



## BUYER'S TERMS AND CONDITIONS – CPO-6.13.01

These Contractor Terms and Conditions shall govern all work contracted by Omnilift, Inc. ("Company") to the Contractor identified in the Contractor Purchase Order ("Purchase Order") that references and incorporates these Terms and Conditions.

**1. THE CONTRACT DOCUMENTS.** The Contract Documents consist of these Contractor Terms and Conditions, any agreement(s) between the Owner of the contracted work identified in the Purchase Order and the Purchase Order, in that order of priority. The Contract Documents are collectively referred to as the "Agreement." Contractor acknowledges it has examined and understands the Contract Documents in their entirety. Contractor is bound by the Contract Documents and shall assume toward Company the obligations and responsibilities that Company assumes toward the Owner. In the event of any conflict between the provisions of any of the Contract Documents, the provisions of these Terms and Conditions shall govern unless the Contract Documents expressly provide otherwise.

**2. SCOPE OF THE WORK.** The Contractor's "Work" includes: (a) all Work identified in the Purchase Order; (b) all Work identified in the Contract Documents; and (c) all things reasonably implied or customarily provided in Contractor's line of work that is necessary to complete such Work for inspection and approval under the Contract Documents.

**3. PERFORMANCE OF THE WORK.** Company employs Contractor as an independent contractor to perform the Work in accordance with the terms and conditions of the Contract Documents. Contractor shall perform all work and furnish all tools, scaffolding, labor, supervision, materials, equipment and all other things necessary to prosecute and complete the Work in a skillful and workmanlike manner and to the Company's satisfaction. Contractor agrees to provide and pay for all labor, regardless of craft or jurisdiction, materials, tools, supplies, and equipment, except as otherwise provided herein, to perform the Work in conformity with the Contract Documents.

**4. TIMING OF THE WORK.** Contractor shall complete all Work within the period of time set forth in the Contract Documents. Contractor shall perform the Work diligently and promptly and in such order and sequence as will achieve timely completion of the Work. Contractor agrees that time is of the essence in its agreement with Company and, if Contractor shall fail to complete the Work within the times specified or such extensions thereof as shall be granted as herein provided, the Contractor shall pay Company as Liquidated Damages, and not as a penalty for such failure, the amount of liquidated damages assessed by the Owner against Company, if any. Extensions of time shall be Contractor's sole remedy for delay.

**5. COORDINATION / COOPERATION.** Contractor shall coordinate its Work with that of any other Project contractors, and shall verify the correctness of contiguous work installed by others. Contractor shall cooperate and coordinate with any and all contractors or material providers whose work may involve, effect or interfere with Contractor's Work

**6. PAYMENT.** In consideration of complete and timely performance of the Work, Company shall pay Contractor the total sum set forth in the Purchase Order upon the terms set forth therein. No payment to Contractor for stored materials shall be made, unless prior written consent for such payment has been given to Contractor by Company. Notwithstanding anything to the contrary elsewhere in the Contract Documents, Contractor expressly acknowledges and agrees that payments to Contractor shall become due only if payment has been received by Company for Contractor's Work. Company reserves the right to deduct from monies owed to Contractor any monies due and owing to Company from Contractor.

**7. RELEASE OF LIENS.** Upon Company's request, Contractor shall provide a signed affidavit showing that all of Contractor's labor, materials, and other bills have been paid and are current, and releases and/or lien waivers, in a form satisfactory to Company. Final payment to Contractor shall not become due until Contractor has delivered to Company a complete release of all liens arising out of the Work or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Owner to indemnify Owner against such lien. In the event of the assertion by others of any claim or lien against Owner or Company, which claim or lien arises out of Contractor's performance, Company may, but is not required to, retain out of any payments due to Contractor an amount sufficient to protect Company from any and all loss, damage, or expense therefrom, until the claim or lien has been adjusted by Contractor to the satisfaction of Company.

**8. CHANGES IN THE WORK.** Company may, at any time during the progress of the Work, make additions to, alterations in, or deviations from, the drawings or specifications or revisions to the Work without invalidating the Agreement. Company may, by written order ("Change Order") to Contractor, make changes in the Work, and Contractor shall thereupon perform the changed Work in accordance with the terms of the Change Order. In the event Company's changes result in the omission of any of the Work, then the fair and reasonable value of the same shall be deducted from the amount herein agreed to be paid to the Contractor. No additional Work shall be considered extra unless the same shall be done under a written Change Order signed by Company. There shall be no monetary or time allowance, direct or indirect, to the Contractor other than what is specifically written in the Change Order, including but not limited to delays, suspensions, escalation, impact, or other cost factors. Change Orders are subject to the terms and conditions of the Contract Documents.

