

Load Banks Direct, LLC

TERMS AND CONDITIONS OF SALE

- 1. GENERAL:** Any quotation, contract, or acceptance of order issued by Load Banks Direct, LLC (the "Company") in relation to the sale or supply of goods of any description shall, unless otherwise specifically agreed in writing by an authorized officer or agent of the Company, be subject to the following terms and conditions.
- 2. CONDITIONS:** These terms and conditions, subject to and together with any specific terms set out on the attached quotation or acceptance of order or in any other document issued by the Company and specified in the attached quotation or acceptance of order shall constitute the entire contract between the Company and the Purchaser. Acceptance of any quotation shall be limited to the terms of the quotation including these terms and conditions. Where these terms and conditions are submitted in response to or in acceptance of an order, acceptance is conditioned on Purchaser's complete assent to these terms and conditions. These terms and conditions shall override and supersede any previous agreement or arrangement between the Company and the Purchaser in relation to the subject matter of the quotation, contract, or order, and in particular shall override and exclude any terms or conditions at any time imposed by the Purchaser.
- 3. VARIATION TO CONDITIONS:** No variation of these terms and conditions shall be effective or binding upon the Company unless it is in writing and signed by an authorized officer or agent of the Company.
- 4. QUOTATIONS AND ORDERS:** (a) Where the Company has issued a written quotation, a contract shall only come into existence if the Company receives an order which accepts and complies with these terms and conditions within the period stated in the quotation. (b) In cases other than where the Company issues a quotation, a contract will only come into existence when the Company mails or otherwise transmits its written acceptance of order and the Purchaser has completely assented to these Terms and Conditions as provided in Paragraph 2, above. (c) Any quotation made by the Company is subject to satisfactory trade and credit references, and shall remain open for acceptance for thirty (30) days after the date thereof, after which time it shall cease to be binding on the Company. Any quotation is subject to revision for errors and omissions. (d) The placement of all orders must be accompanied by sufficient information to enable the Company, upon acceptance, to proceed forthwith. (e) The Company will not in any event be obliged to execute any order received other than in writing.
- 5. WARRANTY, LOAD BANKS DIRECT LOAD BANKS PRODUCTS:** The Company warrants title to the product(s) and, except as noted below with respect to items not bearing the Load Banks Direct load banks brand, also warrants the product(s) on date of shipment to Purchaser, to be of the kind and quality described, merchantable, and free of defects in workmanship and material. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES FROM THE COMPANY OR THE MANUFACTURER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS, AND CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE PRODUCT(S) AND NO OTHER WARRANTY IS GIVEN WHICH EXTENDS BEYOND THE DESCRIPTION ON THE FACE OF THE COMPANY'S QUOTATION OR ACCEPTANCE FORM. This warranty shall remain in effect for a period of one (1) year from date of initial operation or eighteen (18) months from date of shipment, whichever is earlier. This warranty shall be null and void if Purchaser makes any alterations, additions, modifications or improvements to the product(s).
- 6. DISCLAIMER OF WARRANTY, OTHER PRODUCTS:** ANY SEPARATELY LISTED ITEM OF THE PRODUCT(S) WHICH IS NOT A LOAD BANKS DIRECT LOAD BANKS BRANDED PRODUCT IS NOT WARRANTED BY THE COMPANY, and shall be covered only by the express warranty, if any, of the manufacturer thereof. As between Purchaser and the Company, such products are sold AS IS, and Company makes no warranties, express or implied, as to any matter whatsoever, including, without limitation, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP, AND ITS FITNESS FOR ANY PARTICULAR PURPOSE. COMPANY DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO PURCHASER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN A PRODUCT NOT MANUFACTURED BY COMPANY, AND COMPANY SHALL NOT BE LIABLE IN ANY EVENT FOR ANY LOSS, DELAY, OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, PRODUCTS NOT MANUFACTURED BY LOAD BANKS DIRECT. NO OTHER WARRANTY IS GIVEN EXTENDING BEYOND THE DESCRIPTION ON THE FACE OF THE COMPANY'S QUOTATION OR ACCEPTANCE FORM. The Company will in respect of such goods use reasonable efforts to pass on to the Purchaser the benefit of any guarantee provided by the manufacturer or supplier of such goods but not so as to impose on the Company any liability in respect thereof.

