

Hoists Direct LLC

Terms of Sale

DEFINITIONS: Throughout this document Hoists Direct LLC shall be referred to as “We”, “Us”, and “Our” and this purchaser shall be referred to as “Purchaser”.

QUOTATIONS: Are for prompt acceptance, and are subject to change without notice. Quotations are valid for a period of 30 days from the date shown on the face thereof, subject to confirmation after this period. All stenographic and clerical errors are subject to correction.

PRICES ARE: (a) F.O.B. Point of manufacture, or as otherwise noted in the quotation. (b) Subject to change without notice until confirmed by us. (c) After our formal acceptance, prices are firm unless Purchaser requests changes which would affect cost of items ordered. (d) **SALES AND OTHER TAXES:** Purchaser shall pay, in addition to the contract price, any sales, use, excise, retailer’s occupation and/or other taxes payable by reason of this transaction, together with any interest and penalties thereon. In lieu thereof, Purchaser shall provide us with a tax-exemption certificate acceptable to the taxing authorities.

Purchaser shall also reimburse us for any such taxes, including interest and penalties thereon, as may be paid by us together with any expense connected therewith.

SHIPPING DATES: We will endeavor to ship all orders on the nearest date possible to that specified in our acceptance of order. The shipping dates named, however, shall be considered approximate only, since our ability to complete and ship equipment ordered within the period may be dependent upon conditions over which we have no control. We shall not be liable for damages resulting from delays in shipments caused by fires, weather, strikes, war, civil riot, Acts of Providence, or for consequential damages, or for other cause over which we have no reasonable control. (a) The shipping date quoted represents time in “business days”, is subject to change prior to placing an order and may be confirmed or updated by our office at the time of placing order. (b) The shipping date shall be computed from the day following the formal acceptance of the order or the day following the receipt of complete information necessary to design and manufacture, whichever shall be later.

CANCELLATIONS: In the event of a request to stop work or to cancel the whole or any part of an order, Purchaser shall make payments to us as follows: (a) Any and all work that can be completed within 5 days from the date of notification to stop work on account of cancellation shall be completed, shipped, paid in full. (b) For work in process and any materials and supplies procured or for which definite commitments have been made by us in connection with the order, Purchaser shall pay to us the actual costs and overhead expenses determined in accordance with good accounting practices plus 15%.

TERMS OF PAYMENT: Unless otherwise specified, the amount owed by the Purchaser is due up front prior to order processing. We reserve the right to refuse acceptance of any order on the basis of unsatisfactory credit. If credit is offered to a Purchaser, past due accounts shall accrue interest until payment at a rate of 1.5% per month (an 18% annual rate). When an account is past due, if the account is assigned to a licensed collection agency or an attorney is hired for legal action, the Purchaser agrees to pay for all subsequent collection charges and legal fees.

STORAGE: In the cases of delay in shipment at Purchaser’s request, Purchaser agrees to place equipment into storage and pay all handling, insurance and storage charges. Payments due hereunder shall be made in accordance with the terms hereof, substituting date of storage for date of Bill of Lading.

RISK OF LOSS: Delivery to a common carrier or licensed trucker shall constitute delivery to Purchaser, and all risk of loss or damage in transit shall be borne by Purchaser unless otherwise specified.

PROVISIONS FOR ERECTION: If erection or installation labor is included in this contract, the erection price is subject to the following conditions: (a) Purchaser shall provide and pay for all necessary public inspections, licenses, and building permits. (b) The erection price is based on labor to be paid on a ONE shift straight time basis, unless otherwise stated, and does not include premium or overtime labor.

