



TERMS AND CONDITIONS OF PURCHASE

1. **Offer and Acceptance.** Each purchase order that Lowry Holding Company, Inc., a Delaware corporation that does business as Lowry Solutions, Inc., ("Buyer") issues (each a "Purchase Order"), together with these Terms and Conditions of Purchase, is Buyer's offer to purchase the goods ("Goods") and services ("Services") identified in that Purchase Order. Each Purchase Order, together with these Terms and Conditions of Purchase (these "Terms"), and any other documents specifically incorporated into the Purchase Order by Buyer or separately agreed to in writing, such as specifications, drawings, requirements of Buyer's customer, or quality requirements, are, collectively, a "Supply Agreement." All sales by Seller to Buyer are conditional on Seller's assent to the terms of the Supply Agreement exclusively and without regard for any Seller-proffered terms or conditions. If these Terms are first tendered to Seller before Seller tenders Seller's terms and conditions to Buyer, these Terms are in lieu of any terms and conditions later submitted by Seller and Buyer rejects all additional or different terms and conditions of Seller, whether confirmatory or otherwise. If Buyer tenders these Terms after the tender by Seller of other terms and conditions, whether as part of a Seller-generated purchase order or otherwise, then Buyer's acceptance of any offer by Seller associated with Seller's terms and conditions is expressly conditioned upon Seller's acceptance of the Supply Agreement, including these Terms, exclusively and to the exclusion of any proffered Seller terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Seller. Seller's confirmation or acknowledgement of a Purchase Order, these Terms, or a Supply Agreement, Seller's commencement of performance, or Seller's tendering of Goods or Services ordered will constitute Seller's acceptance of these Terms, and of the Supply Agreement, exclusively.

2. **Invoices.** Seller must submit invoices plainly marked with Buyer's purchase order number. Except as otherwise expressly stated in a Purchase Order, Buyer will pay all undisputed amounts under Seller's properly-issued invoices within 60 days after receipt of the Goods and/or Services to which the invoice applies.

3. **Pricing.** The prices contained in each Purchase Order are firm prices that are not subject to change, regardless of materials prices, the prices of labor, or any other causes. For the avoidance of doubt, under no circumstances will UCC Sec. 2-615 or any other similar rule of law be construed to permit any change in pricing. Pricing includes all packing costs. Seller represents and warrants to Buyer that the prices and terms stated in any Supply Agreement are at least as favorable to Buyer as any prices and/or terms that Buyer offers or provides to any other customer of Buyer for each good and service that is similar to the Goods and Services. If and when Seller offers or provides to any third party prices and/or terms that are more favorable than the prices and/or terms with respect to a Good or Service under any Supply Agreement, Seller will immediately notify Buyer of such more favorable price(s) and/or term(s) and give to Buyer the more favorable price(s) and/or term(s).

4. **Taxes.** Buyer will not be liable to Seller for, and Seller may not collect from Buyer, any taxes associated with the provision or receipt of the Goods and/or Services other than taxes imposed by a governmental unit that expressly requires Seller to collect such taxes from Buyer. Whenever federal, state, or local taxes are charged or collected, Buyer must list taxes separately on each invoice.

5. **Shipping Terms.** Unless otherwise expressly stated in a Purchase Order, all prices are F.O.B. (UCC Code Sec. 2-319) Buyer's plant for orders shipped within the United States and DDP (Incoterms 2000) Buyer's plant for orders shipped internationally.

6. **Packing; Containers.** Seller will plainly mark all containers, crates, boxes, and packages with Buyer's order number and include packing lists with all shipments. The packing list for the last shipment for a particular order must conspicuously bear the notation "Order Completed" or another notation to that effect. Failure to properly mark purchased Goods will delay payment until Buyer receives proper documentation.

