

CARVER INCORPORATED GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF TERMS AND CONDITIONS:** Buyer's submission of an order for any of the products or services provided by Carver Incorporated ("Carver"), a wholly-owned subsidiary of Lummus Corporation ("Lummus"), including, but not limited to, Carver and Carver-Gump brands, shall constitute acceptance by Buyer of the Terms and Conditions contained herein (the "Terms and Conditions"), which shall control the transactions between Carver and Buyer. These Terms and Conditions shall not be superseded by any provisions that may be contained in any purchase order or other documentation that may at any time be submitted to Carver by Buyer unless specifically agreed to in writing by Carver. Any resulting contract is for the benefit of the parties hereto and not for any other person. Buyer may not delegate its performance, or assign or transfer its rights or obligations under these Terms and Conditions, without express written consent of Carver.

2. **ACCEPTANCE OF ORDER:** A machinery order, whether on Carver's regular order form or purchase order from Buyer, is not binding upon Carver until accepted in writing by a designated official of Carver. Parts and service orders may be placed and accepted by both written and oral agreement between the Buyer and local Carver branch offices. Once accepted by all parties, the machinery order, purchase order or contract, together with all attachments thereto, and these Terms and Conditions shall constitute the entire contract for the sale and purchase of the goods, articles, equipment, materials and services agreed to in the aforementioned documents (the "Goods").

Unless otherwise expressly stated in the contract, quotation, or pro forma invoice, Carver's quoted prices do not include sales, use, customs fees, excise, or any other international, federal, state, or local taxes. Buyer shall be liable for any such levies. Failure by Carver to collect any such taxes from Buyer with the initial invoiced amount shall not constitute a waiver of Carver's right to bill and collect from Buyer subsequently for such taxes. Buyer shall comply with all governmental laws and regulations and shall secure all necessary approvals, if any, applicable to the delivery, use, and sale of the products and systems and any other conduct contemplated by Buyer's purchase of the products and systems.

3. **CANCELLATION:** Machinery and spare parts orders may not be cancelled by Buyer after material has been purchased or manufacturing has begun, except upon express agreement of Buyer to pay for all expenses incurred by Carver and a reasonable projection for profit, all as determined by Carver.

4. **PAYMENT/COLLECTION:** Buyer agrees to make prompt payment of invoices due in accordance with the terms stated on the order. Any remaining balance outside the payment period will be carried at the lesser of the rate of 1½% per month (18% per annum), or the maximum rate allowed by law. In the event Buyer fails to pay for any one shipment when same becomes due, or should Buyer's account become otherwise delinquent, Carver may, at its option, either terminate this contract or refuse to ship or deliver goods under this or any other order(s) until such delinquency is cured without prejudice to other rights Carver may possess. Should Buyer's financial condition become unsatisfactory to Carver, cash payments or security satisfactory to Carver may be required by Carver for future deliveries or for goods theretofore delivered. Buyer agrees to pay all costs of collection, including reasonable attorneys' fees. Carver shall retain a security interest in the Goods until payment in full has been made. "Payment in full" shall include all amounts due to Carver from Buyer that are related to the Goods, including but not limited to the price of the Goods themselves, and all taxes, customs charges, delivery charges, late payment fees or penalties, and any and all other amounts owed by Buyer to Carver in any manner associated with the Goods.

5. **LIABILITY:** Carver and Lummus will in no event be liable to or otherwise responsible to any other party hereto or any beneficiary hereof for any loss of profits, diminution in value, or incidental, indirect, consequential, special, exemplary or punitive damages that arise out of or relate to this agreement or the performance or breach hereof or otherwise and whether in contract, tort, strict liability, or other legal theory. Such damages include, but are not limited to: loss of profits; loss of savings or revenues; loss of use of the items ordered or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claim of third parties, including customers of Buyer; injury to property; and injury to persons.

Carver makes no representation that any Goods supplied hereunder comply with any particular safety standard or Buyer's particular requirements. It is the responsibility of Buyer/ultimate end user to determine the need for and to furnish all guards, safety features in the electrical circuitry and controls, and other safety devices necessary to ensure the safety of Buyer's employees, Buyer's customers, and the general public, and to comply with all applicable federal, state, and local laws and regulations.

