

LEMO USA TERMS AND CONDITIONS

- 1. Acceptance:** THE ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, AND LEMO USA AGREES TO FURNISH THE MATERIALS, PRODUCTS AND SERVICES COVERED THEREBY ONLY UPON THESE TERMS AND CONDITIONS. These Terms & Conditions contain the entire agreement of the parties and there are no other promises or conditions in any other agreements whether oral or written. This document supercedes any prior written or oral agreements between the parties. The terms and conditions of this Agreement shall prevail, notwithstanding the fact Buyer's order may contain written, printed or stamped provisions or conditions inconsistent with and/or in addition to the written, printed or stamped provisions of this Agreement. Buyer shall contact LEMO USA within 10 days of receipt of LEMO USA Terms and Conditions, or prior to shipment of goods, whichever shall occur first, if any objection is raised. Failure of Buyer to timely object shall be deemed an acceptance by Buyer of LEMO USA's Terms and Conditions. If a timely objection is raised by the Buyer to the LEMO USA Terms and Conditions, the order(s) will not be entered until agreement in writing is reached. All orders are subject to acceptance by Lemo USA.
- 2. Pricing and payment:** All prices are F.O.B. Rohnert Park, California. Payment is due within 30 days of invoice date. All invoices are delinquent at 30 days past invoice date and will be subject to 1% per month finance charge. Overdue accounts may be placed on credit hold and shipments held. Buyer agrees to pay all reasonable collection charges, including attorney fees, in the event his account is delinquent more than 30 days. Buyer will be charged any direct additional cost to which Lemo USA is put by reason of any interruption of production due to Buyer's request, act or default.
- 3. Payment of Taxes:** In the event any sales tax, manufacturer's tax, or other tax is applicable to any shipment made by the Buyer on Buyer's order, such tax shall be added to the selling price and shall be paid by the Buyer. In the event Lemo USA is required to pay any such tax, Buyer shall reimburse Lemo USA therefore.
- 4. Title/Risk of Loss:** All sales are complete, and all Lemo USA's obligations hereunder are completed when Lemo USA delivers the items purchased, properly consigned, to a common carrier. Lemo USA's delivery to such carrier shall constitute delivery thereof to the Buyer, and all risk of loss or damage of goods in transit shall be borne by Buyer.
- 5. Security Interest:** Lemo USA shall retain a security interest in goods delivered hereunder, and in proceeds from the sale, exchange, collection, or disposition thereof, until Buyer has made payment in full for such goods. Buyer shall, upon request by Lemo USA, provide all information and signatures required by Lemo USA to perfect such security interest. Lemo USA reserves all rights granted to a secured creditor under the California Uniform Commercial Code, including the right to repossess upon default by Buyer. To simplify such repossession, Lemo USA may require the Buyer to assemble the collateral and make it available to Lemo USA at a place reasonably convenient to both parties and designated by Lemo USA.
- 6. Returns:** All NON-CANCELABLE/NON-RETURNABLE products shall not be returned. If Buyer intends to return standard product, a return authorization number is required prior to return shipment and the product may be subjected to a restocking fee. Lemo USA reserves the right not to issue a return authorization. Product must be returned (with shipping costs prepaid) in original packaging and in original condition as when purchased, undamaged, not reconfigured, not obsolete, fit for use, and shall not have been previously shipped from Lemo USA to Buyer or its customer more than one year prior to the date of return. Lemo USA reserves the right to not accept damaged product for credit, replacement, or substitution. If damaged product is accepted by Lemo USA for credit, and damage is caused by the negligence of the Buyer, the Buyer will pay all costs for refurbishment of damaged product. Discovery of product defect and return of product shall be made in the period of time following delivery as provided in the applicable sections of the Uniform Commercial Code. In the event of a return, Lemo USA shall have the right, in its sole discretion, to replace, substitute, or issue a credit to Buyer.
- 7. Buyer's Liability upon Default:** In the event Buyer cancels the contract embodied by Buyer's Purchase Order and this acceptance thereof, in whole or in part, or such contract is canceled by Lemo USA because of default by the Buyer, the Buyer shall pay Lemo USA by reason of such cancellation or default for reasonable direct costs sustained, including costs associated with completed units, shipped or unshipped, labor and materials on work in process, and raw materials on hand and/or specific to Buyer's Order and all other reasonable direct costs, for lead time specified in advance of requested date of cancellation, at the current price applicable to the total quantity ordered at the time of default. Notwithstanding the foregoing, if item or items ordered are NON-CANCELABLE/NON-RETURNABLE, the Buyer shall purchase 100% of quantity ordered.

