

**LAUDA-BRINKMANN, LP**  
**TERMS AND CONDITIONS OF SALE**

1. Sale of Products.

(a) All shipments, services, sales and quotations between LAUDA-Brinkmann, LP (“Seller”) and the purchaser named herein (“Purchaser”) of Sellers’ products set forth herein (“Products”) shall be subject to these Terms and Conditions of Sale (the “Terms”). Purchaser acknowledges receipt hereof and accepts these Terms. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY RESPONSE HERETO BY PURCHASER OR IN PURCHASER’S INITIAL ORDER ARE HEREBY REJECTED BY SELLER WITHOUT NEED OF FURTHER NOTICE OF REJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING ON SELLER. Seller’s acceptance of any order offered by Purchaser is EXPRESSLY MADE CONDITIONAL on Purchaser’s assent to these Terms, and under no circumstances will any terms other than these Terms apply to Seller’s sale of the Products.

(b) Seller’s quotations are not binding on Seller. Each order of Products shall be in writing and, subject to Section 1(a), no order of Purchaser shall be binding on Seller until the earlier of (i) shipment to Purchaser of Products, or (ii) transmittal of a written acceptance by Seller. Seller’s failure to respond to Purchaser’s order within four (4) weeks after receipt of the order shall be a rejection of the order.

(c) Purchaser may not cancel any order after it has become binding pursuant to subsection (b) above. Seller may cancel all accepted orders and deliveries of Products if (i) Purchaser makes an assignment for the benefit of creditors, (ii) becomes party to a voluntary or involuntary proceeding of insolvency, bankruptcy or reorganization, (iii) generally becomes unable to pay its debts as they become due, (iv) fails to remit payment to Seller in accordance with the terms hereof or under any other agreement between Seller and Purchaser, or (v) breaches any

other term, provision or condition contained in these Terms.

(d) All references in sales brochures, technical data sheets and offers as to specifications, price and other details of the Products are approximate and shall not be binding on the Seller unless expressly agreed to in writing. Seller may, from time to time, update and replace Products in its line. Seller reserves the right to substitute updated Products, provided that such updated Products meet the specifications of the ordered Products in all material respects and are sold at the same price or less as the ordered Products.

(e) Purchaser acknowledges that Seller’s acceptance of any purchase order is dependent on Seller’s prior approval of Purchaser’s credit. Purchaser acknowledges that Seller may demand assurances of Purchaser’s ability to pay by requesting such trade or banking references or a letter of credit or such other information that is deemed adequate by Seller.

2. Delivery.

(a) All shipments are EXW Seller’s facility in Marlton, New Jersey (Incoterms® 2020) (the “Facility”). Risk of loss/title shall pass to Purchaser at the time the Product is delivered, unless otherwise agreed to differently between Purchaser and Seller in writing. Seller may, at its option, prepay freight charges and seek reimbursement from Purchaser. In the event that Purchaser fails to accept delivery of the Product, Seller shall have the right to store the Product at the Purchaser’s cost and expense until such Product may be sold for a reasonable price to a third party.

(b) All dates of delivery set forth in an accepted order are approximate and non-binding on Seller.

(c) If Purchaser requests any modification of the order after Seller's acceptance, Seller shall have the right to extend the delivery time period as reasonably needed to complete Purchaser's changed order and to adjust the terms of sale and purchase price in its sole discretion.

(d) Seller reserves the right to make partial shipments. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept the remaining delivery.

### 3. Acceptance.

Purchaser shall inspect all Products immediately following arrival thereof at the destination, and shall give written notice to Seller within five (5) days of any claim that the Products are nonconforming, provided that a reasonable inspection should have revealed such non-conformity. If Purchaser shall fail to give such notice within the required time period, then Purchaser is deemed to have accepted the Products.

