

# LAPP TANNEHILL INC. GENERAL TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT** - The terms and conditions of sale contained herein supersede all prior purchase orders, agreements, discussions, negotiations, proposals, or communications between the parties and constitute the entire final contract between the parties which may not be varied except by express written modification signed by Seller's duly authorized representative. Seller's acceptance of Buyer's order is expressly conditioned upon Buyer's agreement to and acceptance of the terms and conditions of sale contained herein together with any special terms set forth on the face hereof by Seller. Seller shall not be bound by any terms and conditions contained in Buyer's forms which in any way alter the terms and conditions imposed in Seller's forms. The receipt of these terms and conditions of sale by Buyer is notice to Buyer of objection by Seller to all other terms, warranties or conditions contained in Buyer's forms. Neither the failure by Seller to object to the purchase order or any other communication from Buyer, nor any research on, or development, manufacture, shipment or otherwise of, goods and/or services by Seller shall be deemed a waiver of the provisions hereof or an approval of any terms, warranties or conditions which are additional to, different from, or conflicting with the terms, warranties and conditions contained in these terms and conditions of sale. The Seller's terms and conditions of sale included herein or stated on any of Seller's forms or packages shall govern and control, regardless of whether Buyer's purchase order or any other forms precede or succeed this document and regardless of whether the Buyer's forms indicate that the terms and conditions therein contained are controlling and cannot be varied. Seller specifically rejects and Buyer disclaims any printed provisions in Buyer's printed purchase orders including associated forms and/or documents.

2. **CREDIT APPROVAL, INFORMATION AND ACCEPTANCE** - All orders are subject to approval of Buyer's credit and acceptance by Seller. As a condition of sale, Buyer grants Seller the right to investigate Buyer's credit, to exchange credit information with others and to report to others about Buyer's account and relationship with Seller and Seller is released from any liability emanating therefrom.

3. **INCREASE IN PRICE** - Any prices quoted or charged to Buyer contemplate reasonable and normal production and delivery schedules, and standardized and uniform shipment lengths, and shall be valid for only 30 days from the date of quotation or the acknowledgment of order, whichever is earlier, and are subject to termination by notice within that period. In the event of a blanket order, or if Buyer requests expedited, staggered or delayed production or delivery dates, or non-standard or non-uniform shipment lengths. Seller retains the right to increase the price to compensate for additional production, transportation or other costs, which amount Buyer agrees to pay upon receipt of an invoice therefore.

4. **TERMS OF PAYMENT** - All invoices are due upon presentation and shall be paid without deductions to set off in lawful money of the United States of America. Terms of payment are due in 30 days of date of invoice. No discount shall be allowed on transportation or insurance charges or taxes. Buyers shall not deduct credits without a credit memo first being issued by Seller. Seller shall have the right to retain a lien on all unshipped goods and goods recovered in transit until all Buyer's indebtedness has been paid.

5. **SECURITY INTEREST** - Until the total purchase price for the goods sold hereunder is paid by Buyer, Seller shall be and is hereby granted by Buyer, a purchase money security interest in such as goods and all proceeds thereof. Buyer hereby appoints Seller as its Attorney-in-fact to execute such financing statements and other documents as Seller may reasonably require in order to perfect such security interest.

With respect to the security interest, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable law, which rights and remedies shall be cumulative and not exclusive.

6. **BUYER TO PAY TAXES AND ADDITIONAL COSTS** - In addition to the purchase price the Buyer shall be obligated to pay for all sales, excise, use, privilege, ad valorem, customs and any other taxes, assessments, tariffs or similar charges imposed, levied or increased by authority of any local, county, state, federal, international or any other country's law, rule, ordinance or regulation concerning the goods for any parts, components or materials thereof, sold to Buyer including the importation, processing, manufacturing, distribution, sale or exportation of the raw materials, parts or manufactured goods. Additionally Buyer shall be liable for any additional costs incurred by Seller arising from any local, county, state, federal, international or any other country's laws regulating the hours and costs of labor for producing the goods. In the event Seller shall be required to pay such taxes, assessments, duties, tariffs or similar charges or incurs such additional costs, the Buyer upon demand shall immediately reimburse Seller for such amounts. Buyer shall furnish to Seller upon demand any appropriate tax exemption certificates.

