

# LB Pipe & Coupling Products, LLC

## Standard Terms and Conditions of Sales

- 1. TERMS & CONDITIONS OF SALE.** The products subject to a sale by LB Pipe & Coupling Products, LLC ("LB") to any Customer (the "Products,"), and any services sold and/or provided by LB to Customer (the "Services"), All sales of Products or Services by LB are governed by and subject to (1) LB's quotation, (2) Sales Order Confirmation and (3) any separate written agreement and/or contract signed by an authorized representative of LB. With regard to (3), such separate written agreement shall supersede any terms that may conflict with those contained in (1) or (2) shall have force and effect only provided they identify with specificity and clarity all terms that specifically supersede those contained in LB's quotation and Sales Order Confirmation. Any irreconcilable conflict, vagueness or confusion between these terms and conditions and those terms and conditions in LB's quotation and/or Sales Order Confirmation shall be resolved in favor of the Sales Order Confirmation, and then the Quotation. LB's acceptance of Customer's purchase order based on LB's Sales Order Confirmation, or commencement of any performance or activity subsequent to the issuance of LB's Sales Order Confirmation, shall not in any way be construed or shall constitute acceptance or acknowledgement of any of Customer's terms and conditions in consistent with the Sales Order Confirmation. **ANY TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER OR CUSTOMER'S STANDARD TERMS AND CONDITIONS OF PURCHASE THAT ARE INCONSISTENT OR IN CONFLICT THOSE CONTAINED IN LB'S SALES ORDER ACCEPTANCE, SHALL BE DEEMED IMMATERIAL AND HELD FOR NAUGHT UNLESS OTHERWISE ACCEPTED BY LB IN WRITING AND SIGNED BY AN AUTHORIZED LB REPRESENTATIVE.**
- 2. CUSTOMER'S ASSENT TO THESE TERMS AND CONDITIONS.** Customer's assent to these terms and conditions shall be conclusively presumed (1) upon Customer's receipt of LB's Sales Order Acceptance and failing to provide any written objection to LB within three (3) days following said receipt, (2) instructing LB to begin work or ship any of the Products or Service Items after receipt of LB's Sales Order Confirmation, (3) acceptance of or payment for all or any part of the Products or Services, or (4) taking any other action evidencing Customer's acceptance of the benefits of the agreement between the parties. LB may commence performance in reliance upon Customers receipt of the Sales Order Confirmation and receiving no objection from Customer within three (3) days of receipt of same by Customer, and LB will not be obligated to fulfill any order or request for the Products or Services by Customer prior to LB preparing and forwarding the Sales Order Confirmation. **CUSTOMER AND LB AGREE THESE TERMS AND CONDITIONS ARE PRESENTED AND ACCEPTED IN GOOD FAITH BY BOTH PARTIES, HAVE BEEN REVIEWED, DISCUSSED AND OTHERWISE CLARIFIED TO THE SATISFACTION OF CUSTOMER AND LB, AND ARE DEEMED CONTROLLING AND FINAL FOR ANY AND ALL TRANSACTIONS.**
- 3. ENTIRE AGREEMENT.** Except as otherwise agreed to in writing by LB in writing, the terms and conditions set forth herein, together with LB's quotation, Sales Order Confirmation, or a separate written and signed agreement, as applicable, shall constitute the full, complete and final agreement between LB and Customer superseding any and all prior oral or written communications of any type or kind.
- 4. MODIFICATION.** No modification of this Agreement or waiver of any of its terms will be binding on LB unless clearly expressed in writing and signed by an authorized representative of LB. This paragraph excludes, among other things, purported modifications and waivers by oral agreement, course of performance, and usage of trade. LB and Customer expressly agree that LB may modify these terms and conditions from time to time, and such modifications shall be binding upon Customer.

