



SELLER'S TERMS AND CONDITIONS – ESA-9.21.01

1. SCOPE. These terms and conditions ("Terms") apply to all sales of used racking equipment ("Equipment") made by Omnilift, Inc. ("Seller") to any purchaser ("Buyer"). Seller does not accept and hereby expressly rejects all terms and conditions contained in any other document which purports to pertain to the Equipment and/or the relationship between Seller and Buyer, which terms and conditions are in addition to or inconsistent with these Terms, and such terms and conditions shall not become part of the order between Buyer and Seller, except as expressly agreed in writing by Seller.

2. ORDERS. All orders are subject to acceptance in writing by Seller. Buyer shall have no right to cancel any accepted order without the prior written consent of Seller.

3. DELIVERY DATE/BUYER'S REMEDY. The promised delivery date is the best estimate possible of when the Equipment will be shipped. Seller shall have no liability for lost profits or incidental or consequential damage due to delays. Buyer shall inspect the Equipment at the time and place of delivery. Buyer's failure to give notice of any claim within 3 days from the date of delivery shall constitute an unqualified acceptance of the Equipment as conforming to the terms of this quotation. Buyer's exclusive remedy in the event the Equipment does not conform to the description shall be a credit of the price of the nonconforming Equipment. Under no circumstances shall the Seller be liable for any indirect, special, incidental, consequential or punitive damages arising from, connected with or relating to this agreement or the purchase, use, operation or maintenance of the Equipment, whether or not such damages are foreseeable and whether or not Seller has been advised of the possibility of such damages, including but not limited to damages for economic losses or property damage arising from, connected with or relating to Seller's acts or omissions, whether under negligence, strict liability, enterprise liability or other product liability theories. Seller's total liability shall not exceed the amount paid to Seller under this agreement.

4. PAYMENT. Payment shall be net ten days from the date of delivery. Any delay in payment beyond such time, for any reason, shall accrue an additional charge of 7% per annum. Should Buyer, for any reason, be unable to accept the Equipment at the time of the scheduled delivery, the full purchase price of the Equipment shall remain due ten days from the date of the scheduled delivery. Shipment and delivery shall at all times be subject to the approval of Seller's credit department. Seller reserves the right at any time to modify or withdraw credit terms without notice and to require guarantees, security, or payment in advance of the amount of the credit involved. If Seller at any time doubts Buyer's financial responsibility, Seller may decline to make shipments hereunder except upon cash payment in advance or receipt of security or other proof of responsibility satisfactory to Seller.

5. SHIPPING/TITLE/RISK OF LOSS. Except as otherwise agreed in writing by Seller and Buyer, all stated prices are F.O.B. Seller's shipping point. Buyer shall bear and be solely responsible for all shipping costs. Title to all Equipment shall remain in Seller until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer. Seller shall retain a security interest in, and right to repossess, any such Equipment until it is paid in full. Risk of loss shall pass to Buyer upon delivery to the carrier.

6. CHANGES. Any change order by Buyer will not be considered effective until mutual agreement has been reached between the Buyer and Seller as to the effect of any changes in prices, delivery, and other conditions of the order. Buyer may not cancel, reduce or delay Seller's production or deliveries except with Seller's consent and subject to conditions imposed by Seller as to payment, shortage, assumption of additional costs and indemnity against loss.

7. NO WARRANTIES. BUYER ACKNOWLEDGES THAT THE EQUIPMENT IS IN USED CONDITION AND IS BEING SOLD "AS-IS," "WHERE-IS" AND "WITH ALL FAULTS." BUYER FURTHER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO INSPECT THE EQUIPMENT PRIOR TO PURCHASE AND THAT IT IS SATISFIED WITH THE CONDITION OF THE EQUIPMENT. SELLER MAKES NO WARRANTIES OF ANY KIND REGARDING THE EQUIPMENT, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON THE SELLER'S SKILL OR JUDGEMENT TO SELECT OR FURNISH THE EQUIPMENT AND THAT THERE ARE NO WARRANTIES REGARDING THE EQUIPMENT.

8. INDEMNIFICATION. Buyer hereby agrees to indemnify, hold harmless and defend Seller, its officers, agents and employees from and against any and all liabilities, damages, losses, suits, claims, judgments, costs, and expenses, including attorneys' fees, arising out of or in connection with the Equipment and its sale, use, operation, maintenance, selection, delivery, possession or modification, including but not limited to claims for personal injury to any person(s) including Buyer's employees, and property damage to the Equipment or other property, including but not limited to loss of use arising directly or indirectly out of or in connection with the use or operation of the Equipment, whether such loss is caused, in whole or in part, by the negligent acts of the Seller, Buyer, or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable, and whether Seller's liability shall be attributable to its status as a seller of such Equipment or otherwise.

