

MEI TERMS AND CONDITIONS OF SALE

1. Controlling Terms & Conditions. These Terms and Conditions of Sale (“**Terms**”) apply to all sales of product and related services (collectively, the “**Product**”) by Minnesota Elevator, Inc. (“**Seller**”) to any customer (“**Buyer**”) with notice of these terms, however gained, including the use of Seller’s website. These Terms, together with those contained in any quotation or sales contract of Seller (“**Sale Contract**”), constitute the entire agreement (the “**Agreement**”) between the parties and shall prevail over any contradictory terms and conditions in any purchase order, acceptance acknowledgment, or other standard form used in the performance of this Agreement. To the extent Buyer’s purchase order or any other statement of Buyer contains any terms or conditions in addition to or different from the terms of this Agreement, such terms and conditions are hereby rejected by Seller and waived by Buyer, and such terms and conditions shall not affect this Agreement nor be binding upon Seller absent an express written statement by Seller to the contrary. Neither Seller’s delivery of the Product nor any other action at any time on the part of Seller shall constitute acceptance of additional or different terms. Buyer’s written acknowledgment of a Sale Contract or commencement of performance, including Buyer’s use of any Product provided by Seller, will constitute acceptance of the terms and conditions of this Agreement. In the event of any conflict between these Terms and the Sale Contract, the terms of these Terms shall govern.

2. Purchase Price & Payment Terms.

a. Purchase Price. Quotations are valid for a period of thirty (30) days from the date of quotation. Unless otherwise set forth in the Sale Contract, prices in effect at time of delivery will apply (the “**Purchase Price**”); and the Purchase Price does not include sales, use, excise or similar taxes or any shipping, delivery or insurance costs. Buyer is responsible for paying all applicable taxes. Seller will invoice Buyer for any such amounts incurred by Seller on behalf of Buyer. Buyer shall provide Seller with a currently valid exemption for all sales claimed tax exempt. Buyer must accept shipment of Product within 12 months of the book date. Any Product that Buyer does accept within such 12 months shall be subject to escalation fees, including inflationary costs and increases in labor and material costs. If original customer-provided information changes, price may change. Price may change upon review of additional and/or updated information. If Buyer does not take delivery or schedule shipment of Product by the original scheduled date, Customer shall pay Seller’s then current storage fees until Product is shipped. If Buyer requests phased or split shipments of Product, the Purchase Price shall increase and Customer shall pay Seller’s then current administration charges for such split shipment.

b. Payment Terms. Payment of the Purchase Price, and any other amounts incurred by Seller on behalf of Buyer, shall be due in full within thirty (30) days from the invoice date. Invoices issued by Seller for whole or partial shipments of Product shall be paid by Buyer regardless of disputes relating to other invoices, and Buyer waives the right to assert offsets or counterclaims with respect to such invoices. Buyer shall promptly notify Seller’s customer service personnel of any disputed invoice. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to the lower of one and one half percent (1.5%) per month or the highest rate permissible under applicable usury law. Buyer agrees to pay Seller’s attorneys’ fees and other costs incurred in collection of any amounts not paid when due.

c. Buyer’s Financial Condition; Insecurity. If in Seller’s reasonable judgment, Buyer’s financial condition or any other circumstance causes Seller to be insecure with respect to Buyer’s performance of any obligation under this Agreement, Seller may accelerate and demand immediate payment of any amounts owed Seller, suspend performance, cancel an order, or require cash payment or satisfactory security before shipment.

3. Shipment Terms & Risk of Loss. All shipments shall be made FOB Seller’s docks in Mankato, MN, and title to and all risk of loss concerning the Product shall pass to Buyer upon the delivery of the Product to the carrier. Buyer shall at its sole cost and expense, be responsible for obtaining all licenses and permits and for satisfying all formalities as may be required to import the goods into any other country in accordance with then prevailing laws, rules and regulations. Any extra charge incurred for additional services, including loading, storage and handling, will be paid by Buyer. The delivery dates specified in this Agreement are estimates only and Seller’s failure to meet the same shall not be deemed a breach of this Agreement. Delays in securing Buyer’s approval of any matter shall, at Seller’s discretion, extend the date of delivery. Seller reserves the right to ship prior to the quoted ship date or to ship in installments. Storage for Product is not recommended nor intended for a period of longer than 2 months. Buyer is responsible for any storage facilities which must be free from moisture, heat or cold environments. Stacking / storing Product incorrectly leads to jacks leaking oil, guide rails bowing or other components getting damaged / scratched. Damaged or defective equipment related to storage or handling of Product is Buyer’s sole responsibility.

4. Inspection & Acceptance. Buyer shall promptly inspect all shipments after arrival of the Product at the original shipping destination and notify Seller in writing within three (3) days of arrival, of any shortages or other failures to conform to this Agreement. Buyer shall allow Seller a reasonable opportunity to inspect such Product to enable Seller to verify the alleged nonconformity. Buyer’s failure to timely notify Seller in writing of any alleged nonconformity of the Product shall constitute an immediate and irrevocable acceptance of the Product. Buyer’s rejection of any Product shall not shift risk of loss of such Product until the Product is returned to Seller, freight prepaid, pursuant to Seller’s written authorization.

5. Limited Warranty & Limited Remedy. Seller warrants to the original Buyer that (i) services provided by Seller shall be performed in a professional and workmanlike manner, consistent with applicable industry standards; and (ii) Product will be free from defects in material and workmanship for a period of twenty four months from the date of shipment under normal use and care. The limited warranty is not transferable.

