

Effective Date: 10Jun11
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LCF-16
Revision: A

## QUOTATION/SALE TERMS AND CONDITIONS

These Quotation/Sale Terms and Conditions ("Terms and Conditions") shall apply to any quotation issued by LUXEL CORPORATION, a Washington corporation ("Luxel"), to which they are physically or electronically attached or in which they are incorporated by reference. All orders and sales of Luxel products and services ("Goods") are subject to final approval by Luxel and shall be subject to these Terms and Conditions, which shall take precedence over any additional or different terms and conditions from the buyer ("Buyer").

### Prices

Unless otherwise stated in a quotation, prices quoted are valid for a period of ninety (90) days after which Luxel shall have the right to adjust quoted prices upon written notice to Buyer. Quoted prices do not include any applicable local, state, federal or foreign taxes and any such taxes, including sales and excise taxes, levied on the Goods shall be added to the specified prices for Goods paid by Buyer and shall remain the sole responsibility of Buyer.

### Quotation

Luxel's acceptance of any order for Goods delivered by Buyer is conditioned upon Buyer's acceptance of these Terms and Conditions. All quotations issued by, and all sales of Goods made by, Luxel shall be subject to these Terms and Conditions, which shall prevail and be effective notwithstanding any inconsistent or additional terms contained in any purchase order or other document submitted by Buyer. Under no circumstances shall any such inconsistent or additional terms be considered a part of these Terms and Conditions and such inconsistent or additional terms are hereby rejected unless expressly accepted in writing by an authorized officer of Luxel. These Terms and Conditions shall not be modified other than in writing signed by Luxel and Buyer and shall become a part of any further or additional order or agreement between the parties regarding the sale of the Goods. Verbal agreements shall not be binding upon Luxel unless they have been agreed to in writing.

### Limitation of liability

In no event shall Luxel be liable to Buyer or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the Goods, any performance or non-performance by Luxel, or the design, use or any inability to use the Goods, whether such damages are claimed under contract, tort or any other legal theory. Buyer understands and agrees that Buyer's sole and exclusive remedy, and Luxel's limit of liability, for any and all loss or damage resulting from defective Goods or the breach by Luxel of any provision or term set forth herein or otherwise, in each case, shall be limited to the purchase price of the particular Goods with respect to which such loss or damage is claimed, plus any transportation charges actually paid by Buyer. This limitation of liability shall survive the termination, expiration or cancellation of any agreement or order with respect to the sale of Goods. Except as otherwise described herein or expressly provided by Luxel, there are no other warranties or guaranties, either express or implied, written, oral or arising under custom or trade, including, without limitation, the warranty of title, against liens, infringement, the warranty of merchantability and the warranty of fitness for a particular purpose. No warranties or representations at any time made by any representative of Luxel shall be effective to vary or expand the above referenced express warranty or any terms set forth in these Terms and Conditions.

Buyer undertakes to include all requirements and specifications relating to the Goods ordered in a quotation. Under no circumstance shall Luxel be held liable for any product defects or specifications which have been requested by Buyer in a quotation.

### Delay in Performance

Luxel shall not be responsible or liable for any delays or failures in performance with respect to any quotation or order for Goods due to any cause or condition beyond the control of Luxel, including, without limitation, strikes or labor difficulties, fires, floods and other actions of the elements, inability to secure transportation, shortage of materials or equipment, riots or other civil commotions and acts of God and war. Luxel's liability for real and proven damages shall, regardless the gravity of the failure, be limited to the price of the Goods directly related to the claim. All other liability of Luxel, such as that for consequential loss, other indirect loss and loss as a result of third party liability, is excluded.

### Inspection



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Buyer shall inspect all supplied Goods and verify conformity with the quotation promptly upon delivery and before use of such Goods. Goods must not be returned without Luxel's prior written authorization. Goods shall be deemed to have been accepted in the event no written notice specifying in detail any shortages, damages or other claims has been received by Luxel within ten (10) days following delivery of the Goods. Luxel shall not be liable for any damage, warranty or remedy, and back charges will not be accepted, without prior notification, an opportunity to view and repair, replace or otherwise cure, and approval by Luxel. A restocking charge in the amount of 30% of the purchase price of the Goods will be charged on Goods approved for refund. In the event that Buyer omits to exercise control of the Goods or elects to use nonconforming Goods, Buyer thereby releases and dismisses Luxel from any and all liability for the possible consequences of the usage of such Goods.

### Term of Delivery

All dates and schedules specified by Luxel for the performance or delivery of Goods by Luxel have been stated only approximately as an estimate from the date of such quotation, and are contingent upon, among other things, the timely receipt of complete specifications, designs, samples and other information reasonably requested by Luxel to be provided by Buyer. Luxel shall not incur any liability, either direct or indirect, nor shall any quotation or purchase order be cancelled as a result of any delays in meeting such dates or schedules. Luxel shall not be responsible for any delays caused by third parties utilized by Luxel or the inability of such third parties to provide or deliver their goods or services to Luxel. Buyer hereby agrees and acknowledges that Luxel's quote may be based on a quote from a third party and Luxel shall not be bound by its own quote if any third party fails to provide its goods or services as promised or agreed.