If for any reason, Purchaser requests overtime, second or third shift work, Purchaser agrees that it will compensate us for the additional cost of the premium wage, plus applicable taxes and insurance. (c) The erection price is also based on the availability of immediately proximate and direct access from the area in which our equipment is unloaded to the erection area. (d) Purchaser shall clear the site selected for installing the equipment, cut and repair any floor, wall or roof opening, in accordance with our clearance diagrams, requirements, or drawings and keep the site free from water, debris and other obstructions. (e) Purchaser shall provide proper lighting, piping and wiring necessary for processing lighting and power, incident to the erection and operation of the equipment. (f) Purchaser agrees to hold us harmless against any loss or damage caused by accident, fires, theft, or negligence occurring upon the premises of Purchaser, unless caused solely by our negligence. (g) The erection price is based on the use of equipment as specified on the face hereof, (i.e. mobile crane, etc.).

EQUIPMENT ALTERATIONS: Purchaser will make all alterations to existing building and equipment as may be required for installation and operation with the equipment specified herein. Outline dimensions are shown on approved drawings. Should any deviations be required from what was originally quoted, Purchaser shall be responsible for any resulting additional costs.

WARRANTY: We make no warranty, expressed or implied, for parts or products which have been altered or repaired outside of our premise. We make no warranty, expressed or implied, on any complete product or component of a product which has been manufactured or altered by a third-party manufacturer. The warranty for the third-party manufacturers that we sell is available upon request or available on the manufacturers website. For complete products or components of products that have been manufactured or altered by a third-party manufacturer, Purchaser agrees that its sole warranty is the warranty provided by the third-party manufacturer. We warrant to the original Purchaser only that product repaired by Hoists Direct LLC shall be free from defects in materials and workmanship for a period of 90 days, if properly installed, serviced and operated under normal operating conditions. IN THE EVENT OF ANY BREACH OF SUCH WARRANTY OR CONTRACT OR FOR NEGLIGENCE OR OTHERWISE WITH RESPECT TO ANY GOODS, OUR SOLE OBLIGATION SHALL BE EXCLUSIVELY LIMITED TO, AT THE OPTION OF US, REPAIR OR REPLACEMENT, F.O.B. OUR POINT OF SHIPMENT, OF ANY PARTS THAT WE DETERMINE TO HAVE BEEN DEFECTIVE OR, IF WE DETERMINE THAT SUCH REPAIR OR REPLACEMENT IS NOT FEASIBLE, TO A REFUND OF THE PURCHASE PRICE UPON RETURN OF THE GOODS TO US. NO CLAIM AGAINST US FOR ANY BREACH OF SUCH WARRANTY SHALL BE VALID OR ENFORCEABLE UNLESS PURCHASER'S WRITTEN NOTICE THEREOF IS RECEIVED BY US WITHIN NINETY (90) DAYS FROM THE DATE OF OUR DELIVERY TO THE CARRIER. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, WE MAKES NO OTHER WARRANTIES WITH RESPECT TO THE GOODS, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND/OR THOSE ARISING BY STATUTE OR OTHERWISE BY LAW OR FROM ANY COURSE OF DEALING OR USE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SHALL WE BE LIABLE TO PURCHASER OR ANY THIRD PARTY WITH RESPECT TO ANY GOOD, WHETHER IN CONTRACT, TORT OR OTHER THEORY OF LAW, FOR LOSS OF PROFITS OR LOSS OF USE, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, DIRECT OR INDIRECT DAMAGES, HOWSOEVER CAUSED. OUR MAXIMUM LIABILITY TO PURCHASER WITH RESPECT TO THE GOODS SHALL IN NO EVENT EXCEED THE PRICE PAID BY PURCHASER FOR THE GOODS THAT ARE THE SUBJECT OF THE APPLICABLE CLAIM. We shall not be liable for any damage, injury or loss arising out of the use of the goods if, prior to such damage, injury or loss, such goods are: (1) damaged or misused following our delivery to the carrier; (2) not maintained, inspected, or used in compliance with applicable law and the written instructions and recommendations provided in any operating manuals or available online at each original equipment manufacturer's website; or (3) installed, repaired, altered or modified without compliance with such laws, instructions or recommendations. This warranty shall not apply to parts or products which have been altered or repaired outside our premises.

