



TERMS AND CONDITIONS OF SALE: FORKLIFT / MATERIAL HANDLING EQUIPMENT

These Terms and Conditions together with the electronically signed and completed purchase form constitute the "Agreement" between A.J. Jersey, Inc. ("Seller" or "AJ") and Buyer. This Agreement applies to all purchases made by Buyer from Seller, and all quotations, invoices and/or purchase orders issued by Seller to Buyer with respect to any forklift and/or material handling equipment. For purposes of this Agreement, "Equipment" means any forklift and/or material handling equipment purchased by Buyer from Seller under this Agreement.

- 1. OSHA REGULATIONS.** Notice is hereby given to Buyer that, in its capacity as an employer of any operator of the Equipment, Buyer is required to follow applicable OSHA regulations, including but not limited to Section 1910.178 (as the same may be modified or amended from time to time).
- 2. OPERATOR TRAINING.** Buyer acknowledges and agrees that OSHA requires that operators of the Equipment must be trained and authorized. Buyer further acknowledges and agrees that it shall only permit properly trained operators to use the Equipment.
- 3. DELIVERY DATE / BUYER'S REMEDIES.** Seller does not guarantee delivery and any delivery or other date quoted by Seller or Seller's representatives is an estimate, based upon current and anticipated factory loads, of when the Equipment will be shipped. AJ shall have no liability for lost profits, incidental or consequential damages, or any other damages due to delays arising from any cause, nor shall any such delay be grounds for cancellation of this Agreement. Buyer shall inspect the Equipment at the time and place of delivery; provided, however that Buyer acknowledges and agrees that the Equipment purchased under this Agreement may have hours of use prior to delivery to the Buyer which may be the result of the manufacturer's and/or Seller's pretesting of the Equipment or transportation to the delivery site. Buyer's failure to give written notice of any claim to Seller within three (3) days from the date of delivery shall constitute an unqualified acceptance of the Equipment by Buyer. Buyer's exclusive remedy in the event that the Equipment does not conform to the specifications set forth in this Agreement (including all quotations, invoices and/or purchase orders issued by Seller to Buyer in connection herewith) or the manufacturer's warranty shall be a replacement of the Equipment or its parts or a repayment of the purchase price of the nonconforming Equipment, as Seller may in its sole discretion elect. Under no circumstances shall AJ be liable for any lost profits, indirect, special, incidental, consequential or punitive damages arising from, connected with or relating to this Agreement or the use, nonperformance, performance, operation or maintenance of the Equipment, whether or not such damages are foreseeable and whether or not AJ 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 AJ's acts or omissions, whether under negligence, strict liability, enterprise liability or other product liability theories. Buyer acknowledges and agrees that AJ's total liability with respect to this Agreement or the Equipment (whether in contract, tort or otherwise) shall not exceed the total amount paid by the Buyer to AJ with respect to the particular Equipment at issue.
- 4. PAYMENT.** Unless otherwise specified in writing by Seller, a twenty-five percent (25%) non-refundable deposit is required at the time of the Equipment order. The remaining balance is due net fifteen (15) days from the date of delivery. Any delay in payment beyond such time, for any reason, shall accrue an additional charge of one and one-half percent (1.5%) per month or the maximum rate allowed by law. 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 fifteen (15) days from the date of the scheduled delivery, and Buyer hereby agrees to pay Seller an additional charge equal to the established monthly rental rate of similar equipment as set forth in Seller's published rental rates (which rates are available to Buyer upon request), pro-rated by the number of days from the date of the scheduled delivery and the date that the Equipment is accepted by the Buyer. Amounts owed by Buyer for Equipment purchased shall be paid without setoff for any amounts which Buyer may claim are owed by Seller and regardless of any other controversies which may exist. Production, shipment, and delivery shall at all times be subject to the approval of AJ. AJ 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 AJ at any time doubts Buyer's financial responsibility, AJ may decline to make shipments hereunder except upon cash payment in advance or receipt of security or other proof of responsibility satisfactory to AJ. Notwithstanding anything in a quotation, this Agreement or any related materials to the contrary, AJ reserves the right at any time up to the time of delivery of the Equipment to charge Buyer a surcharge on each unit of Equipment ordered by Buyer to cover increases in commodity costs, interest rates, duties, tariffs or other related items, in each case, which may have impacted AJ.
- 5. TITLE.** Title to all Equipment shall remain in AJ until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer in full. AJ 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 the earlier of: (a) the delivery of the Equipment to the Buyer's carrier, or (b) Buyer's possession of the Equipment. Buyer shall bear and be responsible for any shipping costs.
- 6. CHANGES.** Any change order by Buyer will not be considered effective until mutual agreement has been reached between the Buyer and AJ in writing as to the effect of any changes in prices, delivery, and other conditions of the order. Buyer may not cancel, reduce or delay an order and/or Seller's delivery of the Equipment except if Seller provides written consent in connection with same (which Seller may grant or withhold in Seller's sole discretion) and subject to conditions imposed by Seller as to payment, shortage, assumption of additional costs and indemnity against loss.
- 7. WARRANTIES.** The only warranties applying to the Equipment are the manufacturer's warranty, if any; provided, however that if Buyer or its agent elect to make any repairs or services, or permit any repairs or services to be made to the Equipment contrary to the terms and conditions of the applicable manufacturer's warranty, then the manufacturer's warranty shall be void. THE ABOVE WARRANTIES ARE EXPRESSLY MADE IN LIEU OF, AND BUYER HEREBY WAIVES, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON THE SELLER'S SKILL OR JUDGEMENT TO SELECT OR FURNISH EQUIPMENT SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE DESCRIBED ABOVE. BUYER AGREES THERE HAVE BEEN NO REPRESENTATIONS UPON WHICH IT RELIED OTHER THAN THOSE SET FORTH ABOVE.