7. **FREIGHT AND RISK OF LOSS** - All shipments are F.O.B. Seller's factory in Minnesota. Seller reserves the right to route the freight. Buyer assumes all risk of loss, shortage, delay or damage in transit once the goods are delivered to the carrier. Buyer shall be responsible for all freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges and any charges for or increments thereof not set forth in the Quotation, Acknowledgment or Order or initial invoice to Buyer, shall be billed by Seller and immediately paid by Buyer.

8. **DELIVERY** - Any special delivery instructions must be given by Buyer prior to acceptance of the quoted price so that Seller has the opportunity to readjust its price and Buyer will assume any costs attributable to a variation in the delivery instructions or place of delivery. Shipment and delivery dates indicated on Quotations and Acknowledgments of Orders are estimated and are not guaranteed unless specified. Seller shall not be liable for failure to fill any order or deliver the goods or for delay in delivering the goods due to any causes whatsoever beyond the Seller's control or in the event of the curtailment of production or delay in delivery. Seller reserves the right to deliver on a prorated basis the goods which it produces for all customers for whom it may have orders and Buyer agrees to pay for such partial deliveries when invoiced.

9. **INSTALLMENT DELIVERIES** - Seller reserves the right to make deliveries in installments. All installments will be separately invoiced and must be paid as billed without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for previous and remaining installments. Seller reserves the right to refuse to make further deliveries if Buyer fails to pay for any installments when due.

10. **NO CANCELLATION** - The Buyer may not cancel this order without written authorization from Seller. In the event Seller authorizes a cancellation, Buyer shall be liable for payment of a cancellation charge equal to twenty-five (25%) percent of the value of the order cancelled plus the costs of all materials ordered by Seller to complete Buyer's order and any production costs which amount Buyer agrees is a fair and reasonable liquidated damage and agrees to pay to Seller upon receipt of an invoice therefore.

11. **RETURNS** - Buyer may not return goods unless written authorization is received from Seller. Goods manufactured by order are not subject to return under any circumstances. In the event Seller authorizes a return, Buyer shall be liable for payment of a restocking charge equal to twenty-five (25%) percent of the value of the returned goods. Any returns accepted will be for credit only, transportation costs to be at Buyer's expense, and Seller retains the sole discretion to determine the value at which the returned goods will be credited. Seller reserves the right to dispose of any unauthorized returns to materials without affording credit. Any oral instructions must be confirmed in writing by Seller to be valid. All returns must be in the lengths originally shipped or no credit will be allowed by Seller.

12. **SERVICE CHARGES, EXPENSES AND FEES OF COLLECTION** - A service charge of 1 1/2% per month (18% per annum) will be charged on all invoices not paid within 30 days of date of invoice. In any jurisdiction where a service charge of 18% per annum is deemed usurious then the amount of the service charge shall be deemed decreased to the maximum allowable rate in such jurisdiction. In the event Seller is obliged to refer Buyer's account for collection or to retain counsel to enforce its right against Buyer, then whether or not suit is instituted, Buyer agrees to pay to Seller in addition to moneys due on invoices, service and cancellation charges, and all of Seller's costs and expenses, including, but not by way of limitation, court costs and attorney's fees in the amount of twenty-five (25%) percent of the total outstanding amount due which Buyer agrees is reasonable.

13. **VARIATION ON QUANTITY SHIPPED** - Seller reserves the right to ship and bill Buyer ten (10%) percent more or less than the exact quantity ordered and all documents shall be deemed modified to comport with such change without the necessity of further writing. Unless specific lengths are expressly made a part of this agreement, Seller shall have the right to vary the lengths of the merchandise shipped.

14. **RIGHT TO SUBCONTRACT** - Seller shall have the right to purchase from other sources or to subcontract the manufacturing of the goods being sold to Buyer.

