



Terms and Conditions of Sale

- 1. General.** This document constitutes an offer or counteroffer by LIFT ("Seller") to sell certain goods and/or services as set forth in Seller's quotation or the applicable supply agreement (the "Products") to buyer ("Buyer"), subject to and in accordance with these terms and conditions (the "Terms and Conditions") and any attachments to this document. This document is not an acceptance of any offer or counteroffer made or purchase order submitted by Buyer. These Terms and Conditions and any contract arising out of or related to these Terms and Conditions including any project proposal, statement of work, service, development or supply agreement agreed to by the parties (each an "Agreement"), collectively with these Terms and Conditions, the "Contract") are each expressly conditioned upon Buyer's assent to all of the Terms and Conditions. Seller's acceptance of any order is subject to Buyer's assent to all of the Terms and Conditions set forth herein.
- 2. Acceptance.** Buyer acknowledges agreement with these Terms and Conditions by placement of an order to purchase Products from Seller or its acceptance of all or any part of the Products. Seller objects to any additional or different terms or conditions contained in any request for quotation, request for proposal, purchase order or other document or communication previously or hereafter provided by Buyer to Seller. If a purchase order or other correspondence contains terms or conditions contrary to the terms and conditions contained in Seller's acknowledgement, Seller's acceptance of any order shall not be construed as assent to any additional terms and conditions, nor will that constitute a waiver by Seller of any of the Terms and Conditions nor an acceptance of any such additional provisions. No such additional or different terms or conditions will be of any force or effect, unless specifically agreed to by an executive officer of Seller in writing. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes any prior discussions, negotiations, agreements and understandings. Modifications to the Contract can be made only by a writing signed by an authorized representative of each party.
- 3. Compliance with Laws.** Seller warrants to Buyer that the goods and services shall be provided, manufactured, shipped, stored, and otherwise handled in strict compliance with all applicable laws, codes, ordinances and regulations.
- 4. Title.** Title conveyed to Buyer by Seller shall be good and merchantable and its transfer rightful. The goods and services shall be delivered free and clear of any lien, security interest, claim or encumbrance whatsoever.
- 5. Price.** The price for goods and services ordered hereby shall be the greater of: (i) the price stated in Seller's quotation or (ii) the list price charged by Seller at the time of shipment of the goods or provision of services. Except as otherwise stated Seller's quotation, price is exclusive of applicable taxes, freight, all packaging and handling, transportation, and insurance. Seller reserves the right to adjust prices prior to shipment to account for any changes in Seller's cost to perform its obligations under the Contract.
- 6. Packaging and Delivery.** Unless otherwise agreed in writing, Seller will package Products in accordance with its standard procedures. Products will be provided Ex Works at Seller's facility.
- 7. Invoices.** Seller shall issue a separate invoice for each separate shipment, milestone, or as otherwise agreed by the parties. Invoices shall be paid within 30 days of receipt of goods or services and a correct invoice. If, in the judgment of Seller, the financial condition of Buyer at any time prior to shipment does not justify the extension of credit, then Seller may stop any pending or future work and/or shipments until past due amounts are paid in full, and require payment in advance or otherwise modify the payment terms upon notice to Buyer. If a dispute arises between the parties concerning Buyer's alleged right to damages or other payments from Seller or its affiliates, the parties shall negotiate in good faith to resolve such dispute. Buyer acknowledges and agrees that payments owed to Seller for Products supplied under this Contract are not subject to any setoff or recoupment by Buyer unless and until Seller agrees in writing to such setoff or recoupment, and that Buyer shall not exercise its right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim.
- 8. Warranties.** Seller warrants that: (i) the Products will conform to the specifications and requirements agreed to in writing by Seller; and (ii) any services provided under this Contract shall be performed in competent, workmanlike manner consistent with industry practice. Seller also warrants that the goods or services to be delivered hereunder were produced in compliance with all applicable laws and regulations. Seller shall maintain, solely at Seller's cost and expense, all licenses, permits, approvals, and the like necessary to conduct its business and perform its obligations under this Contract.
- 9. Changes in Products.** Buyer may request in writing changes in the scope of work, specifications and shipping instructions of Products. As promptly as practicable after receipt of such request, Seller shall advise Buyer whether or not such changes are feasible, the timing for implementation if feasible, and what amendments to the Contract, if any, may be necessitated by such changes, including, without limitation, amendment of price, specifications and shipment schedule. If such proposed amendments to the Contract are accepted in writing by Buyer, Seller shall make the requested changes with respect to such Products as may be affected thereby. Seller may at any time make such changes in the Products as shall constitute an improvement of the Product or production efficiency in the judgment of Seller. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.
