



## TERMS AND CONDITIONS OF SALE

### 1. Scope and Acceptance

These Terms and Conditions of Sale (“**Terms and Conditions**”) apply to all quotations and sales of goods or services (“**Goods**”) by Lummus Corporation or any of its subsidiaries or affiliates (“**Lummus**”). If this writing differs in any way from the terms and conditions of Purchaser’s order, or if this writing is construed as an acceptance or as a confirmation acting as an acceptance, then Lummus’ acceptance is EXPRESSLY MADE CONDITIONAL ON PURCHASER’S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN PURCHASER’S WRITING. Further, this writing shall be deemed notice of objection to such terms and conditions of Purchaser. If this writing is construed as an offer, acceptance hereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. In any event, Purchaser’s acceptance of the Goods shall manifest Purchaser’s assent to these Terms and Conditions. No addition to or modification of these Terms and Conditions will be effective unless set forth in writing and accepted in writing by Lummus.

### 2. Payment; Collection

2.1 Purchaser agrees to make prompt payment of invoices due in accordance with the terms stated on the order acknowledgment. Any remaining balance outside the payment period will be carried at the rate of 1½% per month (18% per annum), or the maximum rate allowed by law. In the event Purchaser fails to pay for any one shipment when same becomes due, or should Purchaser’s account become otherwise delinquent, Lummus may, at its option, either terminate the order or refuse to ship or deliver Goods under this or any other order(s) until such delinquency is cured without prejudice to other rights Lummus may possess.

2.2 Unless otherwise expressly stated in the order acknowledgment, Lummus’ quoted prices do not include or reflect sales taxes, use taxes, customs fees, tariffs, excise taxes, or any other international, federal, state, or local taxes that are applicable at the date of sale or which may take effect between the date of sale and the date of delivery. Purchaser shall be liable for any such levies. Failure by Lummus to invoice for or collect any such fees, tariff duties, or taxes from Purchaser with the initial invoiced amount shall not constitute a waiver of Lummus’ right to bill and collect from Purchaser subsequently for such fees, tariff duties, or taxes. Purchaser shall comply with all governmental laws and regulations and shall secure all necessary approvals, if any, applicable to the delivery, use, and sale of the Goods and any other conduct contemplated by Purchaser’s purchase of the Goods.

2.3 Seller shall have the right to modify prices for the Goods pursuant to a change order as a result of any material increase in Seller’s cost of production beyond Seller’s control (including but not limited to labor, tariffs, fuels, component part(s), steel, aluminum, or copper).

2.4 Should Purchaser’s financial condition become unsatisfactory to Lummus, cash payments or security satisfactory to Lummus may be required by Lummus for future deliveries or for goods theretofore delivered. Purchaser agrees to pay all costs of collection, including reasonable attorneys’ fees.

2.5 Purchaser hereby grants to Lummus a security interest in all Goods shipped hereunder, and in all proceeds thereof until payment in full has been made. “Payment in full” shall include all amounts due to Lummus from Purchaser that are related to the Goods, including, but not limited to, the price of the Goods themselves, and all taxes, customs charges, duties, delivery charges, late payment fees or penalties, and any and all other amounts owed by Purchaser to Lummus in any manner associated with the Goods. At the request of Lummus, Purchaser hereby agrees to execute such documents reasonably required to perfect Lummus’ security interest in such Goods. Whenever reasonable grounds for insecurity arise with respect to due payment by Purchaser, Lummus may demand different terms of payment, and may demand assurance of Purchaser’s payment. Any such demand may be oral or written, and Lummus may, upon the mailing of such demand, stop production and suspend shipments hereunder. If, within the period stated in such demand, Purchaser fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Lummus may, at its option, treat such failure or refusal as a repudiation of the portion of the order which has not been fully performed, or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title.

### 3. Indemnification

Purchaser agrees to indemnify, defend and forever hold harmless Lummus from and against any and all claims, actions, demands, liabilities, losses and damages of any kind (including attorneys’ fees), regardless of the theory of liability, incurred by or threatened against Lummus in connection with: (a) the use and operation of the Goods, including, but not limited to, the failure to operate the Goods in accordance with the operating instructions furnished by Lummus and/or prudent operating practices; (b) the alteration, elimination, or failure to use safety devices furnished by Lummus; (c) any modifications to the Goods by Purchaser; (d) the incorporation of Goods into any product; (e) the installation and use of third-party equipment on the Goods, such as strapping systems with fixed bale discharge conveyors on Lummus down-acting balers, including, but not limited to, any and all such claims, actions, demands, liabilities, losses and damages of any kind arising out of the modification, alteration, or elimination, in whole or in part, of safety devices; (f) the extension of any warranties beyond those provided herein; and (g) any other acts or omissions of Purchaser related to the sale or distribution of the Goods.