5. **DELIVERY.** Delivery dates are approximate. The failure to meet an indicated delivery date will not constitute a breach of this Agreement. In no event shall LB be liable for any claims for labor or for any special, indirect, incidental, or consequential damages including, but not limited to, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), lost sales, or any other damages resulting from delay in delivery. If LB's production or delivery is delayed, LB may allocate production and delivery among its customers in a manner it deems reasonable. LB reserves the right to change or otherwise any product source listed in this Agreement. **ACCEPTANCE OF THE PRODUCTS OR SERVICE ITEMS BY CUSTOMER UPON DELIVERY SHALL CONSTITUTE A WAIVER BY CUSTOMER OF ANY CLAIM FOR DAMAGES ON ACCOUNT OF DELAY IN DELIVERY OR PERFORMANCE.**
6. **SHIPMENT AND RISK OF LOSS.** All deliveries are as per the Sales Order Acceptance. Unless otherwise agreed in writing, LB may, in its sole discretion, select the shipping method, the carrier and the applicable freight charges. If Customer desires to pick up the Products or Service Items at LB's facility, Customer must contact LB to arrange a mutually convenient time for pick up. Customer shall indemnify and hold harmless LB from and against any claims, damages or liabilities suffered by LB resulting from any acts or omissions of carrier. Title to the Products and risk of loss to the Products and Service Items shall pass to the Customer at the point of shipment from LB's facility, whether freight prepaid or freight collect to destination, regardless of which party selects the carrier and arranges the freight charges or particulars of shipment. Risk of loss for damage or delay in transit shall be borne by Customer. Customer shall file and pursue any claims directly with the carrier related to loss, damage or delay in transit, and Customer shall not assert such claims against LB or deduct from amounts owing to LB.
7. **RELEASE OF GOODS FOR SHIPMENT.** Customer must release the Products or Service Items for shipment within twenty (20) days after LB notifies Customer that those items are ready for shipment. After such 20-day period, Customer will pay a holding charge determined in good faith by LB and/or LB may ship the Products or Service Items to Customer without further notification. Customer agrees to accept delivery of all shipped Products or Service Items and to pay the applicable price. LB has the right to sell or scrap any Products without notice to Customer if Customer has not released the Products for shipment within forty-five (45) days after LB notifies Customer that the Products are ready for shipment, and Customer shall be responsible for any difference between the agreed purchase price and the sale price or the scrap allowance. With respect to any order of a single item of a truckload or less, Customer must release the entire order for shipment at one time or pay the additional LTL charges required by LB.
8. **DELAYS AND CANCELLATIONS BY CUSTOMER.** "Delay/Cancellation Costs" include all labor, materials, overhead, general and administrative costs, restocking charges, surcharges levied on material by outside suppliers, sub-vendor cancellation charges, excess inventory charges, value of storage space, inventory tax charges, banking and finance charges, scrapping and disposal fees, and other harm, costs and charges incurred directly or indirectly by LB in connection with a delay or cancellation of an order for the Products or Services. The "Firm Order Period" is determined according to, as applicable, the quotation, order acknowledgement or separate written and signed agreement. If there is no quotation, order acknowledgement or separate written and signed agreement, or if none of those items specifies the Firm Order Period, the Firm Order Period will be determined according to LB's then current cancellation and orderbook management policy. If a Firm Order Period cannot be determined in any of the preceding methods, the entire order will be considered to be within the Firm Order Period. Customer is not entitled, without LB's prior written consent, which may be withheld or conditioned in LB's sole discretion, to cancel or delay a delivery of the Products or Services for all or any part of an order within the Firm Order Period. LB may treat as a cancellation any proposed delay greater than 60 days. If LB consents to the cancellation or delay, Customer shall pay a cancellation or delay charge in an amount determined in LB's sole discretion to reflect all applicable Delay/Cancellation Costs, including, at a minimum, a storage charge, inventory carrying costs, financing costs associated with the finished Products or Service Items, work in process and raw materials, and costs of inactive labor, from the original request date until the time of delivery or performance. In the case of cancellation, the charge may also include, at LB's sole discretion, a reasonable and

equitable profit for LB. If LB's work on an order requires material from Customer or a third party selected by Customer, and LB does not timely receive material that strictly conforms to LB's requirements, including chemical composition, physical properties and dimensions, LB may delay performance of or cancel the order without liability, and Customer shall compensate LB for all Delay/Cancellation Costs, including for costs incurred and time expended working on non-conforming material.