15. **RIGHT TO SUBSTITUTE** - Seller reserves the right to substitute materials or goods of equal or better quality and specification than the goods ordered from Seller. 16. **BUYER'S REPRESENTATION AND ASSUMPTION OF RISK** - Buyer represents to Seller that it is purchasing the goods for industrial or commercial

use or resale for business purposes and not for personal or consumer purposes. Buyer further represents that it is knowledgeable with respect to the type of merchandise sold by Seller and that Buyer, based solely on its own expertise, has selected the merchandise purchased from Seller and has determined that same is suitable for Buyer's intended purposes. Buyer hereby assumes all responsibility and risk of loss and damage if the merchandise purchased from Seller fails to meet Buyer's intended uses.

17. **EXPRESS WARRANTY** - Seller warrants its goods to be free from defects in material and/or work workmanship under normal use and service for a period of one (1) year from the date of the purchase, subject to the terms and conditions set forth below (the "Express Warranty"). Seller does not warrant its goods against any defect except as set forth above, and Seller is not responsible for, and it does not warrant against, any defect or damage caused by transportation, storage, improper installation, maintenance, internal or external hostile environment, misuse, abuse, negligence, accident, modification, tampering, the attachment of any unauthorized accessory, alteration to the goods, or any other conditions whatsoever that do not constitute a defect in material and/or workmanship. Seller's sole responsibility under this Express Warranty shall be, at its option, to either repair or replace any goods which fail during the warranty period, provided that Buyer has promptly reported same to Seller in writing, and complies with the provisions of this Express Warranty.

EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED HEREIN, SELLER SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL EXPRESS AND IMPLIED WARRANTIES WITH REGARD TO ITS GOODS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE, AND FITNESS A PARTICULAR PURPOSE; ALL IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, COURSE OF PERFORMANCE OR ANY OTHER IMPLIED WARRANTIES; AND THE EXPRESS WARRANTY STATED HEREIN IS IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE GOODS PURCHASED BY THE BUYER.

NEITHER SELLER NOR ITS AFFILIATED COMPANIES SHALL BE LIABLE TO BUYER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE) FOR DAMAGE TO OR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS, REVENUE OR GOOD WILL, LOSS OF USE OF EQUIPMENT, FACILITY OR DATE, EXPENSE INVOLVING COSTS OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER OR TEMPORARY EQUIPMENT (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING FACILITIES), CLAIMS OF CUSTOMERS, EMPLOYEES OR ANY OTHER PERSONS AFFILIATED, ASSOCIATED OR IN PRIVITY WITH BUYER, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF BREACH OF THE EXPRESS WARRANTY STATED HEREIN.

THE REMEDIES OF BUYER SET FORTH ARE EXCLUSIVE WITH RESPECT TO BREACH OF THE EXPRESS WARRANTY STATED HEREIN, AND THE TOTAL LIABILITY OF SELLER FOR BREACH OF SAID EXPRESS WARRANTY, AND/OR AS A RESULT OF THE MANUFACTURE, SALES, DELIVERY, INSTALLATION OR TECHNICAL DIRECTION OF INSTALLATION, REPAIR OR USE OF ANY GOODS FURNISHED TO BUYER, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS DETERMINED BY SELLER TO BE DEFECTIVE IN MATERIAL AND/OR WORKMANSHIP.

To obtain warranty inspection on any of the Seller's goods, contact the Seller for field service or warranty shipping instructions. All Express Warranty claims must be made to the Seller or one of its authorized agents, failure to do so shall void the Express Warranty.

18. **SPECIAL ORDERS** - If any goods shall be manufactured and/or sold by Seller to meet Buyer's particular specifications or requirements and is not part of Seller's standard line offered by it to the trade generally in the usual course of Seller's business, Buyer shall defend, protect and save harmless Seller against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any United States or foreign patent and shall defend any suit or actions which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the material covered thereby.