### 4. Express Warning & Release Regarding Third-Party Equipment

Purchaser acknowledges that the installation and operation of third-party equipment on the Goods, including, but not limited to, strapping systems with fixed bale discharge conveyors on Lummus down-acting balers (e.g., Samuel Strapping Systems), are a **SAFETY HAZARD and may result in serious bodily injury or death**. Safety devices provided by Lummus are configured to apply to Lummus-supplied equipment only and should not be modified, altered, or eliminated in whole or in part. Purchaser makes changes, modifications, and alterations to the Goods at its own risk and hereby releases, waives and forever discharges Lummus of and from any claims, actions, demands, liabilities, losses and damages of any kind associated with the use of third-party equipment or equipment manufactured using unauthorized or counterfeit copies of Lummus’ intellectual property including, but not limited to drawings, designs, schematics, or technical information.



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### 5. Limitation of Liability

**LUMMUS SHALL IN NO EVENT BE LIABLE OR OTHERWISE RESPONSIBLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LOST PROFITS, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE GOODS OR LOSS OF GOODWILL, EVEN IF LUMMUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Lummus' maximum liability exceed the amount paid to Lummus for the specific Goods giving rise to such liability. Purchaser agrees to indemnify Lummus against any claims in excess of this amount. THE LIMITATIONS OF LIABILITY AND MAXIMUM LIABILITY SET FORTH IN THIS SECTION 5 WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

### 6. Delivery; Shipment; Title; Risk of Loss

6.1 Delivery by Lummus of the Goods is completed when the Goods are made available to the Purchaser or Purchaser's agent in accordance with the Incoterms stated in the pro forma quotation or order acknowledgment. Lummus reserves the right to make partial shipments and to render invoices on partial shipments.

6.2 All shipments are Ex-Works, Savannah, Georgia, or point of manufacture, unless otherwise agreed to in writing by the parties. In case the contract price includes freight charges, the freight charges are not guaranteed unless the material is routed by Lummus, and if the Purchaser specifies a routing which increases the cost of freight, the difference shall be paid by the Purchaser.

6.3 Shipment dates are approximate and subject to change without notice to Purchaser and are based upon prompt receipt from Purchaser of down payment, and all necessary information and approval of drawings.

6.4 Any claims for short shipment, loss, or damage during shipment of any Goods must be made within thirty (30) days of receipt of the Goods.

6.5 Unless otherwise agreed to by Lummus in writing, title to and risk of loss of the Goods shall pass to Purchaser upon delivery of said Goods to a carrier at Lummus' facility.

6.6 It is important that Lummus be continually informed as to the location and ownership of the Goods provided hereunder. Accordingly, if any major item of said Goods is sold or moved to a different location or scrapped, Purchaser is urged to notify Lummus stating, if applicable, the name of the new owner and the new location.

### 7. Warranty

7.1 Warranty for the Goods is limited to the following: machinery and parts are warranted to be free from defects in material and workmanship for the warranty periods set forth in Sections 8 and 9, as applicable, below; provided, however, that the warranty for Goods not manufactured by Lummus is limited to the warranty provided by the original manufacturer thereof to the extent such warranty may be transferred to Purchaser. The foregoing warranty shall not apply to any Goods if: (a) the Goods are not installed according to directions furnished by the manufacturer; (b) the Goods are not maintained and operated by a competent operator or according to the manufacturer's recommendations and sound engineering principles; (c) the Goods are modified or integrated with incompatible equipment and/or parts, either by Purchaser or a third party; or (d) payment in full for the Goods has not been made by Purchaser.

7.2 Any failure on the part of the Purchaser to comply with these Terms and Conditions or the requirements of the order acknowledgment shall be held to void all warranties. Any Purchaser or third-party modifications, alterations, or repairs (actual or attempted) to the machine(s) or part(s), without express written consent from Lummus, shall void all warranties. Lummus shall not be liable for the cost of any unauthorized modifications, alterations, or repairs.