9. **SPECIFICATIONS.** The material specifications, quality requirements, or any other aspect of the Products and the Service Items or their manufacture (the "Product Specifications") is controlled by LB's quotation, Sales Order Acceptance, or separate written and signed agreement. If any of the Product Specifications in LB's quotation, Sales Order Acceptance, or separate written and signed agreement differ materially from the Product Specifications requested by Customer, LB may, in its sole discretion, require that Customer provide a written acknowledgment and acceptance of the Product Specifications in LB's quotation, Sales Order Acceptance, or separate written and signed agreement prior to the manufacture or delivery of the Products or Service Items. Customer is not entitled, without LB's prior written consent, which may be granted or withheld in LB's sole discretion, to make any changes to Product Specifications in LB's quotation, Sales Order Acceptance (3 days following receipt of same), or separate written and signed agreement. If LB consents to the change, LB may condition its consent on Customer's agreement to price adjustments and other compensating payments satisfactory to LB. In addition to all other remedies available to it under applicable law, LB may refuse to comply with any change to which LB has not given its prior written consent.
10. **GOVERNMENT CONTRACTS.** If Customer is purchasing the Products or Services for a government contract or sub-contract, Customer shall promptly notify LB of that fact and of any contractual terms from the government procurement laws and regulations that Customer is obligated to include in its contracts for such Products or Services. No government procurement provisions will be included in this Agreement unless agreed to in a writing signed by an authorized representative of LB.
11. **PURCHASE PRICE.** The purchase price of the Products or Services shall be as stated in LB's quotation, Sales Order Acceptance, or separate written agreement signed by an authorized representative of LB, as applicable. Unless agreed by LB in writing, the purchase price does not include shipment costs. If the Products or Service Items are shipped freight prepaid, the charge for freight shall be added to the invoice. Prices are based on and assume Customer's compliance with all of the terms and conditions of this Agreement, including a promise by Customer to purchase a particular mix of goods, a certain quantity of goods, or a certain percentage of Customer's requirements for the goods. LB may adjust prices, in its sole discretion, if the circumstances do not coincide with the forgoing assumptions. In addition, LB may at any time adjust prices based on changes to energy costs, raw material costs, labor costs and exchange rates.
12. **PAYMENT TERMS.** Payment terms are as set forth in the Quotation, Sales Order Acceptance, or separate written agreement signed by an authorized representative of LB with no discount allowed on transportation charges. Interest will accrue on invoices unpaid after the net due date at the maximum legal statutory interest rate.
13. **TAXES.** Prices do not include any taxes or other assessments. All taxes, duties, fees, assessments or other charges of any kind imposed by any federal, state, municipal or other governmental authority which LB is required to collect or pay with respect to the provision, production, sale or shipment of the Products or Services shall be the responsibility of Customer. Customer agrees to pay all such taxes and further agrees to reimburse LB for any such payments made by LB.
14. **PAYMENT DEFAULT.** If Customer fails to make payment in full or in part when due or refuses to pay any applicable price increases or surcharges, LB shall have the right to: (i) immediately suspend performance and cancel the unfinished portion of any outstanding orders, (ii) declare all unpaid amounts for the Products or Service Items delivered immediately due and payable, and

(iii) withhold further deliveries. If LB elects to proceed with an order after the suspension of performance, LB shall have an extension of time for performance as is necessitated by the suspension. LB shall have the right to enforce payment of the full purchase price, including any price increase or surcharge, for Products or Service Items already delivered or in process. Customer shall reimburse LB for all costs of collection, including reasonable attorney's fees, incurred as a result of Customer's failure to make payments when due.