In the event Lemo USA does not meet the confirmed delivery date agreed to with the Buyer as evidenced in writing, Lemo USA shall be allowed one opportunity to reschedule the delivery and Buyer shall not be entitled to cancel this contract for such reason. In the event Lemo USA does not meet said rescheduled delivery, Buyer may cancel this contract and not be in default hereunder, including the terms of this Section 7.
- 8. Indemnity:** Buyer hereby specifically agrees to defend Lemo USA, to save Lemo USA harmless and to indemnify Lemo USA against all claims for damage or profits and for all costs and attorney fees incurred by Lemo USA resulting from any suit or suits arising from alleged infringements of patents, design copyrights, or trademarks with respect to all goods manufactured, either in whole or in part, to Buyer's specifications. Lemo USA, at its expense, will defend Buyer and its customer against any reasonable and good faith claim based on an allegation that an unaltered LEMO USA product infringes a U.S. patent, trademark or copyright of another; provided however, that no such obligation shall apply to (i) any LEMO USA product manufactured to Buyer's specifications and/or designs or (ii) any product that has been modified, or altered by Buyer or a third party. Lemo USA shall pay any reasonable resulting costs (including reasonable attorney's fees), and damages finally awarded against Buyer or its customer that are attributable to such claim or will pay the part of any settlement that is attributable to such claim, provided that: (a) Buyer notifies Lemo USA promptly in writing of the claim; (b) Lemo USA is permitted to control the defense or settlement of the claim; and (c) Buyer and its customer cooperate reasonably in such defense or settlement. In the event any such product sold by LEMO USA is held to constitute an infringement of any such US patent, trademark or copyright, and the use of such product by Buyer is enjoined, LEMO USA shall, at its own expense and option, either procure for Buyer the right to continue using said product, replace same with a non-infringing product, modify it so it becomes a non-infringing product, or have the product returned, and refund the purchase price to Buyer. In no event shall Lemo USA's total liability to Buyer under or as a result of compliance with the provisions of this paragraph exceed the aggregate sum paid by Buyer for the allegedly infringing product. The foregoing states the entire liability of LEMO USA for infringement by said products or by any part thereof, either alone or in combination with other devices or elements.

THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OF ANY KIND.
- 9. Warranties:** Lemo USA warrants to Buyer that the goods will conform to the applicable drawings or design standards, and shall be free from defects in material and workmanship. The foregoing warranty shall apply for a period of one year from the date of shipment of product to Buyer. Lemo USA's sole responsibility shall be to replace any such nonconforming goods or repair such nonconforming goods without charge to Buyer. The express warranties set forth in this agreement are exclusive and are in lieu of all other express or implied warranties, but not limited to, warranties of merchantability and fitness for a particular purpose, and do not apply to products that have been modified, altered, misused, or damaged during shipment or by Buyer.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LEMO USA DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.
- 10. License:** The submission of a quotation or order acknowledgment does not grant or imply a license under any patents now owned or controlled by Lemo USA, or which may become owned or controlled by Lemo USA.
- 11. Applicable Law:** This Agreement shall be subject to the applicable provisions of the Uniform Commercial Code, under the laws of the State of California.

- 12. Disputes and Resolution; Attorney's Fees:** The parties agree that any disputes or questions arising hereunder including the construction or application of these Terms and Conditions shall be settled in the State of California, according to the laws of the State of California. Any action based on this Agreement must be commenced within one (1) year after the cause of action arises. The parties hereto hereby consent to jurisdiction and venue in the Superior Court of Sonoma County, California, and in the Federal District Court for the Northern District of California, with respect to all disputes or disagreements under these Terms and Conditions and agree that any action with respect to any of the foregoing shall be brought and maintained only in such courts sitting in the Northern District of California or Sonoma County, as appropriate. In any court action at law or in equity, which is brought by one of the parties to enforce or interpret the provisions of these Terms and Conditions, the prevailing party will be entitled to costs and reasonable attorney's fees, in addition to any other relief to which that party may be entitled.
- 13. Confidentiality:** Both parties acknowledge that during the course of business, each may obtain confidential information regarding the other party's business. Both parties agree to treat all such information as confidential and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and for five (5) years after the term of all orders. Upon request by an owner, all documents relating to the confidential information will be returned to such owner.
- 14. Assignment:** It is agreed by the parties that there will be no assignment or transfer of any order or any interest in any orders. Action by a party in violation of this provision will dismiss the other party from any further obligations arising from any orders.
- 15. Amendment:** These Terms & Conditions may be modified or amended if the amendment is made in writing and is signed by both parties.
- 16. Severability:** If any provision of these Terms & Conditions shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- 17. Waiver of Contractual Right:** The failure of either party to enforce any provision of these Terms & Conditions shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.
- 18. Limitation on Damages:** Buyer's consequential or incidental damages for any Lemo USA breach of the contract, except for Lemo USA's gross negligence or willful misconduct, will be limited to the purchase price. Subject to Section 8 hereof, Lemo USA will have no liability to Buyer for any damages, losses, liabilities, injuries, claims, demands or expenses arising out of or directly or indirectly connected with the use of the product. Lemo USA shall not be liable for any exemplary, indirect, incidental, or consequential damages sustained or incurred in connection with the use of the product regardless of the form of action, whether in contract, tort (including negligence) or strict liability.
- LEMO USA SHALL NOT BE LIABLE FOR ANY DAMAGES DUE TO CAUSES BEYOND THE REASONABLE CONTROL OF LEMO USA OR ATTRIBUTABLE TO ANY SERVICE, PRODUCTS, OR ACTIONS OF ANY PERSON OTHER THAN LEMO USA REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.
- 19. Force Majeure:** NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY FOR DELAYS, FAILURE IN PERFORMANCE, OR LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS SUCH AS: FIRE; LIGHTENING; STRIKE; EMBARGO; EXPLOSION; POWER SURGE OR FAILURE; ACTS OF GOD; WAR; TERRORIST ATTACKS; LABOR DISPUTES; CIVIL DISTURBANCES; ACTS OF CIVIL OR MILITARY AUTHORITY; INABILITY TO SECURE MATERIALS, FUEL, PRODUCTS OR TRANSPORTATION FACILITIES; ACTS OR OMISSIONS OF SUPPLIERS, OR ANY OTHER CAUSES BEYOND ITS REASONABLE CONTROL, WHETHER OR NOT SIMILAR TO THE FOREGOING.