

LUTZE, INC. STANDARD TERMS AND CONDITIONS OF SALE

LUTZE, INC.

1. **General.** The terms and conditions contained herein, together with any additional or different terms contained in Lutze, Inc.'s proposal. If any, submitted to Purchaser (which Proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions) constitutes this entire agreement between the parties with respect to the order and supersedes all prior communications and agreements. Acceptance by Lutze, Inc. of Purchaser's order, or Purchaser's acceptance of Lutze, Inc.'s proposal is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions which may not be changed or waived except in writing and signed by both parties. Any additional, inconsistent or different terms and conditions contained in Purchaser's purchase order or other documents supplied by the Purchaser are hereby expressly rejected. Unless the context otherwise requires, term "Products" as used herein includes all products, parts and accessories furnished by Lutze, Inc..
2. **Delivery.** Unless otherwise stated in Lutze, Inc.'s quotation, all Products manufactured, assembled or warehoused in the continental United States is delivered Ex Works. Where the scheduled delivery of Products is delayed by Purchaser or by reason of any of the contingencies referred to in Section 6, Lutze, Inc. may deliver such shipment by moving it to a storage lot and account of and at the risk of Purchaser. Shipping dates are based on prompt receipt of all necessary information from Purchaser. Lutze, Inc. reserves the right to deliver in installments.
3. **Risk of Loss.** Notwithstanding any agreement with respect to delivery terms of payment or delivery charges, risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment.
4. **Payment.**
 - A. Unless specified to the contrary in writing by Lutze, Inc., payment terms are net 30 days from date of invoice.
 - B. If, in the judgment of Lutze, Inc. the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, then Lutze, Inc. may require payment in advance or cancel any outstanding order, whereupon Lutze, Inc. shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall become due on the date Lutze, Inc. is prepared to make delivery. Delays in delivery or non-conformities in any installments shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
 - C. If Payments are not made when due, Purchaser shall pay attorneys' fees and court costs incurred by Lutze, Inc. of overdue payments.
5. **Force.** Lutze, Inc. shall not be liable for loss, damage, detention or delay, nor be deemed to be in default from causes beyond its reasonable control or from fire, strike, labor difficulties, act or omission of any governmental authority or of Purchaser, compliance with governmental regulations, insurrection or riot, embargo delays or shortages in transportation or inability to obtain necessary labor, materials or manufacturing facilities from usual sources or from defects or delays in the performance of the suppliers or subcontractors due to any of the foregoing causes. In the event of delay due to any such cause, the date of delivery and the contract price will be adjusted as may be reasonably necessary to compensate Lutze, Inc. for such delay.

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6. **Products Warranty.** Lutze, Inc. warrants, for a period of one (1) year from the date of original delivery, it products to be free from defects in material and workmanship. Lutze, Inc.'s obligation under this warranty is limited to repair or replacement at its factory of any part or parts of said products which shall be returned to Lutze, Inc. with transportation charges prepaid and which Lutze, Inc.'s examination shall disclose to its satisfaction to have been defective. This is Lutze, Inc.'s sole warranty. LUTZE, INC. MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE AFORESTATED OBLIGATION ARE HEREBY DISCLAIMED BY LUTZE, INC. AND EXCLUDED FROM THIS AGREEMENT. Lutze, Inc. neither assumes or authorizes any persons to assume for it any other obligation in connection with the sale of Lutze, Inc.'s products. This warranty shall not apply to any product or component thereof which has been repaired or altered outside of Lutze, Inc.'s factory in any manner, so as, in Lutze, Inc.'s judgement to affect its serviceability or which has been subjected to misuse, negligence or accident, or to products made by Lutze, Inc. which have been operated in a manner contrary to Lutze, Inc.'s printed instructions. Under no circumstances shall Lutze, Inc. be liable for loss, damage, cost of repair or consequential damages of any kind in connection with the sale, use or repair of any product purchased from Lutze, Inc.
7. **Limitation of Liability.** IN NO EVENT SHALL LUTZE, INC., ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, ACCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, including, but not limited to loss of profits or revenue, loss of or use of the Products or any associated Products, cost of capital, cost of substitute Products, facilities or service, downtime costs, delays or claims of customers of the Purchaser or other third parties for such or other damages. Lutze, Inc.'s liability on any claim whether in contract, warranty, negligence, tort, strict liability, or otherwise for any loss or damage arising out of, connection with, or resulting from this contract or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any Products covered by or furnished under this contract, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed the purchase price allowable to the Products or part thereof or service which gives rise to the claim. All causes of action against Lutze, Inc. arising out of or relating to this contract or the performance or breach hereof shall expire unless brought within one (1) year of the time of accrual thereof. In no event, regardless of cause, shall Lutze, Inc. assume responsibility for or be liable for penalties or penalty causes or any description or for indemnification of customer or others for loss, damages or expenses each arising out of or related to the goods or services of this order.
8. **Taxes.** The contract price does not include any Federal, State or Local property, license, privilege, sales, service, use, excise, value added, gross receipts, or other like taxes which may now or hereafter be applicable in, measured by or imposed upon or with respect to this transaction, the property, its purchase, sale, replacement, value or use, or any service performed in connection therewith. Purchaser agrees to pay or reimburse Lutze, Inc., its subcontractors or suppliers any such taxes which Lutze, Inc., its subcontractors or suppliers are required to pay or collect or which are required to be withheld.
9. **Laws and Regulations: Customs Duties.**
- A. Lutze, Inc. does not assume any responsibility for compliance with federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Products is the sole responsibility of the Purchaser. All laws and regulations expressly incorporated herein shall be those in effect as of the date hereof. In the event of any subsequent revisions or changes therein, Lutze, Inc. assumes no responsibility for compliance therewith. If Purchaser declares a modification as a result of any such change or revision, it shall be treated as a change order. Nothing contained herein shall be construed as

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imposing responsibility or liability upon Lutze, Inc. for the obtaining of permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Products.

