

GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE. This quotation / invoice is an invitation for an offer and is tendered by Buyer for acceptance by Seller. It shall become a binding contract only when accepted by the General Manager or General Sales Manager at the office of Seller's sales and service branch stated herein. Upon said acceptance, the contract shall be effective after and shall survive (i) delivery of the equipment ordered hereunder and (ii) the signing of any additional security agreement relating to said equipment. If the terms hereof conflict with any such security agreement, the terms of the latter shall control.
2. SHIPMENT. Unless otherwise specifically agreed, all prices are for material packed for domestic shipment and for delivery F.O.B. factory or point of shipment. Shipping dates are approximate and based on prompt receipt of all necessary information. All risk of loss shall be upon the Buyer from point of shipment. Buyer shall pay all transportation and delivery charges to final destination.
3. PRICES. Prices quoted / invoiced herein are based on present costs. Such prices are subject to increase by Seller at any time prior to delivery in respect of all or any portion of the equipment in order for scheduled delivery more than six (6) months from order dated, to the extent necessary to cover Seller's increased costs applicable thereto.
4. PAYMENT. Partial shipments may be made and payments therefore shall become due in accordance with the terms hereof. Finance charges are subject to rates in effect at time of delivery of equipment herein described. The terms of sale herein are subject to credit approval and Seller may at any time prior to delivery modify the terms of payment originally specified to assure prompt payment for the equipment ordered.
5. TAXES. The amount of taxes stated on the reverse side hereof, if any, is approximate only. Buyer is liable for the full amount of all taxes applicable to or as a result of this transaction, exclusive of franchise taxes and taxes measured by the net income of Seller. Buyer shall pay the amount of all such taxes as at any time requested by Seller as if originally added to the price. If Seller pays such taxes, buyer shall reimburse Seller therefore.
6. SECURITY INTEREST AND DEFAULT. Seller shall retain a security interest in the equipment delivered hereunder until the total selling price, including taxes, delivery and other charges, is paid in full by Buyer. Buyer agrees to sign and deliver to Seller an additional security agreement required by Seller to secure the amount owed.

If Buyer shall fail or refuse to accept delivery of the equipment and parts ordered hereunder or shall default in the performance of any of the terms, covenants and conditions of this Agreement, Seller may retain the cash deposited or paid to it and the equipment accepted by it on account of the sale price, if any, and apply the same toward payment of its damages. If equipment ordered has been delivered to Buyer by Seller at the time of default, Seller may declare the full amount due and payable without notice or demand and may repossess the equipment. Repossession and disposition of equipment, and suit for deficiency, shall be pursuant to applicable laws. The remedies provided herein in favor of Seller shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in Seller's favor existing at law or in equity.
7. WARRANTY. The only warranties made with respect to new goods quoted / invoiced herein are those of the manufacturer. The manufacturer's warranties will be furnished upon request.

If there are no warranties by the manufacturer, the goods are offered "As Is."

This warranty does not apply in respect of damage to any product or accessory or attachment thereof caused by overloading or other misuse, neglect or accident, nor does this warranty apply to any product or accessory or attachment thereof which has been repaired or altered in any way which, in the sole judgment of Seller, affects the performance, stability or general purpose for which it was manufactured.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), EXPRESS OR IMPLIED, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

USED PRODUCTS ARE SOLD ON AN "AS IS" BASIS AND THERE IS NO IMPLIED WARRANTY OR MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, UNLESS OTHERWISE EXPRESSLY STATED ON THE FACE OF THIS FORM.

This warranty does not apply to batteries, tires, distributor points, spark plugs or other trade accessories which are covered by the existing warranties, if any, of the respective manufacturers thereof.

