

LVR, Inc.

**TERMS AND CONDITIONS OF SALE**

**1. GENERAL** These Terms and Conditions are applicable to any products and/or services purchased from LVR, Inc. ("Seller") by you ("Purchaser"). By purchasing any product and/or service, Purchaser is expressly accepting and agreeing to be bound by these Terms and Conditions. Any sale is expressly limited to these Terms and Conditions. No other terms or conditions other than these Terms and Conditions, and no agreement or understanding in any way modifying or changing these Terms and Conditions shall be binding on Seller unless specifically agreed to by Seller pursuant to a written instrument signed and delivered by Seller's authorized representative. Only officers of Seller having a title of Vice-President or President are authorized to deliver any such written instrument. These Terms and Conditions shall not in any way be modified, changed, limited, controlled or restricted by any oral statements, by the provisions on any of the Purchaser's forms, or by letters or papers which are inconsistent herewith. Any sale is expressly made conditional upon Purchaser's assent to these Terms and Conditions, and no terms, conditions, promises, understandings, representations or warranties, oral or written, other than those set forth herein shall be binding on Seller. These Terms and Conditions constitute notification of Seller's objection to and rejection of any conditions of sale, whether contained in Purchaser's purchase order, bid documents or in any other writing that are different from, inconsistent with or in addition to these Terms and Conditions.

Performance of Seller pursuant to any purchase order or bid delivered to seller by purchaser is not to be construed as an acceptance by Seller of any terms or conditions not specifically set forth herein.

**2. TAXES** Any sales, use or other similar type taxes imposed on this transaction are not included in the price. Such taxes shall be billed separately to the Purchaser. Seller will accept a valid exemption certificate from the Purchaser if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such an exemption certificate, Purchaser agrees to promptly reimburse Seller for the taxes.

**3. PERFORMANCE, INSPECTION AND ACCEPTANCE** All materials delivered and work performed shall be accepted within 24 hours after arrival at point of delivery and/or completion of work. All claims whatsoever by Purchaser excepting only those provided for under the WARRANTY, LIMITATION OF WARRANTY and LIABILITY Clauses herein must be asserted in writing by Purchaser within said 24 hour period or they are waived. If this contract involves partial performances, all such claims must be asserted within said 24 hour period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Purchaser's remedy for lesser defects shall be those provided for under the WARRANTY, LIMITATION OF WARRANTY, and LIABILITY Clauses.

Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to, labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any delays so occasioned shall effect a corresponding extension of Seller's performance dates which are, in any event understood to be approximate. In no event shall Purchaser be entitled to incidental or consequential damages for late performance or a failure to perform.

If Purchaser wrongfully rejects or revokes acceptance of items tendered under this agreement or fails to make a payment due on or before delivery or repudiates this agreement, Seller shall at its option have a right to recover as damages either the price as stated herein (upon recovery of the price the items involved shall become the property of the Purchaser) or the profit (including reasonable overhead) which the Seller would have made from full performance together with incidental damages and reasonable costs.

**4. TITLE AND RISK OF LOSS** For material orders, full risk of loss (including transportation delays and losses) shall pass to the Purchaser upon shipment of product. However, Seller retains title, for security purposes only, to all products until paid for in full in cash and Seller may, at Seller's option repossess the same upon Purchaser's default in payment hereunder and charge Purchaser with any deficiency. For work performed at the Purchaser's work site, full risk of loss is borne by the Purchaser. Purchaser is responsible to pay Seller for any partial work completed up to the time of loss.

**5. PAYMENT TERMS** Unless otherwise specified in writing and accepted by Seller, payment is due, in full, within thirty days after the date of Seller's invoice therefore. Any typographical or clerical errors in any invoice delivered to Purchaser may be corrected by Seller. If in Seller's judgment the credit of Purchaser becomes impaired or Seller deems itself insecure, Seller may, at its sole option, suspend production, shipment or delivery of products ordered by Purchaser and request that Purchaser provide Seller with reasonable guarantees and/or security. The failure or refusal of Purchaser to provide such guarantees and/or security within ten (10) days after Seller's request therefore shall constitute a repudiation of the entire contract between Seller and Purchaser and Seller, in addition to (and not in limitation of) all other remedies legally available to it may accelerate and declare immediately due all of Purchaser's accounts with Seller. If Purchaser fails to make any payment to Seller when due, Seller may defer or discontinue further performance by Seller under any order placed with it by Purchaser until payment is made or until Seller receives adequate assurance of Purchaser's performance. Purchaser shall pay all costs and expenses, including but not limited to, attorneys and collection agents fees and court costs, incurred by Seller in collecting Purchaser's past due accounts. Late charges of 1.5% per month may be added to balances which are not paid to Seller within invoiced terms.

**6. SUSPENSION** Failure by Purchaser to make timely payments of Seller invoice shall entitle Seller to suspend performance of services under these Terms and Conditions. Unless payment in full is received by Seller within seven (7) days of the date that the suspension is mailed to the Purchaser by Seller, the suspension shall take effect without further notice. Seller shall not be liable for any damages or delays caused by such suspension.