Buyer agrees to indemnify and forever hold harmless Carver Incorporated and Lummus Corporation against any and all claims, actions, or demands by any third party whomsoever, asserting breach of warranty, products liability, or personal injury arising as a result of the use and operation of said equipment.

The Buyer/ultimate end user shall be responsible at all times for the safe operation of the Goods provided hereunder and agrees to indemnify and hold harmless Carver and Lummus against all claims, actions, or demands arising out of personal injury or property damage caused by failure to operate said Goods in accordance with the operating instructions furnished by Carver, prudent operating practices, or by the alteration, elimination, or failure to use safety devices furnished by Carver.

Carver's total liability for any and all losses and damages arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort, or otherwise) shall not exceed the purchase price of the Goods with respect to which such cause arises. Buyer agrees to indemnify Carver (and Lummus) against any claims in excess of this amount.

It is important that Carver be continually informed as to the location and ownership of the Goods provided hereunder. Accordingly, if any major item of said Goods is sold or moved to a different location or scrapped, Buyer is urged to notify Carver stating, if applicable, the name of the new owner and the new location.

6. **DELIVERY (SHIPMENT):** Delivery by Carver of the aforesaid Goods under this contract is completed when the Goods are made available to the Buyer or Buyer's agent in accordance with the Incoterms stated in the contract, quotation, or pro forma invoice. Carver reserves the right to make partial shipments and to render invoices on partial shipments.

All shipments are Ex-Works, Savannah, Georgia or point of manufacture, unless otherwise clearly specified in the contract. In case the contract price includes freight charges, the freight charges are not guaranteed unless the material is routed by Carver, and if the Buyer specifies a routing which increases the cost of freight, the difference shall be paid by the Buyer.

Shipment dates are approximate and are based upon prompt receipt from Buyer of down payment, confirmation of order financing, and all necessary information and approval of drawings.

7. **SHIPPING CLAIMS:** For Goods, machinery and/or parts, any claims for short shipment, loss, or damage during shipment must be made within thirty (30) days of receipt of the goods.

8. **WARRANTY:** Warranty applicable for Goods is limited to the following: machinery and parts are warranted to be of good material and to perform as designed if properly maintained and operated by a competent operator, provided, however, the warranty for Goods not manufactured by Carver is limited to the warranty provided by the manufacturer thereof. Failure of any article named herein to comply with the aforesaid warranty shall in no way affect this contract or notes, contract of sale, or security instruments given in accordance herewith. It is distinctly understood and agreed that the warranty is given upon the following conditions: 1) that the Goods are installed according to directions furnished by the manufacturer; 2) that the Goods are maintained and operated according to the manufacturer's recommendations and sound engineering principles; 3) that the Goods are not to be integrated with incompatible equipment and/or parts, either by Buyer or a third party; and 4) all terms of the contract, including payment in full, have been fulfilled by Buyer. **Any failure on the part of the Buyer to comply with these Terms and Conditions or the requirements of the purchase order or contract shall be held to void all warranties.**

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, CARVER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF THE GOODS, PRODUCTS AND SYSTEMS, THEIR MERCHANTABILITY, OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE, AND CARVER SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES.

9. **MACHINERY WARRANTY PERIOD:** Carver-manufactured **New** machinery will be warranted for the duration of: a) the first season of operation b) Twelve (12) months after machinery commissioning; or c) eighteen (18) months after delivery, whichever occurs first. **Used** machinery and their components sold as "**Reconditioned**" will be warranted for the duration of: a) three (3) months after machinery is placed in operation; or b) six (6) months after delivery, whichever occurs first. **Used** machinery and their components sold "**As Is**" are not warranted, unless otherwise agreed to in writing. All wear parts and/or consumables are covered by the parts and service warranty period found herein.