### 4. Returns.

Once a purchase order is binding pursuant to Section 1(b) and the Product arrives at Purchaser's designated destination, no return of goods will be accepted, for any reason, following the five (5) day acceptance period in Section 3. If a return is duly requested—in accordance with Seller's Return Terms and Conditions, which have been provided to Purchaser—within such five (5) day period, Seller reserves the right to charge Purchaser a 20% restocking fee. If said return request is after the five (5) day period, Seller reserves the right to charge a higher restocking fee and/or deny said return. If a return is requested and approved, Purchaser will receive return forms, via a Purchaser designated e-mail address, which forms must be acknowledged and shipped with the returned Product. Such shipping must be postmarked on or before the final day for acceptance of the Product, and must be received by the Seller on or before ten (10) days from the date of original shipment of the Product by the Seller to the Purchaser. Purchaser will be solely responsible for the shipping and packaging of any Products being returned and for the removal of

any hazardous materials therefrom. Seller reserves the right to reject any return based upon the reasons listed in the Seller's Return Terms and Conditions. Purchaser must adhere to all guidelines provided on the Return Terms and Conditions provided by Seller. If payment has been received for the Product, and a return of the Product is accepted by the Seller, Purchaser will be issued a store credit which may be used towards future purchases with Seller.

### 5. Prices.

(a) Unless otherwise agreed to in writing, all prices quoted by Seller are in U.S. Dollars and exclusive of packaging, handling, freight, insurance, taxes, or tariffs. Payment terms shall be thirty (30) days net unless otherwise specified in an applicable invoice. If an invoice is not paid in full within thirty (30) days following the date of invoice, Seller shall be entitled to charge interest on the delinquent invoice in the amount of (i) 18% per annum, or (ii) the highest rate permitted by applicable law. The foregoing shall be in addition to and not in lieu of any other remedies Seller may have at law or in equity for such delinquency.

(b) Purchaser shall have no right of offset by virtue of any claim against Seller, unless Seller has acknowledged the validity and amount of such claim in writing.

(c) Prices for Products are subject to change without notice.

(d) All prices quoted by Seller are exclusive of any tariffs, duties, and similar charges levied on the Products and payable by Seller in procurement of the Products (collectively, "Import Costs"). Seller may, at its sole discretion, include Import Costs in the Product quotation. Notwithstanding whether any Import Costs were included in the quotation, and regardless of the amount of such quoted Import Costs, all Import Costs shall be Buyer's sole responsibility, regardless of whether such Import Costs are imposed, assessed, levied, or become known before or after acceptance of Buyer's order of the Products. At Seller's sole discretion, Seller may

invoice all or part of the incurred Import Costs, dollar-for-dollar, separately to Buyer, which amounts Buyer shall pay in accordance with Section 5(a).

6. Warranties.

(a) Seller warrants only that the Products shall be free from defects of materials and workmanship for a period of twenty four (24) months on units and twelve (12) on spare parts, after the date of delivery ("Warranty Period"). Such warranty is limited to the original Purchaser only. If, within the Warranty Period, (i) the Purchaser discovers any defects in the materials or workmanship of the Product and (ii) notifies the Seller in writing of such defects and returns the defective Product to Seller, Seller shall, at its option, repair or replace the defective Product or issue a credit equal to the purchase price thereof, according to the Return Policy..

(b) This warranty shall not apply to any of the following: (i) Products that have been altered or repaired by anyone other than Seller's approved personnel; (ii) Products that have been damaged by circumstances beyond the reasonable control of Seller; (iii) Products that have been incorrectly installed or improperly used or maintained by Purchaser; or (iv) Products that have been subjected to conditions of use and or maintenance not in conformity with Seller's instructions regarding the Products.

(c) Other than the warranty contained in Section 9 hereof, Seller makes no warranty and disclaims all liability for the infringement of third party intellectual property rights arising from the Purchaser's use of the Product.

(d) THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE

EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES.

(e) PURCHASER ACKNOWLEDGES THAT IN THE EVENT PURCHASER RECEIVES NON-CONFORMING GOODS, PURCHASER'S WARRANTY REMEDIES ARE LIMITED TO THE EXCLUSIVE REMEDIES OF (1) RETURN OF THE GOODS AND ISSUANCE OF A CREDIT FOR THE PRICE, OR (2) REPAIR AND REPLACEMENT OF NON- CONFORMING GOODS OR PARTS, AND PURCHASER ACKNOWLEDGES THAT IT SHALL BE AT THE EXCLUSIVE DISCRETION OF SELLER AS TO WHICH REMEDY SHALL BE AVAILABLE TO PURCHASER IN THE EVENT A DISPUTE ARISES.

