

TERMS AND CONDITIONS

1. Contract Formation

If this instrument is a quotation, whether or not responsive to a request from the Buyer (hereinafter "Customer"), it constitutes the offer of Lynch Fluid Controls Inc. (hereinafter "LFC") to the Customer, and becomes a binding contract under the terms and conditions set forth herein when it is accepted by the Customer. However, any such acceptance shall be valid only if made within thirty days of the date of this instrument or such other time period specified herein. If this instrument is an acknowledgment, it constitutes LFC's acceptance of the Customer's order, subject, however, to the terms and conditions set forth herein. Upon the creation of a contract, this instrument will recite the entire agreement between the parties with respect to the goods, equipment or services being purchased, and shall supercede any other agreement, writing, or understanding whether made before or after the date of this instrument. Thus, LFC's contractual obligations are expressly limited to the terms contained therein. The inclusion of any different or additional terms in any other instrument is object to, and performance by LFC shall occur with the express understanding that only the terms and conditions recited herein shall control.

2. Terms of Payment

- a. All payments are to be made in specified funds, and without expense to LFC.
- b. Payment shall be cash with the Order or sight draft attached to a bill of lading (or other shipping documents) at the option of LFC.
- c. When credit is extended by LFC, invoices shall be due and payable within thirty days from invoice date. Any amount unpaid thirty days after shipment is subject to a monthly service charge, on the unpaid balance. However, notwithstanding the foregoing, LFC retains the option to refuse or to revoke credit, and to require immediate payment of all outstanding balances and payment on delivery for all future deliveries.
- d. Customer agrees to pay any expense incurred on collecting any unpaid balance of the purchase price, or in recovering possession of goods including reasonable attorney's fees.
- e. If LFC extends credit to the Customer, then for the purposes of securing payment and performance of all Customer's obligations hereunder, LFC shall retain a security interest in all of the goods being sold pursuant to this agreement. At LFC's request, Customer shall execute and join in executing all financing statements and other instruments, in form satisfactory to LFC, which LFC deems necessary or desirable to perfect its security interest in the goods being sold pursuant to this agreement.

3. Packing and Shipment

Packing and shipment shall be in accordance with good commercial practice. Augmented or enhanced packaging specified by the Customer will be provided, which may include a surcharge.

4. Delivery and Title

- a. Delivery shall be ExWorks LFC factory. Title shall pass upon collection from LFC factory.
- b. Under no circumstances shall LFC have any liability whatsoever for delays, loss of use, or for any indirect or consequential damages arising from any delay or loss or use.

- c. LFC shall not be responsible for the failure to perform any obligation arising hereunder due to events beyond its control. These events shall include, but are not limited to, fire, storm, flood, earthquake, explosion, electrical/power supply interruptions, accidents, acts of public enemy or terrorism, sabotage, strikes, labour disputes, labour shortages, work stoppages, transportation embargoes or delays, failure or shortage of materials or machinery used by LFC in the manufacture of the goods supplied hereunder, acts of God, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, and acts or regulations or priorities of the Federal, Provincial or local government or branches or agents thereof, government contracts or shipments to purchasers to fulfill government contracts.
- d. No claim for shortage in packaging shall be allowed unless reported to LFC, in writing, within ten days after receipt of goods.

5. Patents

The Customer shall not receive, as a result of the sales of goods hereunder, any right or license of any kind under any patent owned or controlled by LFC, or under which LFC may be licensed. However, the foregoing provision shall not limit the right of the customer to use and sell such goods, in the event such goods are covered by any such patent.

6. Indemnity

If any goods are made in compliance with Customer's plans, designs, specifications or instructions. Customer shall indemnify and hold harmless, and defend LFC against any damage, loss, expense, liability, claims, suits, judgments, decrees and costs caused by or relating to the plans, designs, specifications or instructions for such goods, including any patent infringement or alleged infringement.

7. LFC Standard Product Warranty

- a. LFC warrants that each item of its manufacture shall, at the time of shipment to Customer, conform to applicable specifications and drawings, and be free from defects in material and workmanship. Design, essential performance, or other provisions expressly stated to be goals or objectives shall not be deemed to be requirements subject to the Warranty.
- b. Unless otherwise specified, LFC's obligation under this Warranty shall be limited to repair or replacement, at LFC's option, of any item which within twelve months from date of shipment to Customer is proven to LFC's satisfaction to have been non conforming at the time of shipment. As a condition of this Warranty, Customer shall notify LFC in writing of any claimed non conformance immediately upon discovery and shall return the item to LFC for inspection. LFC shall not be responsible for any work done or repairs made by others at this time. Disassembly by anyone other than persons authorized by LFC will void the terms of this Warranty.
- c. LFC shall not be responsible for the performance of any product which incorporates items manufactured by LFC unless such performance is expressly designated as LFC's responsibility under the terms of the written agreement between LFC and the Customer.
- d. LFC shall not be liable for improper use, installation, accidents, operation or maintenance of items manufactured by LFC, nor for any damage resulting therefrom, or from negligence on the part of Customer's employees or agents.

