

# LEER, INC.

## TERMS AND CONDITIONS

**1. OFFER & ACCEPTANCE; ORDERS SUBJECT TO ACCEPTANCE.** This document (i) constitutes an offer or counter-offer by Leer, Inc., an Iowa corporation (hereinafter the “**Seller**”), to sell the products and/or services (collectively, the “**Products**”) described in the quotation, proposal, order acknowledgment, invoice or other document provided by Seller and into which these Terms (as defined below) are incorporated (the “**Seller Document**”) to the purchaser named (“**Buyer**”) in accordance with these terms and conditions (these “**Terms**”), (ii) is not an acceptance of any offer made by Buyer, and (iii) is expressly conditioned upon Buyer’s assent to these Terms. Seller hereby objects to the inclusion of any additional or different terms or conditions proposed by Buyer or contained in any request for proposal, purchase order, acknowledgement, or other communication previously or hereafter provided by Buyer to Seller. No such different or additional terms or conditions will be of any force or effect. This offer may be revoked by Seller at any time before it is accepted by Buyer, and will automatically expire 30 calendar days after its date if Buyer has not accepted it before then. Neither Buyer’s acceptance of this offer nor any conduct by Seller (including but not limited to shipment of Products) will oblige Seller to sell to Buyer any quantity of Products in excess of the quantity that Buyer has committed to purchase from Seller at the time of such acceptance or conduct.

**2. ENTIRE AGREEMENT.** These Terms, together with the consistent terms provided by Seller in the Seller Document, shall be referred to herein as the “**Agreement**” and will be the entire agreement between Seller and Buyer on the subject of the transaction described herein and therein; there are no conditions to the Agreement that are not so contained or incorporated. This writing is intended by Seller and the Buyer as a final and exclusive expression of their agreement, and no course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Agreement.

**3. PRICE. Prices quoted by Seller are subject to change by Seller, before and/or after acceptance by Buyer of Seller’s offer or counteroffer.** In the event of a price change, Seller shall provide written notice to Buyer at least 4 weeks prior to the expected shipment date (a “**Discretionary Price Change, commonly known as a surcharge**”). No later than 5 Calendar days after a Discretionary Price Change, commonly known as a surcharge, Buyer shall have the right to notify Seller in writing of Buyer’s objection to the Discretionary Price Change, commonly known as a surcharge (“**Buyer Objection**”). Unless a Buyer Objection is timely raised, Buyer shall be deemed to have accepted the Discretionary Price Change, commonly known as a surcharge. Upon Seller’s receipt of timely written notice of a Buyer Objection, the Agreement shall be terminated without liability to either party. In addition to the prices stated in this Agreement, Buyer shall pay to Seller on demand an amount equal to all taxes and other charges imposed by any governmental agency or authority, whether by present or future enactment, upon the manufacture, sale, shipment, delivery or use of the Products sold hereunder, which taxes or charges Seller is or shall be required or permitted to pay or collect. All prices and amounts payable, under the Agreement are in U.S. Dollars. Any freight price quoted in this Agreement is only an estimate, and prevailing freight rates will be charged at the time of invoicing.

All prices listed in Seller’s publications (including on Seller’s website) are intended as a source of general information only and not as an offer to sell, and all prices contained therein are subject to confirmation by formal quotation by Seller. Buyer acknowledges that the prices specified herein were furnished by Seller in accordance with the most current information made available to Seller as of the date of this Agreement. Buyer acknowledges further that the prices specified herein are subject to change or withdrawal within 30 days of the Agreement. No order shall be binding upon Seller until received and accepted by Seller in its sole discretion.

**4. DELIVERY; ALLOCATION OF RISK.** This is a shipment contract. The Products shall be shipped F.O.B. Seller’s plant (as defined in Wis. Stat. § 402.319) or, for ultimate destinations outside of the U.S., EXW Seller’s plant (as the latter shipping term is defined in Incoterms 2020) unless otherwise specified in a Seller Document. Title to and possession of all Products sold hereunder shall pass to Buyer on delivery to a common or contract carrier and, regardless of the shipping terms or freight payment, such Products shall be at the risk of Buyer from and after such delivery. Seller reserves the right to specify the routing on all shipments to Buyer. Tender of a Bill of Lading operates as tender of the Products.