- B. Lutze, Inc.'s prices herein are based on customs duties, the rate of exchange of the dollar, and other importation or exportation fees and the rates thereof in effect on the date hereof. Any changes in such duties, taxes or rates, shall be the basis for a price adjustment in a change order.
10. **Export Control.** Purchaser agrees that in accordance with Part 770 of the Export Administration Regulations published by the U.S. Department of Commerce, Office of Export Administration, that the Products connected with this order or technical data connected with this order is not intended to be shipped, directly or indirectly, to any of the countries prohibited by the Export Administration Regulations.
11. **Information Furnished to and by Purchaser.** Any drawings or other information submitted to the Purchaser shall remain the exclusive property of Lutze, Inc.. Purchaser shall not, without Lutze, Inc.'s prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Products and not for any other purposes, including the duplication thereof in whole or part.
12. **Patent Indemnity.**
- A. Lutze, Inc. shall defend at its own expense any actions brought against Purchaser alleging that the Products furnished hereunder by Lutze, Inc. or the use of said Products to practice any process supplied hereunder by Lutze, Inc. directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in said actions. Lutze, Inc. shall have the right to settle or otherwise terminate said action on behalf of Purchaser.
- B. Lutze, Inc. shall have no obligations hereunder and this Paragraph 12 shall not apply: (1) to any other Products or processes, including Products and processes supplied hereunder by Lutze, Inc. which have been modified or combined with other Products or processes; (2) to any products or articles manufactured by any Products or processes; (3) to any patent issued after the date hereof; and (4) in the event any of said actions are settled or otherwise terminated without the prior written consent of Lutze, Inc..
- C. If, in any action defended hereunder, the Products is held to constitute infringement, or the practice of any process using the Products is finally enjoined, Lutze, Inc. shall, at its option and its own expense, either procure for Purchaser the right to continue using said Products, or modify or replace it with non-infringing Products, or with Purchaser's assistance, modify the process so that it becomes non-infringing; or remove it and refund the purchase price allocable to the infringing Products.
- THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF LUTZE, INC. PRODUCTS MANUFACTURED WITH RESPECT TO PATENT INFRINGEMENT.
- D. To the extent that said Products or any part thereof is modified by Purchaser, or combined by Purchaser with Products or processes not furnished hereunder, except to the extent that Lutze, Inc. is a contributory infringer, or said Products or any part thereof is used by Purchaser to perform a process not furnished hereunder by Lutze, Inc. or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against Lutze, Inc., Purchaser agrees to defend and indemnify Lutze, Inc. in the manner and to the extent Lutze, Inc. indemnifies Purchaser in this "Patent Indemnity" paragraph insofar as the terms hereof are appropriate.
13. **Inventions.** Unless otherwise agreed in writing by Lutze, Inc. and Purchaser, all rights, title and interest in any invention, development, improvements or modifications of or for Products and services furnished to Purchaser shall remain with Lutze, Inc..

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14. **Assignment.** Any assignment of this contract or any rights or obligations hereunder without prior written consent of Lutze, Inc. shall be void.
15. **Termination.** No termination by customer for default shall be effective unless and until Lutze, Inc. shall have failed to correct such default within 45 days after receipt by Lutze, Inc. of the written notice specifying such default.
16. **Partial Invalidity.** If any provision herein or portion thereof shall for any reason be held invalid or unenforceable, such invalidity or un-enforceability shall not affect any other provision or portion thereof, but these Conditions of Sale shall be construed as if such invalid or unenforceable provision or portion thereof had never been contained herein.
17. **Choice of Law.** This agreement shall be governed by laws of the state of North Carolina, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding, North Carolina law with respect to conflicts of law. Purchaser agrees that all causes of action under this Agreement shall be brought in the State Courts of the County of Mecklenburg, North Carolina, or the U.S. District Court which serves North Carolina. Purchaser agrees that Charlotte, North Carolina is both the place of making and the place of performance of this Agreement.
18. **Blanket Orders.** Lutze, Inc. may accept customer blanket orders for Lutze, Inc. Products under the "standard Terms and Conditions of Sale" as outlined in this document, with the additional conditions as follows.
 - (a) All blanket purchase orders will contain, a purchase order number, unit pricing, total quantity, schedule quantity and release delivery dates.
 - (b) Lutze, Inc. blanket orders will have a maximum duration of (12) months. All blanket orders will be shipped complete within one year (12 months) period from the date of the first shipment on the order.
 - (c) Any extensions to this shipping policy must be approved in writing by Lutze, Inc. Management five working days prior to the next scheduled ship date on the blanket order.
 - (d) Any pricing considerations extended by Lutze, Inc. based on the quantities involved in the blanket order will be honored except under the following conditions.

If the blanket order is canceled prior to completion, a cancellation charge will be assessed that may include order cancellation charges, and retraction of the initial pricing considerations that were extended and were based solely on the blanket order quantity.

If the blanket order is extended by Lutze, Inc. for a period exceeding the original twelve months order period, Lutze, Inc. will have the right to pass on any price increases they have incurred on the non shipped portion of a blanket order that has been extended beyond its original term length.
 - (e) Blanket orders may be canceled by Lutze, Inc. with 30 days written notice if Lutze, Inc. discontinues such products. Lutze, Inc. will provide equal or superior products to fulfill the blanket order agreement.