19. **BUYER'S DUTY TO INSPECT AND LIMITATION ON SELLER'S RESPONSIBILITY** - Buyer must examine the goods carefully and fully upon receipt and before using, cutting or reselling the same and any claim for defective or non-conforming goods must be immediately reported in detail to the Seller in writing. Buyer's failure to give such detailed written notice to seller within 10 days of Buyer's receipt of Seller's special goods made to order or within 30 days of its receipt of Seller's stock shall constitute an unqualified acceptance of the goods and a release and waiver of all claims. Seller, at its discretion, must be afforded an opportunity to inspect any non-conforming or defective goods and to cure any problems and Seller shall have the right to require Buyer to assemble and return any defective or non-conforming goods before Seller incurs any liability to Buyer. Seller's sole liability to Buyer and Buyer's sole recourse shall be expressly limited to Seller, at Seller's sole options, either replacing any defective goods or reimbursing Buyer for the original price charged for said goods. In no event shall Seller's liability exceed the original price charged for the goods.

20. **OWNERSHIP OF TOOLING AND INDEMNIFICATION** - Any special materials, tools, molds, dies, jigs, gauges, patterns, fixtures and equipment, and any replacements thereof or charges, additions or accession thereto (hereinafter "tooling") shall become and remain the property of Seller regardless of whether the Buyer paid for same, the charge therefore only representing a portion of the cost thereof. Buyer hereby grants to Seller a non-exclusive irrevocable license without charge or royalty to use tooling or any improvements, ideas, procedures or innovations created, conceived or arising during the manufacturing of the goods being sold to Buyer. The Buyer agrees to indemnify and save Seller harmless from all claims, judgments, decrees, damages, costs and expenses, including attorney's fees, arising from any claim of infringement of any United States patent, registration, trademark or logo in connection with the production, use of sale of the tooling or the goods sold to Buyer or to the extent that such infringement arises from the design, specification or instructions furnished by Buyer or undertaken at Buyer's suggestion or request.

21. **BUYER'S DEFAULT** - In addition to any rights reserved to Seller under law or these terms of sale, if Buyer becomes insolvent, or if any insolvency petition is filed by or against Buyer, or if an assignment for the benefit of creditors is filed by Buyer, or if a trustee receiver, fiscal agent or other court officer is appointed for Buyer, or if Buyer makes fraudulent transfers or preferential payments, or if Buyer refuses to accept conforming goods or otherwise breaches its obligations to Seller, or repudiates any agreement with Seller, or if Seller in its sole discretion deems itself insecure or feels that Buyer's financial condition is impaired or does not justify continuance of production or shipment on the terms agreed upon herein, Seller reserves the right to cancel the order or to refuse to continue production and/or deliveries until it receives full payment in advance or satisfactory security and guarantee that payment will be made when due. In the event of nonpayment for any delivery made, installment or otherwise, Seller may suspend future deliveries due until full payment is made, or may cancel the agreement. Notwithstanding Seller's actions, however, Buyer shall be liable for all costs and expenses incurred by Seller due to Buyer's default, including all cancellation charges, court costs and attorney's fees.

22. **NO WAIVER OF RIGHTS** - Seller's failure to exercise or enforce any of its rights under this agreement or under law shall not constitute a waiver of Seller's rights.

23. **NO ASSIGNMENT BY BUYER** - Buyer shall not be allowed to assign its contract with Seller.

24. **CORRECTION OF ERRORS** - Seller shall have the right to correct any stenographic, clerical, typographical, or patent errors contained in this document or any of the documents relating to the transaction between the parties.

25. **GOVERNING LAW AND JURISDICTION** - The agreement between the parties shall be deemed to be made in Minnesota and shall be governed by the laws of Minnesota and specifically the Uniform Commercial Code (hereinafter "Code") in effect in Minnesota as of the date of this document. By accepting this document, Buyer hereby submits to the jurisdiction of the Courts of Minnesota for any purposes dealing with this document or any subsequent agreement between Buyer and Seller or of the breach of or the enforcement thereof or for any purposes of Seller enforcing any of its rights against the Buyer. Whenever a term defined by said Code is used in this instrument, the definitions in the Code shall control its meanings. The parties submit to the jurisdiction of the courts of Minnesota which shall be the only forum for litigating any disputes arising under this agreement. In the event that any provision of this agreement shall be invalid under the laws of any jurisdiction, such invalidity shall not affect the other provisions of this agreement which shall remain in full force and effect.

26. **CAPTIONS** - The captions to the clauses contained herein are for identification only and shall not be construed as being a substantive part of the agreement nor as having any independent meaning.