7. Limitation of Liability.

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN ALL EVENTS, THE LIABILITY OF SELLER HEREUNDER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT IN QUESTION OR WITH RESPECT TO WHICH SUCH BREACH, DEFAULT, OR NEGLIGENCE IS CLAIMED.**

**SELLER SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF ANY CONTRACT OR OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT BY CUSTOMER OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (B) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM LOST CONTRACTS OR BUSINESS; OR (C) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.**

#### 8. Security Interest.

Purchaser hereby grants Seller a security interest in the Products and all proceeds thereof to secure Purchaser's obligations to Seller. From time to time, Seller shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. At Seller's request, Purchaser agrees to execute and deliver to Seller any and all documents necessary to perfect Seller's security interest, including all UCC financing statements. Purchaser further appoints Seller as Purchaser's attorney in fact for the purpose of executing all documents on Purchaser's behalf, which are necessary to perfect and maintain Seller's security interest in the Products.

#### 9. Protection of Trade Secrets and Confidential Information.

Except as required by law, the Purchaser shall not disclose any of the terms or conditions of an accepted order, including price terms, to any third party for any reason whatsoever. All specifications, drawings, models, samples, designs, technical information or data, written, oral or otherwise, furnished by or on behalf of Seller shall remain the property of Seller, whether paid for by Purchaser or not, and shall be returned (together with all copies) promptly upon Seller's request. Such information shall be treated as confidential, and shall not be used, disclosed or reproduced by Purchaser, except as required in the course of performance hereunder. Purchaser's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of three (3) years from the date of Seller's acceptance of the last order to which the items of confidential information in question pertain; provided, however that Purchaser's obligations of confidentiality hereunder with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. For purposes hereof, the confidentiality obligations embodied herein do not extend to any information, which, at the time

of disclosure, was (i) already known or independently developed by Purchaser; (ii) in the public domain through no wrongful act of Purchaser; or (iii) received by Purchaser from a third party who was free to disclose such information. The parties acknowledge that the rights of Seller hereunder are in addition to those rights Seller may have under common law or applicable statutes for the protection of trade secrets. Upon demand by Seller, Purchaser shall immediately return all information subject to this Section 8 to Seller.

#### 10. Intellectual Property Rights.

(a) Purchaser may not use any of Seller's intellectual property rights, including, but not limited to patents, copyrights, trademarks, and service marks without Seller's prior written consent.

(b) Seller grants Purchaser a limited, fully paid up, non-exclusive, inalienable and non-transferable license to any of Seller's intellectual property necessary to operate the Products.

(c) Seller warrants that it does not possess actual knowledge that the Products sold pursuant hereto and their general method of operation infringe on any third party intellectual property rights. Seller makes no warranty and disclaims all liability for third party infringement claims arising out of the objects manufactured by the Purchaser using the Products sold hereunder.

(d) Purchaser shall notify Seller promptly in writing of any claims brought against the Purchaser, or of any notice received by a third party, that the Products infringe third party intellectual property rights.

(e) Any damages of Purchaser arising under this Section 9 are subject to the limitation of liability contained in Section 6.

#### 11. Arbitration.

Any controversy or claim arising out of or relating to these Terms, or the breach hereof, shall be submitted to and be finally resolved by binding

arbitration, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, to be conducted by the American Arbitration Association (“AAA”), with such arbitration to be held in Burlington County, New Jersey in accordance with the AAA’s Commercial Arbitration Rules then in effect. Any civil action to enforce this arbitration clause may be brought in the United States District Court for the District of New Jersey, and each party consents to and waives any challenge to the personal jurisdiction of that court. Each party hereby irrevocably agrees that service of process, summons, notices, as other communications related to the arbitration procedures shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party, or if actually received by the other party. The arbitration shall be conducted by one arbitrator, as selected by the procedure established by the AAA rules. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator. Notwithstanding the foregoing, Seller may seek injunctive relief against Purchaser from any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to these Terms or the breach hereof. The parties agree that although these Terms of are to be governed by New Jersey law, this arbitration agreement, and whether it is enforceable, is to be governed and determined by the federal law of the United States of America, particularly the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and related jurisprudence.

