

# Leroy Somer North America

## TERMS AND CONDITIONS OF SALE

Leroy Somer North America, a division of Emerson Electric Co., a Missouri corporation, is herein referred to as the "Seller" and the customer or person or entity purchasing goods ("Goods") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale and license of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Buyer. Buyer's acceptance of the Goods will manifest Buyer's assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment of the Goods is received and accepted by Seller within such time period; provided, that in all cases the prices for Goods are subject to adjustment to those in effect at time of shipment at Seller's option. All prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller will not accept orders for Goods to be shipped on a consignment or guaranteed sale basis.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods sold to Buyer by Seller, which security interest shall continue until all such Goods are fully paid for in cash, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Risk of loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss for damage and responsibility shall pass from Seller to Buyer upon delivery to and accept by carrier at Seller's shipping point. All shipments are Ex Works, Seller's shipping point. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller warrants that the Goods manufactured by Seller will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment under normal use and regular service and maintenance for a period ending on the earlier of 12 months from the date the Goods are first put into service or 18 months from the date of shipment of the Goods by Seller, unless otherwise specified by Seller in writing. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. **THE WARRANTIES SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 7, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's exclusive remedy, repair, correct or replace Ex Works point of manufacture, or refund the purchase price for, that portion of the Goods found by Seller to be defective. Buyer shall give Seller the reasonable opportunity to perform any appropriate tests on Goods for which a warranty claim is made. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. All costs of dismantling, reinstallation and freight and the time and expense of Seller's personnel and representatives for site travel and diagnosis under these warranties shall be borne by Buyer unless accepted in writing by Seller. Seller shall have the right to require Buyer to deliver the Goods to Seller's designated service center, and Buyer shall pay all charges for inbound and outbound transportation. In addition, Buyer shall pay for any services (diagnostic or otherwise) other than the direct and actual costs of repair or replacement under the foregoing warranties. Parts repaired or replaced during the warranty period shall be covered by the foregoing warranties for the remainder of the warranty period that applied to the original parts. Repairs or replacements do not extend or otherwise change any warranty applicable to repaired Goods as a whole or to parts not repaired or replaced by Seller pursuant to the foregoing warranties.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

Section 5 applies to any entity or person who may buy, acquire or use the Goods, including any entity or person who obtains the Goods from Buyer, and such subsequent transferee shall be bound by the limitations therein, including Section 6. Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 5 and 6.

The foregoing warranties do not apply to all Goods sold by the Seller. In certain cases the period of time during which the warranty applies is different, or any refund of purchase price may be prorated based on age or usage of the Goods. Any special warranty terms will be noted in the acknowledgement.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5.

**SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocates the risk between Seller and Buyer and form a basis of this bargain between the parties.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions (i) of such Goods, or (ii) of any combination of Goods acquired from Seller in a system designed by Seller. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability.

8. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war, fire, flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

9. **CANCELLATION:** Orders (or any portions thereof) may be cancelled by Buyer only with the advance written approval of the Seller. If such written approval is given, Buyer shall make payment to Seller of Seller's cancellation charges which include, among other things, all of Seller's costs and expenses incurred (including all engineering expenses) and all commitments made by the Seller to suppliers and subcontractors, and a reasonable profit on all of the foregoing. Seller's determination of such termination charges shall be conclusive.

10. **CHANGES:** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller shall have the absolute right to revise the prices and dates of delivery, and to add charges for work and materials rendered unnecessary by such changes or additions.

Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

11. **TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchases, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

12. **INSTALLATION:** Prices, unless otherwise specified in writing by Seller, do not include an allowance for installation or final on-site adjustment. Buyer shall be responsible for receiving, inspecting, testing, storing, installing, starting-up and maintaining all Goods.

13. **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

14. **INSPECTION/TESTING:** Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods meet Seller's criteria for such procedures.

15. **BUYER'S INSPECTION AFTER DELIVERY:** Buyer shall inspect Goods delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods.

16. **DRAWINGS:** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.

17. **BUYER'S COMPLIANCE WITH LAWS:** In connection with the transactions contemplated by this agreement, Buyer is familiar with and shall fully comply with all applicable laws, regulations, rules and other requirements of the United States and of any applicable state, foreign and local governmental body in connection with the purchase, receipt, use, transfer and disposal of the Goods.

18. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.

19. **RETURNED GOODS:** Except as otherwise provided with respect to warranty defects in Section 5, advance written permission to return Goods must be obtained from Seller. Such Goods must be current, unused, catalogued Goods and must be shipped, transportation prepaid, to a location specified by Seller. Returns made without prior written permission will not be accepted by Seller. Credit or exchange for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repacking charge (which charge shall be no less than 25% of the current price for the returned Goods), plus the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorizing return.

20. **BUYER SUPPLIED DATA:** To the extent that Seller has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or the provision of Services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

21. **NUCLEAR/MEDICAL: GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS.** Buyer accepts goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

22. **COMPATIBILITY:** Seller cannot assume responsibility for any compatibility considerations, including torsional, crankshaft bending/deflection, base, design, prime mover bearing axial thrust capacity, and other considerations, all of which shall be the sole responsibility of the Buyer.

23. **REGULATORY LAWS AND/OR STANDARDS:** Seller makes no promise or representation that the Goods will conform to the laws, statutes, ordinances, regulations, codes or standards of any specific United States or foreign jurisdiction (whether national, international, federal, state, or local), except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and Seller. The Seller's prices do not include the costs of any related inspections or permits or inspection fees.

24. **NO RESPONSIBILITY FOR INFORMATION OR ASSISTANCE:** Seller shall not be responsible for any assistance or advice concerning any Goods or any other parts or services supplied hereunder or any system or equipment in which any Goods may be installed. Seller's sole responsibility for the Goods and the use thereof is as set forth in Section 5 hereof.

25. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

26. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default of or any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of or any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of Missouri without regard to its conflicts of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Missouri. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.