

TERMS AND CONDITIONS (REVISION 1)

1. **Scope:** The terms and conditions set forth below with those appearing on the face of this purchase order or on any exhibits attached hereto constitute the complete and exclusive agreement (hereafter "Order") between Loftness Specialized Equipment ("Company" or "Buyer") and the Supplier identified on the face of this Order ("Supplier"). Acknowledgement of this Order by Supplier, including, without limitation, by beginning performance of the work contemplated by this Order, shall be deemed acceptance of this Order and the terms hereof by Supplier. The terms and conditions of this Order take precedence over any additional or different terms and conditions of the Supplier which may be contained in Supplier's quotation or acknowledgement to which objection is hereby made by Company. No modification of this Order shall be binding upon either party unless in writing and signed by an authorized representative of each party. **ANY ATTEMPTED ACKNOWLEDGEMENT OF THIS ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER IS NOT BINDING UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING.**

2. **Prices:** This Order shall not be filled at prices higher than those shown on this Order, or, if no price is specified, higher than those last quoted or charged by the Supplier, unless such increased price shall have been authorized in writing by Company. Such prices shall remain firm for the duration of this Order and are exclusive of taxes, shipping and insurance. If charges for taxes, shipping and insurance are applicable, they shall be separately stated on Supplier's invoice. Supplier warrants that each price for goods, equipment or materials ("Goods") or services ("Services") is no less favourable than that extended by Supplier during the term of this Order to any other customer for the same or like items in equal or lesser quantities on similar terms and conditions, provided that Supplier shall promptly inform Buyer of any lower pricing levels provided by it for the same or comparable Goods or Services.

3. **Shipping and Delivery:** Quantities shipped must equal the quantity ordered unless otherwise specified by Company. Each shipment of Goods by Supplier to Company shall include a packing list which contains at least (i) the purchase order number, (ii) Company's unique part number, (iii) the quantity and (iv) the date of shipment. All deliveries shall be strictly in accordance with the delivery schedule set out on the Order and within the shipping window of 3 days early and 1 day late. Buyer may refuse to accept, or return at Supplier's risk and expense, any Goods made in excess of Buyer's order or in advance of required delivery dates, or to defer payment on such deliveries until such dates. Supplier shall notify Buyer immediately of any actual or potential labor dispute or other circumstance which is delaying or threatens to delay the timely performance of this Order, provided that no such notification shall relieve Supplier of its obligations set forth herein. Delivery for this purpose shall mean date of receipt at Company's dock.

4. **Title and Risk of Loss:** Unless otherwise specified on the face of this Order, shipping terms shall be FOB point of shipment ("FOB Ship Point"). Title and risk of loss will pass to Company upon delivery of acceptable Goods to Company. If the face of this Order specifies Buyer's location as FOB ("FOB Destination") point, Supplier will bear risk of loss or damage and title shall not pass to Company until actual delivery of the Goods at the Buyer location.

5. **Inspection:** Buyer shall not be required to inspect or test articles covered by this Order. It shall be Supplier's responsibility to assure that such articles are in strict conformance with all requirements of the Order. Notwithstanding the above, all articles or work called for hereunder shall be subject to inspection and test by Buyer and by personnel designated by Buyer at all times and places including the period of manufacture and in any event, prior to acceptance. Unless otherwise specified herein, final inspection and acceptance shall be made after delivery to Buyer. If any inspection or test is made on the premises of Supplier or Supplier's subcontractor, Supplier shall provide without additional charge, reasonable facilities and assistance for the safety and convenience of inspection personnel. Buyer shall have the right to reject articles found upon inspection not to conform to the requirements of this Order, and to require their correction or replacement at Buyer's option. Buyer's acceptance of any non-conforming article of work shall not constitute a waiver of requirements for any additional articles or work required to be delivered hereunder. Supplier shall provide and maintain an inspection system acceptable to Buyer, and shall maintain complete inspection and test records, which shall be made available to Buyer upon request. **Right of Access:** Should Buyer, Buyer's customer or regulatory authority inspections be required by this Order, notification of the required inspections shall be made as promptly as possible, but no less than 48 hours in advance. The inspections may occur at any of the facilities involved with the Order and will include all applicable records.

6. **Invoices and Payment:** Unless agreed upon in writing, Supplier shall issue invoices only at time of shipment of Goods or completion of Services. All terms will be specified on the face of this Order, and shall be adhered to under all circumstances, unless mutual written agreements are agreed upon in writing between Company and Supplier to change those terms. Terms will commence from time of receipt of Goods at Buyer's facility or upon Buyer's confirmation of completion of Services provided by Supplier.