**7. WARRANTY** The Seller warrants that all materials and/or workmanship supplied hereunder will conform to generally accepted commercial standards. The obligation of the Seller under this warranty shall be limited to Seller's sole discretion to either replacing any materials furnished by it hereunder established to be defective and/or repairing or replacing any workmanship established to be defective within the period of 90 days from the time of installation. The Seller shall not be liable for indirect or consequential damages of any kind, including but not limited to damage to, or disruption of any other work, loss of profits, increased costs, or interruption of business, production or operations, and no claim of any kind hereunder shall exceed in amount the prorated price of that part of the materials and/or workmanship established to be defective. In any event the total amount of any damages shall not exceed the total price for materials and/or workmanship. The Purchaser shall give prompt written notice to the Seller of any observed or suspected defects. The Seller shall not be liable for back charges incidental to field changes or corrections to materials and/or workmanship furnished hereunder unless ample opportunity is given the Seller to inspect the materials and/or workmanship claimed to be defective, and then only after the field changes or corrections have been authorized in writing by the Seller. No person is authorized to assume for the Seller any other liability.

There are no warranties extending beyond those provided herein, either express or implied, including the implied warranty of merchantability or any warranty of fitness for a particular purpose. Any prior contemporaneous or subsequent oral, written or implied warranties, promises, representations, agreements or affirmations are specifically revoked and disclaimed and are agreed not to be a part of any agreement between the parties unless included in a written agreement signed by all parties.

**8. LIMITATIONS OF LIABILITY** The foregoing obligations of Seller to replace defective Seller materials or workmanship or to refund a pro rata portion of the purchase price thereof shall be Purchaser's exclusive remedy for any defect of deficiency in or relating to any Seller product or the failure of any Seller product to perform for any reason whatsoever.

In no event will Seller's liability to the Purchaser for any and all claims, including property damage and personal injury claims, allegedly resulting from breach of contract, tort or any other theory of liability, exceed the amount paid hereunder to Seller.

In no event shall Seller be liable for any damages relating to Purchaser's loss of use, income or profit, or for any incidental, special, liquidated or consequential or other similar damages arising, directly or indirectly, out of, or occasioned by, the selection of functionality of, use of or inability to use any seller product, whether such damages are based on a claim of a breach of express or implied warranty (including merchantability and fitness for a particular purpose), tortious conduct (including negligence and strict liability) or any other cause of action.

**9. INDEMNIFICATION** Purchaser hereby releases, indemnifies and holds harmless Seller, its directors, officers, employees, agents and representatives from and against any and all claims, damages, costs, expenses and other liabilities including, but not limited to, attorneys fees, whether arising in contract or tort, including, but not limited to strict liability, negligence or fraud, or any other cause of action, which may be made against or incurred by Seller, its directors, officers, employees, agents representative, successors or assigns, arising from or by reason of any liability for which Seller is not responsible under these Terms and Conditions including, but not limited to, those liabilities for which Seller has specifically disclaimed liability hereunder. This indemnification obligation shall not be limited in any manner by any limitation on the amount or type of damages, compensation or benefits payable by or for Purchaser or any other person, firm or entity under workers or workmen's compensation acts, disability benefit acts or any other employee benefit acts.

**10. HAZARDOUS MATERIALS** The Purchaser's facilities may contain hazardous materials, including asbestos bearing materials. If any such materials are encountered Seller shall have no obligation to remove or remediate them in the absence of a separate agreement (including separate consideration to Seller) for such work. If Seller is required to perform work within or immediately adjacent to any facilities that are determined to contain hazardous materials and/or asbestos, and the said work must be interrupted to allow for the remediation or removal of such materials by others, Seller shall be entitled to any and all costs and other expenses associated with such interruption in work.

As part of its work, Seller may supply, install and/or remove materials that may be hazardous. Seller complies with all Federal and State environmental regulations regarding hazardous materials. Seller's services do not include safety training or protection of Purchaser's employees, agents, contractors or guests against these hazards. Purchaser warrants that Purchaser understands the hazards of materials that Seller may be supplying, installing and/or removing and that Purchaser has taken all proper, legal and appropriate safety measures to protect Purchaser's employees, agents, contractors and guests against these hazards. Purchaser expressly agrees that Purchaser is solely responsible for the proper training and protection of all persons on its property, and that Seller shall in no way be responsible or liable for the safety of any person, other than its own employees.

Purchaser shall fully defend, hold harmless and indemnify Seller, its directors, officers, employees, agents, successors and assignees from and against any claims arising out of exposure to such hazardous materials, including silica and asbestos containing materials.

**11. SAFETY** Seller shall not be responsible for health or safety programs or precautions related to Purchaser's activities or operations, Purchaser's other contractors, the work of any other person or entity, or Purchaser's site conditions. Seller shall not be responsible for inspecting, observing, or correcting health or safety conditions or deficiencies of Purchaser or others at Purchaser's site, and Purchaser agrees to indemnify, hold harmless and defend Seller against any claims arising out of such conditions or deficiencies. So as not to discourage Seller from voluntarily addressing health or safety issues by making observations, reports, suggestions, or otherwise, it is understood and agreed that Seller shall nevertheless have no liability or responsibility arising on account thereof.

**12. LAWS** This Agreement and all rights and obligations of the parties hereunder, and any disputes hereunder, shall be construed and governed by the laws of the state of Pennsylvania.

**13. SEVERABILITY** The invalidity or unenforceability of any particular provision of these Terms and Conditions or any other agreement between Purchaser and Seller shall not affect any other provision of these Terms and Conditions.