CARVER INCORPORATED GENERAL TERMS AND CONDITIONS (cont'd)

- 10. PARTS AND SERVICE WARRANTY PERIOD:** Warranty for parts and field service is limited to ninety (90) days from installation of parts or completion of service work. In no case will spare parts be warranted beyond six (6) months of delivery. For wear parts with a typical useful life of less than ninety (90) days under normal operation, the warranty period will be the generally accepted useful life for said parts (as determined solely at the discretion of Carver). Carver-Gump sifter screens are warranted to comply with the material, wire diameter, weave configuration and published specifications of the screen ordered for a period not to exceed sixty (60) days of shipment. The screen fastening clips are warranted from separation for up to six (6) months of delivery. Screen life cannot be expressly warranted due to conditions beyond Carver's control as to the products and conditions that the screens may be exposed.
- 11. REMEDY:** With regard to any Carver warranties, Carver's liability is limited exclusively to Carver repairing and/or replacing the machine(s) or part(s), or to refunding the price for said machine(s) or part(s) (solely at Carver's option). Any Buyer or third party modifications, alterations, or repairs (actual or attempted) to the machine(s) or part(s), without express written consent from Carver, shall void all warranties. Carver shall not be liable for the cost of any unauthorized modifications, alterations, or repairs.
- 12. RETURNED GOODS POLICY:** No Goods may be returned to Carver without the express written approval from Carver in the form of a Return Material Authorization ("RMA"). Goods returned without referencing a Carver RMA will be rejected and returned to the sender at the sender's expense. Returned items must be sent to the Carver location as specified in the RMA.
- All requests to return Goods must be made within 30 days of Buyer's receipt of the Goods. No RMA's will be issued for Goods held more than 30 days. Goods must then be returned and received back to Carver within 30 days (60 days for International Buyers) of the issuance of the RMA in order to receive a credit. Standard Carver stocked items will be credited for the full item price paid, less a restocking/processing fee of up to 20%, once they have been received by Carver and inspected to be in good, unused condition.
- Special-order parts or made-to-order assemblies are not returnable.**
- 13. FIELD CONSULTANT:** Unless otherwise expressly stipulated, the equipment shall be erected and commissioned by and at the expense of the Buyer. If the Buyer desires the advisory and technical services of a Field Consultant in connection with the erection, installation, or commissioning of the machinery, or if it is necessary to furnish his services after the machinery is installed, the Buyer shall pay for such services at a mutually-agreed per diem rate. Additionally, Buyer shall pay the Field Consultant's hotel, traveling, and other necessary expenses, including transportation of tools. Such payments will continue until the Field Consultant's return to the Carver plant or other equivalent starting point. When Buyer is being assisted by a Field Consultant furnished by Carver, whether as part of the proposal or upon special request by Buyer, Buyer shall furnish all necessary skilled and unskilled labor, tools, appliances, and rigging for the safe and proper handling, erection, or operation of the equipment without responsibility or liability on the part of Carver. Buyer shall pay premium rates for overtime services on regular workdays and for services on Saturdays, Sundays, or holidays.
- 14. TECHNICAL DATA:** Buyer agrees that Carver's drawings, specifications, operating instructions, and other engineering documents, as well as the information they contain, are the exclusive, "Intellectual Property" of Carver and shall be used only for the purpose of evaluating the Carver proposal or, if the Goods are purchased, for the installation, operation, and maintenance of the installation for which the Goods were purchased. Buyer shall not hold itself out as having any right to or interest in the Intellectual Property other than the rights granted under this agreement. Buyer shall not contest and shall not assist any third party to contest Carver's rights to the Intellectual Property. Buyer shall not take any action or omit to take any action likely to jeopardize the validity of the Intellectual Property.
- If any drawings are furnished with a proposal, they are approximate and submitted only to show general style, arrangement and approximate dimensions of machinery offered. Order-specific documentation (machinery plans, foundation and electrical drawings, and machinery-specific supporting documentation/manuals) will be furnished where required after the acceptance of such proposal. No work is to be based on preliminary proposal drawings. Any and all Carver technical data and documentation should remain solely in the possession of the Buyer and should not be provided, either directly or electronically, to any third party without the express written consent of Carver. Any and all such Intellectual Property, drawings and other technical data and documentation, in any form, shall be considered Carver's Confidential Information.