- 10. Limitation of Remedies.** Buyer agrees that its sole and exclusive remedy against Seller shall be limited to either repair or replacement of the Products or a refund of the purchase price, at Seller's option. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing to repair or replace the defective Products or tender a refund following a final determination that the Product does not conform to the requirements of the Contract.
- 11. Limitation of Liability.** THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE IN THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD-PARTY CLAIMS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES PROVISIONS SET FORTH IN THIS SECTION SURVIVE BETWEEN BUYER AND SELLER EVEN IF THE EXCLUSIVE REMEDY SET FORTH ABOVE IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE OR OTHERWISE BE DEEMED UNENFORCEABLE.
- 12. Assignment, Successors, Relationship.** Buyer shall not assign this Contract or any rights, nor delegate any duties to any third party without written approval from Seller. Any attempt to do so will be void. This Contract shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Each party is an independent contractor of the other party. This Contract shall not confer any rights or remedies upon any third party, other than the parties to this Contract and their respective permitted successors and assigns.
- 13. Confidential Information.** Seller's confidential and proprietary information includes, without limitation, its business plans, business strategies, marketing plans, industry and competitive information, technology, product, and proposed product information, pricing and cost arrangements and agreements with Buyer, distributors, customers, suppliers, licensors and licensees, information relating to its customer base, information concerning employees and financial information. All such confidential and proprietary information shall (a) remain the property of Seller, (b) be carefully preserved and maintained by Buyer at its expense, and (c) be promptly returned to Seller or satisfactorily accounted for upon completion of this Contract or upon Seller's written demand. Buyer acknowledges that, unless covered by a separate nondisclosure or confidentiality agreement signed by Seller, all Buyer's information is provided to Seller on a non-confidential basis.
- 14. Intellectual Property.** Each party retains ownership of its respective background intellectual property. Seller shall be the sole owner of all intellectual property developed or created by Seller in the course of performing this Contract, including, but not limited to, any idea, invention, concept, design, prototype, product configuration, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, or the like, that are created in the course of performing any Contract and any associated intellectual property rights therein. Subject to Buyer's compliance with this Agreement, and Seller receiving full payment under the Agreement, Seller grants to Buyer an irrevocable, non-exclusive, non-transferable, royalty-free, worldwide license for deliverables provided under this contract. Deliverables, if any, provided by Seller are for Buyer's internal business operations. Buyer shall not reverse engineer, decompile or disassemble the Deliverables. Buyer expressly warrants that all designs, drawings, and specifications supplied by Buyer do not infringe any patent, trademark, copyright or other intellectual property of any third party.
- 15. Indemnity.** Buyer agrees to defend, indemnify and hold harmless Seller, its officers, directors, shareholders, affiliated entity, employees, agents, representatives, successors and assigns ("Indemnitees") from all losses, liabilities, damages, and/or expenses which may be sustained or claimed against an Indemnitee: (i) arising out of Buyer's use of the goods or services hereby ordered; (ii) arising from injury to Buyer's employees; (iii) arising from Buyer's use of automobiles, trucks, or heavy equipment; (iv) based on a claim that the goods or services supplied by Seller infringe a patent, copyright, or trademark or misappropriate a trade secret of a third party; or (v) any other breach by Buyer of any term of this Contract. Buyer shall, at the request of Indemnitee, defend any such claim, action or lawsuit. If the goods or services are subject to a final non-appealable judgment that they infringe the intellectual property rights of any third party, Seller shall do one of the following at Seller's option and expense: (i) procure for Buyer the right to continue using the goods or services; or (ii) replace or modify the goods or services so that they become non-infringing without losing functionality. The indemnity under this Section shall survive delivery and acceptance of goods and services and termination or expiration of this Contract and/or Buyer's written agreement with Seller, if applicable.
- 16. Force Majeure.** Seller shall not be liable for, and shall have no obligation to incur costs for expedited freight as a result of, delays or failures in performance of an order or default in delivery, if occasioned by fire, explosion, flood, war, accident, interruption of or delay in transportation, labor trouble, governmental regulation or other action, disease or pandemic, or any other circumstances beyond Seller's reasonable control, or if occasioned by partial or complete suspension of operations at any of Seller's offices or other business locations. At Seller's option, the total quantity of Product covered by this Contract may be reduced, or the specified delivery period may be extended by a time equal to that during which shipments or services shall be so omitted and such shipments shall then be made or services performed during the period of extension. Buyer expressly acknowledges that Buyer's obligations of payment and other performance cannot be excused under this provision and Buyer assumes the risk that circumstances beyond its control may affect Buyer's performance.
