

## **LCF SYSTEMS, INC AGREEMENT OF PURCHASE AND SALE.**

All orders are subject to acceptance by LCF Systems, Inc. Pursuant to the terms and conditions of this Agreement, the Seller agrees to transfer ownership and deliver possession to the Buyer, and the Buyer shall pay for and accept from the Seller, in such amounts and at such prices as agreed by the Parties.

### **1. PRICING.**

LCF Systems Inc.'s quoted prices apply for 30 days or otherwise as stated in the quote. Unless otherwise stated, the Buyer shall pay all taxes and third-party expenses imposed on, in connection with, or measured by the transaction contemplated by this agreement in addition to the prices set forth on price quote.

### **2. PAYMENT TERMS.**

The Buyer shall remit payment to the Seller within 30 days of its receipt of such invoice.

### **3. BUYER'S REPRESENTATIONS AND WARRANTIES.**

The Buyer hereby represents and warrants to the Seller that:

- (a) The Agreement constitutes a legal, valid, and binding obligation enforceable in accordance with its terms.
- (b) Any taxes or other governmental charges imposed on the sale of the Goods under this Agreement shall be paid by the Buyer.
- (c) **(Optional)** [Except as expressly stated in this Agreement, neither the Seller nor any party acting on its behalf has made any representation or warranty, express or implied, concerning the Goods, or their fitness for any particular use, it being the intention of the Parties that the Goods are sold "AS IS."]

The Buyer agrees to immediately notify the Seller in writing if any facts or circumstances arise that would make any of the representations in this Agreement inaccurate.

**3. Delivery; Title; and Risk of Loss.** Unless otherwise stated in Exhibit A, the Seller shall deliver the Goods FOB the Seller's facility in [\_\_\_\_], and title to and risk of loss of the Goods will pass to the Buyer upon such delivery by the Seller. Any stated delivery dates are approximate. The Seller will not be liable for any losses, damages, penalties, or expenses for failure to meet any delivery date.

#### 4. TERMINATION.

This Agreement may be terminated:

- (a) By either Party, at any time, on provision of ( 14 ) days' written notice to the other Party; provided, however, that orders for Goods manufactured to the Buyer's specifications may only be terminated prior to the commencement of production;
- (b) By either Party, at any time, for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within \_\_\_\_\_ (        ) days of its receipt of written notice thereof.
- (c) By either Party, at any time, without prior notice, if the other Party has instituted a proceeding seeking relief under the Bankruptcy Code or similar law, makes an assignment for the benefit of the creditors, or admits in writing its inability to pay its debts as they become due.

Immediately on the termination of the Agreement for any reason the Buyer must return to the Seller all documents, technical data, and equipment loaned by the Seller to Buyer for the purposes of or in connection with the Agreement.

#### 5. DEFAULT AND REMEDIES.

- (a) If either Party terminates this Agreement because of the other Party's default, the non-breaching Party, in addition to all rights it has under this Agreement, shall have the right to exercise any and all remedies available at law or in equity (including any remedies afforded each Party under the Uniform Commercial Code). All rights and remedies are cumulative, and the election of one remedy shall not preclude another. Any termination shall be without prejudice to accrued rights. Specifically, a termination due to default of delivery or payment for the Goods required hereunder shall not in any manner affect or terminate the rights and obligations of the Parties hereto that have accrued hereunder prior or subsequent to such default in delivery or payment. Notwithstanding the expiration or termination of this Agreement, the obligations intended to survive termination or expiration of this Agreement shall continue in full force and effect.
- (b) If the Agreement is terminated by the Seller based on the Buyer's breach, then:
  - i. the full price for all Goods delivered and not yet paid for shall be immediately due and payable, notwithstanding that the normal terms of payment as set out in Section above may not have been exceeded; and
  - ii. at the Seller's discretion, it may either sell to the Buyer or dispose of elsewhere Goods in the course of manufacture or manufactured and not yet delivered, or delivered and not yet paid for; provided, however, that if the Seller elects to dispose of such Goods elsewhere the Buyer will be liable to pay to the Seller any loss incurred by the Seller as a result thereof.

#### 6. INDEMNIFICATION.

The Buyer shall at all times indemnify, defend and hold harmless the Seller against all claims, actions, damages, losses, liabilities, and expenses, including reasonable outside attorneys' fees, arising out of or caused by any breach of any of the representations, undertakings, or agreements made by the Buyer under or pursuant to this Agreement.

## **7. MODIFICATION.**

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, and such amendment must be in writing and signed by both Parties.

## **8. FORCE MAJEURE.**

The Seller shall not be considered in default hereunder or be liable for any failure to perform or delay in performing any provisions of this Agreement in the customary manner to the extent that such failure or delay is caused by any reason beyond its control, including any act of God, fire, explosions, hostilities, or war, declared or undeclared, strike or work stoppage involving either Party's employees, or governmental restrictions; provided, however, that the Party declaring force majeure shall give prompt written notice to the other Party of the commencement, nature, and termination of the force majeure condition. The Party whose performance has been interrupted by such circumstances shall use every reasonable means to resume full performance of this Agreement as promptly as possible.

## **9. NO IMPLIED WAIVER.**

**Disclaimer of Warranty; Due Diligence.** The Goods are being sold "as is," and the Seller disclaims all warranties of quality, whether express or implied, including the warranties of merchantability and fitness for particular purpose. The Buyer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Goods and that no such statements or representations have been made. The Buyer acknowledges that it has relied solely on the investigations, examinations, and inspections as the Buyer has chosen to make and that the Seller has afforded the Buyer the opportunity for full and complete investigations, examinations, and inspections.

## **10. Limitation of Liability.**

The Seller will not be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this agreement or the transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action) and irrespective of whether the Seller has been advised of the possibility of any such damage. In no event will the Seller's liability exceed the price the Buyer paid to the Seller for the specific Goods provided by the Seller giving rise to the claim or cause of action.

## **11. GOVERNING LAW.**

This Agreement shall be governed by the laws of the state of \_\_\_\_\_. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse

the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

**12. COUNTERPARTS/ELECTRONIC SIGNATURES.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**13. SEVERABILITY.**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**14. ENTIRE AGREEMENT.**

This Agreement constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous contracts and understandings, both written and oral, between the Parties.

**15. AFFIRMATION OF THE PARTIES.**

The Parties affirm that they have entered into this Agreement freely, voluntarily, and without reliance on any promises, representations, or other statements not contained in this Agreement and have read and understood this Agreement.

**16. HEADINGS.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.