**5. SHIPPING DATES.** The Products sold hereunder will be shipped at the earliest practicable schedule date of Seller unless specific shipping dates are agreed to in writing by Seller, it being understood that all shipment and delivery dates are approximate. Seller reserves the right to make delivery in installments, unless

otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to Seller within 10 calendar days after receipt of shipment, and failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss of or damage to the Products in transit must be made to the carrier, and not to Seller. Buyer or Buyer’s designee must note suspected freight damage (or refuse delivery) before signing a Bill of Lading when freight damage is suspected or obvious.

**6. FORCE MAJEURE.** Seller shall not be liable for any losses or damages, direct or consequential, arising out of any delay in delivery, or failure to deliver any of the Products sold hereunder, if such delay or failure to deliver is due to a cause beyond Seller’s reasonable control including, but not limited to, an Act of God, act of Buyer, explosion, accident, fire, drought, flood, strike, insurrection or riot, war, the public enemy, the acts, statutes, regulations or orders of a federal, state or local governmental unit, freight embargo, epidemic, pandemic, quarantine, transportation, power, labor or material shortage, delay in transportation, or a default or force majeure of a supplier. In the event of any such delay in delivery, the date of delivery will be extended for a reasonable time after termination of such cause, but not less than a period equal to the time lost because of delay. If, because of any such event, Seller is unable to supply the total demand for its products, including the Products, to all of its customers, Seller may allocate its available supply of products among itself and all of its customers, including those not under contract, on such basis as it determines to be equitable, without obligation to purchase similar products from other sources.

**7. PAYMENT.** Buyer shall make payment in full and in cash at the time of delivery for the Products sold hereunder except as otherwise stated in the Seller Document. If Buyer fails to pay any invoice when due, or fails to accept shipments as scheduled, Seller may, without prejudice to other remedies, either defer further shipments until the default is corrected, or cancel the unfilled portion of the order, and any or all other orders. Buyer shall not take any deductions against the amount shown on Seller’s invoice. If the financial responsibility of Buyer shall in the judgment of Seller become impaired at any time, Seller may refuse to make shipment hereunder unless Buyer makes cash payment or provides security satisfactory to Seller. Buyer’s failure to pay in accordance with the terms of Seller’s invoice will void warranties. If production or shipment of completed Products, or other Seller performance, is delayed by Buyer, Seller may immediately invoice, and Buyer will pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, Buyer will compensate Seller for storage of completed Products or work in process during any such delay, whether stored at Seller’s facility or an independent storage company’s facilities.

**8. REPRESENTATIONS AND WARRANTY.** The warranty for the Products is the Seller’s standard, written warranty for such Product listed on <https://www.leerinc.com/terms-of-service/> as in effect at the time of the sale (the “**Standard Warranty**”). This Standard Warranty extends only to the original purchaser who is end user of the Product, and not to a dealer or distributor of the Products.

**THE STANDARD WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

**9. RETURNS.** Written authorization from Seller is required prior to returning any Products or parts. If such return is so authorized by Seller, freight costs for such returns are to be prepaid by Buyer and subject to minimum 25% re-stocking fee and other applicable charges such as repairs to Products or Product parts damaged in transit, etc. Custom walk-ins (defined as any item other than G-24, G-5 or G-7 products) or non-stock refrigeration are not returnable.

