

## TERMS AND CONDITIONS

**1. ACCEPTANCE OF TERMS AND CONDITIONS.** Customer's submission of an order for any of the products or systems provided by Livingston & Haven (L&H) shall constitute acceptance by Customer of the Terms & Conditions contained herein, which shall control the transactions between L&H and Customer. These Terms & Conditions shall not be superseded by any provisions that may be contained in any purchase order or other documentation that may at any time be submitted to L&H by Customer unless specifically agreed to in writing by L&H. IT IS FURTHER UNDERSTOOD AND AGREED THAT THE PRICE STATED FOR THE PRODUCTS OR SYSTEMS HEREIN DESCRIBED IS A CONSIDERATION FOR LIMITING THE LIABILITY OF L&H AS SET FORTH HEREIN.

**2. AVAILABILITY.** Some of the products and systems shown in the L&H binders are not available from all L&H locations. In such case, if possible the local L&H office will refer Customer to a responsible source.

**3. QUOTATIONS.** Written quotations are firm for 30 days from quotation date unless stated on the quotation to the contrary or unless revoked by oral or written notice from L&H prior to acceptance by L&H of a written order from customer. Also, unless stated by the manufacturer or by L&H to the contrary, quoted prices will apply on products or systems scheduled for shipment within 30 days of the quote, while prices in effect at the time of shipment will apply on unscheduled shipments and products or systems scheduled for shipment beyond 30 days. If the cost to L&H of performance hereunder should be increased by reason, directly or indirectly, of any governmental action, including without limitation the imposition or variation of any customs duty, L&H shall have the right to increase the quotation price by the amount of such increased cost.

**4. ORDERS; PAYMENT; DELIVERY.** On approved credit sales, terms are net 15 days unless otherwise stated in writing. When credit has not been approved, payment terms, subject to prior approval by L&H, may be cash in advance, C.O.D., Bill of Lading with sight draft attached, or domestic letter of credit. L&H, without liability to Customer or any party, may at any time alter or suspend credit or discontinue deliveries or stop goods in transit when, in its opinion, the financial condition of Customer or potential Customer warrants such action. In such case, L&H shall be paid by Customer for service charges. L&H reserves the right to add a monthly service charge up to the maximum rate permitted by law for delinquent accounts. All sales are F.O.B. Shipping Point, unless otherwise agreed to by L&H in writing. All risk of loss or damage shall pass to Customer upon delivery of the products or systems to the carrier. Any claims for loss or damage during shipment are to be filed with the carrier. L&H will not accept responsibility for any such claims. L&H shall make every reasonable effort to meet commitments concerning shipping dates; however, revisions may be necessary due to unforeseen events. L&H WILL NOT BE RESPONSIBLE FOR ANY LOSS, INCLUDING BUT NOT LIMITED TO INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OCCURRING TO CUSTOMER OR TO ANY OTHER PARTY AS A RESULT OF ANY DELAY IN SHIPMENT. Orders are not cancellable by Customer unless and until all cancellation provisions, if any, are agreed to by L&H in writing and all cancellation charges, if any, have been paid by Customer.

**5. LIMITED WARRANTIES.** The only warranties made on products and systems-sold by L&H are the warranties provided by the respective manufacturers for such products and systems. Reference should be made by Customer to the terms of such manufacturers' warranties for the conditions thereof. In the event L&H has modified, altered or fabricated any of the products or systems sold by it, L&H warrants only that such modification, alteration or fabrication shall be free of defects in material or workmanship for one year from shipment to Customer. As to such warranties by L&H, its liability is limited exclusively to making replacement or repairs or to refunding the price for such modifications or alterations made by L&H. Any Customer modifications, alterations or repairs (actual or attempted) to the products or systems by L&H shall void all warranties of L&H unless Customer has obtained prior written authorization from L&H consenting to such modifications or alterations. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, L&H MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE CONDITION OF THE PRODUCTS AND SYSTEMS, THEIR MERCHANTABILITY, OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. IN ADDITION, L&H WILL NOT BE RESPONSIBLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM AN ALLEGED BREACH OF SUCH WARRANTIES, IF ANY, OR FROM ANY OTHER ALLEGED BREACH OF ANY PROVISION OF L&H'S CONTRACT WITH CUSTOMER. L&H staff are not authorized to

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warrant the suitability of products or systems for any particular application beyond the state of use described or warranty provided by the manufacturer for any such products or systems.

