

Louisville Exchanger and Vessel, Inc

(LEV)

TERMS AND CONDITIONS FOR LEV COMPANY, INC. PURCHASE ORDERS

1. ACCEPTANCE: THIS DOCUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN SELLER AND LEV, ANY TERMS IN SELLER'S INVOICE OR OTHER DOCUMENTATION INCONSISTENT HERewith NOTWITHSTANDING. THE SELLER'S SHIPMENT OF GOODS IN RESPONSE TO THIS ORDER SHALL CONSTITUTE ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN, NOTWITHSTANDING ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN ANY INVOICE OR ACKNOWLEDGEMENT FORM SUBMITTED BY THE SELLER. ANY PURPORTED ACCEPTANCE CONTAINING ADDITIONAL TERMS (INCLUDING ANY TAX THERON) WILL NOT BE ACCEPTED AS PART OF THIS OFFER UNLESS AGREED TO IN WRITING BY LEV.

2. MODIFICATION: MODIFICATION OR AMENDMENT OF THIS ORDER SHALL BE ACKNOWLEDGED IN WRITING BY THE SELLER TO LEV AND MUST BE APPROVED IN WRITING BY LEV.

3. ACKNOWLEDGMENT: THE SELLER SHALL ACKNOWLEDGE RECEIPT AND ACCEPTANCE OF THIS ORDER PROMPTLY, GIVING DATE OF SHIPMENT.

4. PRICE: THIS ORDER MAY NOT BE FILLED AT PRICES HIGHER THAN SPECIFIED HEREIN. IF NO PRICE IS SPECIFIED THE MATERIAL SHALL BE BILLED AT THE PRICE LAST QUOTED BY THE SELLER OR PAID BY THE LEV TO THE SELLER OR AT THE PREVAILING MARKET PRICE WHICHEVER IS LOWER. NO CHARGES WILL BE PAID FOR PACKING, CRATING, BOXING OR CARTAGE UNLESS OTHERWISE STATED HEREIN AND AGREED.

5. WARRANTIES: THE SELLER WARRANTS: A) THAT ALL APPLICABLE LAWS, RULES AND REGULATIONS OF GOVERNMENT AUTHORITIES COVERING THE PRODUCTION, SALE AND DELIVERY OF THE GOODS AND SERVICES SPECIFIED HEREIN HAVE BEEN COMPLIED WITH: A) THAT THE GOODS AND SERVICES UNDER THIS ORDER DO NOT INFRINGE UPON THE CLAIM OF ANY COPYRIGHT OR U.S. PATENT; AND B) THAT ALL GOODS AND SERVICES FURNISHED PURSUANT TO THIS ORDER ARE FREE FROM DEFECTS, ARE OF MERCHANTABLE QUALITY AND ARE IN ACCORDANCE WITH THE SPECIFICATIONS AND DRAWINGS OF LEV.

6. INSPECTION: ALL GOODS AND SERVICES ARE SUBJECT TO INSPECTION AND APPROVAL BY LEV AND OR DESIGNATED REPRESENTATIVES AT THE OWNER'S SITE WITHOUT CHARGE, NOTWITHSTANDING PRIOR PAYMENT TO OBTAIN CASH DISCOUNTS. ACCEPTANCE SHALL NOT BE CONSTRUED TO RELIEVE SELLER OF RESPONSIBILITY FOR DEFECTIVE WORKMANSHIP WHICH MAY BE DETERMINED LATER.

7. QUALITY: GOODS REJECTED ON ACCOUNT OF INADEQUATE QUALITY OR WORKMANSHIP WILL BE RETURNED TO THE SELLER WITH CHARGE FOR TRANSPORTATION BOTH WAYS, PLUS LABOR AND EXPENSES, AND ARE NOT TO BE REPLACED EXCEPT UPON RECEIPT OF WRITTEN INSTRUCTIONS FROM LEV.

8. DELIVERY: IF DELIVERY IS NOT MADE WITHIN THE TIME STATED ON THIS ORDER, LEV SHALL HAVE THE RIGHT TO CANCEL THIS ORDER OR ANY PORTION THEREOF, WITHOUT LIABILITY.

9. INDEMNITY: SELLER AGREES TO PROTECT, INDEMNIFY, AND SAVE HARMLESS LEV AND OWNER FROM ANY LOSS, COST, DAMAGE, OR EXPENSE, INCLUDING ATTORNEYS FEES, ARISING FROM (A) BREACH OF ANY OF THE WARRANTIES SET OUT ABOVE; (B) BREACH OF THE TERMS OF THIS PURCHASE ORDER AND (C) ANY CLAIM OF DEATH OR INJURY TO PERSONS OR DAMAGE TO PROPERTY ARISING OUT OF, OR ATTRIBUTABLE TO THE GOODS AND SERVICES SUPPLIED HEREUNDER, INCLUDING WITHOUT LIMITATION, DEFECTS IN DESIGN, MATERIALS, MANUFACTURE OR INSTALLATION, EXCEPT WHERE SUCH LOSS, COST DAMAGE, OR EXPENSE RESULTS FROM THE SOLE NEGLIGENCE OF LEV.

10. INQUIRIES: IN ACCEPTING THIS ORDER THE SELLER ASSUMES THE RESPONSIBILITY OF REFERRING TO LEV ANY AND ALL INQUIRIES OR ORDERS MADE BY THIRD PARTIES FOR DUPLICATE OR SPARE PARTS FOR THE GOODS ORDERED HEREIN.

11. CONFIDENTIALITY: VENDOR ACKNOWLEDGES THAT ANY LEV DRAWINGS, OR OTHER INFORMATION PROVIDED TO SELLER BY LEV, INCLUDING BUT NOT LIMITED TO THE DESIGN OF EQUIPMENT BUILT BY SELLER PURSUANT TO SUCH DRAWING AND INFORMATION ARE THE PROPRIETARY PROPERTY OF LEV, ARE NOT TO BE USED FOR ANY OTHER CUSTOMER OR ANY OTHER PURPOSE AND ARE TO REMAIN CONFIDENTIAL, UNLESS AGREED TO BY LEV IN WRITING.

12. TERMINATION/CANCELLATION: IF LEV TERMINATES OR CANCELS THE PURCHASE ORDER WITHOUT CAUSE, SELLER IS ENTITLED TO RECEIVE PAYMENT ONLY FOR DIRECT LABOR AND NON-RECOVERABLE MATERIAL CHARGES INCURRED THROUGH DATE OF TERMINATION/CANCELLATION. ANY SUCH CLAIM MUST BE ACCOMPANIED BY APPROPRIATE DOCUMENTATION SUBSTANTIATING COSTS INCURRED.

13. ASSIGNMENT: THE SELLER SHALL NOT IN ANY MANNER DELEGATE ITS RIGHTS OR OBLIGATIONS UNDER THIS ORDER WITHOUT THE PRIOR WRITTEN CONSENT OF LEV.

14. GOVERNING LAW AND JURISDICTION: THIS ORDER AND ANY AGREEMENT OF SALE RESULTING FROM ITS ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF KENTUCKY AND ANY DISPUTES BETWEEN THE PARTIES RELATING TO THIS ORDER SHALL BE DETERMINED IN THE STATE OR FEDERAL COURTS OF KENTUCKY, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES FOR SUCH PURPOSE