- e. LFC shall not be responsible for any consequential or incidental damages occasioned by failure of any item supplied by LFC, or by failure of any item in which a component manufactured by LFC is incorporated.
- f. Unless previously agreed to in writing, LFC shall not provide field repairs, modifications, or any other field service under this Warranty.
- g. THE WARRANTIES CONTAINED HEREIN ARE EXCLUSIVE AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER OBLIGATIONS AND LIABILITIES. WITH RESPECT TO CONTRACTS DIRECTLY BETWEEN LFC AND THE CANADIAN GOVERNMENT OR ANY OF ITS AGENCIES, THE RIGHTS AND REMEDIES AFFORDED TO THE GOVERNMENT OR AGENCY BY THIS STANDARD PRODUCT WARRANTY ARE IN ADDITION TO AND DO NOT LIMIT ANY RIGHTS AFFORDED BY ANY OTHER PROVISION OR PROVISIONS OF THE CONTRACT.

8. Information, Data and Design

Any proposals, prints, brochures, drawings, design, data, or other information furnished to the Customer by LFC before, after, or contemporaneously with the execution of this contract are intended for confidential use by the Customer, shall remain the property of LFC, and shall not be used to the detriment of LFC's competitive position. When given, all such proposals, performance and production projections, prints, brochures, drawings, designs, data and other information are based on LFC's knowledge and understanding, but are, in all events, estimated only and are not guaranteed or warranted in any respect. The providing of any design information by LFC shall not constitute an assumption of design responsibility unless otherwise expressly assumed by LFC.

9. Cancellation of Contract

Under no condition may the Customer cancel his obligations under this contract. Any attempt to do so will entitle LFC, in its sole discretion, to either

- a. recover all direct, indirect, and consequential damages arising by reason of such attempted cancellation, or
- b. retain as liquidated damages any customer deposit made under this contract.

10. Applicable Law

In the event of a dispute regarding any of the terms or conditions contained herein, the parties agree that the law of Ontario will control.

11. Assignments

The Customer's rights may not be assigned or otherwise transferred to any other person, whether by operation of law or otherwise, without LFC's prior written approval.

12. Waivers

Waiver by LFC of any breach of any of these provisions, or its failure to exercise any right, shall not be construed as a waiver of any other breach, or a waiver to exercise any other right.

13. Indemnification

Customer will indemnify LFC and hold LFC harmless from any and all claims made by Customer's employees or agents for injuries or damages including death, arising from or related to tasks performed under this quotation or contract.

14. Default

If the Customer fails to pay any invoice when due, or fails to accept shipments as scheduled, LFC may, at its option and without prejudice to other remedies, either defer further shipments until the default is corrected or cancel LFC's remaining obligations under the contract.

15. Customer's Authorization

The Customer represents and warrants that the person who executed the offer which this instrument accepts, or who will execute the Customer's acceptance of the offer contained in this instrument, has duly executed the relevant documents on behalf of the Customer, and is duly authorized so to act.

16. Customer Supplied Drawings

Customer supplied drawings, Engineering & Manufacturing Costs will be assessed if design needs modification due to errors or omissions.

17. Quote Validity Period

Quote is valid for 30 business days.

18. Required Documentation

First Article Inspection, Production Part Approval Process, End Item Data Package, Failure Mode and Effects Analysis, Test Reports, Mill Certificates, Certificate of Compliance, etc are subject to a surcharge.

If not specified at the time of quoting but requested on P/O, a fee may be added to your order.

19. Shipment and Pricing

Noted ship dates are based upon receipt of approval drawing.

Premium delivery may be available:

- a. Contact manifold engineering for availability.
- b. A premium of 20% of production pricing applies when delivery requested is less than two weeks after receipt of order.
- c. A premium of 30% of production pricing applies when delivery requested is less than one week after receipt of order.

20. Cancellation Charges

Cancellation charges are based on work completed.

- a. Machining has commenced: 50% of pricing for quantity cancelled.
- b. Machining/Assembly have been completed: 100% of the pricing for quantity cancelled.

RETURNS

1. No Product may be returned for credit or exchange without the prior approval of LFC.
2. The return is accepted by the LFC a RETURN # will be issued by LFC. Returned parts must be visibly marked with the provided RETURN #.
3. A 30% restocking fee or minimum \$40.00 (whichever is greater) will apply to all authorized items returned for credit. LFC reserves the right to modify this charge based on circumstances.
4. All returned items will be subject to inspection. Products returned for inspection must be in a good re-saleable condition otherwise it will not be accepted.
5. All items for return are to be freight prepaid by the Customer even for warranty inspection.
6. Products that are made to order are not subject to our standard return policy.