**10. CANCELLATIONS/CHANGES.** No accepted offer may be cancelled or altered by Buyer except upon terms and conditions accepted by Seller in writing. If a cancellation is so accepted by Seller in writing, if such order has been released to

production, Buyer will be subject to a minimum 25% cancellation fee for such order plus any applicable engineering fees and other charges such as custom metal purchased and/or in-process, panels already produced, etc.; in addition, Buyer agrees to assume liability for all costs incurred by Seller in processing the order to the time of Seller's receipt of Buyer's notice of cancellation. If a change is so accepted by Seller in writing, if such order is changed after being released to production, Buyer will be charged the total amount necessary to accommodate the change(s) plus any applicable engineering fees.

**11. PRODUCT CHANGES.** Seller reserves the right, at any time, and from time to time, and without providing prior notice to Buyer, to make design, specification, composition and other changes or modification in or to its Products, as Seller deems appropriate, and any Products so changed or modified shall be considered standard Products in fulfillment of Seller's obligation.

**12. BUYER'S INDEMNITY.** Buyer agrees to defend, hold harmless, and indemnify Seller and its officers, agents and employees from and against any and all losses, damages (including damages arising from personal injury or death), liabilities, claims, costs and expenses (including attorneys' fees) whether in contract or in tort, made by persons other than Buyer, arising out of Buyer's acts, omissions, or arising out of possession, use, misuse or improper storage or handling of Products including, but not limited to: (a) any breach by Buyer of this Agreement including, without limitation, Buyer's failure to timely pay; (b) any violation by Buyer of any law, rule or regulation; (c) any use or resale of the Products by Buyer, including, without limitation, any misuse of the Product or use of the Product in a manner for which it is not designed or intended; (d) Buyer's designs, specifications, or requirements, including any claim of patent, trademark, copyright or trade secret infringement; or (e) Buyer's tortious act or omission. Further, Buyer agrees to indemnify and save Seller harmless from any loss or damage to property and from injuries to persons relating in any way to the use of car(s), truck(s) and barge(s) used for the delivery of the Products while such vehicles are in the Buyer's possession.

**13. INDEMNIFICATION PROCEDURES.** Seller shall give Buyer written notice of any claim for which indemnification is sought under the Agreement, provided that the failure to give such written notice shall not, however, relieve Buyer of its indemnification obligations, except and only to the extent that Buyer forfeits rights or defenses by reason of such failure. Seller, may, at Seller's option, assume and control the defense of the claim, and in such case, Buyer shall indemnify Seller from and against losses, damages, costs and expenses (including attorneys' fees, court fees, and other defense costs) incurred by Seller in defending such claims. If Seller decides not to assume the defense of a claim, then Buyer shall assume and control the defense of such claim, at Buyer's expense and by Buyer's own counsel (which counsel shall be subject to the approval of Seller, which approval will not be unreasonably withheld or delayed); provided that Seller shall have the right to participate in the defense of any claims with counsel selected by it at Seller's expense. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claims. Notwithstanding any other provision of this Agreement, Buyer shall not consent to the entry of any judgement or enter into any settlement of any claims without the prior written consent of Seller.

**14. LIMITATION OF LIABILITY. SELLER SHALL NOT BE LIABLE WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE OR OTHER LEGAL THEORY FOR ANY SPECIAL, INDIRECT, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING LOSS OF PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute Products, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages, costs or losses. **SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY AMOUNT WITH RESPECT TO ANY ORDER OF PRODUCTS THAT, IN COMBINATION WITH ALL CLAIMS BY BUYER AGAINST SELLER RELATED TO SUCH ORDER OF PRODUCTS, EXCEEDS THE TOTAL PRICE PAID BY BUYER TO SELLER FOR SUCH ORDER OF PRODUCTS. SELLER WILL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** The liability of Seller to Buyer, whether in contract, tort (including negligence or strict liability) or otherwise, is exclusively limited to the remedies expressly provided under

the terms of the Agreement, in lieu of any and all other remedies at law or in equity. Any cause of action that Buyer may have against Seller and which may arise under this Agreement must be commenced within one (1) year after the cause of action has accrued.