## 12. Export Compliance.

Should Purchaser re-sell any Product purchased from Seller which originates in Germany, or re-sell any replacement part or upgrade for any Product which originates in the U.S. to a customer outside of the United States, the Purchaser acknowledges that the export of

that Product, or upgrade or replacement part thereto, from the United States may fall within the scope of the Export Administration Regulations (“EAR”) of the Bureau of Industry and Security (“BIS”) at the U.S. Department of Commerce. It may also be subject to the regulations of the U.S. Department of State’s Directorate of Defense Trade Controls, the U.S. Treasury Department’s Office of Foreign Assets Control, and other U.S. government agencies. If Purchaser re-sells our products, Purchaser must comply with the EAR and any other applicable U.S. regulations. Purchaser’s responsibilities shall be:

(i) *Determining the Export Control Classification Number.* In most cases, an export license from BIS will not be required. However, Purchaser must make that determination. In order to do this, Purchaser must first assign the Export Control Classification Number (“ECCN”) to the product being exported.

(ii) *Determining if Country Restrictions Exist.* Using the ECCN, Purchaser must then compare the specific controls for Purchaser’s ECCN against the Country Control List (“CCL”). Reasons for controls include national security and nuclear non-proliferation, among others. Exports to certain countries such as Cuba and North Korea are prohibited altogether, while exports to others require a license.

(iii) *Determining the End User.* Purchaser must determine if the buyer to which Purchaser is re-selling Seller’s Product appears on the “Denied Persons” list, the “Entity List,” or the “Unverified List” (all maintained by BIS), as well on the Treasury Department’s “Specially Designated Nationals and Blocked Persons” List. Based on which list the end user appears on, the export transaction may be prohibited altogether, or require a license.

(iv) *Determining the End Use.* Some end-uses are prohibited, while others may require a license. For example, Purchaser may not export to certain entities involved in the proliferation of weapons of mass destruction (e.g., nuclear, biological, chemical) and the missiles to deliver them, without specific authorization.

13. Miscellaneous.

(a) Purchaser shall comply with any and all technical guidelines, including but not limited to installation requirements, for the Products, as may be issued by Seller from time to time. Purchaser shall supply Seller with all information Seller reasonably requires to fulfill its obligations and duties to Purchaser hereunder.

(b) Notwithstanding anything herein to the contrary, Seller shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, terrorism, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond Seller's control.

(c) Purchaser's failure to initial any clause hereof, shall have no effect on the enforceability of said clause.

(d) Purchaser shall not assign this contract without the express prior written consent of Seller.

(e) Except as otherwise expressly provided herein or in a written document, signed by Seller and Purchaser, this document and attachments and exhibits hereto constitute the entire agreement between Seller and Purchaser with respect to the subject matter herein contained and all prior agreements and communications between Seller and Purchaser, whether oral or written, are superseded by these Terms.

(f) No modification, limitation, waiver or discharge of these Terms shall bind Seller unless in writing and signed by a duly authorized employee of Seller. Seller may, from time to time, modify these Terms by giving thirty (30) days advance written notice to Purchaser. Modification of these Terms may be made on a case by case basis in invoices to the Purchaser upon the express agreement of both parties hereto, and any such modification shall control only the single purchase transaction covered by such invoice.

(g) The failure of Seller to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(h) All notices required hereunder shall be in writing and sent by first class mail or by telefax or written confirmation to such addresses as stated herein.

(i) These Terms shall be governed by, and construed, interpreted and enforced under the laws of the State of New Jersey without giving effect to conflict of laws principles, provided however, that all aspects relating to arbitration hereunder shall be governed by the federal law of the United States of America.

(j) In case any conditions of these Terms should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of these Terms shall not be affected thereby.

(k) Support or service contracts between the Purchaser of the Product and the Seller shall be deemed made for the term set forth in such contract.