7.3 No representations or warranties, whether express or implied, are made by Lummus as to the safety of any Goods supplied hereunder or compliance of the Goods with any particular safety standard or Purchaser's specifications or requirements. It is the responsibility of Purchaser/ultimate end-user to determine the need for and to furnish all guards, safety features in the electrical circuitry and controls, and other safety devices necessary to ensure the safety of Purchaser's employees, Purchaser's customers, and the general public, and to comply with all applicable federal, state, and local laws and regulations.

**7.4 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, LUMMUS HEREBY DISCLAIMS ALL OTHER WARRANTIES, GUARANTEES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, AS TO THE GOODS AND ANY OTHER MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

### 8. Machinery Warranty Period

New Lummus-manufactured machinery will be warranted for the duration of: (a) six (6) months after machinery commences commercial operation, not to exceed 100,000 bales; or (b) eighteen (18) months after delivery, whichever occurs first. Used machinery and their components sold as "Reconditioned" will be warranted for the duration of: (a) three (3) months after machinery is placed in operation, not to exceed 50,000 bales; or (b) six (6) months after delivery, whichever occurs first. Used machinery and their components sold "As Is" are not warranted, unless otherwise agreed to in writing. All wear parts and/or consumables are covered by the parts and service warranty period found herein.

### 9. Parts and Service Warranty Period

Warranty for parts and field service is limited to: (a) ninety (90) days from installation of parts or completion of service work; or (b) six (6) months after delivery, whichever occurs first. In no case will spare parts be warranted beyond six (6) months from delivery. For wear parts with a typical useful life of less than ninety (90) days under normal operation, the warranty period will be the generally accepted useful life for said parts (as determined solely at the discretion of Lummus).



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### 10. Warranty Remedy

10.1 Subject to the limitations of liability outlined in Section 5 above, and the warranty provisions in Sections 7, 8, and 9, the sole and exclusive warranty remedy is limited to Lummus repairing and/or replacing the affected machine(s) or part(s), or to refunding the price for said machine(s) or part(s), solely at Lummus' option.

10.2 **Lummus will have no obligation to remedy defects unless, within thirty (30) days of the end of the applicable warranty periods set forth in Sections 8 and 9 above, Purchaser gives Lummus written notice of its claim.**

### 11. Termination; Cancellation

11.1 Orders may not be terminated or cancelled by Purchaser except upon express written consent of Lummus. If Lummus consents to such termination, reasonable termination charges and expenses, including loss of down payment, may be assessed to cover costs incurred by Lummus and a reasonable projection for profit, all as determined by Lummus.

11.2 Lummus may terminate an order for convenience upon thirty (30) days written notice to Purchaser.

11.3 Lummus may terminate an order immediately by written notice to Purchaser without liability or further obligation hereunder if Purchaser breaches any provision, term or condition of the order, or these Terms and Conditions, and Purchaser shall be liable for all damages, losses, costs, expenses and liabilities that Lummus incurs directly or indirectly resulting from Purchaser's breach, including, without limitation, attorneys' fees.

11.4 Lummus may terminate an order immediately by written notice to Purchaser without liability or further obligation hereunder if Purchaser fails or refuses to furnish Lummus with such information and assurances as Lummus may request about Purchaser's financial and operating conditions as affecting Purchaser's ability to purchase Goods and, to the extent permitted by law, in the event of Purchaser's insolvency, the filing of a voluntary or involuntary petition in bankruptcy by or against Purchaser, the appointment of a receiver or trustee for Purchaser, Purchaser's execution of an assignment for the benefit of creditors, or a comparable event. In the event of a termination under this Section 11, Purchaser shall be liable for all damages, losses, costs, expenses and liabilities that Lummus incurs directly or indirectly resulting from Purchaser's breach, including, without limitation, attorneys' fees.

### 12. Returned Goods Policy

12.1 No Goods may be returned to Lummus without the express written approval from Lummus in the form of a Return Material Authorization ("RMA"). Goods returned without referencing a RMA will be rejected and returned to the Purchaser at the Purchaser's expense. Returned items must be sent to the Lummus location as specified in the RMA. All requests to return Goods must be made within thirty (30) days of Purchaser's receipt of the Goods. No RMA's will be issued for Goods held more than thirty (30) days. Goods must then be returned and received back to Lummus within thirty (30) days (sixty (60) days for international Purchasers) of the issuance of the RMA in order to receive a credit. Standard Lummus stocked items will be credited for the payments paid by Purchaser, less a restocking/processing fee of up to 20%, once they have been received by Lummus and inspected to be in good, unused condition.