LIMITATION OF LIABILITY: In performing services, including but not limited to overhead lifting equipment inspections, Hoists Direct LLC will use the degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing in the same locality at the time the services are actually rendered. Should Hoists Direct LLC or any of its professional or non-professional employees be found to have been negligent in the performance of professional services or to have been negligent in any non-professional capacity, purchaser agrees that the maximum aggregate amount of liability and/or that of said professional employee, shall be limited to the fee paid to Hoists Direct LLC for services on the project described in any order acknowledgement or invoice. NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY HOISTS DIRECT LLC IN CONNECTION WITH ANY PROPOSAL FOR SERVICES, THE FURNISHING OF ORAL OR WRITTEN REPORTS, OR OBSERVATION OF WORK TO BE PERFORMED BY HOISTS DIRECT LLC AND/OR OTHERS, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED ENTIRELY.

LIMITATION OF ASSERTATION OF CLAIMS: No claim or cause of action shall be asserted, nor suit brought on any claim or cause of action, by purchaser on or arising out of this Agreement or the performance of service by Hoists Direct LLC hereunder after ninety (90) days from the date of Hoists Direct LLC's performance of the services giving rise to such claim or cause of action.

PURCHASER'S NEGLIGENCE; INDEMNITY: Hoists Direct LLC shall not be responsible of any loss, cost, damage, or liability arising from any negligent acts or omissions by purchaser, Its agents and staff, and/or other consultants retained by purchaser. Purchaser agrees to hold harmless, indemnify, and defend Hoists Direct LLC, its agents, owners and staff, and consultants retained by Hoists Direct LLC, from and against any and all claims, losses, damages, liability, and costs, including but not limited to the cost of defense and reasonable attorney's fees, directly or indirectly arising out of or in any way connected with Purchaser's negligent, reckless, or willful acts, errors, and/or omission, or those of Purchaser's agents and staff, and/or other consultants retained by purchaser. Purchaser shall comply with and require its employees to comply with directions set forth in instructions and manuals furnished by any original equipment manufacturer and shall use and require its employees to follow such instructions and manuals and to use reasonable care in the use and maintenance of the goods. Purchaser shall not remove or permit anyone to remove any warning or instruction signs on the goods. In the event of personal injury or damage to property or business arising from the use of the goods, Purchaser shall, within forty-eight (48) hours thereafter, give Hoists Direct LLC written notice of such injury or damage. Purchaser shall cooperate with Hoists Direct LLC in investigating any such injury or damage and in the defense of any claims arising therefrom.

GENERAL: We shall not in any event be liable for indirect, special, consequential, or liquidated damages or penalties. The conditions herein stated together with Purchaser's written order or contract accepted by us and any attachments made a part thereof shall constitute the entire contract of sale. The contract shall not be modified except by mutual agreements in writing signed by Purchaser and approved in writing by the Managing Member of Hoists Direct LLC. The contract is assignable only with our written consent.

MISCELLANEOUS: This instrument constitutes the entire agreement between Hoists Direct LLC and Purchaser, superseding all previous understandings and writings regarding this transaction. Any amendment or modification of this agreement shall be void unless in writing and signed by the Managing Member of Hoists Direct LLC. This agreement shall be governed by and construed under the laws of the State of Delaware. Any action to enforce, arising out of, or relating in any way to, any of the provisions of this agreement shall be brought and prosecuted in a court located in Wilmington, Delaware as is provided by law, and Purchaser and Hoists Direct LLC consent to such jurisdiction. No delay or omission by Hoists Direct LLC in exercising any right or remedy hereunder shall be a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Hoists Direct LLC are cumulative.

NO RELIANCE: Purchaser's employees, contractors and/or agents may have made oral statements or representations about the performance or operation of the goods. Such statements do not constitute warranties and are not part of this contract. Purchaser expressly disclaims any reliance on such statements as a basis for entering into this contract.