

## LENOVA® Group (“LENOVA®”)

### Terms and Conditions of Sale

These Terms and Conditions of Sale (“Terms and Conditions”) apply for review and acceptance by any persons or companies wishing to login as a registered user to LENOVA®, Inc. website and/or apply to become a verified, AUTHORIZED DEALER/DISTRIBUTOR/SALES CHANNEL (“Buyer”).

Unless otherwise specifically agreed to in writing by an authorized representative of LENOVA®, Inc., ILLINOIS, these Terms and Conditions shall apply to any order accepted by Buyer for Products (defined below) sold and/or supplied by LENOVA® to Buyer. The contract of sale for any Products shall be formed when Buyer’s order is accepted in writing by an authorized representative of LENOVA®, ILLINOIS.

#### 1. Standard Conditions of Sale

Sales of any of the Products described or referred to in Buyer’s order are expressly conditioned upon these Terms and Conditions. Any order for, any statement of intent to purchase, or any direction to proceed with manufacture or shipment, of any Products shall constitute acceptance of these Terms and Conditions and Buyer’s representation and warranty that Buyer is solvent. Any additional or different terms or conditions set forth in Buyer’s order or in any other communication from Buyer shall be null and void unless specifically agreed to in writing by an authorized representative of LENOVA®, ILLINOIS.

#### 2. Prices and Taxes

Prices are in U.S. Dollars including LENOVA®’s standard domestic packing for shipment. Special packaging (if available) may be provided at an extra charge. For Canadian Buyer prices are in Canadian Dollars. Prices include transportation charges only on orders of a size defined in our applicable catalog based on a single shipment to the same destination address. At LENOVA®’s option, orders of less than the defined size shall be shipped with transportation charges either collect or prepaid and billed to Buyer. Any prepaid transportation charges will be billed to Buyer by LENOVA® with payment due in accordance with the payment terms established. Sales tax will be billed to Buyer by LENOVA® with payment due in accordance with the payment terms established unless Buyer has furnished LENOVA® with a current sales tax exemption certificate.

#### 3. Delivery, Title and Risk of Loss, and Acceptance

Except as stated in the third paragraph of this Article, LENOVA® shall deliver the Products to Buyer F.O.B. our shipping point. Partial deliveries shall be permitted. Upon delivery to the carrier, title to the Products and all risk of loss or damage shall pass to Buyer. Delivery times are approximate and are dependent upon prompt receipt by LENOVA® of all material and information necessary to proceed with the manufacturing and/or delivery of the Products without interruption. Buyer acknowledges and agrees that many factors can affect the manufacture and/or delivery of Products and shall not seek to hold LENOVA® liable or seek to cancel orders for delays in delivery that are not unreasonable.

Buyer agrees that LENOVA® has the right to deliver a quantity of Products that may vary up to 10% over or under the quantity specified in Buyer’s order and Buyer agrees to accept and pay for such revised quantity of Products (with any price adjustments at LENOVA®’s discretion) in satisfaction of Buyer’s order.

If any Products cannot be shipped when ready due to any cause referred to in Article 4 (entitled “Excusable Delays”), LENOVA® may place such Products or parts in storage (which may be at the place of manufacture). In such event, (i) LENOVA® shall notify Buyer of the placement of the Products in storage; (ii) LENOVA®’s delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Buyer, (iii) any amounts otherwise payable to LENOVA® upon delivery shall be payable upon presentation of LENOVA®’s invoices therefor and its certification as to such cause, (iv) promptly upon submission of (LENOVA®’s invoices, Buyer shall reimburse LENOVA® for all expenses incurred by LENOVA®, including, but not limited to, preparation for and placement into storage, handling, storage, inspection, preservation and insurance, and (v) when conditions permit and upon payment of all amounts due hereunder, LENOVA® shall reasonably assist and cooperate with Buyer, at Buyer’s expense, with respect to the removal of any Products which have been placed in storage.

Buyer shall inspect Products as promptly as practical after receipt. However, unless earlier rejected or accepted by Buyer, the Products shall be deemed to be accepted by Buyer 5 days after delivery to Buyer. Upon Buyer's acceptance of each unit of Products, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Buyer's sole and exclusive remedy regarding any defect or non-conformance shall be as set out in Article 6 hereof (entitled "Warranties").