7. **Deliveries.** Time is of the essence in all of Seller's performances under any Supply Agreement. If Seller fails to timely deliver any goods or services provided for in a Supply Agreement, Buyer may, among its other remedies, (1) require that Seller ship by express or other more rapid means of delivery, any additional expense to be paid by Seller, or (2) cancel all or any part of the applicable Supply Agreement. If, by reason of Seller's failure to make deliveries as or when specified, Buyer finds it necessary to use other articles of material in place of those covered by a Supply Agreement, Seller will pay Buyer whatever expense, loss, or damage Buyer sustains by reason thereof. Seller will promptly give notice to Buyer of any fact or circumstance of which Seller is aware or of which Seller could, with reasonable diligence, be aware, that could reasonably be expected to delay any delivery of Goods or Services under any Supply Agreement. Seller may not ship excess quantities unless expressly authorized by Buyer in a signed writing. If Seller ships unauthorized excess quantities, Buyer may ship the same back to Seller FOB Buyer's location of, if Buyer retains the unauthorized excess quantities, Seller will reimburse Buyer for the reasonable costs of storing any unauthorized excess quantities delivered and, in any case, risk of loss to the Goods will remain with Seller. Buyer need not perform incoming inspections of any Goods or Services and Seller waives any right to require Buyer to conduct any such inspections.

8. **Quality Programs.** Seller will participate in Buyer's supplier quality and development program(s), if any, and comply with all quality requirements and procedures that Buyer specifies from time to time.

9. **Inspection; Acceptance.** All Goods and Services, and the facilities at which Seller manufactures, processes, or provides the same, are subject to inspection and/or test at any reasonable time or place, and in any quantity by Buyer or Buyer's direct or indirect customer(s). If any such inspection and/or test is made on Seller's premises or the premises of Seller's subcontractor(s), Seller will furnish, without additional charge, all reasonable facilities and assistance required by the inspectors. Such inspections and/or tests shall not relieve Seller of the obligation to make full and adequate inspections and tests. Receipt of, and/or payment for, Goods and Services will not itself constitute acceptance by Buyer of any Goods or Services. If a Good or Service is defective, the Buyer or its customers may reject such Goods and/or Services or require their replacement or correction. Buyer may return all rejected Goods or Services at Seller's invoice price plus all transportation charges and handling expenses. Buyer may, or may cause a third party to, rework, repair, or correct, any Goods or Services that fail to conform to the warranties contained in these Terms and Seller shall bear all costs thereof. Buyer may reject all Goods and Services if any of the Goods or Services do not conform to the warranties contained in these Terms and Buyer will have no obligation to reject only commercial units of the Goods or Services.

10. **Warranties.** Seller represents and warrants to Buyer and to each of Buyer's direct and indirect customers and users (a) that the Goods and Services will conform strictly to the specifications, drawings, samples or descriptions furnished to or by Buyer; (b) that the Goods and Services and new and of good quality and workmanship; (c) that the Goods and Services will be free of defects in design (unless, and then only to the extent that, Buyer provided the design), materials, or manufacture; (d) that the Goods and Services will be merchantable; (e) that the Goods and Services will be fit for the particular purposes intended by Buyer and/or Buyer's direct and indirect customers; (f) that the Goods and Services will comply with all applicable environmental, occupational, safety, health and other laws, rules, and regulations applicable to the design, function, or use of the Goods and/or Services in any jurisdiction of which Buyer informs Seller; (g) any Goods that are reasonably likely to go to an end user's hands in substantially the same form as when delivered to Buyer will have attached all warning labels, tags, or other notices necessary to avoid a failure-to-warn claim of product liability with respect to the Goods; and (h) neither the Goods nor the Services, nor their possession or use by any Buyer Indemnitee (defined below) as contemplated by a Supply Agreement or as implied by the nature or character of the Goods and Services, will infringe upon, violate, or misappropriate any intellectual property, contract, or other right of a third party. Seller shall immediately notify Buyer of any errors in specifications or drawings provided by Buyer to the extent that Seller is aware of same or that a reasonably skilled manufacturer, provider, or merchant of goods and services of the kind should have discovered. Seller further warrants that it has merchantable title to all Goods and that Seller will deliver all Goods free and clear of liens and encumbrances.

11. **Hazardous Materials.** If any Goods are, or contain, materials that are identified by any workplace health or safety or environmental law as hazardous, Seller will prominently label the Goods as such and will provide to Buyer, before delivery or concurrently with delivery, all Material Safety Data Sheets and any other information necessary to handle and store the Goods safely.

