

Terms and Conditions of Sale

Lightning Eliminators and Consultants, Inc. ("LEC") offers to sell only on the condition that Buyer's acceptance is expressly limited to LEC's Terms and Conditions of Sale. LEC's acceptance of any order from Buyer is expressly made conditional on agreement to these Terms and Conditions of Sale unless otherwise specifically agreed to in writing by LEC. In the absence of such written agreement, commencement of performance or delivery shall be for Buyer's convenience only and shall not be construed as an acceptance by LEC of Buyer's Terms and Conditions of Purchase. If a contract is not earlier formed by mutual agreement in writing, Buyer's acceptance of any goods or services shall be deemed acceptance of the LEC Terms and Conditions of Sale as stated herein.

1) PRICES

- a) All prices for sales are F.C.A. LEC Dock, Boulder, Colorado, USA. Prices are always stated in U.S.A. dollars (\$). Except for services and customized products, prices are obtained from LEC's most recent published price list. LEC reserves the right to change prices without notice, and those prices on the most recent published price list at the time an order is accepted will apply unless otherwise provided in a written quotation from LEC.
- b) Unless otherwise agreed to in writing by LEC, all price quotations expire ninety (90) days after the date of the written quotation. All prices quoted are valid only if Buyer's requested delivery date, including any change orders, is within six (6) months of the date on which the original order is accepted.
- c) Unless otherwise agreed to in writing by LEC, all prices quoted are exclusive of all taxes (except taxes levied against LEC's income), including state and local use, sales, property (ad valorem), and similar taxes. Buyer agrees to pay such taxes unless Buyer has provided LEC with a valid exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which equipment is to be directly shipped hereunder or unless such sale is otherwise exempt from such taxes. When applicable, such taxes shall appear as a separate item on LEC's invoice.
- d) All freight and packing charges are the responsibility of the Buyer, including, but not limited to shipping, insurance, customs, duties, taxes, and broker fees.
- e) All tooling or engineering charges included in an invoice shall not imply ownership of the tools or designs by the Buyer. Proprietary materials are covered in Section 10 of these Terms and Conditions of Sale.

2) PAYMENT AND SECURITY TERMS

- a) Payment is to be in U.S.A. dollars (\$). LEC's normal terms of payment shall be NET 30 DAYS from date of invoice. In the event payment is not received at the LEC offices in Boulder, Colorado, within such 30 day period, any unpaid balance shall commence to bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by the applicable law from the 31st day. LEC reserves the right to change the credit terms at any time, when in LEC's sole opinion, Buyer's financial condition or previous payment record so warrants.
- b) Should Buyer become delinquent in the payment of any sum due LEC, after ten (10) days from the date of written notice to Buyer, LEC shall not be obligated to continue performance under any agreement with Buyer.
- c) Buyer hereby grants, and LEC reserves, a purchase money security interest in each product purchased hereunder, and in any proceeds thereof, for the amount of its purchase price. Upon request by LEC, Buyer shall sign any document required to perfect such security interest. Payment in full of the purchase price of any product purchased hereunder shall release the security interest on that product.

3) SHIPMENTS, TITLE, RISK OF LOSS

- a) All delivery dates are estimated and are dependent in part upon prompt receipt of all necessary information to service an order. LEC shall make a reasonable effort to meet any delivery date(s) quoted or acknowledged. However, LEC will not be liable for its failure to meet such date(s). LEC shall not be liable for any premium transportation or other costs or losses incurred by Buyer as a result of LEC's inability to deliver product in accordance with Buyer's requested delivery date(s).
- b) All shipments by LEC are made F.C.A. LEC Dock, Boulder, Colorado, USA. Title to the products (except software and documentation) and risk of loss shall pass to Buyer at the LEC Dock. Title to software products and documentation will remain with LEC or its licensors.
- c) Unless otherwise agreed to in writing by LEC, all products shall be packed for shipment and storage in accordance with standard commercial practices. All packing shall conform to requirements of carrier's tariffs and/or international shipping rules and regulations as they may apply to any international shipment.
- d) LEC reserves the right to make deliveries in installments unless specifically agreed to otherwise with client in writing. Partial shipments shall be billed as made, and payments, therefore, are subject to the terms of payment noted above. LEC reserves the right to make shipments in advance of the scheduled delivery date, unless the Buyer specifically requests in writing that shipments not be made prior to the scheduled date. LEC reserves the right, in LEC's sole judgment, to allocate inventory and production if such allocation becomes necessary.

4) ORDER OF PRECEDENCE

- a) Acceptance by Buyer is limited to LEC's Terms and Conditions of Sale unless these Terms and Conditions of Sale are superseded by those appearing in any applicable LEC quotation or purchase agreement executed between LEC and Buyer. Buyer's additional or different terms and conditions shall not apply.
- b) Except as set forth in Section 4(a), Buyer's purchase of LEC products hereunder represents acceptance of LEC's Terms and Conditions of Sale, which constitute the entire understanding between the parties and supersede any previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of LEC's Terms and Conditions of Sale shall be valid or binding on either party unless in writing and signed by an authorized representative of each party.