7. **Set Off:** Buyer shall be entitled at all times to set off any amounts owing at any time from Supplier, under this Order or otherwise, to Buyer or any of Buyer's affiliates against any amounts due by Buyer in connection with this Order.

8. **Patent Indemnification:** Supplier represents that the Goods furnished and/or Services provided hereunder and their use does not infringe any patent, trademark, and copyright or other intellectual property right of any person. Supplier agrees, at its own expense, to defend, indemnify and save harmless Buyer, its affiliates and their customers and successors and assigns in any and all patent, trademark, copyright and/or other intellectual property infringement claims, actions or suits alleged or brought or in any way arising out of the use of the Goods or Services furnished by or on behalf of Supplier and Supplier agrees to procure rights for continued use of infringed Goods for Buyer or to provide an alternate acceptable to Buyer, except where such Goods or Services are furnished pursuant to the drawings or designs furnished by Buyer.

9. **Product Specifications:** No substitutes will be accepted without Buyer's specific written approval. For a reasonable time after delivery, Supplier's Goods and Services performed are subject to Company's inspection and approval. If specifications are not met: (a) Goods may be rejected and returned at Supplier's expense, including transportation charges both ways, and/or (b) Company's may require that any Services be repeated pursuant to the stated specifications at the sole cost and expense of Supplier. Payment of invoice does not constitute acceptance of Goods or Services covered by this Order and is without prejudice to any and all claims of Buyer against Supplier. Any review or approval of drawings by Buyer will be for Supplier's convenience and will not relieve Supplier of its responsibility to meet all requirements of this Order.

10. **Warranties; Other Indemnity:** During the time specified on the face of this Order, Supplier represents and warrants that all Goods and Services delivered hereunder shall be free from defects, either harmful or not, of material and workmanship, and Supplier further warrants that parts furnished will conform strictly to the specifications and/or drawing specified. In addition, all Goods will be of merchantable quality and fit for the particular purpose for which they are intended. Such warranties together with Supplier's service warranties and guarantees shall run to Buyer, its successors, assignors and/or its customers. Supplier warrants that the title to any Goods conveyed to Buyer is good, and the Goods shall be delivered free and clear of any security interests or other lien or encumbrance. Supplier agrees, at its own expense, to defend, indemnify and save harmless Buyer, its affiliates and their customers and successors and assigns of and from any and all costs, claims, suits, liabilities, damages or expenses of any kind or nature, including but not limited to court costs and attorneys' fees, arising out of or in connection with (i) any actual or alleged breach of any representation, warranty, covenant or agreement of Supplier made pursuant to this Order or (ii) any claim of death or bodily injury to persons or damage to property caused or alleged to have been caused by or arising out of the Goods or Services supplied or performed to be supplied or performed hereunder, or their component parts, or any defect in the design or performance thereof.

11. **Materials and Tools:** Whenever Supplier shall have in its possession property of Buyer, by virtue of this Order; Supplier will be deemed an insurer thereof and shall be responsible for its safe return to Buyer and to ensure that no other party shall acquire a security interest in same.

12. **Intellectual Property:** All drawings, specifications, data, memoranda, calculations, notes and other materials or copies thereof made available to Supplier by Buyer shall remain the sole and exclusive property of Buyer and will be returned at the completion of this Order or when requested by Buyer. Further, Buyer shall acquire sole and exclusive ownership of all equipment, materials, and documents generated as a result of this Order and/or through the use of Buyer information.

13. **Compliance With Federal, State, and Local Laws:** Supplier warrants that in performance of this Order, it has complied with or will comply with all applicable Federal, State and local laws and ordinances and lawful orders, rules and regulations thereunder, including, but not by way of limitation, provisions of the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Sec. 201-219), and lawful rules and regulations thereunder.

14. **Equal Opportunity:** Supplier agrees to comply with applicable State, Federal and local laws, and unless specifically exempt, to comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended and of the rules, regulations, and relevant orders of the Secretary of Labor, including the equal opportunity clause.

15. **Packaging:** No charge will be allowed for packing, boxing or crating, unless agreed upon in writing at time of purchase. Damage to any material not packed to insure proper protection during shipment shall be charged to the Supplier as well as shipping costs.

