neglect, or misuse of said equipment; (c) the expense of, and loss or damage caused by, repairs or alterations made by anyone other than the Seller; (d) damage caused by abrasive materials, chemicals, scale deposits, corrosion, lightning, improper voltage, mishandling, or other similar conditions; (e) any loss, damage, or expense relating to or resulting from installation, removal or reinstallation of equipment; (f) any labor costs or

charges incurred in repairing or replacing defective equipment or parts, including the cost of reinstalling parts that are repaired or replaced by Seller; (g) any expense of shipment of equipment or repaired or replacement parts; or (h) any other loss, damage or expense of any nature.

The above warranty shall not apply to any equipment which may be separately covered by any alternate or special warranties.

LIABILITY LIMITATIONS: Under no circumstances shall the Seller have any liability under the Order or otherwise for liquidated damages or for collateral, consequential, incidental, punitive or special damages or for loss of profits, or for actual losses or for loss of production or progress of construction, regardless of the cause of such damages or losses. In any event, Seller's aggregate total liability under the Order or otherwise shall not exceed the contract price.

ACTS OF GOD: Seller shall in no event be liable for delays in delivery of the equipment or other failures to perform caused by fires, acts of God, strikes, labor difficulties, pandemics, acts of governmental or military authorities, delays in transportation or procuring materials, or causes of any kind beyond Seller's control.