15. **CUSTOMER'S FINANCIAL CONDITION.** All new customers must supply a current financial statement, five trade references, and completed credit questionnaire. LB shall have the right, by written notice, to suspend performance, terminate this Agreement, cancel any order, modify any payment terms, or require full or partial payment or adequate assurance of performance from Customer, without liability to LB, in the event of a material adverse change in the Customer's financial condition or if reasonable grounds for insecurity arise with respect to Customer's performance of this Agreement, evidence of which might include, among other things, (i) a default under any of Customer's financing agreements, (ii) Customer's inability to obtain financing, (iii) a reduction in Customer's credit rating by a recognized rating agency, (iv) Customer's insolvency, (v) the filing of a bankruptcy by or against Customer (whether voluntary or involuntary), (vi) the appointment of a receiver or trustee for Customer, (vii) the execution by Customer of an assignment for the benefit of creditors, (viii) the failure by Customer to make a payment to LB when due, or (viii) any other event which raises reasonable doubts as to Customer's creditworthiness. The modifications LB may make to payment terms include shortening the payment period, requiring advance payment, or requiring payment of cash on delivery. LB shall notify Customer in writing of any modifications to payment terms, which may be made retroactive to include amounts then accrued but unpaid. LB reserves the right to cancel Customer's credit at any time for any reason, without notice. The foregoing remedies are in addition to LB's other rights and remedies under this Agreement and under applicable law, including Section 2-609 of the Uniform Commercial Code.
16. **SETOFF.** LB shall have the right to credit toward the payment of any monies that may become due to Customer for any amounts which may now or hereafter be owed to LB or any of its subsidiaries or affiliates. Customer shall pay LB's invoices without discount, setoff or reduction for any reason, including asserted warranty claims or other claims of non-performance by LB.
17. **ACCORD AND SATISFACTION.** Checks or payments, whether full or partial, received from or for the account of Customer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by LB against the amount owing by Customer with full reservation of all LB's rights and without an accord and satisfaction of Customer's liability. Customer shall remain liable for any deficiencies and shortfalls.
18. **LIMITED WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN LB'S QUOTATION, SALES ORDER CONFIRMATION OR SEPARATE WRITTEN AND SIGNED AGREEMENT, LB MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. AT LB'S DISCRETION, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE CONFORMANCE OF ANY PRODUCTS OR SERVICE ITEMS FURNISHED BY LB UNDER THIS AGREEMENT SHALL BE LIMITED TO EITHER: (1) REPLACEMENT OF SUCH PRODUCTS OR SERVICE ITEMS AT THE POINT OF SHIPMENT FROM LB'S FACILITY, OR (2) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF SUCH PRODUCTS OR SERVICE ITEMS UPON AUTHORIZED RETURN THEREOF.** In the event LB has authorized Customer to scrap all or any portion of the Products or Service Items, the scrap allowance is to be credited toward any amounts that may be due LB. The employees and representatives of LB are not authorized to make any statement or representation as to the Products or Service Items inconsistent with this Agreement, and no such statements made will be binding upon LB or be grounds for any claim.
19. **NON-CONFORMING GOODS.** No claim for damages for non-conforming Products or Service Items will be allowed unless Customer provides LB with written notice of the claim within thirty

(30) of the date the Products or Service Items were delivered to Customer. To assert such a claim, Customer must (a) at LB's request, return to LB 100% or, if agreed by LB, a lesser but still statistically relevant percentage of the Products or Service Items claimed to be non-conforming, and (b) provide reasonable evidence to support the claim, including, if requested by LB, results of diagnostic tests, evaluations and investigations performed by Customer or Customer's customer. Products or Service Items for which damages are claimed shall not be returned, repaired, or discarded without LB's prior written consent. If requested by LB, the non-conforming Products or Service Items must be returned to LB at Customer's expense within ten (10) days of LB's request. No claims, rejections or returns for non-conforming Products or Service Items will be permitted unless Customer cooperates in full with LB's technical personnel to determine the cause of the non-conformance.

