

LEWIS TREE SERVICE – STANDARD TERMS & CONDITIONS PURCHASE ORDERS

1. ACCEPTANCE OF ORDER

Seller shall notify and acknowledge in writing within two (2) business days of receipt of this Purchase Order to Purchaser. The receipt by Seller of this Purchase Order or the initiation of performance under this order shall constitute acceptance of the Purchase Order by the Seller, including all of the terms and conditions herein. This Purchase Order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by Seller are rejected unless expressly agreed to in writing by an authorized representative of the Purchaser's Purchasing Department.

2. QUANTITIES AND PRICES

Purchaser's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. Purchaser reserves the right to reject and return any material in excess of the quantities specified herein. To the extent that the prices for articles or services ordered hereunder are not specified herein, unless otherwise agreed by Purchaser, the prices shall be those applicable to Purchaser's last preceding order for a comparable quantity, or if there is none such, then Seller's last preceding quotation for the same as accepted by Purchaser.

3. WARRANTIES

Seller expressly warrants that all articles, materials, parts and work covered by this order will conform to the specifications, drawings, samples, or other description furnished or adopted by Purchaser or otherwise referenced in this order and shall be merchantable, of good workmanship and material, and free from defects. These warranties are in addition to any other warranties specified here in, made by the Seller, or implied by law, and shall survive acceptance and payment. In case of ambiguity in specifications, drawings or other requirements of this order, Seller, before proceeding, must consult Purchaser, whose written interpretation shall be final.

4. NOTIFICATION OF SUPPLIERS FACILITY OR PROCESS CHANGE

Supplier, pursuant to this Article and unless superseded by additional requirements attached to and made part hereof, shall keep Buyer informed of all changes that may impact the quality of the Products or Services being provided under the Agreement or order. These changes include: (i) a change in the manufacturing, assembly or test location; or (ii) removal or reduction of inspection or test procedures and/or methods associated with the Product or Services; or (iii) any major changes in material, manufacturing process, the Services or the design of the Products. The Supplier agrees to flow down the substance of this clause to its Suppliers

5. INSPECTION

All articles, parts, materials, and workmanship entering into the performance of this order are subject to 100% inspection and testing by Purchaser before and after delivery, notwithstanding prior acceptance or payment. No preliminary inspection by or on behalf of Purchaser shall be deemed to constitute acceptance or relieve Seller of its own obligation to make full and adequate test and inspection. Seller agrees to furnish all reasonable facilities and assistance for tests and inspections to be made on its premises by or on behalf of Purchaser. Any article, part, material, or workmanship not accepted may be held by Purchaser, after notice of rejection to Seller, at Seller's risk and expense and subject to Seller's order, or at the option of Purchaser, and in addition to Purchaser's other rights. Seller shall replace the same or reimburse Purchaser for its expenses of rework, inspection, transportation, and repackaging. Seller shall pay the cost of all Purchaser's articles, parts or material that may be damaged by any improper workmanship on the part of Seller.

6. DELIVERY

Time is of the essence in this order. Seller must make deliveries in accordance with the delivery schedule specified herein, if any. If for any reason the Seller cannot or will not make delivery by the time specified, Seller shall immediately notify Purchaser to that effect and the reasons therefor. Purchaser reserves the right to reject or return at Seller's risk and expense all articles or materials shipped which are in excess of or in advance of the time specified for delivery or to defer payment for advance deliveries until the specified delivery dates. Acceptance of late deliveries shall not be deemed to be a waiver of purchaser's rights arising from late deliveries. Items on backorder must be communicated immediately by Seller to Purchaser. Purchaser may then choose to proceed with or cancel the order.

7. CHANGES

Purchaser may, at any time prior to shipment, make changes in the shipping and packing instructions; increase or decrease quantity; change the drawings, designs or specifications; change the place of inspection, delivery or acceptance; or change the amount of.

Purchaser furnished property. Any proposal for adjustment under this clause must be submitted in writing within fifteen (15) days from the date the change is ordered. Pending such adjustment, Seller shall proceed in accordance with such change notice or order. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes". Except, as otherwise provided in this Purchase Order, no changes shall be made unless such change is authorized in writing by Purchaser.

8. TERMINATION

Purchaser may terminate this order or work under this order in whole or in part by written notice to Seller. Upon termination of this order, no charges shall be incurred by Purchaser. Purchaser shall not be liable for any items on a terminated order which have not yet been delivered unless such items were customized in accordance with Purchaser's specifications and cannot be sold by Seller to another of Seller's customers. All commercial off the shelf items will not incur any cost upon termination of an order for any reason.

9. PROPRIETARY RIGHTS

If articles ordered are to be manufactured or supplied pursuant to Purchaser's drawings or to specifications furnished by Purchaser and are not based upon Seller's design, the Seller grants to Purchaser and Purchaser's assignees an exclusive, fully paid-up, and irrevocable license to make, procure, use, sell, and sublicense any improvement made or incorporated into said article by Seller, as work product. Any intellectual property arising out of any work herein, shall be deemed work product and shall be solely owned by Purchaser. Seller agrees that all data, including documentation furnished with items or to be furnished by this order shall be free from proprietary restrictions, except as specified herein. Seller's data may be reproduced and used by Purchaser in performance of Purchaser's customer' contracts, including training or user manual purposes.