- 17. Waiver and Amendment.** The Contract may be amended only by written mutual agreement of the parties. Seller shall not be deemed to have waived any rights arising from this Contract unless expressly waived in a writing signed by Seller. A waiver of any term, condition or default of this Contract shall not be construed as a waiver of any other term, condition, or default, and shall not affect any rights or remedies subsequently arising under the same or similar clauses. Any failure of Seller to insist upon the performance of any term or condition of this Contract, or to exercise any right hereunder, shall not be construed as a waiver of the further performance of any such term or condition or the exercise in the future of any such right.
- 18. Entire Agreement.** The Contract, including these Terms and Conditions and all documents incorporated by reference in the Contract, represents the entire understanding between Buyer and Seller, shall supersede all prior understandings and agreements relating to the subject matter hereof. In the event of a conflict between the Terms and Conditions and the Agreement, the Agreement shall govern and control.
- 19. Governing Law and Jurisdiction.** This Contract shall be governed by and interpreted in accordance with the laws of the State of Michigan. All terms used in this Contract, which are defined in the Uniform Commercial Code as adopted in the State of Michigan, shall have the same meaning herein as such code. Buyer consents to the exclusive jurisdiction of the appropriate state court in Wayne County, Michigan or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division, for any legal or equitable action or proceeding arising out of, or in connection with, this Contract. Buyer specifically waives any and all objections to venue in such courts.
- 20. Seller's Remedies.** In the event Buyer breaches the terms or conditions of the Contract, Seller shall be entitled to, among other damages, an award of all costs and attorneys' fees incurred as a result of the breach including, but not limited to, all attorneys' fees incurred to collect any outstanding payments owed by Buyer.
- 21. Severability.** If any term(s) of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect.
- 22. Cancellation.** Once accepted by Seller, orders may not be cancelled by Buyer, in whole or part, without Seller's prior written consent, which consent Seller may withhold in its sole discretion. Any cancellation requested by Buyer and authorized by Seller shall be conditioned, among other things, on Buyer indemnifying Seller in full for all loss (including loss of profit), liabilities, costs, charges and expenses incurred by Seller as a result of such cancellation. Seller reserves the right to adjust pricing on any remaining portion of the order, where a partial cancellation is permitted by Seller. Seller reserves the right to cancel, in whole or in part, any order upon written notice to Buyer. Upon cancellation by Seller, Seller shall refund to Buyer any deposits or other amounts paid Seller prior to termination, less the actual costs incurred by Seller through the time of cancellation.
- 23. Additional Buyer Responsibilities**
 - (A) Buyer's Products.** Buyer acknowledges that any Services provided by or on behalf of Seller are only an aid in Buyer's development of Buyer's products and are not intended as a substitute for professional judgment or independent testing and verifying results or output. Buyer further acknowledges that Buyer is solely responsible for its products and for establishing adequate independent procedures for testing the accuracy of the Services and any output. Neither Seller nor its Affiliates or suppliers shall have any liability to Buyer or any third party in respect to the quality or conformity of any products produced or sold by Buyer.
 - (B) Software Driving Industrial Machinery.** To the extent that Services are to form part of a process that drives industrial machinery, Buyer shall be solely responsible for verification, validation, cross-checking and testing of the results generated from the Services to ensure that the results are correct, safe and suitable, prior to the results being used on any industrial machinery or in any manufacturing process. Seller does not guarantee the correct or expected behavior of any industrial machinery that uses output generated from the Services whether directly or indirectly. FAILURE TO CORRECT ERRORS MAY RESULT IN SERIOUS DAMAGE TO INDUSTRIAL MACHINERY OR INJURY OR DEATH OF PERSONNEL IN THE PROXIMITY OF THE MACHINE. Any and all such outcome is solely Buyer's responsibility.
 - (C) Buyer's Compliance With Laws.** Buyer shall strictly comply with all applicable laws, codes, ordinances and regulations concerning the performance of the Contract and use of the Products including, but not limited to any limitations on the export of the Products.
 - (D) Non-Solicitation.** Buyer shall not solicit for employment any employees or contractors of Seller without Seller's express written consent. This provision shall not be construed to prohibit Buyer from hiring any individual responding to a generally available job posting.