**15. INTELLECTUAL PROPERTY.** All intellectual property rights (including, without limitation, patents, trademarks, registered designs and any rights to apply for same, copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and existing at any time in Products or arising out of or relating to the design or manufacture of Products or the provision of services shall belong to and remain vested in Seller. Nothing in the Agreement grants to Buyer any right, title or interest in or to Seller's intellectual property.

**16. DESIGNS AND TOOLS.** Any design work performed by Seller, and any dies, molds, jigs or other tools that Seller manufactures or acquires, in connection with its performance hereunder will be and remain the sole property of Seller, notwithstanding any charges to Buyer therefor. Any such charges convey to Buyer the right to have the designs, dies, molds, jigs and/or other tools used by Seller for performance hereunder, but do not convey title or right of possession or any other right.

**17. INFRINGEMENT.** Buyer warrants that any words, designs or devices which Buyer instructs Seller to incorporate in or imprint or place on the Products sold hereunder do not infringe on any patent, trademark, copyright or other intellectual property right of a third party, notwithstanding that Seller may be consulted as to, or may perform, art or design work or other special services in connection with the order.

**18. CONFIDENTIAL INFORMATION.** Any and all designs, sketches, models, or samples, drawings, bills of materials, blueprints, plans, devices, machinery, specifications, processes, techniques, expertise, business and financial records, part numbers, plans and projections, and other similar information, items, documents and materials made available by Seller or its affiliates to Buyer or its affiliates, or otherwise acquired, obtained or developed by Buyer under or in connection with these Terms (collectively, the "Confidential Information") are and at all times shall remain the exclusive property of Seller. "Confidential Information" shall not include any item of information that Buyer can demonstrate by documentary evidence: (a) is or has become public knowledge, whether by publication or otherwise, through no act, omission or fault of Buyer or any of its employees, officers, directors, agents or affiliates, or (b) is disclosed to Buyer by a third party who is in lawful, rightful possession of the information and who has the legal right to make disclosure thereof without confidentiality restrictions. During the Confidentiality Period, Buyer agrees that it shall not (i) make any use whatsoever of the Confidential Information except for the purpose(s) specified in these Terms; or (ii) disclose the Confidential Information to any third party. The "Confidentiality Period" shall mean, for all Confidential Information that constitutes a 'trade secret' under applicable law, the period beginning on the date of disclosure to Buyer and ending on the later of (x) the date such Confidential Information is no longer a trade secret under applicable law, or (y) the date that is 3 years after the date that Seller accepts the last purchase order submitted by Buyer; and shall mean, for all other Confidential Information, the period beginning on the date of disclosure to Buyer and ending 3 years after the date that Seller accepts the last purchase order submitted by Buyer. Buyer acknowledges and agrees that money damages for any and all breaches of Buyer's obligations under this Section 18 are both incalculable and insufficient and that any such breach would irreparably harm Seller. Therefore, in the event of an actual or prospective breach of any such obligation, Seller shall be entitled to seek a permanent and/or preliminary injunction to prevent or remedy such breach and shall have the right to specific enforcement of this Section 18 against Buyer in addition to any other remedies to which Seller may be entitled at law or in equity.

**19. TERMINATION.** In the event of voluntary or involuntary bankruptcy, receivership, insolvency or reorganization proceedings involving either party or its property, or the assignment of all or substantially all of the assets of either party for the benefit of creditors, the other party may terminate its obligations hereunder by giving written notice of such termination which shall become effective upon the giving of such notice.

**20. INSPECTION.** Buyer shall inspect and test the Products delivered hereunder for damage, defect or shortage, immediately upon receipt at Buyer's plant or such other location as determined by Buyer and provide Seller notice of such damage, defect or shortage within ten (10) days of receipt. All claims for any damage occurring during transport, whether based on contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim not later than ten (10) days after Buyer's receipt of the Products as to which such claim is made.

**21. WAIVER EFFECT ON FUTURE BREACHES.** No claim or right of Seller arising out of breach of this Agreement by Buyer can be discharged or released in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by Seller. Waiver by Seller or a breach by Buyer of any provision of this Agreement shall not be deemed a waiver of future compliance and such provisions shall remain in full force and effect.