**9. MODIFICATION / ASSIGNMENT.** This Agreement shall not be modified by any oral agreement, implied agreement or custom, and no waiver by Company of these provisions shall be deemed to have been made unless in writing. Contractor shall not assign this Agreement nor any interest herein, and shall not subcontract the whole or a portion of this Agreement without the Company's prior written consent. Any assignment or attempt to assign any monies due or which may become due to the Contractor hereunder shall be void and of no force or effect unless prior thereto the Contractor shall have obtained the written consent of Company. Contractor shall not be relieved of its duties and obligations hereunder by any such assignment or subcontract.

**10. INSURANCE.** Before commencing the Work, and at all times prior to the completion and acceptance of the Work by the Owner, Contractor shall, at its expense: (1) obtain, supply, and maintain insurance coverage as required by the Contract Documents and this Section 10; (2) deliver insurance certificates ("Certificates") to Company indicating the existence of the coverage required by this Agreement and providing for thirty (30) days prior written notice of cancellation, expiration or modification of the policies; and (3) name Company and Owner as additional insureds on all insurance policies, with



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the exception of workers' compensation insurance. The insurance policies required by this Agreement shall be in a form that is acceptable to the Company, and shall be issued by an insurer or insurers authorized to conduct the business of insurance in the Commonwealth of Pennsylvania with an A.M. Best Rating of A- VII, or greater. All such policies of insurance shall include a waiver of subrogation in favor of Company. Contractor's insurance shall meet or exceed the following requirements:

- (a) Comprehensive General Liability Insurance, including contractual liability coverage, with liability limits of no less than \$1,000,000 per occurrence/\$1,000,000 aggregate, or such amount as shall be required by Owner (whichever is greater), which insurance shall insure against any and all claims, accidents, liability, damages, loss and expense arising out of or in any way resulting from the Contractor's performance under the terms of this Agreement that results in bodily injury, sickness, disease, death or injury to or destruction of property, including loss of use resulting therefrom. The aforementioned coverage shall be primary for the Company and the Contractor;
- (b) Workers' Compensation Insurance in conformance with all State and/or Federal statutory requirements;
- (c) Automobile Liability covering claims for damages because of bodily injury, sickness or disease, including death resulting from any of these at any time, or property damage arising out of the ownership, maintenance or use of a motor vehicle, including owned, non-owned, and hired vehicles, with bodily injury and property damage limits of not less than \$1,000,000 per person/ \$1,000,000 per accident

**11. COMPLIANCE WITH LAWS AND REGULATIONS.** All Work, labor, services and materials to be furnished, supplied or performed by Contractor must strictly comply with all Federal, State, Local, Municipal, as well as any and all other governing jurisdictions' and authorities' laws, rules, regulations, statutes, ordinances, and directives ("Laws") now in force or hereafter in effect. All Work, labor, services and materials, in addition to that specifically required by the Contract Documents, but necessary to fully comply with said Laws, will be furnished by Contractor as part of this Agreement and without any additional compensation. Contractor shall respond to, defend, indemnify and hold harmless Company and Owner from and against any loss, liability or expense arising from any violation of Laws, including citations, assessments, fines, or penalties resulting therefrom.

**12. LICENSE, PERMITS AND FEES.** Contractor shall, at its own expense, obtain all necessary permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, unless specifically stated otherwise in the Contract Documents. Contractor agrees to pay all royalties and license fees and to indemnify and hold harmless Contractor and Owner from any and all loss, damage or expense to which they may be put from claims or litigation for the use or misuse of any patented or unpatented invention or process, used or furnished by Contractor, unless required by the Contract Documents and not originated or prepared by Contractor.

**13. TAXES AND CHARGES.** Contractor shall be responsible for all payments of taxes, contributions and/or premiums payable on its employees or operations under Workers' Compensation laws, unemployment compensation laws, the Federal Social Security Act, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and/or premiums which may become payable by operation of law or contract, including contributions payable by the employees. Contractor shall comply with all rules and regulations at any time applicable hereto and shall, on demand, substantiate that all taxes and other charges are being properly paid. Contractor shall hold Company harmless from all liability, loss and expense resulting from Contractor's failure to comply with such requirements.