#### **4. Excusable Delays**

LENOVA® shall not be liable for delays in delivery or failure to perform due, directly or indirectly, to: (i) causes beyond LENOVA®'s reasonable control, (ii) acts of God, acts of Buyer, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), governmental priorities, change of government, government instability, port congestion, riots, revolutions, strikes or other labor disputes, fires, floods, acts of terrorism, sabotage, nuclear incidents, earthquakes, storms, epidemics, or (iii) causes beyond LENOVA®'s reasonable control to timely obtain necessary and proper labor, materials, components, facilities, energy, fuel, transportation, governmental authorizations or instructions, material or information required from Buyer. The foregoing shall apply even though any of such causes exists at the time of the order or occurs thereafter.

LENOVA® shall notify Buyer of any delay or failure excused by this Article and shall specify the revised delivery date as soon as is practicable. In the event of a delay, subject to the third paragraph of this Article, Buyer may not terminate the order and the time of delivery or of performance shall be extended for a period equal to the time lost by LENOVA® by reason of the delay or failure.

If delay or failure excused by this Article extends for more than 60 days and LENOVA® and Buyer have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either LENOVA® or Buyer (except where delay is caused by Buyer, in which event only LENOVA®), upon 30 days written notice, may terminate the order with respect to the unexecuted portion of work, whereupon Buyer shall promptly pay LENOVA® its termination charges determined in accordance with LENOVA®'s standard accounting practices upon submission of LENOVA®'s invoices therefor.

#### **5. Payment**

Buyer shall pay in full for the Products without deduction, offset or counterclaim, in accordance with the payment terms set forth in LENOVA®'s invoice. (Payment terms are 1% discount if paid within 10 days, net 30 days, from the date of LENOVA®'s invoice.) Past due amounts shall accrue interest at the lesser rate of 1.5% per year or the maximum rate permitted by applicable law until paid in full.

Should any indebtedness owing by Buyer to LENOVA® be past due, LENOVA® may, at its option and without prejudice to its other remedies, withhold further deliveries to Buyer until all indebtedness owed to LENOVA® has been fully paid.

#### **6. Warranties**

All Products sold by LENOVA® are warranted from the date of installation set forth by our product warranty specifications and are to be free from defects in title, material, and workmanship and to conform to LENOVA®'s published specifications applicable to such Products. If a Product fails to meet the foregoing warranties, LENOVA® shall correct the failure, at its option, (i) by repairing the Product, or (ii) by making available to Buyer F.O.B. our Shipping Point, LENOVA®'s warehouse, a replacement Product.

LENOVA®'s obligations under this Article shall not apply to any Product which (i) has been modified or otherwise altered, other than pursuant to LENOVA®'s written instructions or written approval, or (ii) is not properly stored or used, or (iii) has been subjected to abuse or any other kind of misuse, neglect or detrimental exposure or has been involved in an accident.

Subject to Article 7 ("Patents"), this Article sets forth the exclusive remedies for claims based upon defects in or nonconformity of the Products, whether the claim is in contract, warranty, tort (including negligence), strict liability, equity, quasi-contract, or otherwise. Upon the expiration of the warranty period, all such liability shall terminate. Except as set forth in Article 7 ("Patents"), the foregoing warranties are in lieu of all other warranties whether oral, written, expressed, implied or statutory. NO IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

## 7. Patents

LENOVA® warrants that any Product, manufactured by LENOVA® and furnished hereunder (“Product”) shall be free of any rightful claim of any third party for infringement of any United States patent. If Buyer notifies (LENOVA® in writing promptly of the receipt of any claim that such Product infringes a United States patent and gives LENOVA® information, assistance and exclusive authority to settle and defend such claim, LENOVA® shall, at its own expense and option, either: (i) settle or defend such claim or any suit or proceeding arising therefrom and pay any damages and costs awarded therein against Buyer, or (ii) procure for Buyer the right to continue using such Product, or (iii) modify the Product so that it becomes non-infringing, or (iv) replace the Product with a non-infringing Product, or (v) remove the Product and refund the purchase price (less reasonable depreciation). THE FOREGOING STATES THE ENTIRE LIABILITY OF LENOVA® FOR PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT INFRINGEMENT OF ANY PRODUCT AND IS SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH HEREIN.

The preceding paragraph in this Article shall not apply: (i) to any Product which is manufactured to Buyer’s design or specification, or (ii) to the use of any Product furnished hereunder in conjunction with

any other apparatus or material. As to any Product or use described in the preceding sentence, LENOVA® assumes no liability whatsoever for any patent or other intellectual property infringement.