12. **Indemnification.** Seller will indemnify, defend, and hold harmless Buyer and Buyer's equityholders, directors, managers, officers, employees, agents, and direct and indirect customers (each a "Buyer Indemnitee") against any third-party claim or demand for injury or death of persons, property damage, economic loss, and any other damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other theory, to the extent caused or alleged to have been caused by Seller's defective design, manufacture, or provision of Goods or Services, Seller's willful or negligent acts or omissions in its performance under a Supply Agreement, or any other fact that, if true, would be, or be evidence of, a breach by Seller of any warranty under a Supply Agreement.

13. **Insurance.** Seller will procure and maintain insurance reasonably satisfactory to Buyer covering Seller's liability for the items for which Section 12 requires Seller to indemnify the Buyer Indemnitees. Seller will cause Buyer to be named additional insured on each such policy insurance and will cause the insurer(s) to give to Buyer at least 30 days' notice of any expiration, termination, or reduction of such insurance. Buyer will, promptly upon request by Seller, provide to Seller one or more certificates of insurers evidencing the required insurance and showing Buyer as additional insured. For the avoidance of doubt, nothing in this Section 13 will reduce Seller's obligations under Section 12 or require that Buyer limit its recovery to the benefit of, or proceeds of, any insurance.

14. **Intellectual Property Rights.**

(a) **Buyer's Intellectual Property.** Buyer does not by these Terms or any Supply Agreement transfer to Seller any right in any idea, invention, improvement, new and useful process, machine, manufacture, or composition of matter, new and useful