5) CHANGES

- a) If Buyer issues a change order less than sixty (60) days prior to scheduled shipment and such change order causes a delivery delay, then Buyer may be subject to a fifteen percent (15%) charge based upon the price of the affected product or actual additional charges as may be applicable.
- b) In addition, any such change in delivery dates caused by Buyer establishing a delivery date greater than six (6) months from Buyer's original order shall constitute a new order for the affected products. Buyer may be required to pay an adjusted unit price based on the quantity of all goods that shall have been delivered under the original order. The then current list price and volume discounts shall apply to the new order.
- c) For customized products or services, Buyer cannot reschedule deliveries without written approval by LEC.

6) CANCELLATIONS

- a) For standard products and services, (those items set forth in LEC's current published price list) the Buyer may terminate or cancel its order upon at least thirty (30) days advance written notice from the original scheduled shipment date and upon payment of applicable cancellation charges, which shall take into account among other things expenses already incurred and commitments already made by LEC, including but not limited to raw materials, work in process, and finished goods. For the purposes of this section, the date of termination or cancellation shall be the date on which the written notice of termination or cancellation is received by LEC.
- b) If Buyer cancels an order for customized products or services any time after the order is accepted by LEC, Buyer may be subject to an additional charge of up to 100% of the customized products or service value. Customized products or services are those items not set forth in LEC's current published price list, including systems and solutions.
- c) For customized products or services, Buyer cannot cancel or return product without written approval by LEC.

7) SPECIFICATIONS

Specifications quoted in the LEC catalog are those that are applied at the time of order. In an effort to constantly improve its products, LEC reserves the right to change specifications at any time without notice and without incurring any obligation to incorporate new features in products previously sold. For customized products, the applicable specifications shall be those agreed to in writing by the parties.

8) WARRANTY

- a) LEC warrants to the Buyer that during the applicable warranty period: (a) the products meet, in material respects, the applicable specifications for such products in effect on the order acceptance date; and (b) the products are free from material defects in materials and workmanship under normal use and service.
- b) The applicable warranty period is specified on the LEC website under "Warranty". The warranty period begins on the date of shipment from LEC for standard products or on the date of installation completion for DAS and custom designed solutions. All warranty certifications and documentation will be issued upon full payment of all outstanding invoices.
- c) LEC's sole obligations pursuant to this warranty, and the sole remedies of the Buyer and of any subsequent purchaser of the site where products are installed and will continue to operate, shall be limited to the repair or replacement, in LEC's sole discretion, of any of the products that do not conform to this warranty during the applicable warranty period.
- d) This warranty shall be invalidated if the products (a) have not been installed, handled, or used in accordance with LEC's recommended procedures; (b) have been modified; (c) have been damaged through misuse, negligence, or abuse of the Buyer or of any subsequent purchasers; (d) are damaged by causes external to the products, including (without limitation) shipping damage, power failure, fire, or accident or catastrophe of any nature; (e) have their warranty seals broken, damaged, or destroyed; or (f) have been subjected to repairs or attempted repairs by any person other than LEC or its authorized representative.
- e) **THE WARRANTY SET FORTH ABOVE IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

9) WARRANTY OR AFTER-WARRANTY REPAIR FOR STANDARD PRODUCTS NOT PROVIDED OR PART OF A LEC CUSTOM DESIGNED SOLUTION OR SYSTEM

- a) To obtain warranty or after-warranty repair service, the Buyer must return the product to the LEC factory in Boulder, Colorado, USA unless otherwise authorized by LEC. Prior to returning the product to LEC, Buyer must first obtain a Return Material Authorization (RMA) from LEC. The Buyer shall prepay all shipping charges, custom broker fees, duties, and taxes. LEC will refuse any collect shipments.
- b) LEC will provide an estimate of repair costs for after-warranty service. The Buyer must approve estimated repair costs before repairs are performed.
- c) LEC will refuse to provide either warranty or after-warranty service on any LEC products that have damaged or missing warranty seals or that have evidence of attempted tampering or repairs.
- d) LEC will make reasonable efforts to return repaired products to original specifications, subject to availability of critical components. This may not be possible for discontinued products. In this situation, LEC will provide information regarding an appropriate replacement including pricing.
- e) To the extent that the customer is not at fault and there is no evidence of tampering or attempted repairs, LEC will pay for the return of warranty repaired products to Buyers within the USA only. In those situations where the customer is at fault, or the product was tampered with, improperly installed, inappropriate for the use or where there is evidence of attempted repairs, the customer will be responsible for all freight charges for both the return and any replacement parts or augmentation offered. For countries other than the USA, LEC will return both warranty and after-warranty repaired products to Buyer, freight collect, via the carrier designated by the Buyer. Foreign Buyers are solely responsible for all shipping charges, insurance, customs broker fees, duties, taxes, etc.