12.2 **Special-order parts or made-to-order assemblies are not returnable.**

### 13. Field Consultant

Unless otherwise expressly stipulated, Goods shall be erected and commissioned by and at the expense of the Purchaser. If the Purchaser desires the advisory and technical services of a Field Consultant in connection with the erection, installation, or commissioning of the Goods, or if it is necessary to furnish such services after the Goods are installed, the Purchaser shall pay for such services at a mutually agreed per diem rate. Additionally, Purchaser shall pay the Field Consultant's hotel, traveling, and other necessary expenses, including transportation of tools. Such payments will continue until the Field Consultant's return to the Lummus plant or other equivalent starting point. When Purchaser is being assisted by a Field Consultant furnished by Lummus, whether as part of the proposal or upon special request by Purchaser, Purchaser shall furnish all necessary skilled and unskilled labor, tools, appliances, and rigging for the safe and proper handling, erection, or operation of the equipment without responsibility or liability on the part of Lummus. Purchaser shall pay premium rates for overtime services on regular workdays and for services on Saturdays, Sundays, or holidays.

### 14. Technical Data

14.1 Purchaser agrees that Lummus exclusively owns all rights, title and interest in and to all of Lummus' patents and patent applications, trademarks, service marks, logos, trade names, domain names and copyrights (together with all inventions, discoveries, techniques, processes, methods, formulae, designs, trade secrets, know-how, ideas, drawings, specifications, operating instructions, engineering documents, business and technical data and information, computer programs, and all other intellectual property and proprietary rights) (the "**Intellectual Property**"), and the Intellectual Property shall be used only for the purpose of evaluating the Lummus proposal or, if the Goods are purchased, for the installation, operation, and maintenance of the installation for which the Goods were purchased. Purchaser shall not hold itself out as having any right, title to, or interest in the Intellectual Property, other than the rights granted under these Terms and Conditions. Purchaser shall not contest and shall not assist any third party to contest Lummus' rights to the Intellectual Property. Purchaser shall not take any action or omit to take any action likely to jeopardize the validity of the Intellectual Property.

14.2 If any drawings are furnished with a proposal, they are approximate and submitted only to show general style, arrangement and approximate dimensions of machinery offered. Order-specific documentation (machinery plans, foundation and electrical drawings, and machinery-specific supporting documentation/manuals) will be furnished where required after the acceptance of such proposal. No work is to be based on preliminary proposal drawings. Any and all Intellectual Property should remain solely in the possession of the Purchaser and should not be provided, either manually or electronically, to any third party without the express written consent of Lummus. Any and all such Intellectual Property, in any form, shall be considered Lummus' Confidential Information.

### 15. Confidentiality

15.1 Purchaser agrees that it shall keep strictly confidential all information regarding Lummus that Purchaser receives as a result of its dealings with Lummus (the "**Confidential Information**"), and Purchaser will disclose such information only to those of its officers



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or employees who need to know such information and shall advise such officers and employees of the confidential nature of such information and the restrictions on its use. Purchaser shall not make or permit the disclosure, release or publication of any Confidential Information to any other person or use such information for the benefit of any other person (especially, but not limited to, competitors of Lummus). Confidential Information shall include, but shall not be limited to, Goods, materials, drawings, specifications, operating instructions, engineering documents, tooling, molds, packaging, designs, formulas, business plans, financial projections, strategic plans, organizational structure, merchandising strategies, marketing or promotional strategies, and the scope or terms of any engagement, prices, and/or quantities purchased. Confidential Information shall also include any and all pricing information of any kind provided to Purchaser, including, but not limited to, price quotes, estimates, invoices, purchase orders, and any and all other documents or information, written or oral, containing or discussing the pricing of any Goods. Purchaser agrees that Confidential Information is proprietary to Lummus. The foregoing restrictions shall not apply to any such information to the extent that such information: (a) is or becomes generally known and available to the public (other than as a result of a disclosure by or negligence of Purchaser); (b) was made known to Purchaser, prior to the date hereof, by sources not subject to confidentiality obligations to Lummus; or (c) is required to be disclosed pursuant to subpoena or other legal process, provided that Purchaser shall have given Lummus reasonable prior notice of such proposed disclosure so that Lummus may seek a protective order with respect to the use and disclosure of such information in such proceeding.