THE PATENT WARRANTY AND INDEMNITY OBLIGATIONS SET FORTH ABOVE ARE IN LIEU OF ALL OTHER PATENT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY.

## 8. Image License Agreement

LENOVA® maintains and owns a representative collection of product images and graphical brand elements. LENOVA® does not catalog a picture for each individual item, size and gauge. Refer to <https://www.lenovagroup.com> to view applicable images for each specific item.

LENOVA® extends to Buyer, a royalty free, non-exclusive license (“License”) to use certain copyrighted promotional materials specified below (“Licensed Materials”) in the Permitted Media (as defined below) for the purpose of advertising and soliciting sales of our products sold by or emanating from LENOVA®. The Licensed Materials shall consist of the name LENOVA®, any LENOVA® logos, emblems, iconography, trademarked names, supplied product specifications and descriptions and provided product images (either illustration or photography). LENOVA® reserves the right to add to, modify or delete the Licensed Materials. Buyer must comply with all of LENOVA®’s quality control and usage requirements, which LENOVA® communicates to Buyer from time to time, with regard to use of the Licensed Materials. LENOVA® may terminate the License in the event determines, in its sole discretion, that Buyer has failed to abide by LENOVA®’s quality and control and usage requirements.

LENOVA® consents to Buyer’ s usage of the Licensed Materials, upon the condition that Buyer does not permit, either directly or indirectly, the Licensed Materials to be used in any advertisement, promotion, publication or media other than the Permitted Media without LENOVA®’s prior written consent. In addition, Buyer will not, directly or indirectly, use the Licensed Materials to advertise, promote and/or sell our Products not sold by or emanating from LENOVA® and any such use of the Licensed Materials shall be grounds for immediate termination of the License; upon Buyer’s receipt of notice of such termination, Buyer must remove the Licensed Materials from all of its promotional activity.

LENOVA® makes no representation or warranties regarding the Licensed Materials.

Authorized use of Licensed Materials by Buyer is limited to Buyer’s own advertisements, catalogs, point-of-sale promotion, flyers, brochures, websites, training materials and presentations (“Permitted Media”). Use of the Licensed Materials in any other media or publication or any other use not set forth in this Article shall require the prior written consent of LENOVA®.

## **9. Emailed Marketing Messages**

By agreeing to these Terms and Conditions, Buyer consents to LENOVA® sending email communications to Buyer (at the email address it registered with LENOVA®) regarding price changes, company updates, product promotions and more. Buyer may opt out of these email communications via a link on any emailed communication from LENOVA® inviting Buyer to manage its email subscriptions.

## **10. Limitations of Liability**

THE TOTAL LIABILITY OF LENOVA® FOR ANY AND ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR PATENT INFRINGEMENT), STRICT LIABILITY, EQUITY, QUASI-CONTRACT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY AGREEMENT OR TRANSACTION SUBJECT TO THESE TERMS AND CONDITIONS OF SALE OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT OR THE FURNISHING OF ANY SERVICE, SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT OR SERVICE WHICH GIVES RISE TO THE CLAIM AND ANY SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR PATENT INFRINGEMENT) EQUITY, QUASI-CONTRACT OR OTHERWISE, SHALL LENOVA® BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY SUCH DAMAGES, ALL OF WHICH ARE WAIVED IN FULL BY BUYER. IF BUYER TRANSFERS TITLE TO, OR LEASES THE PRODUCTS SOLD HEREUNDER TO, OR OTHERWISE PERMITS OR SUFFERS USE BY, ANY THIRD PARTY, BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A WRITTEN AGREEMENT PROVIDING LENOVA® WITH THE SAME LIMITATION OF LIABILITY SET FORTH IN THE PRECEDING SENTENCE.

If LENOVA® furnishes Buyer with advice or other assistance which concerns any Product supplied hereunder and which is not required by these Terms and Conditions or pursuant to any other written agreement between LENOVA® and Buyer, the furnishing of such advice or assistance shall not subject LENOVA® to any liability, whether in contract, warranty, tort (including, but not limited to, negligence or patent infringement), strict liability, equity, quasi-contract or otherwise.