9. INSURANCE. Buyer assumes all risk of loss of and damage to the Equipment from any cause after the Equipment is delivered by the Seller. By signing this agreement Buyer agrees that it will, at its own expense, maintain insurance on the Equipment against all physical loss or damage thereto in an amount equal to the full insurable value of the Equipment. Buyer further agrees that it shall secure comprehensive general liability insurance, including contractual liability coverage, with liability limits of no less than \$1,000,000 per occurrence/\$1,000,000 aggregate, which insurance shall insure both the Buyer and the Seller, their agents, employees and assigns, for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the sale, operation, maintenance, use, manufacture or selection of the Equipment that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting therefrom. The aforementioned first and third-party insurance coverages shall be primary for the Buyer and the Seller and shall not be cancelled or modified at any time without at least thirty (30) days written notice. Customer shall provide satisfactory evidence of the existence of such insurance in the form of a Certificate of Insurance from an insurer licensed to conduct business in the Commonwealth of Pennsylvania prior to the delivery of the Equipment.

10. TERMINATION. Seller may terminate this agreement upon immediate written notice to Buyer on the happening of any of the following events: (a) Failure of Buyer to accept delivery of Equipment or to pay any indebtedness to Seller when due, accompanied by a failure within ten (10) days after demand therefor, to fully pay the same or provide assurance of payment satisfactory to Seller; (b) Failure by Buyer to honor any promise on Buyer's part contained in this agreement or to perform any of its obligations under this agreement, other than the payment of any indebtedness to Seller, after Buyer shall have been notified by Seller of such failure and in Seller's opinion shall have failed to correct the same within thirty (30) days after receipt of such notice; (c) Repetition by Buyer of a failure which is the same or substantially the same as the one previously corrected by Buyer after notice as provided in subparagraph (a) above; (d) The material inaccuracy of any information set forth in any application, claim, schedule, certificate, or other document heretofore or hereafter furnished by Buyer to Seller; and (e) Buyer shall cease to function as a going concern, or makes an assignment for the benefit of creditors, or any proceeding under any federal or state bankruptcy, receivership or insolvency laws is instituted by or against Buyer, or the liquidation, dissolution, merger, or consolidation of Buyer occurs, or a receiver or trustee for Buyer or any of its assets or property is appointed or applied for. Termination shall not release or affect, and this agreement shall remain fully operative as to, any obligations or liabilities incurred by Buyer prior to the effective date of such termination; provided, that all indebtedness of Buyer to Seller shall become immediately due and payable on the effective date of termination without demand, and Seller may deduct from any sums it owes to Buyer sums owed to Buyer to Seller. Any orders received from Buyer, whether or not accepted by Seller, which have not been shipped prior to Buyer's receipt of notice of termination or the effective date of termination or expiration, whichever shall occur first, shall only be shipped C.O.D. or cash in advance.

11. MODIFICATIONS. In the event Buyer modified the Equipment sold hereunder without the express written consent of Seller, or Buyer fails to implement any changes in the Equipment directed by Seller, Buyer agrees to indemnify defend, and hold Seller harmless from any and all claims, demands, suits, costs, and expenses incurred thereby, whether in contract, tort, or otherwise resulting from such failure.

12. CONTINGENCIES. Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material, or Equipment used in the manufacture of the Equipment; failure of any party to perform any contract with Seller relative to the Equipment or from any cause whatsoever beyond Seller's control, whether or not such cause be similar or dissimilar to those enumerated, Seller shall promptly notify Buyer of the happening of any such contingency and of the contemplated affect thereof on the delivery of the Equipment.

13. TAXES. Orders are subject to present and future government laws, regulations, and orders. All sales and excise taxes in respect to sale, transportation, or delivery are for the account of the Buyer and shall be paid by the Buyer.

14. DAMAGE AND LOSS. Seller reserves the right to replace or credit the price of nonconforming Equipment which has been duly rejected and returned transportation charges prepaid and which has not been altered in any way after delivery, but under no circumstances will Seller be responsible or liable for loss, damage or expense growing out of nonconforming Equipment or the use thereof or other consequential damage. No Equipment will be accepted for return, replacement or credit without the written consent of Seller.

15. ENTIRE AGREEMENT. Upon Buyer's acceptance hereof, this proposal shall constitute the entire agreement between the parties hereto with regard to the subject matter hereof. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms set forth herein. No representations, understandings, or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein. This agreement may only be modified in writing signed by the parties or their duly authorized agents.

16. TIME FOR BRINGING ACTION. Any action for the breach of this agreement must be commenced within one year after such cause of action has accrued.

17. APPLICABLE LAW/FORUM. This agreement shall be governed by the laws of the Commonwealth of Pennsylvania, regardless of any conflicts of law provision requiring reference to the rules of, decisions in, and/or laws of another state or sovereign nation. The parties agree that any action to enforce the terms of this agreement, or any action arising from either party's performance hereunder, must be initiated in the Court of Common Pleas of Bucks County, Pennsylvania.