**14. WAIVER OF MECHANICS LIENS.** Provided that the lien of the Contractor is subject to waiver under the Laws of Pennsylvania, the Contractor for itself, its subcontractors, suppliers, materialmen and employees, waives, releases and relinquishes all rights to file any Notice of Intent, Notice of Lien, Mechanics' Lien or any other encumbrance against Company, Owner, Project, or any monies earned by Contractor. In such circumstances where waiver is permitted, the filing or effectuating by Contractor of such encumbrance shall constitute a material breach of this Agreement. In the event Contractor files such an encumbrance, Contractor will, within five (5) days after request by either the Owner or Company and at Contractor's expense, have such lien or encumbrance discharged by payment, release, filing of a bond, or other method approved by Company. Contractor for itself and for anyone else acting under or through it hereby irrevocably authorizes and empowers any attorney of any court of competent jurisdiction to appear as attorney for it, them or any of them in any such court and: (1) in its or their name or names, mark satisfied of record at the cost and expense of Contractor or of them, any and all claims or liens; or (2) cause to be filed any pleading or instrument. Contractor shall be responsible and liable for all damages and expenses, including bond premiums, attorney's fees, etc. to discharge and/or defend against same. The existence of any encumbrance shall preclude Contractor's right to receive payment until such encumbrance has been satisfied and removed.

**15. GUARANTEE/WARRANTY.** In addition to all other guarantees and warranties contained in the Contract Documents, and not in limitation of Contractor's other legal rights, Contractor warrants and guarantees that its Work shall be of good quality, free from faults and defects, and in strict conformance with this Agreement and the Contract Documents. Contractor warrants that all materials and equipment furnished shall be new unless otherwise specified. Contractor shall, at its own expense and without entitlement to additional time or monies, correct all defects due to faulty workmanship and/or materials that may appear within in the guarantee or warranty period established in the Contract Documents and, if no such guarantee period is stipulated in the Contract Documents, then such guarantee shall be for a period of one (1) year from the acceptance of the Work by Owner. Contractor further agrees to execute any special guarantees as provided by the Contract Documents or required by law. Contractor shall require similar guarantees from all vendors and subcontractors. Contractor shall pay for all changes to the Work resulting from such defects in workmanship or materials and all expenses necessary to replace or repair the Work, including that damaged or disturbed by making replacements or repairs.

**16. INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless, Owner, Company, their agents and employees, from and against claims, damages, losses and expenses (including but not limited to attorney's fees and costs), demands, suits and



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causes of action (irrespective of whether such claims or actions are based upon contract, tort, negligence, strict liability, or otherwise), arising out of, caused by, resulting from or occurring in connection with the Contractor's performance of the Work hereunder, or by or on account of any act or omission of the Contractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable and regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. In the event Contractor is requested but refuses to honor the indemnity obligations hereunder, then Contractor shall, in addition to all other obligations, and upon adjudication of Contractor's obligation for indemnification, pay the cost of bringing such action, including but not limited to, attorney's fees, costs and expert fees, to the party requesting indemnity. The indemnification obligation shall not be limited by a limitation on amounts or types of damages, compensation of benefits payable by or for the Contractor under Workers' Compensation acts, disability benefits acts or other employee benefits acts. Further, the indemnification obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person. Contractor hereby waives all right to claim liability by way of subrogation or otherwise against Company or Owner for any loss or damages covered by any policy of insurance, whether such insurance is required by this Agreement or not.

**17. TERMINATION WITH CAUSE.** In the case of the Contractor's material breach or default of this Agreement as set forth in Section 23 hereof, Company may, at its discretion, terminate this Agreement upon failure of Contractor to cure the breach or default after receiving written notice thereof from the Company or the Owner. In the case of such termination with cause, Company may take possession and use any and all materials, equipment, tools, or chattels furnished by or belonging to Contractor either at or for the Project. Contractor, on termination, will be deemed to have offered to Company an assignment of all of its subcontracts and purchase orders relating to the Project. Company may, at its discretion, do whatever is necessary to assure performance of any terminated Work, and take such action as necessary in Contractor's name. Company may, through itself or others, provide labor, equipment and materials to prosecute Contractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including all charges, expenses, losses, costs, damages and attorney's fees incurred as a result of Contractor's failure to perform, from any monies then due or thereafter to become due to Contractor. Company may withhold from Contractor monies due or to become due under this or any other contract to offset the damage incurred or possibly incurred as a result of Contractor's breach or default. In case of a breach or default, Contractor shall be liable to Company and Owner for any and all additional cost, expenses, attorney's fees, and other damages both liquidated and unliquidated, which directly or indirectly result from Contractor's breach, threatened breach, or default.