## **11. Cancellation and Returns**

Buyer may cancel an accepted order only upon written request to LENOVA® in the following manner:

### **A. Stock Products**

(1) prior to scheduled delivery of any stock Products, by written notice to Buyer's assigned LENOVA® Customer Care office or to an authorized representative of LENOVA®; (2) after delivery of any stock Products on Buyer's order, the order may be cancelled only with LENOVA®'s written consent. Buyer's request for cancellation should be addressed as instructed above. Any deposit monies held by LENOVA® will be credited against Buyer's 25% restocking charge.

### **B. Custom Products**

Buyer may cancel an accepted order for custom Products only prior to the commencement of manufacturing of such Products.

## 12. Returns

The following applies to Buyer's return of Products:

### A. Stock Products

Incorrect deliveries of any stock Products will be exchanged or refunded after inspection of such Products by LENOVA® personnel provided that LENOVA® agrees that the delivery was incorrect and Buyer notifies LENOVA® in writing of Buyer's intention to make such return within 5 days of Buyer's receipt of such Products.

### B. Custom Products

No returns are permitted for custom Products.

## 13. Indemnification

Buyer agrees to save, protect, defend (with counsel acceptable to LENOVA®) indemnify and hold harmless LENOVA® and its successors, assigns, licensees and affiliates, and each of their respective officers, directors, managers, partners, employees, agents and representatives, from and against any and all claims, demands, suits, actions, judgments damages, liabilities, obligations, costs and expenses (including, but not limited to, attorney's fees, whether or not litigation is commenced) arising out of or in connection with (i) an allegation that any Products made by LENOVA® for or supplied to Buyer in accordance with Buyer's design or specification infringes upon another party's rights; (ii) Buyer's misuse of any Products; (iii) Buyer's use of any Products in manner or any purpose for which they are not intended; (iii) any Products that have been modified or mishandled by Buyer; (v) the operation and conduct of Buyer's business, and/or (vi) Buyer's breach of any of the provisions of these Terms and Conditions.

## 14. General Provisions

The provisions of these Terms and Conditions are for the sole and exclusive benefit of LENOVA® and Buyer and not for any other parties. The delegation or assignment or encumbrance by Buyer of any or all of its duties or rights hereunder without LENOVA®'s prior written consent shall be void.

The invalidity, in whole or in part, of any Article or paragraph (or portion thereof) of these Terms and Conditions shall not affect the validity of the remainder of such Article or paragraph (or portion thereof).

The validity, performance and all matters relating to the interpretation and effect of these Terms and Conditions and/or relating in any way to the Products shall be governed by the laws of the State of ILLINOIS, U.S.A., without regard to conflict of laws rules. LENOVA® and Buyer each consent to the personal jurisdiction of and venue in the state and federal courts located in the County of Cook, State of ILLINOIS, U.S.A., which courts shall constitute the exclusive forum for all actions and proceedings concerning these Terms and Conditions and/or relating in any way to the Products, whenever, wherever and however arising, whether at law, in equity or otherwise and whether the dispute involves any alleged breach of contract, violation of law or tort of any kind. LENOVA® and Buyer each waives to the fullest extent permitted by applicable law any right it may have to a trial by jury in respect of any such action or proceeding. In any such action or proceeding, the prevailing party shall be entitled to an award of its reasonable costs, including attorneys' fees and expenses. Article headings used herein are for convenience only and shall not be deemed to be part of these Terms and Conditions. These Terms and Conditions, and all rights and obligations hereunder, shall be binding upon, and inure to the benefit of

LENOVA® and Buyer and their respective successors and permitted assigns. No waiver by LENOVA® or Buyer of any breach by the other party of any term, covenant or condition of these Terms and Conditions shall be deemed a waiver of any other breach (whether prior to or subsequent) of the same or any other term, covenant or condition of these Terms and Conditions. These Terms and Conditions (together with Buyer's orders for the Products accepted in writing by an authorized representative of LENOVA® in Commerce, California) constitute the entire agreement between LENOVA® and Buyer with respect to the subject matter of these Terms and Conditions and replaces and supersedes all prior discussions, negotiations, understanding and agreements, whether written or oral, between LENOVA® and Buyer. These Terms and Conditions may only be amended or modified by a writing signed by both LENOVA® and Buyer.

**15. Entire Agreement**

These Terms contain our entire agreement relating to each Transaction. These Terms may not be waived, changed, modified, extended or discharged except by an agreement in writing that is signed by an authorized representative of the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.