8. INDEMNIFICATION. To the fullest extent permitted by law, 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 actual or alleged sale, use, operation, maintenance, manufacture, 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 AJ's liability shall be attributable to its status as a Seller of such Equipment or otherwise. To the fullest extent permitted by law, Buyer further hereby waives all rights to claim liability by way of subrogation or otherwise against Seller for any loss or damages. In the event that Seller shall be required to take any legal action to recover possession of the Equipment, or to enforce any of the terms of this Agreement, Buyer hereby agrees to indemnify Seller for all costs, expenses and fees associated with such action.

9. INSURANCE. Buyer assumes all risk of loss of and damage to the Equipment from any cause upon the earlier of: (a) the delivery of the Equipment to the Buyer's carrier, or (b) Buyer's possession of the Equipment. 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 (as permitted herein), 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 insurance coverages shall be primary for the Buyer and the Seller and shall not be canceled or modified at any time without at least thirty (30) days written notice to Seller. Buyer 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 State of New Jersey prior to the delivery of the Equipment.

10. TERMINATION. AJ may terminate this Agreement (along with any and all quotations, invoices and/or purchase orders issued by Seller to Buyer in connection herewith) 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 AJ when due; (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 AJ or the failure to accept delivery of the Equipment as set forth in subparagraph (a) above, after Buyer shall have been notified by AJ of such failure and in AJ'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 (b) 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 AJ; or (e) if 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 AJ shall become immediately due and payable on the effective date of termination without demand, and AJ may deduct from any sums it owes to Buyer sums owed to Buyer to AJ. Any orders received from Buyer, whether or not accepted by AJ, 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. GOVERNMENT CONTRACT CONDITIONS. If Buyer's order contains a U.S. government contract number and the Equipment ordered hereunder is to be used in the performance of such contract, those clauses of applicable U.S. government procurement regulations mandatory required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.

12. MODIFICATIONS. In the event Buyer modified the Equipment sold hereunder without the express written consent of AJ, or Buyer fails to implement any changes in the Equipment provided by AJ (as received from the manufacturer of the Equipment), Buyer agrees to indemnify defend, and hold AJ harmless from any and all claims, demands, suits, costs, and expenses incurred thereby, whether in contact, tort, or otherwise resulting from such failure.

13. CONTINGENCIES. Notwithstanding anything to the contrary herein, AJ 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 AJ relative to the production of the Equipment or from any cause whatsoever beyond AJ's control (including, without limitation, an epidemic or pandemic), whether or not such cause be similar or dissimilar to those enumerated. AJ shall promptly notify Buyer of the happening of any such contingency and of the contemplated affect thereof on the manufacture and delivery of the Equipment.

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

15. DAMAGE AND LOSS. Subject to Buyer providing timely notice to Seller as required by Section 3 above, Seller reserves the right to correct or replace or credit the price of defective or nonconforming goods which have been duly rejected and returned transportation charges prepaid by Buyer and which have not been altered or defaced or further processed in any way after delivery, but under no circumstances will Seller be responsible or liable for loss, damage or expense growing out of defective or nonconforming goods or the use thereof or other consequential damage. No goods will be accepted for return replacement or credit without the written consent of Seller.

16. ENTIRE AGREEMENT. This Agreement 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. For the avoidance of any doubt, this Agreement supersedes any Buyer purchase order terms and conditions, as applicable.

17. TIME FOR BRINGING ACTION. Any action for the breach of this Agreement must be commenced within one (1) year after such cause of action has accrued.

18. NOTICES. For purposes of this Agreement, notices, and all other communications provided for herein shall be in writing and shall be deemed to have been given (a) if hand delivered, upon delivery to the party, (b) if mailed, five (5) days following deposit of the notice or communication with the United States Postal Service by registered or certified mail, return receipt requested, postage prepaid, or (c) if sent by overnight courier, one (1) day after being sent, addressed to the address of the applicable party provided in the electronically signed and completed purchase form or such other address as either party hereto may have furnished to the other party in writing in accordance herewith.

19. NO ASSIGNMENT BY BUYER. Buyer shall not assign this Agreement (by operation of law or otherwise) without the prior written consent of Seller, which consent can be withheld in Seller's sole and absolute discretion.

20. SEVERABILITY. If any term, condition or obligation of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, conditions and obligations of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

21. NO WAIVER. Seller's failure to enforce any provision or right under this Agreement shall not be construed as a waiver of any breach by Buyer or of any Seller's rights under this Agreement.

22. APPLICABLE LAW / FORUM. This Agreement shall be governed by the laws of the State of New Jersey regardless of any conflicts of law provision requiring reference to the rules of decision 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 Courts of the State of New Jersey or the United States District Court for the District of New Jersey (which shall have jurisdiction with respect to the subject matter hereof and the parties of this Agreement). Buyer agrees not to assert any defense to any action or proceeding initiated by Seller based upon improper venue or inconvenient forum. Each party waives any right to a trial by jury.

23. SURVIVAL. The provisions of Sections 1 through 23 of this Agreement shall survive the termination of this Agreement (as applicable).