7. **RETURN POLICY:** Load Banks Direct, LLC is a manufacturer of custom Load Bank assemblies and holds the right to refuse the return of any product, for any reason.
8. **SPECIFICATIONS, DESCRIPTIONS AND PERFORMANCE:**
 - (a) All specifications, drawings and particulars of weights and dimensions submitted with the Company's quotations are approximate where tolerances are not shown.
 - (b) Any data, printed matter, designs, drawings, specifications, advertisements, or catalogues supplied to the Purchaser before or after the date of order are subject to alteration without notice and represent only a general guide to the goods and services described therein. All such documents or data are not representations or warranties of fact nor shall they form the basis of any contract.
9. **PRICE VARIATIONS:**
 - (a) The Company shall have the right to increase contract prices to reflect any increase in costs arising after the date of any quotation as a result of: (i) any alteration in or addition to the Purchaser's requirements; (ii) the Purchaser's instructions or lack of instructions; (iii) any interruptions, delays, overtime work, mistakes, alterations arising from the work of other contractors found to be outside agreed tolerances, delays caused by other contractors, and any other cause for which the Company is not directly responsible; or (iv) Any increase in any tax, duty or levy imposed on goods or services which affect contract prices in any manner.
 - (b) All quotations are subject to availability of goods and materials.
10. **SHIPMENT AND DELIVERY:** The term "shipment" or "delivery" means delivery to the initial carrier in accordance with the delivery terms of this order. All prices are F.O.B. the Company, and the Company shall select the carrier, method of transportation and route. All freight, including insurance, unless otherwise agreed to by the Company in writing, shall be payable by Purchaser. **ALL RISK OF LOSS AND DAMAGE SHALL PASS TO PURCHASER AT THE FOB SHIPPING POINT.** The Company may make partial shipments. The Company has the right to add to the invoice, as a separate item, the value of any special shipping device (tarpaulin, cradle, crib and the like) used to contain or protect the product(s) invoiced, while in transit.
11. **DELAYS:** Times quoted for shipment or delivery are to be reckoned from the date of the Company's official acceptance of the Purchaser's order, or (if later) from the date of receipt of all information necessary to enable the Company to proceed forthwith. Any date given by the Company for delivery of goods or completion of services is given as an estimate only and shall not constitute a term of any contract between the Company and the Purchaser and any delay in delivery or completion shall not constitute a breach of contract. While the Company will use reasonable efforts to meet such estimates, it reserves the right to amend given dates without prior notification. Without prejudice to the foregoing, delivery or completion may in any event be delayed, suspended, cancelled or terminated without liability on the part of the Company if it suffers delay in performance due to any cause beyond its control, including but not limited to act of God, war, act or failure to act of government, act or omission of Purchaser, fire, flood, strike or labor trouble, sabotage, or inability to obtain from suitable sources services, materials, components, equipment or transportation. Company will give Purchaser notice in writing within a reasonable time after Company becomes aware of any such delay. The Company shall under no circumstance be liable for any direct, indirect or special, incidental or consequential losses, costs or penalties incurred or suffered by the Purchaser as a result of the Company's inability or failure for any reason to meet specified delivery or installation dates.
12. **PURCHASER DATA:** Timely performance by the Company is contingent upon Purchaser's supplying to the Company, when needed, all required technical information, including drawing approval, and all required commercial documentation.
13. **STORAGE:** Any item of the product(s) on which manufacture or shipment is delayed by causes within Purchaser's control, or by causes which affect Purchaser's ability to receive the product(s) may be placed in storage by the Company for Purchaser's account and risk, either at the Company's own facility or elsewhere on the Purchaser's behalf and all resulting charges for storage, insurance, transport or demurrage (including the Company's charge for storage) and incidental expenses shall be payable by the Purchaser. The goods may be invoiced on the day they are put into storage, and, for the purposes of payment by the Customer and the Company's liability hereunder, the goods shall be deemed to have been delivered and the risk of loss shall pass to the Purchaser on that day.
14. **GOODS IN TRANSIT:** Company shall not be liable for any loss or damage to goods in transit or for any shortage on delivery. The Company will use all reasonable efforts to pass to the benefit of any claim the Company may have against any carrier provided the Purchaser: (a) gives to the Company and to the carrier written notice of damage or shortage within three (3) days of the date of arrival of the goods; (b) complies with all conditions imposed by the carrier; and (c) takes such other steps (including where applicable giving shorter notice to the carrier) as are necessary to preserve a claim against the carrier.