- 15. CONFIDENTIALITY:** Buyer agrees that it shall keep strictly confidential all information regarding Carver that Buyer receives as a result of its dealings with Carver (the "Confidential Information"), and Buyer will disclose such information only to those of its officers or employees who need to know such information and shall advise such officers and employees of the confidential nature of such information and the restrictions on its use. Buyer shall not make or permit the disclosure, release or publication of any Confidential Information to any other person or use such information for the benefit of any other person (especially, but not limited to, competitors of Carver). Confidential Information shall include, but shall not be limited to, Goods, materials, drawings, specifications, operating instructions, engineering documents, tooling, molds, packaging, designs, formulas, business plans, financial projections, strategic plans, organizational structure, merchandising strategies, marketing or promotional strategies, and the scope or terms of any engagement, prices and/or quantities purchased. Confidential Information shall also include any and all pricing information of any kind provided to Buyer, including but not limited to price quotes, estimates, invoices, purchase orders, and any and all other documents or information, written or oral, containing or discussing the pricing of any Carver Goods. Buyer agrees that Confidential Information is proprietary to Carver. The foregoing restrictions shall not apply to any such information to the extent that such information (i) is or becomes generally known and available to the public (other than as a result of a disclosure by or negligence of Buyer), (ii) was made known to Buyer, prior to the date hereof, by sources not subject to confidentiality obligations to Carver, or (iii) is required to be disclosed pursuant to subpoena or other legal process, provided that Buyer shall have given Carver reasonable prior notice of such proposed disclosure so that Carver may seek a protective order with respect to the use and disclosure of such information in such proceeding. The requirements of this Section 15 shall continue as long as the Confidential Information is confidential or proprietary in nature. Buyer shall treat all Confidential Information with at least the same care as it treats its own confidential information, but in no event shall Buyer exercise less than reasonable care. Upon completion, cancellation or termination of the purchase order or agreement, Buyer shall return to Carver all Confidential Information, including any copies thereof made by Buyer. Buyer acknowledges and agrees that any breach of any of its confidentiality obligations herein may be detrimental to the business interests of Carver and Carver shall be entitled to injunctive relief, as well as to recovery of actual and punitive damages, costs and expenses, including, but not limited to, reasonable attorney's fees and expenses, arising as a result of any such breach.
- Notwithstanding any other provision of these Terms and Conditions, Carver shall have the right to seek a temporary restraining order, preliminary injunction and/or any other equitable or provisional remedy to enforce the provisions of this Section and Section 14.**
- 16. FORCE MAJEURE:** If Carver's ability to perform its obligations to Buyer is limited, delayed, or prevented in whole or in part by any event or condition not reasonably within the control of Carver or its suppliers, including, but not limited to, acts of God, war, civil strife, labor unrest, transportation delays, or by any law, rule, regulation, order, or any other action of any public authority, Carver shall be excused, discharged, and released of performance to the extent such performance is so limited, delayed, or prevented, without liability of any kind. In the event of any such delay, the date of shipment shall be extended for a period equal to the time lost by reason of the delay.
- 17. ARBITRATION:** Any and all questions, differences, controversies, claims, or disputes arising out of or in connection with any Carver order, any sale and purchase of any Goods (as that term is defined herein), or these Terms and Conditions shall be finally settled in accordance with the rules then enforced of the CPR Institute Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules") by three (3) independent and impartial arbitrators. Any judgment upon any award rendered by the arbitrators may be entered in any state or federal court located in Chatham County, Georgia. The party desiring arbitration shall so notify the other party, in writing, in accordance with the aforesaid rules and such notice shall be accompanied by the name of the arbitrator selected by the party serving such notice. A second arbitrator shall be chosen by the other party, and the third arbitrator, who shall serve as the chair of the arbitration panel, shall be appointed in accordance with the CPR Rules. If a party fails to select an arbitrator and to advise the other party of its selection, in writing, within seven (7) days after receipt by such party of the written notice of intent to arbitrate, the second arbitrator will be selected in accordance with the CPR Rules. All arbitration proceedings and hearings shall be held in Savannah, Georgia, U.S.A. Arbitration is the sole exclusive remedy of the parties of any controversy hereunder, and this arbitration clause shall be construed in accordance with the laws of the State of Georgia, U.S.A., without reference to choice of law principles, and shall be deemed to be a mandatory submission to arbitration under the provisions of said laws.
- 18. CONTROLLING LAW:** The validity, construction, and performance of these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Georgia, without reference to choice of law principles. Subject to the provisions of Section 17 of these Terms and Conditions, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in Chatham County, Georgia, in any action relating hereto or to the subject matter hereof. In the event any provision hereof shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of these Terms and Conditions shall remain in full force and effect.