**18. TERMINATION WITHOUT CAUSE.** This Agreement may be terminated by Company for any reason, including Company or Owner's convenience, upon forty-eight (48) hours written notice to Contractor, and Company may require Contractor to immediately stop Work.

**19. PAYMENT UPON TERMINATION.** In the event of a termination without cause, Contractor shall be paid for the reasonable value of Work actually and satisfactorily performed to date and the cost of any materials delivered to the Project site. Company shall not be liable to Contractor for any other costs nor for prospective profits on Work not performed. If the termination and cancellation is due to any Contractor Default, or as a result of court order of public authority, then Company shall not be liable to Contractor for any sum greater than that which Company receives from Owner with respect to Contractor's performance, less any costs incurred by Company. Upon termination, Contractor shall not be entitled to any further payments under this Agreement until Contractor's Work has been completed and accepted by Owner, and payment has been received by Owner with respect thereto. In the event the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Contractor; but if such expense exceeds the balance due, Contractor agrees to promptly pay the difference to Company. In no event shall Company be responsible for any lost profits or any other damages of the Contractor including, but not limited to, consequential damages.

**20. BONDS.** If required by the Contract Document, Contractor shall furnish a Labor and Materials Bond and/or a Performance and Payment Bond in a form satisfactory to Company, which bond(s) shall be in place prior to the commencement of any work under this Agreement. Contractor's failure to meet its Bond requirements may be deemed a material breach of this Agreement.

**21. LEGAL FORUM FOR DISPUTES.** The Agreement and all acts and transactions contemplated hereunder shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws. The parties further 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.

**22. DAMAGE TO WORK.** Except to the extent of any proceeds received by Company for the benefit of Contractor under a policy of insurance, all loss or damage to Contractor's Work resulting from any cause whatsoever shall be borne and sustained by Contractor and shall be solely at its risk until final acceptance by Owner. Contractor hereby agrees to waive all rights of subrogation, on behalf of itself and its insurers, in connection with any such loss or damage. Contractor shall at all times and at its expense protect all labor, materials, supplies, tools, and equipment against any damage, injury, destruction, theft or loss, and in no event shall Company be liable or responsible therefore. Contractor shall be responsible for the correction or restoration of any such loss or damage to the Work resulting from the operations of Contractor or its subcontractors, agents, servants, or employees hereunder.

**23. DEFAULT.** The parties agree that a material breach and default of this Agreement by Contractor has occurred if at any time the Contractor shall:

- (a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of sufficient quality to perform the Work with the skill, conformity, promptness, and diligence required hereunder;
- (b) cause stoppage or delay of or interference with the Work;
- (c) fail to prosecute the Work with promptness and diligence;



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- (d) become insolvent or unable to or fail to pay its obligations as they mature; or
- (e) fail in the performance of strict observance of any of the covenants, conditions, or other terms of this Agreement or the Contract Documents;

Company shall, after giving Contractor notice of default and forty eight (48) hours within which to commence a cure, have the right to remedy the default by whatever means Company may deem necessary or appropriate including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part of the Work thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Contractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due to become due to Contractor hereunder, and recover from Contractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorney's fees suffered or incurred by Owner or Company by reason of or as a result of Contractor's default.

**24. MISCELLANEOUS PROVISIONS.** If Company does not insist in any instance upon strict compliance with any of the provisions of this Agreement, or to exercise any options provided, this forbearance shall not be construed a waiver of Contractor's right to require such compliance or to exercise such option. The Contract Documents comprise the entire agreement between the Parties relating to the Work covered and, with the exception of the documents specifically referenced and incorporated herein, no other agreement, representation, or understanding concerning the same has been made and no oral statement, understandings or agreement shall affect the terms hereof. To the best knowledge and belief of the Parties, this Agreement contains no provision that is contrary to federal or state law, ruling, or regulation. However, if any provision herein shall conflict with any such Laws, then such provision shall continue in effect only to the extent permissible. In the event any provision is thus inoperative, the remaining provisions shall remain in full force and effect. This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of the Parties hereto. All sections and headings are used for convenience only and do not affect construction or interpretation of this Agreement.