**22. ASSIGNMENT AND DELEGATION.** No right or interest in this Agreement shall be assigned by Buyer without the written permission of Seller and no delegation of any obligation owed by Buyer to Seller shall be made without the written permission of Seller. Such permission shall not relieve Buyer from its obligations or from any liability for breach or from any duty to perform. Any attempted assignment or delegation other than in compliance with this Agreement shall be wholly void and totally ineffective for all purposes.

**23. AMENDMENT.** No agreement or understanding to cancel, terminate or modify this Agreement shall be binding on Seller unless in writing and signed by Seller's authorized agent.

**24. SECURITY INTEREST.** In the event Buyer makes payment for the Products other than in cash at time of delivery pursuant to Section 7 above, Buyer hereby acknowledges that Seller retains a purchase money security interest in the Products, documents relating to the Products, and all proceeds and products of the foregoing, wherever located, to secure the debt, obligations and liabilities of the Buyer to Seller arising out of, or in connection with, the purchase of the Products from Seller. To secure Buyer's obligations to Seller under the Agreement or any other agreement, Buyer hereby grants to Seller a security interest in all the Products sold under the Agreement, whether now owned or hereafter acquired, and all products and proceeds thereof. Seller may file any financing statements and send any notices necessary or appropriate to perfect or protect such security interest. Buyer authorizes Seller to sign and execute on behalf of and in the name of Buyer and/or agrees to execute, on demand, Security Agreements or other documents which Seller deems necessary or appropriate to perfect or protect its purchase money security interest and agrees to pay all costs of filing such statements or instruments. Seller is entitled to file and/or enforce mechanic's, materialmen's, carriers', repairers' and other similar statutory liens.

**25. INSURANCE.** At Buyer's expense, Buyer agrees to carry, with reputable insurance companies, insurance coverage of the types and in the amounts reasonably requested by Seller from time to time. Buyer shall ensure that Seller is named as an additional insured on such insurance policies, and Buyer shall provide Seller with certificates of such insurance upon request.

**26. RELATIONSHIP OF PARTIES.** Buyer and Seller are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship. Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

**27. GOVERNMENT CONTRACTS.** If the provision of Products by Seller under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. or any state government, Buyer shall so notify Seller in advance of order acceptance specifying the mandatory provisions of U.S. or state law which apply.

**28. CUMULATIVE REMEDIES.** Seller's rights and remedies under the Agreement are cumulative and in addition to all other rights and remedies available to Seller at law or in equity.

**29. APPLICABLE LAW.** This Agreement and any dispute arising herefrom shall be governed by, and this Agreement shall be construed and enforced in accordance with, the laws of the state of Wisconsin (without reference to principles of conflicts of laws and excluding Chapter 135 of the Wisconsin Statutes). **THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

**30. SEVERABILITY.** If any provision, clause or part of the application thereof under certain circumstances is held invalid, the remainder of this Agreement or the application of said provision, clause or part under other circumstances shall not be affected thereby.

**31. NOTICE.** Any notice hereunder shall be deemed given if and when deposited in the United States mail, postage prepaid, addressed to the other party at the address herein.

**32. FORUM AND JURISDICTION.** Buyer and Seller each irrevocably and unconditionally agree that the sole and exclusive forum and venue for any legal or

equitable action or proceeding arising out of or in connection with this Agreement will lie in the United States District Court for the Western District of Wisconsin or the courts in the State of Wisconsin sitting in Dane County and each party hereby irrevocably and unconditionally submits to the sole and exclusive personal jurisdiction of such courts.

**33. UPDATES.** THESE STANDARD TERMS MAY BE MODIFIED, AMENDED AND UPDATED FROM TIME TO TIME AT THE DISCRETION OF SELLER UPON WRITTEN NOTICE TO BUYER.

Updated August 2021

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