10. PURCHASER'S PROPERTY

Whenever Seller has in its possession any of Purchaser's property, Seller shall be deemed an insurer thereof and shall be responsible for its safe return. Equipment, patterns, dies, tooling, materials, specifications, and drawings supplied or paid for by Purchaser in connection with this order shall remain Purchaser's property. The property shall not be used except for work performed for Purchaser, and upon request by Purchaser, shall be returned to Purchaser F.O.B. its shipping point specified on the face hereof, together with completed articles and those in process if so specified by Purchaser.

11. NONDISCLOSURE OF TRADE SECRETS

Seller agrees that the nature of said materials, specifications, and drawings, and the purposes for which the same are furnished by Purchaser to Seller shall be kept in strict confidence and shall be revealed only to Seller's employees and only to the extent necessary.

12. DAMAGES AND RISK OF LOSS

Seller assumes all responsibility for risk of loss or other damages to all articles and materials ordered hereunder or in its custody pursuant hereto, until delivered to Purchaser, F.O.B. its shipping point specified on the face hereof. In no event shall Purchaser be liable for anticipated profits or for damages on account of negligence or for incidental or consequential damages.

13. CLAIMS

Seller agrees to indemnify Purchaser against all claims, whether on account of negligence or otherwise, asserted by any persons other than Purchaser's employees, arising out of or resulting from Seller's performance of this order or the products provided. Upon request by Purchaser, Seller agrees to furnish certificates in form satisfactory to Purchaser, evidencing adequate coverage for the benefit of both Seller and Purchaser as to workmen's compensation, occupational disease, unemployment compensation, fire and extended coverage, and public liability, including contractual liability on both owned and non-owned vehicles.

14. ASSIGNMENT

No right or obligation under this order (including the right to receive money due and to become due hereunder) shall be assigned by Seller without the prior written consent of Purchaser, and any purported assignment without such consent shall be void.

15. PAYMENT

Invoices shall contain the following information: Purchase Order number, item number, description of articles, sizes, quantities, unit prices and extended totals, and taxes. Purchaser may make adjustments in Seller's invoices due to shortages, late delivery, rejections, or other failure to comply with the requirements of this order before payment. Seller discounts will be taken from the date of material receipt. Payment for the purchase of goods and/or services by Purchaser shall be sixty (60) days from Purchaser receipt of correct invoice and delivery of the goods and/or services. Notwithstanding the foregoing, at the Purchaser's option, payment may be made within fifteen (15) days after receipt of Seller's correct invoice and delivery of the goods and/or services, in which case Purchaser shall receive a three percent (3%) discount against the applicable payment. Payment shall not constitute final acceptance.

16. APPLICABLE LAW AND DISPUTES

The law of the State of New York shall govern any dispute arising from this order. Seller consents to the jurisdiction of the courts of the State of New York. Any litigation under this order, if commenced by Seller, shall be brought in a Court of competent jurisdiction in the State of New York. However, if New York law does not cover the issue in dispute or if there is a conflict between New York law and Federal law, i.e., decisions of the Federal Courts, regulations and statutes, the New York court shall apply the Federal law. Pending the resolution of any dispute, the Seller shall proceed as directed by Purchaser in writing.

The parties further agree, to the extent permitted by law, to waive all rights to a trial by jury of an action relating to the dispute or interpretation of this agreement, whether sounding in contract, tort, or otherwise. The parties specifically acknowledge that this waiver is made knowingly and voluntarily after an adequate opportunity to negotiate terms. Each party shall comply with all applicable codes, laws, rules and regulations of federal, state or local authorities as they affect the order. Each party shall be responsible for any and all damages incurred resulting from their respective failure to comply with said codes, laws, rules and regulations. Each party shall procure at its expense all permits and licenses which may be required to perform under the order, if any.

17. MISCELLANEOUS

No delay or failure on the part of Purchaser in exercising any right or remedy hereunder shall constitute a waiver of those or any other rights or remedies under this order.

Either party may cancel this order without obligation in the event that the other becomes bankrupt or insolvent or makes an assignment for the benefit of creditors.

This order, when accepted, shall supersede all prior understandings, transactions, and communications, whether oral or written, pertaining to the subject matter thereof.

18. PATENTS

Except for Purchaser's designed articles, Seller agrees, at its own expense, to defend Purchaser, Purchaser's customers, and users of Purchaser's products, and to hold them harmless, with respect to any and all claims for articles furnished by Seller under this order that infringe any Letters Patent, and with respect to any and all suits, controversies, demands, and liabilities arising out of any such claim.

19. GRATUITIES

Purchaser employees are to refrain from receiving any gift from a supplier or would be supplier of products or services for or from other organizations or individuals that have business relations with the company. Accordingly, Seller agrees not to offer or permit its agents or representatives to offer any such gratuities (in the form of entertainment, gifts or otherwise) to any employees of Purchaser.

20. DISCLOSURE OF INFORMATION

Except as required by law or regulation the Seller shall not release to anyone outside the Seller's organization any information pertaining to any part of this order without prior written approval of the Purchaser.

21. PUBLICITY

Either Party shall not, without the prior written consent of the other Party, use in advertising, displays and/or any other media, information or product relating to the requirements set forth herein. Either Party shall formally transmit to the other Party a request for each such release, including the exact wording and sketches or photographs, which may form a part of the release, where such consent shall not be unreasonably withheld.