8. FINANCE/DELINQUENCY CHARGES. Buyer hereby agrees to pay a finance delinquency charge to Seller of 1% per month on any outstanding balance due and owing more than 30 days after invoiced by Seller to Buyer in this transaction. This is an Annual Percentage Rate of 12%.
9. INSURANCE. Buyer hereby agrees, warrants and covenants to keep the equipment delivered hereunder insured at all times against loss by fire and/or other hazards concerning which, in the judgment of the Seller, insurance protection is reasonably necessary, in a company or companies satisfactory to the seller and in amounts sufficient to protect the Seller against loss or damage to said equipment during the duration of Seller's security interest hereunder. Buyer further agrees to pay all premiums therefore and to furnish copies of such policy or policies of insurance to the Seller upon the Seller's request together with any loss payable clauses in favor of the Seller as may be requested by the Seller and granting to the Seller the right to act as the attorney for the Buyer in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts for the duration of the Seller's security interest herein.
10. RESALE, ENCUMBRANCE AND EXAMINATION. The Buyer agrees that the Seller may examine and inspect the equipment delivered hereunder at any time wherever located so long as there are obligations of the Buyer contained herein still unperformed and the Seller retains a security interest in the equipment. Buyer further agrees, warrants and covenants that no sale or offer of sale or other transfer or encumbrance shall be made on the equipment without the prior written consent of the Seller during the duration of the Seller's security interest in the equipment and that the Buyer shall keep the equipment in good order and repair and will not waste or destroy the same for the duration of the Seller's security interest.
11. REPOSSESSION. In addition to all other rights and remedies upon default afforded to Seller herein, Buyer upon default specifically grants the right to Seller to come upon and/or go into the property of Buyer where the equipment is located and take possession of the equipment without judicial process to the extent permitted by law.

12. COSTS, EXPENSES, ATTORNEYS' FEES, ETC. UPON DEFAULT. In the event of a default under this agreement the Seller shall have the right, at its option and without demand or notice, to declare all or any part of the obligations immediately due and payable; and in addition, the Seller may exercise, in addition to the rights and remedies granted hereby, all of the rights and remedies of the Seller under the Uniform Commercial Code or any other applicable law. Buyer agrees in the event of a default, to make the equipment available to the Seller at a place to be designated by the Seller. Buyer further agrees to pay all costs and expenses of the Seller including reasonable attorney fees and all other costs of litigation incurred by the Seller in the collection of any of the obligations of the enforcement of any of Seller's rights including but not limited to repossession and replevin.
13. DELAYS. Seller shall not be liable for loss or damage due to delay in delivery or manufacture, resulting from causes beyond Seller's reasonable control, including but not limited to, compliance with any regulations, orders, or instructions of any federal, state or municipal government or any department or agency thereof, acts of God, acts of omissions of the Buyer, acts of civil or military authority, fires, strikes, factory shutdowns or alterations, embargoes, war, riot, delays in transportation, or inability due to causes beyond the Seller's reasonable control to obtain necessary labor, manufacturing facilities or materials from the Seller's usual sources; any delays resulting from any such cause shall constitute a waiver of all claims from damages. In no event shall Seller be liable for SPECIAL OR CONSEQUENTIAL DAMAGES.
14. CANCELLATION. Buyer may cancel its order, reduce quantities, revise specifications or extend schedules only by mutual agreements as to reasonable and proper cancellation charges which shall take into account expenses already incurred and commitments made by Seller; and Buyer shall indemnify Seller against any loss resulting therefrom.
15. LIMITATION OF LIABILITY. Buyer's exclusive remedy in the event of any act or omission by or attributable to Seller giving rise to any liability shall be the repair or replacement of any non-conforming goods or parts. In addition, it is agreed that IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES INCURRED OR SUSTAINED BY BUYER FROM ANY CAUSE OF ANY KIND OR NATURE IN THE CASE OF INJURY TO THE PERSON. LIABILITY FOR CONSEQUENTIAL DAMAGES IS EXCLUDED TO EXTENT PERMITTED BY LAW.
16. INDEMNIFICATION. Buyer agrees to indemnify, defend, and hold Forklifts of Michigan, Inc. free and harmless from any and all liabilities, damages, losses, claims, causes or action, and suits of law or in equity or any obligation whatsoever arising out of or attributed to any action or neglect of the Buyer or any personnel employed by Buyer in connection with the use, operation or maintenance of the goods obtained as a result of this Purchase Order.
17. ARBITRATION. Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be settled in accordance with the Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.
18. ENTIRE AGREEMENT AND APPLICABLE LAW. The rights and obligations of Seller and Buyer under any order placed pursuant hereto shall be governed by the laws of the state where accepted by Seller. No waiver, modification or addition to any of the provisions on the face hereof shall be binding on Seller unless made in writing by the General Manager or the General Sales Manger at Seller's branch office as stated herein. In the event of conflict between Buyer's purchase order and the terms hereof, the latter shall control.