16. **Confidentiality:** All information obtained by Supplier from Company or its affiliates which is identified as confidential or proprietary by or on behalf of Company or its affiliates or is acquired by Supplier under circumstances

reasonably considered to impose an obligation of confidentiality shall (i) be received in confidence and (ii) shall remain the property of Company or its affiliates, (iii) shall not be disclosed to a third party and (iv) shall be used by Supplier only to the extent necessary for the performance of this Order. For failure of Supplier to observe the provisions of this section, in addition to all other rights and remedies Buyer may have, Buyer shall have the right to terminate this Order without any obligation by Buyer to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination. Upon completion or termination of this Order, Supplier shall, upon the request of Buyer, promptly return to Supplier all such confidential information, including any copies thereof, and shall destroy (with such destruction certified in writing upon request of Buyer) all notes, analyses and other material derived therefrom.

17. Assignment: Supplier may not subcontract, assign or otherwise delegate performance of its obligations under this Order or any rights under this Order without the prior written consent of Company. Any attempted assignment without Company's written approval shall be void.

18. Cancellation For Default: Company reserves the right to cancel all or any part of this Order without liability if Supplier fails to make deliveries as specified herein, or fails to make progress such as to endanger performance of the work and does not correct such failures within ten (10) days after receipt of written notice from Company specifying such failure. Any failure by Company to exercise this cancellation option with respect to any installment shall not constitute a waiver with respect to subsequent installments. In the event of the insolvency of Supplier, an assignment for the benefit of creditors, the filing of voluntary or involuntary petition in bankruptcy or appointment of a Receiver, or Trustee by or for Supplier; Company shall have the right to cancel this Order immediately without liability.

19. Termination for convenience: Buyer may terminate this order at any time for its convenience, in whole or in part, in which event, Buyer's sole obligations shall be to reimburse Supplier for (a) those goods actually shipped and accepted by Buyer up to the date of termination, and (b) costs incurred by Supplier for unfinished goods, which are specifically manufactured for Buyer and which are not standard products of the Supplier, as of the date of termination, plus a reasonable profit thereon. In no event shall Buyer be responsible for loss of anticipated profit nor shall reimbursement exceed the order value of the actual quantity of goods that are on firm release by Buyer.

20. Product Liability and Other Insurance: Except when otherwise so stipulated by Buyer, Supplier shall obtain and maintain at its expense policy or policies or product liability insurance naming Loftness Specialized Equipment an additional insured in the amount of \$500,000/1,000,000 bodily injury and \$500,000 property damage, and in such company or companies, as shall be satisfactory to Buyer. Upon Buyer's request, Supplier shall also maintain, at its expense, the following insurance with a broad form Suppliers endorsement in coverage amounts not less than those specified in the preceding sentence, naming Loftness Specialized Equipment., an additional insured: (i) Comprehensive General Liability with coverage for bodily injury/property damage, (ii) Employer's Liability, (iii) Property Insurance covering the full value of all property owned, rented or leased by Supplier in connection with this Order and covering damage to property in Supplier's care, custody and control; and (iv) Workers' Compensation Insurance. All such policies shall provide that coverage thereunder shall not be terminated or changed without at least (10) ten days prior written notice to Buyer and shall contain a waiver of subrogation in favor of Buyer. Supplier shall furnish Buyer with certificates of insurance, and evidence of renewals. The purchase of such insurance or the furnishing of certificates shall not be in satisfaction of Supplier's liability hereunder or in any way modify Supplier's indemnification of Buyer.

21. Waiver: The remedies herein reserved to Company shall be cumulative and additional to pay other or further remedies provided in law or equity and a waiver by Company of a breach of any provision of this Order shall not constitute a waiver of any other breach, of such provision.

22. Governing Law: This Agreement, and all rights and obligations in connection herewith, shall be governed by and construed under the laws of the State of Minnesota. The courts of the State of Minnesota shall have full exclusive jurisdiction over Company, Supplier, and all subject matter in connection with any controversy, claim, or award arising out of this Order.

23. Independent Contractor: In performing this Order, Supplier is acting as an independent contractor, and neither Supplier nor any of Supplier's employees, subcontractors or agents shall be construed as employees, agents, partners or joint venturers of Buyer in any respect. Each party shall be responsible for taxes imposed on such party.

IF ANY PART OF THE TERMS AND CONDITIONS STATED HEREIN ARE HELD VOID OR UNENFORCEABLE, SUCH PART WILL BE TREATED AS SEVERABLE, LEAVING VALID THE REMAINDER OF THE TERMS AND CONDITIONS NOTWITHSTANDING THE PART OR PARTS FOUND VOID OR UNENFORCEABLE.