- 20. SHORTAGE OF GOODS OR DAMAGED GOODS.** Claims by Customer with respect to shortage of Products or Service Items invoiced, or for damaged Products or Service Items, must be made to LB in writing no later than thirty (30) from the date the Products or Service Items were delivered to Customer. All claims must be made only for substantial cause, must be in writing, and must define with specificity the reason(s) for such claim. **FAILURE TO NOTIFY LB OF ANY CLAIM WITHIN THE TIME PERIOD SPECIFIED BY THIS SECTION SHALL CONSTITUTE A WAIVER OF AND BAR TO ANY SUCH CLAIM. LB SHALL INCUR NO LIABILITY FOR SHORTAGE OR DAMAGE ALLEGED TO HAVE OCCURRED OR EXISTED AT OR PRIOR TO DELIVERY TO THE CARRIER UNLESS CUSTOMER SHALL HAVE ENTERED FULL DETAILS THEREOF ON CARRIER'S DELIVERY RECEIPT WHICH MUST BE SIGNED BY THE CARRIER'S AGENT. LB MUST BE GIVEN AN OPPORTUNITY TO INVESTIGATE THE CLAIM BEFORE CUSTOMER DISPOSES OF THE PRODUCTS OR SERVICE ITEMS. ANY DAMAGED PRODUCTS OR SERVICE ITEMS SHALL NOT BE RETURNED, REPAIRED OR DISCARDED WITHOUT LB'S WRITTEN PERMISSION.**
- 21. TECHNICAL ADVICE.** LB assumes no obligation or liability for any technical advice furnished to Customer, including without limitation technical advice with respect to the use of the Products or Service Items, all such technical advice being given and accepted at Customer's risk. LB will not be liable for any damages of any kind arising out of or relating to the use of or the inability to use the information provided, including but not limited to any special, indirect, incidental or consequential damages including, without limitation, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), or lost sales, whether foreseeable or not, and even if LB has been advised of the possibility of damages.
- 22. INTELLECTUAL PROPERTY.** Nothing in this Agreement is to be construed as a grant or assignment of any license or other right to Customer of any of LB's or its affiliates' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. All improvements and developments related to the Products or the efforts of LB and Customer will be owned exclusively by LB, and Customer shall reasonably cooperate with LB in confirming that result.
- 23. CONFIDENTIALITY.** Any pricing or other sensitive commercial information provided by LB to Customer is proprietary to LB and shall be held in confidence by Customer, shall only be used by Customer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without LB's prior written consent. Customer shall be liable for any loss to LB or commercial gain by others from unauthorized use of confidential information occasioned by Customer's failure to comply with this provision.
- 24. AUDIT.** Unless otherwise agree to in writing by an authorized representative of LB, Customer shall have no right to audit any books or records of LB and Customer shall have no right to enter into any facility owned or controlled by LB without the express written consent of an authorized representative of LB.
- 25. LIMITATION OF LIABILITY. LB'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES, AND UNDER NO CIRCUMSTANCES SHALL LB BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL**

**DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COSTS OF SHIPMENT, DOWNTIME, LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOST SALES, DAMAGE TO EQUIPMENT, OR CLAIMS OF CUSTOMER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES OR PENALTIES, WHETHER OR NOT CUSTOMER IS LEGALLY OBLIGATED TO PAY THEM. LB'S LIABILITY HEREUNDER SHALL BE LIMITED TO EITHER: (1) THE OBLIGATION TO REPAIR OR REPLACE, AT LB'S SOLE DISCRETION, ONLY THOSE PORTIONS OF THE PRODUCTS OR SERVICE ITEMS PROVEN TO HAVE FAILED TO MEET IN MATERIAL RESPECT THE SPECIFICATIONS ON THE LB'S QUOTATION, ORDER ACKNOWLEDGEMENT, OR SEPARATE WRITTEN AND SIGNED AGREEMENT AT THE TIME OF SHIPMENT FROM LB'S FACILITY, OR (2) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES. LB AND CUSTOMER EXPRESSLY AGREE TO THIS ALLOCATION OF RISK AND THE PRICE STATED FOR THE PRODUCTS OR SERVICES IS CONSIDERATION FOR THE LIMITATION ON LB'S LIABILITY. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXCLUSIVE REMEDY DESCRIBED IN THIS SECTION FAILS ITS ESSENTIAL PURPOSE.**