10) WARRANTY FOR SYSTEMS AND CUSTOM DESIGNED SOLUTIONS

For custom designed systems and solutions, LEC offers a functional warranty program. For these systems and solutions, Buyer is required to contact LEC to initiate warranty coverage investigation. LEC will then work with the Buyer to determine the cause and nature of the issues presented and to develop a plan to address these issues. In its sole discretion and judgment, LEC may choose to send an inspector to the site, and if the strike is confirmed, LEC may choose to provide replacement parts or augmentation parts. Each Incident is handled on a case-by-case basis.

11) PROPRIETARY MATERIALS

LEC shall retain exclusive ownership in the reports, specifications, designs and any other intellectual property created by LEC in the course of providing products and services, including customized systems and solutions, to Buyer. Unless otherwise agreed to in writing by LEC, copyrighted materials (software and printed documentation) and other proprietary materials (including reports, designs and specifications) supplied by LEC may not be copied except for archive purposes or to replace a defective copy. LEC grants Buyer a nonexclusive license to use the copyrighted and other proprietary materials only to evaluate the proposed products/solution and to operate the products/solution supplied by LEC. Buyer may transfer the copyrighted and other proprietary materials only upon and in conjunction with the transfer of the site where products are installed and will continue to operate and subject to the confidentiality obligations. Buyer and any transferee is prohibited from disassembling, decompiling, or reverse engineering the LEC products and software or using the documentation and any other proprietary material for any purpose other than in connection with the use of associated products/solution supplied by LEC. Buyer's license confers no title or ownership and is not a sale of any rights in the copyrighted and other proprietary materials.

12) INFRINGEMENT

- a) Unless the products are custom-manufactured by LEC to specifications supplied by the Buyer, LEC shall defend any suit or proceeding brought against the Buyer that is based on a claim that one or more of the products infringes a valid U.S. patent or copyright, and pay any resulting costs, damages, and attorneys' fees finally awarded against Buyer that are attributable to such claim, provided that the Buyer (a) notifies LEC promptly in writing of the assertion (whether or not the assertion has been made in a suit or other proceeding) by a third party of a claim of infringement; (b) gives LEC full authority to respond to the assertion (including full authority to defend or compromise any suitor proceeding); and (c) complies fully with all reasonable requests by LEC for information and assistance regarding the asserted infringement. If the Buyer complies with these conditions and is enjoined from continued use of the product, then LEC shall, at LEC's option, either (a) acquire the right for the Buyer to continue to use the product by payment of a license fee or otherwise; (b) modify the product to eliminate the infringement; (c) replace the product with a non-infringing substitute; or (d) refund the depreciated value of said product upon return of same to LEC.
- b) Notwithstanding the foregoing, LEC shall be relieved of all its obligations to defend the Buyer pursuant to this Section 11 and for any liability for infringement if (a) any asserted infringement is based upon the use of any of the products (or any components of any of the products) in a manner for which the product (or the component) was not designed or intended or with products not supplied by LEC; (b) the product has been modified by or on behalf of the Buyer; or (c) the Buyer does not fulfill its obligations under this Section 11.
- c) LEC shall have no liability for, and the Buyer agrees to indemnify LEC and to hold LEC harmless from, any loss or expenses (including attorneys' fees) resulting from any intellectual property infringement arising from any of the products that are custom-manufactured by LEC to specifications or technical information supplied by the Buyer.
- d) The foregoing states the entire liability of LEC for infringement of intellectual property rights by products furnished hereunder.

13) LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE STATED IN SECTION 12 ABOVE OR OTHERWISE REQUIRED BY APPLICABLE LAW, IN NO EVENT SHALL LEC BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF PROFITS, LOSS OF DATA, COST OF COVER), OR PUNITIVE DAMAGES. EXCEPT AS OTHERWISE STATED IN SECTION 12 ABOVE OR OTHERWISE REQUIRED BY APPLICABLE LAW, TO THE EXTENT LEC IS HELD LEGALLY LIABLE TO BUYER, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, LEC'S TOTAL LIABILITY IS LIMITED TO THE CONTRACTUAL VALUE OF THE PRODUCTS OR SERVICES AT ISSUE OR THE COST OF REPAIR OR REPLACEMENT OF THE PRODUCTS AT ISSUE, WHICHEVER IS LESS.