- improvement thereof, novel ornamental design of a functional item work of authorship, patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("Intellectual Property Right") of Buyer in information, documents, or property that Buyer makes available to Seller under a Supply Agreement or otherwise, other than the right to use Buyer's Intellectual Property Rights to produce and supply Goods and Services solely to Buyer.
- (b) Seller's Intellectual Property. If a Supply Agreement is terminated other than by Seller for Buyer's breach, Seller grants to Buyer a non-exclusive right and license to use and have used Seller's Intellectual Property Rights to obtain from alternate sources products and services similar to the Goods and Services to the extent of the volume of Goods and Services that Buyer could have ordered under the affected Supply Agreement(s).
- (c) Intellectual Property Rights Generated in Performance of Supply Agreement. If Seller, in the course of performance under a Supply Agreement, creates, discovers, invents, generates, or reduces to practice anything in which Intellectual Property Rights arise or exist, Seller will immediately (i) give notice to Buyer of the creation, discovery, invention, or work of authorship and the Intellectual Property Rights therein, (ii) assign to Buyer all such Intellectual Property Rights, and (iii) cooperate with Buyer (including, but not limited to, by making available Seller personnel to assist in prosecution of such rights), at Buyer's expense for reasonable out-of-pocket costs, in prosecuting, securing, registering, and perfecting such rights in Buyer.
- (d) Infringement. Seller will indemnify, defend, and hold harmless each Buyer Indemnitee from and against all claims, suits, actions, liabilities, losses, damages, penalties, interest, costs, and expenses, including reasonable legal fees, arising out of, or relating to, any actual or alleged infringement by the Goods or the Services (or the possession or use thereof by any direct or indirect customer of Buyer) of a third-party Intellectual Property Right, contract right, or other right.
15. Compliance with Law. In the performance of all Supply Agreements, Seller will comply with all federal, state, and local laws, ordinances, rules, orders, regulations or requisitions that are applicable to each Supply Agreement and/or to Seller. Seller will, upon Buyer's request, furnish to Buyer such certificates of compliance with the same, including, but not limited to, Customer environmental requirements, and in such form, as Buyer from time to time requires.
16. Activities at Buyer's Facilities. Seller will cause each agent of Seller to enter any facility of Buyer to comply with all workplace rules and security requirements of Buyer.
17. Changes. Buyer reserves the right at any time to make changes in drawings and specifications as to any Goods or Services. If any actual difference in cost to Seller results, the applicable price(s) shall be equitably adjusted, provided that Seller makes a written claim for adjustment within 10 days after first receiving the proposed changes. Each Supply Agreement is also subject to change, modification, suspension, or cancellation by Buyer in the event of fire, accidents, strikes, government acts, acts of God, curtailments, or reductions in orders by Buyer's customers, or any other conditions or events beyond Buyer's commercially reasonable control.
18. Term and Termination.
- (a) Generally. Each Supply Agreement will remain in effect for the term specified in the Supply Agreement (which term may be specified as a platform life, product life, quantity, or by other means) unless earlier terminated by Buyer by reasonable (but not less than 30 days') notice to Seller. Upon termination of a Supply Agreement, Seller will assist Buyer in locating an alternative source for the Goods and Services and in moving production to the alternate source selected by Buyer.
- (b) Termination for Seller's Default.
- (i) Buyer may forthwith cancel and terminate, in whole or in part, any Supply Agreement in the event that:
- (A) Seller becomes unable to pay its debts as they become due;
- (B) A receiver or similar custodian or agent is appointed for Seller or any material part of Seller's business;
- (C) Seller makes an assignment generally for the benefit of creditors;
- (D) Seller becomes entitled to demand adequate assurance of performance under UCC Sec. 2-609 and Buyer fails to deliver to Buyer adequate assurance of performance by the earlier of the fifth day after such demand or, if shorter considering the circumstances, a reasonable time after demand; or
- (E) Seller materially defaults under any of its obligations under any Supply Agreement (whether the Supply Agreement that is the subject of termination or any other Supply Agreement) or any other agreement between Buyer and Seller and fails to cure such default within 10 days after receipt of notice of such default.
- (ii) In the event of termination of a Supply Agreement or part thereof by Buyer for Seller's default, Buyer may, in addition to termination, have any and all other remedies available at law or in equity.
19. Buyer Property; Bailment. All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, other property purchased by Buyer from Seller, furnished by Buyer to Seller, paid for by Buyer, or for which Buyer reimburses Seller ("Buyer Property") shall at all times be and remain the property of Buyer. BUYER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO BUYER'S PROPERTY AND PROVIDES BUYER'S PROPERTY "AS IS AND WHERE IS." Seller will not permit any third-party encumbrance or claim of any kind to attach to any Buyer Property. Seller will appropriately segregate Buyer Property and prominently mark and/or tag all Buyer Property as being the property of Buyer. Seller will, at its own expense, insure for the benefit of Buyer to its full replacement value, all Buyer Property in Seller's possession or control. Seller may not use any Bailed Property for any purpose other than Seller's performance of a Supply Agreement for Seller and, in any case, Seller may not use any Buyer Property for its own benefit or the benefit of any third party. Seller may not move any Buyer Property from the initial Seller location to which the Buyer Property is delivered except on the express written and signed instructions of Buyer. Buyer may enter onto Seller's premises at any reasonable time to inspect and/or take all Buyer Property and Seller's records with respect thereto. Seller will arrange with any landlord or other third party any access necessary to any premises over which any such third party may or does limit access. Upon completion of Supply Agreements or parts thereof or their cancellation or termination for whatever cause, Seller shall:
- (a) Hold and protect all Buyer Property pending instructions from Buyer as to disposition of the same, free of all charges for such service and storage; and
- (b) Upon receiving instructions from Buyer to deliver the Buyer Property to Buyer or Buyer's nominee, promptly deliver the Buyer Property as instructed.
20. Labor. Seller will notify Buyer of the contract expiration date at least six months before the expiration of a current labor contract covering Seller's employees or the employees of Seller's principal suppliers that has not been extended or replaced. Buyer may thereafter direct Seller in writing to manufacture up to 60 days of additional inventory of Goods, specifying the quantities of Goods required and any packaging and storage requirements, and Seller will comply with such direction by Buyer.
21. Confidential Information. Seller will keep in confidence and prevent the disclosure to any third party all information and data disclosed to it by Buyer or that Seller learns from Buyer, in either case that is not readily ascertainable by the public by proper means, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and information about research and development.
22. Remedies Cumulative. Each remedy of Buyer is cumulative with each other remedy contained in each Supply Agreement and with all other remedies available to Buyer at law, in equity, and otherwise, and no pursuit by Buyer of any particular remedy will constitute an exclusive election by Buyer of any particular remedy.
23. Assignment; Third Parties. Seller may not assign or subcontract its duties or responsibilities under any Supply Agreement without the prior written consent of Buyer. Buyer may freely assign its rights and obligations under any Supply Agreement or part thereof and, thereupon, Buyer will have no liability for any obligation that arises after the date of the assignment. Buyer may, at its option, permit one or more of its affiliates to purchase Goods or Services under any Supply Agreement, any such purchases by Buyer's affiliates will be solely for each Buyer affiliate's own account, and Buyer will have no liability for any breach by any Buyer affiliate with respect to such Buyer affiliate's purchases. All Buyer Indemnitees are express third-party beneficiaries of all indemnification obligations and warranties of Seller under these Terms and any Supply Agreement. There are no other third-party beneficiaries of any right or obligation under any Supply Agreement.
24. Customs. Transferable credits or benefits associated with Goods and/or Services purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Goods and/or Services necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in a Supply Agreement, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations. For all Goods and/or Services covered by these Terms or any Supply Agreement, Seller shall provide to Buyer, at Buyer's request from time to time, an up-to-date certificate of origin compliant with the provisions of the North American Free Trade Agreement or any similar treaty or rule of law.
25. Government Supply Agreements. If a Purchase Order identifies a government prime contract, the following clauses are hereby incorporated by reference. Equal Opportunity (E. O. 11246), 48 §§ CFR 52.222-26; Affirmative Action for Special Disabled and Vietnam Era Veterans (38 USC § 4212(a)), 48 CFR §§ 52.222-35; Affirmative Action for Handicapped Workers (29 USC § 793), 48 CFR §§ 52.222-36. Copies of these clauses are available on request.
26. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OR (B) DAMAGES IN EXCESS OF THE PRICE OF THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THESE LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THAT THEY CAUSE ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE AND NOTWITHSTANDING THAT BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
27. Miscellaneous.
- (a) Choice of Law; Jurisdiction; Venue. These Terms and each Supply Agreement will be construed and enforced according to the law of the State of Michigan and the federal law of the United States of America, without regard for conflict of law rules. The United Nations Convention on Supply Agreements for the International Sale of Goods will not apply to these Terms or any Supply Agreement. Any claim, suit, or cause of action that arises out of, or is related to, these Terms or any Supply Agreement may be brought only in the courts of the State of Michigan sitting in Livingston County, Michigan or in the United States District Court for the Eastern District of Michigan. Each party irrevocably consents to the personal jurisdiction of, and venue in, such courts.