Unless otherwise expressly agreed to in writing, shipment of Goods will be F.O.B. Luxel's facility, at which time title and risk of loss shall pass to Buyer. Payment of all shipping and freight charges, along with all customs, duties, costs, taxes, insurance premiums, and other expenses related to the transportation of Goods, shall be the sole responsibility of Buyer.

### Cancellation or Change Orders; Default

No orders may be withdrawn or canceled by Buyer, nor may they be deferred when ready, unless Luxel shall have previously approved such withdrawal, cancellation or deferral in writing and Luxel shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to Luxel not to exceed its cost plus anticipated profit. In the event that Buyer shall request changes in any order that has been submitted to Luxel, Buyer shall be responsible for all charges and expenses reasonably incurred by Luxel with respect to such changes. Buyer shall not have the right by change orders to specify any products or services that are not generally made available by Luxel to its customers. In the event of Buyer's default hereunder, Luxel shall have the right to immediately cancel any order, stop work, refuse to ship or stop delivery of any Goods, and Luxel shall be entitled to recover any losses or damages incurred by Luxel as a result of such default and to seek any other remedy provided by law. Buyer's default means (i) Buyer's insolvency or the filing or institution of a proceeding under any bankruptcy, reorganization or similar law, by or against Buyer, (ii) an assignment for the benefit of creditors by Buyer, (iii) the appointment of a receiver, trustee or custodian for any of the property or assets of Buyer, and (iv) Buyer otherwise being in default of any obligation to Luxel hereunder or otherwise. By submitting an order to Luxel, Buyer warrants, represents and covenants that it is solvent now and will be solvent at shipment and agrees to notify Luxel immediately in writing upon the occurrence of any of the events set forth in this paragraph.

### Conditions of payment

Unless otherwise provided in a quotation, all invoices are due thirty (30) days after the date of invoice (net 30 days). Luxel reserves the right to supply certain high value products cash on delivery only, without any deduction. Any possible protest must be communicated within 10 days after the date of invoice. Late payment will cause, ipso jure and without notice, a late payment charge of 2% for each elapsed and/or started month. Offsetting against any kind of non-approved counter-claims as well as execution of right of retention of Goods shall be excluded unless established in court or agreed to by Luxel. Luxel shall remain the sole owner of delivered Goods, and title to Goods shall not pass to Buyer, until such time as Luxel receives payment in full of the entire purchase price for such Goods, including transport costs and taxes and Luxel reserves the right to invoice separate parts of a quote separately. Luxel reserves the right to refrain from execution of further components of a quote or order, or of any subsequent quote or order, or to terminate a delivery, until such time as any outstanding issued invoices shall have been paid in full.



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**Indemnification**

Buyer shall indemnify and hold harmless Luxel and its officers, employees and agents against all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable attorney's fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of Buyer's storage, handling, use, implementation or disposal of Goods purchased from Luxel. This indemnity obligation shall survive the expiration, termination or cancellation of any agreement or order with respect to the sale of Goods.

**Credit Report**

Buyer hereby authorizes Luxel from time to time to obtain Business and Consumer Credit Reports on Buyer or any principals of Buyer or to obtain credit and funding information from any other source. Luxel shall have no obligation to commence or continue performance until adequate credit and funding information has been provided, at any time upon the request of Luxel. Luxel may stop the manufacture or supply of any Goods when it, in its sole discretion, determines that Buyer is in breach of this Agreement or any other contract with Luxel, or Luxel reasonably believes that Buyer may be unable to make timely payments with respect to any ordered Goods, until such time as payment has been made and any such payment insecurity has been resolved.

**Governing Law and Jurisdiction; Attorney's Fees**

This Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with the laws of the State of Washington, without regard to any choice of law principles. Buyer and Luxel hereby agree to submit to the jurisdiction of the state and federal courts for the State of Washington, King County, and such courts shall have exclusive jurisdiction and venue to adjudicate the rights and obligations of the parties relating in any manner hereto. The parties hereby waive any argument relating to the convenience of forum. In the event of litigation relating to the subject matter hereto, the substantially prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees and costs relating to such litigation.

**General**

These Terms and Conditions shall govern the entire relationship between Luxel and Buyer. The parties agree that there are no other understandings between the parties concerning the subject matter hereof, whether verbal or written. By acceptance of the quotation, Buyer agrees that any additional terms and conditions of a purchase order or change order shall not be applicable unless expressly agreed to by Luxel in writing and Luxel specifically objects to the inclusion of any different or additional terms or conditions by Buyer in confirming or accepting any quotation. Delivery of a purchase order by Buyer pursuant to this quotation shall be deemed to be an acceptance by Buyer of these Terms and Conditions. In the event Buyer includes different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to any quotation, neither Luxel's delivery of all or part of the Goods, nor any other action except a written notice from Luxel, shall constitute acceptance of such additional or different terms, but instead these Terms and Conditions shall apply.

**Severability**

If any provision of these Terms and Conditions is held by any court to be invalid or unenforceable, such provision shall be deemed to be modified or deleted, but only to the extent necessary to enable that and the remaining provisions of this Agreement to be valid and enforceable.

**BY ACCEPTING THE QUOTATION AND/OR PROVIDING A PURCHASE ORDER TO LUXEL, BUYER ACKNOWLEDGES RECEIPT AND ACCEPTANCE OF THESE TERMS AND CONDITIONS.**