15.2 The requirements of this Section 15 shall continue as long as the Confidential Information is confidential or proprietary in nature. Purchaser shall treat all Confidential Information with at least the same care as it treats its own confidential information, but in no event shall Purchaser exercise less than reasonable care. Upon completion, cancellation or termination of the order, Purchaser shall return to Lummus all Confidential Information, including any copies thereof made by Purchaser. Purchaser acknowledges and agrees that any breach of any of its confidentiality obligations herein may be detrimental to the business interests of Lummus, and Lummus shall be entitled to injunctive relief, as well as to recovery of actual and punitive damages, costs, and expenses, including, but not limited to, reasonable attorney's fees and expenses, arising as a result of any such breach.

15.3 **Notwithstanding any other provision of these Terms and Conditions, Lummus shall have the right to seek a temporary restraining order, preliminary injunction and/or any other equitable or provisional remedy to enforce the provisions of this Section 15 and Section 14.**

### 16. Force Majeure

If Lummus' ability to perform its obligations to Purchaser is limited, delayed, or prevented in whole or in part by any event or condition not reasonably within the control of Lummus or its suppliers, including, but not limited to, acts of God, war, civil strife, labor unrest, transportation delays, tariffs, pandemics, local, state, or federal declared emergencies, or by any law, rule, regulation, order, or any other action of any public authority, Lummus shall be excused, discharged, and released of performance to the extent such performance is so limited, delayed, prevented, or made materially more expensive, without liability of any kind. In the event of any such delay, the date of shipment shall be extended for a period equal to the time lost by reason of the delay. In the event that tariffs on any Goods materially increase between the date of execution of an order and the date of delivery of the Goods covered by such order, or in the event a Good's or an input's price increases within 90 days of such tariff increases on the Goods or inputs used in the manufacture of Goods, Lummus shall have the right to issue a change order consistent with Section 2.3 of these Terms and Conditions, if practicable, or terminate the order by promptly providing Purchaser with written notice and refunding any charges paid by Purchaser for Goods not yet delivered.

### 17. Controlling Law and Arbitration

The validity, construction, and performance of these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Georgia, U.S.A., without reference to choice of law principles. Any and all questions, differences, controversies, claims, or disputes arising out of or in connection with these Terms and Conditions or the performance, enforcement, breach, termination, or validity thereof, shall be finally settled by arbitration in Savannah, Georgia, U.S.A., conducted in the English language by three (3) independent and impartial arbitrators administered by the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof; provided, however, that if Purchaser is located outside of the United States, Lummus shall, in its sole discretion, have the unilateral option to pursue arbitration in an international arbitration court located in the country of Purchaser. Each party shall choose one arbitrator, and the third shall be chosen by the other two arbitrators. Any arbitration decision shall be final and non-appealable. The basis for the arbitrators' decision shall be based solely on these Terms and Conditions and any documents incorporated thereby. If the Purchaser is located in the United States, the rules of the American Arbitration Association shall apply. If the Purchaser is located outside of the United States, the American Arbitration Association Rules on International Dispute Resolution Procedure shall apply to the arbitration. The provisions of this paragraph, however, will not prevent or limit either party's right to apply to a court of competent jurisdiction for a temporary restraining order, preliminary or permanent injunction, or other similar equitable relief. Subject to the arbitration provision herein, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in Chatham County, Georgia, in any action relating hereto or to the subject matter hereof. In the event any provision hereof shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of these Terms and Conditions shall remain in full force and effect.

### 18. Attorneys' Fees

Purchaser shall reimburse Lummus for any and all attorneys' fees arising from or related to enforcement of these Terms and Conditions, including, but not limited to, attorneys' fees arising from any collection efforts for past due amounts owed to Lummus by Purchaser.

### 19. Assignment

Purchaser shall not delegate its performance or assign or transfer its rights or obligations under these Terms and Conditions without express written consent of Lummus.



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### 20. **Waiver; Severability**

No provision hereof and no breach of any provision hereof will be deemed waived by reason of any previous waiver of such provision or of any breach thereof or failure of Lummus to enforce any such terms or exercise any right hereunder. If any provision of these Terms and Conditions should be held invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

### 21. **Survival**

Provisions of these Terms and Conditions which, by their nature, should apply beyond their terms will remain in force after any termination or expiration hereof, including, but not limited to, the following provisions: Indemnification, Limitation of Liability, Technical Data, Confidentiality, Controlling Law and Arbitration, Attorneys' Fees, and Survival.

### 22. **Amendments**

These Terms and Conditions shall be subject to further amendments or rescission made by Lummus without notice to Purchaser, and a valid version is always available on Lummus' website at [www.lummus.com](http://www.lummus.com).