- (b) Advertising. Seller will not advertise or otherwise disclose to the public its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as is necessary in order to perform a Supply Agreement or as required by law.
- (c) Audit Rights. Seller will maintain, for not less than three years after completion of each Supply Agreement, records necessary to support amounts charged to Buyer under such Supply Agreement. Buyer and its representatives may audit such records to the extent needed to verify that Seller's invoices and any payments to Seller are supported by the Supply Agreement. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit reveals material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.
- (d) Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in a Supply Agreement makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.
- (e) Waiver. Buyer's failure to insist on performance of any obligation, or to exercise any right or privilege, or Buyer's waiver of any obligation, shall not thereafter be a waiver of other terms, conditions, rights, or privileges, or of the same terms, conditions, rights, or privileges on a different occasion.
- (f) Severability. If any provision of a Supply Agreement is invalid or unenforceable in any jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of a Supply Agreement or the validity or enforceability of that provision in any other jurisdiction.
- (g) Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service. The addresses for notice for each party are those on the Purchase Order, Attn: Legal Department. Either party may change its address for notice by giving to the other party notice of the change of address.
- (h) Remedies Cumulative. Each and every remedy of Buyer is cumulative and no exercise or pursuit by Buyer of any particular remedy will be deemed an election of that remedy exclusively. Any claim, suit, or action resulting from any breach on the part of Buyer under these Terms or any Supply Agreement must be commenced within six months after the cause of action has accrued or be forever waived. Drafting Party. No rule that requires the construction of any language against the drafting party will apply to the construction of these Terms.
- (i) Entire Agreement. Each Supply Agreement constitutes the entire agreement between the parties with respect to its subject matter, and each Supply Agreement supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of that Supply Agreement, including, but not limited to, any Seller quotation unless Buyer specifically incorporates it into in a Supply Agreement in a signed writing. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of any Supply Agreement will be binding unless in writing and signed by the party against which enforcement is sought.