- 15. TERMS OF PAYMENT:** Terms of Payment are: Company accepts MasterCard, Visa, Discover or American Express credit card, or to destinations in the USA, net cash 30 days from date of invoice, with approved credit. Goods dispatched for overseas destinations, if not paid with credit card, payment shall be made on presentation of shipping documents against an irrevocable Letter of Credit. All past due charges shall be assessed a late payment fee of the lesser of 1 ½ % per month (18% per annum), or the maximum amount allowed by applicable law.
- 16. TITLE AND RISK OF LOSS:** Title to the product(s) and risk of loss or damage shall pass to Purchaser at the F.O.B. point.
- 17. DEFAULT BY CUSTOMER:**
- (a) If the Purchaser shall fail to pay the contract price and any delivery or other charges in full in accordance with these conditions, or to fulfill any of its obligations hereunder, or if the Purchaser shall make or offer to make any arrangement or composition with its creditors or shall commit any act of bankruptcy, or if any petition or order for relief in bankruptcy shall be filed against the Purchaser or if the Purchaser being a corporation or partnership any resolution or petition to wind up such company's business (other than for the purpose of merger or reorganization) shall be passed or filed, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, or if at any time it shall come to the notice of the Company that the Purchaser is or is likely to be unable to meet its obligations in full as they fall due, Purchaser shall be in breach of this agreement and the Company shall have the right forthwith to terminate or cancel any contract then subsisting with the Purchaser and upon written notice of such termination or cancellation being mailed by the Company to the Purchaser's last known address any such contract shall be deemed to have been terminated or cancelled but without prejudice to any other rights or remedies available to the Company.
- (b) Upon termination or cancellation of any contract pursuant to subparagraph (a) above the Company shall (without prejudice to any other rights or remedies available to it) be entitled, if it so elects, to repossess, at the Purchaser's expense, any goods which may have been delivered to but not paid for by the Purchaser.
- (c) Notwithstanding the provisions of subparagraph (b) above and of Paragraph 15 hereof, the Company may upon termination or cancellation pursuant to subparagraph (a) above elect to treat the property in any goods which have been partly or wholly completed as having passed to the Purchaser notwithstanding that the same may not have been delivered and in such case the Company shall be entitled (without prejudice to any other rights or remedies available to it) to recover from the Purchaser the whole or any unpaid part of the contract price and any other charges.
- 18. EXCLUSIVE REMEDY, LIMITATION OF LIABILITY:**
- (a) Subject to subparagraphs (b) and (c) below, (and except for any liability to individuals for strict liability in tort, or for negligence by the Company, its employees or agents, resulting in death or personal injury), if Purchaser discovers that any item of product(s) was not as warranted above, Purchaser's remedy for such defect or breach shall be limited to adjustment or repair or replacement of the item or any affected part of the product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation and freight in connection with the foregoing remedies. The Company shall have the right to dispose of any product(s) or parts replaced by it. THIS STATES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AGAINST THE COMPANY AND ITS SUPPLIERS RELATING TO THE PRODUCT(S) WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATION OR DEFECTS FROM ANY CAUSE.
- (b) Purchaser's remedies hereunder (except for any liability to individuals for strict liability in tort or for negligence proximately resulting in death or personal injury) are subject to the following conditions; (i) the defect must appear, and prompt written notice of the defect must be received by the Company within 18 months of the date of shipment of the product(s) and within one year from the date of initial operation of the product(s); and (ii) the goods must have been installed and at all times operated in accordance with the Company's recommendations (or, in the absence of such recommendations, in a proper manner); and (iii) the fault or defect must derive solely from the product's faulty design, materials or workmanship, and not wholly or partly as a result of negligence, incorrect or improper storage, maintenance, use or handling by any person, or any cause outside the control of the Company; and (iv) the goods must not have been modified, disassembled, repaired or altered without the Company's express, written consent; and (v) upon demand, the defective goods or parts must be returned to the company, shipping prepaid; and (vi) All returned goods and parts must be accompanied by a certificate stating that they are clean and free from contamination.
- (c) As provided above in Paragraph 6, no warranties are given as to any goods which are not of Load Banks Direct Load Banks brand, and the Company shall have no liability in respect of such goods. The Company will, in respect of such goods, use reasonable efforts to pass on to the Purchaser the benefit of any guarantee provided by the manufacturer or supplier of such goods, but not so as to impose on the Company any liability in respect thereof.
- (d) With the exception of liability to individuals for strict liability in tort or for negligence resulting in death or personal injury, NEITHER THE COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR ANY INCIDENTAL, DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF

SIMILAR TYPE, OR FOR CLAIMS BY PURCHASER FOR DAMAGES OF PURCHASER'S CUSTOMERS ARISING AS A RESULT OF OR IN CONNECTION WITH THE SALE OF GOODS OR SERVICES HEREUNDER OR THEIR INSTALLATION OR USE OR ANYTHING DONE OR OMITTED TO BE DONE IN CONNECTION THEREWITH. Likewise, the Company shall not, under any circumstances, be liable for the fault, negligence, or wrongful acts of Purchaser or Purchaser's employees, or Purchaser's employees, or Purchaser's contractors or other suppliers.

(e) If any of the limitations of liability contained in this agreement is held not to be valid as being unconscionable and contrary to public policy, but would be valid if part of the wording were deleted or its extent reduced or modified, then such limitations on liability shall apply with such modifications as may be necessary to make the same enforceable.

(f) The provisions of this Paragraph 18 shall apply to any replacement goods or parts supplied by the Company, except that the time limitations herein shall apply from the date of the original shipment or operation.

19. **SEPARATE ITEMS:** The Company may, if it so elects, treat each item separately priced on a quotation as the subject of a separate contract and in such case these terms and conditions shall apply independently to each item.
20. **WAIVER:** Any express or implied waiver by the Company of any term or condition of this contract or of any breach or default by the Purchaser may be terminated by the Company at any time. Should Company choose not to exercise any of its rights hereunder, such shall not constitute or be deemed a waiver or forfeiture of such rights.
21. **COMPLIANCE WITH OFFICIAL REQUIREMENTS:** The Company will comply with all laws applicable to the Company. Compliance with OSHA or similar federal, state, or local laws during any operation or use of the product(s) is the sole responsibility of the Purchaser. Except as provided in Paragraph 22 with regard to Patents, the Purchaser shall be exclusively responsible for ascertaining that any goods ordered from the Company and designs supplied or specified by the Purchaser do not infringe any letters patent, registered designs, any other rights vested in a third party or any statute, order, regulation, by-law or other requirement for the time being in force. The Purchaser shall indemnify the Company against all claims, damages, penalties, costs and expenses for which the Company may become liable for any such infringement.
22. **PATENTS:** Purchaser shall notify the Company of any claim that the design or construction of the product(s) as furnished infringes upon a United States patent. The Company shall pay costs and damages finally awarded in any suit against Purchaser or its vendees to the extent based upon a finding that the design or construction of the product(s), as furnished, infringes upon a United States patent, (except infringement occurring as a result of incorporating a design or modification at Purchaser's request), provided that Purchaser promptly notifies the Company of any claim of such infringement, and provided that the Company is given the sole right at its discretion and expense to settle such claim and to defend or control the defenses of any suit based upon such claim. **THIS PARAGRAPH SETS FORTH THE COMPANY'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENTS.**
23. **NON-CANCELLATION:** Purchaser may not cancel or terminate for convenience, or direct suspension of manufacture without the prior written consent of the Company and Purchaser shall in any event pay all costs of materials, labor and associated overhead and shipping incurred to the date of such written approval.
24. **APPLICABLE LAW:** This contract and these conditions shall be construed according to and governed by the law of Ohio.
25. **REPRESENTATIONS OF PURCHASER:** Purchaser represents and warrants that it is not purchasing product from Company for the purposes of competitive analysis, reverse engineering, design copying or other similar purposes.
26. **SEVERABILITY:** These terms are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
27. **GENERAL:** The Purchaser agrees to indemnify and keep indemnified the Company against all reasonable fees, costs and other expenses incurred by the Company in enforcing any of the foregoing terms or provisions. All paragraphs and other headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of these conditions. Assignment may only be made with the consent of both parties.