14) CONFIDENTIAL INFORMATION

- a) Definition. "Confidential Information" shall include but not be limited to: (1) all ideas, designs, specifications, concepts, and inventions made or developed by LEC in the course of or related to providing the products or services under this agreement; (2) all other trade secrets or confidential or proprietary information of either party marked as or stated to be "Proprietary" or "Confidential"; and (3) information relating to the terms of this agreement, except to the extent that the parties mutually agree to disclose such information to a third party. Unless otherwise provided in this agreement, information shall be identified as Confidential Information orally at the time of disclosure, by using an appropriate proprietary stamp or legend, or by designating the information as confidential in writing within thirty (30) days after such disclosure.
- b) Prohibited Disclosures. Except as expressly allowed in Section 13(c) or elsewhere herein, each party agrees to maintain all Confidential Information of the other party in confidence to the same extent that it protects its own similar confidential information (but in no event less than a reasonable degree of care), to take reasonable precautions to prevent unauthorized disclosure or use of such information, and to use such Confidential Information only in connection with performing under this agreement. These restrictions on disclosure and use shall survive the termination of this agreement.
- c) Exceptions. Neither party shall be obligated to maintain the confidentiality of any information only to the extent that it (1) is or becomes generally known to the public without violation of this agreement by the receiving party; (2) was in recipient's lawful possession prior to the disclosure and had not been obtained by the receiving party directly or indirectly from the disclosing party; (3) is lawfully obtained by receiving party from a third party without restriction on disclosure; (4) is independently developed by receiving party without use of Confidential Information; (5) is released from confidential treatment by written consent of the disclosing party; or (6) is required to be disclosed to comply with applicable laws, a court order, or governmental regulations, provided that the party required to make the disclosure provide prior written notice of the disclosure and take reasonable actions to minimize the extent of the disclosure.
- d) Return of Confidential Information. Upon request of either party, each party must promptly return to the other party all Confidential Information in the possession of the party and/or its agents. An officer of each party must certify the return of all Confidential Information to the other party.

15) GOVERNING LAW, ARBITRATION

- a) This agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado without giving effect to the conflict of law provision thereof. The parties hereby disclaim the applicability of the 1980 U.N. Convention on the International Sale of Goods. This agreement constitutes the complete agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations or offers, written or oral. This agreement may be amended only in writing, signed by an authorized representative of each party.
- b) Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Denver, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration, regardless of which party or parties prevail. The decision or award of the arbitrator shall be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act. However, in the event of any breach or threatened breach of confidentiality/license obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies without submitting such matter to arbitration.

16) EXPORT CONTROLS

Unless otherwise agreed to by LEC, Buyers who export from the U.S.A. products purchased hereunder assume all responsibility for obtaining any required export authorization. Buyer shall not export, re-export, or transfer technical data or products supplied by LEC, directly or through others, or the direct product of such data, to any country or user to which such export, re-export, or transfer is restricted by United States or local country law or regulation without first obtaining any required government license, authorization, certification, or approval.

17) FORCE MAJEURE

All orders accepted by LEC are subject to postponement or cancellation for any cause beyond the reasonable control of LEC, including without

limitation: inability to obtain necessary materials and components; strikes, labor disturbances, and other unavailability of workers; fire, flood, and other acts of God; war, domestic or international terrorism, riot, civil insurrection, and other disturbances; production or engineering difficulties; and governmental regulation, orders, directives, and restriction.

18) FIELD SUPERVISION AND INSTALLATION

- a) Installation Supervisor time starts when Supervisor departs LEC or home, and stops when Supervisor returns to LEC or home.
- b) Customer to pay all change fees and additional costs as a result of schedule changes by customer.
- c) Customer to provide at least 10 days advance notice of installation schedule.
- d) Customer to pay for time where Supervisor is available but unable to work due to circumstances beyond LEC's control.

19) MISCELLANEOUS

- a) LEC products may have remanufactured parts that are the equivalent to new in performance.
- b) Except as may be prohibited by U.S.A. bankruptcy laws, in the event of any insolvency or any inability to pay debts as they become due by a party hereto, or voluntary or involuntary bankruptcy proceeding by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may elect to cancel any unfulfilled obligations hereunder, except for payments due.
- c) Any required notices shall be given in writing at the address of each party set forth on the acknowledgement of order, or to such other address as either party may substitute by written notice to the other, or delivered by email or fax.
- d) Customer may not assign or transfer any of the rights, duties, or obligations herein without the prior written consent of the other, and any purported attempt to do so shall be null and void.
- e) LEC's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- f) No U.S. Government Procurement regulations shall be included hereunder and binding on either party unless specifically agreed to in writing prior to incorporation herein.
- g) LEC's website (www.LECGlobal.com/solutions/warranty) contains various forms and procedures for implementing the warranty provisions described above. To the maximum extent possible, customers must use these forms and procedures to obtain warranty and after warranty service and support. Please refer to this information for further detail.