26. **INDEMNIFICATION.** Customer agrees to indemnify, defend and hold harmless LB, its directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including without limitation reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by LB arising out of (a) Customer's breach of its obligations hereunder, (b) Customer's negligence or misconduct, or (c) Customer's misuse or misapplication of the Products or Service Items or damage to the Products or Service Items caused by Customer or its employees, agents or customers.
27. **FORCE MAJEURE.** LB shall not be responsible for cancellation or delay in delivery or performance resulting, in whole or in part, from causes beyond its reasonable control, including, but not limited to: acts of God; acts of Customer; strikes or other labor disturbances regardless of whether or not LB is capable of settling such strike or disturbance; mill or facility conditions; temporary or permanent mill or facility closures; equipment failure; inability to obtain fuel, material, or parts; war; acts of terrorism; sabotage; riot; delays in transportation; repairs to equipment; natural disasters; epidemics; floods; fires; action of governmental authorities (valid or invalid); severe weather conditions; accidents; explosions; failure of or inability to obtain power, raw materials, suppliers, labor, equipment or transportation; a court or administrative injunction or order; or any other contingency the non-occurrence of which was a basic assumption on which this Agreement was made.
28. **GOVERNING LAW; FORUM SELECTION.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Customer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction to any court of competent jurisdiction, for both State and federal courts in the State of Texas, County of Montgomery, for any litigation or claim, in law or equity, which may arise out of or be related to this Agreement or the purchase or use of the Products or Services. Any action brought in any such court may not be transferred or removed to any other court. Customer waives any objection based upon forum non-conveniens and expressly consents and waives any and all objection to venue for any such action.
29. **STATUTE OF LIMITATIONS.** CUSTOMER AND LB AGREE THAT, UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR THE SALE OF THE PRODUCTS OR SERVICES MUST BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH THE PRODUCTS OR SERVICE ITEMS IN QUESTION WERE DELIVERED TO CUSTOMER OR THE DATE ON WHICH THE EVENT GIVING RISE TO THE ACTION OCCURRED, WHICHEVER IS EARLIER.
30. **DISPUTE RESOLUTION.** Customer and LB will attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement or the breach thereof. If a dispute should arise, CUSTOMER AND LB AGREE TO SUBMIT THE DISPUTE TO MEDIATION. CUSTOMER AND

LB FURTHER AGREE THAT THEIR PARTICIPATION IN MEDIATION IS A CONDITION PRECEDENT TO ANY PARTY PURSUING ANY OTHER AVAILABLE REMEDY IN RELATION TO THE DISPUTE. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. Customer and LB agree that the entire mediation procedure will be confidential. Customer or LB must give written notice of their desire to commence mediation, and a mediation session must take place within forty-five (45) days after the date such notice is given. The mediation shall be attended by representatives of each party with authority to resolve the dispute, and counsel for the parties shall not attend the mediation unless otherwise agreed to by the parties. Customer and LB will jointly appoint a mutually acceptable and neutral mediator. If Customer and LB are unable to agree upon the appointment of a mediator within seven (7) days after notice of desire to mediate is given, Customer or LB may apply to the American Arbitration Association for appointment of a mediator. The mediation shall be held in -----, Texas. Customer and LB agree that the expenses of mediation shall be borne equally by both parties. Customer and LB agree that arbitration will not be used to settle a dispute arising out of or relating to this Agreement or the breach thereof.