No performance warranty is intended or implied. This limited warranty does not cover any issues arising from: (a) Product design (which is solely the responsibility of Buyer to confirm), (B) Product that has been modified, neglected, misused, abused, or damaged, whether due to freight carrier, installation, natural disasters or otherwise; or (c) wear and tear. A lack of a documented preventative maintenance program on at least a monthly basis is considered neglect. The limited warranty excludes: (d) consumables (ie hydraulic fluid gibs, etc), (e) corrosion from exposure to liquids or atmospheres; and (f) Buyer failure to properly clean or care for Product.

Any alleged breach of this limited warranty shall be forever waived if not reported to Seller in writing within the applicable warranty period. In the event of a breach of this limited warranty, Seller shall as Seller's sole obligation and Buyer's sole remedy, repair or replace such nonconforming Product. Buyer shall at its cost: (a) return the alleged defective Product to Seller, F.O.B. Seller's shipping origin, before remedying a breach of the limited warranty; and (b) arrange for transportation of replacement or repaired Products to Buyer's desired location.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT SOLD OR SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO, FUNCTIONALITY, IMPLIED CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT.

6. LIMITATION OF LIABILITY. SELLER SHALL HAVE NO LIABILITY TO ANY PERSON FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, LIQUIDATED, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES, OR LOSSES RELATED TO LOSS OF TIME, LABOR CHARGES OR OTHER EXPENSES. THE PARTIES EXPRESSLY AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SHALL SURVIVE THE DETERMINATION OF ANY COURT OF COMPETENT JURISDICTION THAT ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT IN RESPECT OF WHICH THE CLAIM IS MADE. No action may be brought by Buyer against Seller after one (1) year from the date of delivery of the Product, and Buyer agrees that this provision shall be grounds for dismissal of any suit or claim asserted by Buyer after such time.

7. Indemnification. Buyer shall indemnify (and at Seller's option, defend) and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from any and all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "**Claims**"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Product, including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Products or materials; (c) Buyer's non-compliance with any law; (d) breach of these Terms by Buyer; and (e) Products subject to the warranty exclusions in Section 5.

8. Other Limitations. All technical advice and recommendations are: (a) furnished by Seller gratis, (b) believed by Seller to be reliable; and (c) intended for use by persons having skill and know how, at their own risk, and Seller assumes no responsibility for, and is not liable for (d) damages incurred from their use by Buyer; or (e) complying with local codes, unless the codes are in conformity with ANSI A17.1. Any deviations from ANSI A17.1 must be notified in writing to Seller, and specifically acknowledged by Seller in writing - otherwise Seller accepts no responsibility, and Buyer is solely responsible for code compliance. Any plans and specifications prepared or modified by Seller: (a) are exclusively for the Product, (b) may not be used by Buyer or others for any purpose; and (c) must be reviewed and confirmed by Buyer as adequate for Buyer's intended use and purpose. Seller is not responsible for discovering deficiencies in Buyer's plans or designs. Buyer is exclusively responsible for analysis of Product impact on any building / structure design.

9. Default & Remedies. Upon the occurrence of any default by Buyer, Seller may at its option and without notice or demand, exercise all or any one of the following remedies: (i) declare immediately due and payable all invoices and all other sums due or to become due under the Agreement and any other agreement between Buyer and Seller, together with costs of collection and all applicable termination fees; (ii) terminate all of its obligations arising under the Agreement or any Sales Contract; or (iii) exercise all other legal and equitable remedies which Seller may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently. Buyer agrees to pay all of Seller's costs and expenses incurred in enforcement of the Agreement, including all attorney's fees and court costs. A cancellation fee equal to 10% of the quoted price is applicable if Buyer cancels the order after Seller has prepared approved drawings.

10. General Provisions.

a. Intellectual Property; Confidentiality. All specifications, documentation and any other intellectual property involved in the manufacturing the Product s is the property of Seller, except to the extent Buyer has supplied specifications, drawings or other intellectual property to Seller. All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.

b. Assignment. Buyer may not assign its rights or obligations under this Agreement to any third party, by operation of law or otherwise, without Seller's prior written consent.

c. Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery of Product or other nonperformance caused in whole or part by any contingency or event beyond Seller's reasonable control, including without limitation, acts of any government or any agency or subdivision thereof, war, riots, acts of God, pandemic or epidemic, machinery breakage, or any shortage of or inability to secure labor, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices or from regular sources. In the event of the occurrence of any of the foregoing, Seller may distribute its available goods among its customers on such a basis as Seller shall deem fair and equitable, without liability to Buyer.

d. Modification & Waiver. No addition to, or modification or waiver of, any provision of this Agreement shall be binding upon Seller unless set forth in a written document signed by Seller. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

e. Governing Law; Forum; WAIVER OF JURY TRIAL. The validity, operation, and performance of this Agreement (including all matters arising out of or relating to this Agreement) shall be governed and controlled by the laws of the State of Minnesota and the United States of America, notwithstanding conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any claim, cause of action, suit or demand allegedly arising out of or related to this Agreement shall be brought exclusively in the state or federal courts located in Minneapolis, Minnesota, and the parties irrevocably consent to jurisdiction in, and venue of such courts. BUYER IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

f. Material Terms. Buyer agrees that these Terms are a material part of the transaction between and Seller, and without Buyer agreeing to be bound by all of the Terms, Seller would not have sold the Products or provided the services on terms (including price) as favorable to Buyer as are contained in the Sale Contract.