**6. TAXES; GOVERNMENT REGULATIONS.** Unless otherwise expressly stated in the quotation, L&H's quoted prices do not include sales, use, excise or any other federal, state or local taxes. Customer shall be liable for any such levies. Failure by L&H to collect any such taxes from Customer with the initial invoiced amount shall not constitute a waiver of or bar to L&H's right to bill and collect from such Customer subsequently for such taxes. Customer shall comply with all governmental laws and regulations, and shall secure all necessary approvals, if any, applicable to the delivery, use and sale of the products and systems and any other conduct contemplated by Customer's purchase of the products and systems.

**7. RETURNED PRODUCTS AND SYSTEMS.** Goods may not be returned by Customer without L&H's prior written authorization. Any request to return must be made within 10 days from receipt of the goods. Returned goods must be in first class salable condition, in their original container, shipment prepaid and subject to inspection upon receipt by L&H. When goods are returned because of an acknowledged error by L&H, L&H will rectify its error promptly without expense to Customer. If the authorized return is not because of a fault of L&H or its suppliers, L&H will undertake all reasonable action to minimize the expense of such returns; however, L&H reserves the right to make a handling and re-stocking charge. Products and systems that have been manufactured or fabricated to Customer's specifications are not returnable.

**8. SHORTAGES AND DEFECTIVE PRODUCTS AND SYSTEMS.** All claims for shortages, defects or incorrect products or systems shipped to Customer must be filed by Customer with L&H within 10 days of the receipt of the product or system. Claims for loss or damage in transit must be filed with the carrier as per Section 4 above.

**9. CATALOG INFORMATION.** The catalogs contained in L&H's binders are provided by manufacturers of the equipment described therein. L&H cannot assume responsibility for errors or omissions in any of the descriptions of the products and systems contained therein. L&H reserves the right to make additions, deletions or modifications to its binders, and changes in its suppliers, without notification to Customer.

**10. USE OF PRODUCTS AND SYSTEMS.** The installation and the operation of the products and systems purchased from L&H in a safe manner and in conformance with all applicable codes and regulations, including the Occupational Safety & Health Act (O.S.H.A.) is Customer's responsibility.

**11. OWNERSHIP OF DESIGNS.** If any engineering and/or design work is performed by L&H for Customer relative to products ordered under this agreement, Customer agrees that all right, title, copyright and ownership of such engineering and/or design work is solely the property of L&H.

**12. SMALL ORDERS.** Contact your L&H office for minimum billings. Small orders are costly to handle and process. This is true for both the buyer and seller. Contact L&H's nearest office for suggestions on eliminating or minimizing the costs of small orders placed with L&H.

**13. CHANGES IN TERMS AND CONDITIONS.** These Terms and Conditions are subject to change by L&H without prior notice. As per Section 1 above, these Terms and Conditions may not be altered in any way by Customer and L&H hereby rejects any effort by Customer to effect any such alteration.

**14. CUSTOMERS.** Customer represents and warrants that it shall use any goods subject hereto solely for its own use in its business operations or for resale to other businesses for similar use. L&H does not sell consumer products.

**15. FORCE MAJEURE.** If L&H's ability to perform its obligations to Customer is limited, delayed or prevented in whole or in part by any event or condition not reasonably within the control of L&H or its suppliers, including without limitation acts of God, war, civil strife, labor unrest, transportation delays, or by any law, rule, regulation, order or any other action of any public authority, L&H shall be excused, discharged and released of performance to the extent such performance is so limited, delayed or prevented, without liability of any kind.

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**16. WAIVER.** Waiver by L&H of any default of Customer or of any provision hereof shall not be deemed a waiver of any other default of Purchaser.

**17. CONTROLLING LAW.** The validity, construction and performance of these Terms & Conditions shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding that body of law applicable to choice of law. Each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in Mecklenburg County, North Carolina in any action relating hereto or to the subject matter hereof. In the event any provision of these Terms & Conditions or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of these Terms & Conditions shall remain in full force and effect.

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