31. **NONWAIVER.** The failure of LB to enforce any of the provisions of this Agreement shall not be construed as a waiver of LB's right to enforce all other provisions. LB reserves the right to enforce these terms and conditions at any time, and none shall be deemed waived unless such waiver is in writing and signed by an authorized representative of LB. LB's rights and remedies set forth in this Agreement are in addition to all legal and equitable rights and remedies available to LB under applicable State and Federal Law.
32. **ASSIGNMENT OR DELEGATION.** Customer shall not assign or delegate any or all of its rights or obligations under this Agreement without the prior written consent of LB, and any attempt to do so will be ineffective and held for naught.
33. **NO THIRD PARTY RIGHTS.** This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person or legal entity any legal or equitable right, remedy or claim under or with respect to this Agreement.
34. **INDEPENDENT PARTIES.** LB and Customer are independent parties and nothing in this Agreement shall make either party an agent, partner, joint venturer, or legal representative of the other.
35. **HEADINGS.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
36. **SEVERABILITY.** If any provision or part of a provision of this agreement is declared invalid, illegal, or unenforceable under applicable law, the affected provision will be considered omitted or modified to conform to applicable law. The validity, legality, and enforceability of all other remaining provisions or parts of provisions will remain in full force and effect.
37. **INTERNATIONAL TRADE.** LB makes no representation with respect to the country of origin, qualification for duty preference or similar program, specific Harmonized Tariff Schedule Number, export jurisdiction, U.S. Munitions List category, Export Control Classification Number, or export authority of any good. LB retains all of its duty drawback rights, and any attempt by Customer to transfer any such rights will be void. Customer shall not, itself or by any freight forwarder, customs broker or other agent or third party under Customer's direction or control, designate LB as the U.S. Principal Party in Interest (as defined in the U.S. Foreign Trade Regulations, 15 CFR Part 30) or file the Electronic Export Information with U.S. Bureau of Census ("EEI"), unless otherwise agreed in writing by an authorized representative of LB. If Customer files an EEI without the prior written consent required by the preceding sentence, then: (i) the EEI will be considered to have been made without LB's authority or permission, and any false statements to the government will be considered to have been made by Customer or its agent, as applicable, (ii) any affected transaction will be considered to be a routed export transaction, such that

Customer or its agent will be considered the U.S. Principal Party in Interest and exporter of record (as defined by the Foreign Trade Regulations and the Export Administration Regulations) for those transactions, (iii) Customer shall assume all of the responsibilities of the exporter of record for any such transactions; and (iv) LB will have no responsibility as the exporter of record. Customer represents that it is not, and to the best of Customer's knowledge, its customers, its customers' end-users and its agents are not, subject to any U.S. or other government sanction or restriction that would prohibit the sale or export by LB of the Products or Services. Upon LB's request, Customer shall provide all end-user and end-use information of which it is aware or which it could obtain with commercially reasonable efforts. Customer shall comply strictly with all applicable U.S. export laws and regulations, and Customer shall assist LB in complying and documenting compliance with any applicable U.S. export laws, regulations and executive orders. Regardless of any statements on Customer's purchase order or other documents to the contrary, LB shall not be the importer of record (as that term is defined by U.S. law at 19 USC 1484, or equivalent provision of non-U.S. law) with respect to a transaction governed by this Agreement, unless otherwise agreed in writing by an authorized representative of LB.

38. **PROPERTY AND FACILITIES.** Customer is considered the owner of all specifically identified tooling, dies and similar items that Customer owns and places in LB's possession for the purpose of manufacturing the Products or providing the Services (the "Customer Tooling"). Customer is responsible for paying for any necessary replacements of and repairs to the Customer Tooling. LB assumes no obligation or liability with respect to the Customer Tooling or any other property of Customer to which LB is not taking title, including tangible personal property of Customer upon which LB will be performing Services (the "Customer Property"). LB is not obligated to segregate, label, protect, insure or take any other action with respect to managing and safeguarding the Customer Tooling and Customer Property. Customer accepts all risk of loss and damage to the Customer Tooling and Customer Property. LB is considered the owner of all tooling, dies and similar items used by LB in connection with the Products and Services other than the Customer Tooling ("LB Tooling"). Customer acquires no interest in the LB Tooling, notwithstanding any charges, amortizations or other costs included in the pricing or otherwise paid by Customer in relation to the LB Tooling. LB may use the Customer Tooling and the LB Tooling without restriction in any of its business operations, including in the manufacture of the Products, provision of the Services, and the manufacture of products and provision of services for other customers.
39. **TRACEABILITY.** If the Agreement obligates LB to provide traceability on Products or Service Items, LB's obligation with respect to the Products or Service Items returned to LB (a) is limited by the accuracy and completeness of the information provided by Customer with respect to the returned Products or Service Items, and (b) will terminate if the return was not authorized in advance by LB.