

## TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (the "Terms") are applicable to the provision of all goods supplied and/or Services, as such term is defined herein below, rendered ("goods") by TOWLIFT, INC., an Ohio corporation and its affiliates ("Towlift"), to any purchaser, or in the case of sample products or material, recipient, thereof ("Buyer")

1. **GENERALLY** - Towlift's offer for sale of goods and Buyer's acceptance of any such offer is governed exclusively by these Terms unless otherwise agreed in writing signed by Towlift. If an order is deemed to be an offer by Buyer, Towlift's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional, different, or conflicting terms proposed by Buyer in any offer, acceptance, confirmation (including any Buyer purchase order or specifications) or otherwise, (a) are requests for material alterations to these Terms, (b) are hereby rejected and objected to by Towlift, and (c) will not be binding in any way on Towlift.

2. **PRICE; PAYMENT** - The goods are hereby offered for sale at prices to be established by Towlift. Unless otherwise specified on Towlift's invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing, Buyer will pay for all goods on a net thirty (30) day basis. Towlift reserves the right to assess reasonable interest charges on any amounts not paid by the date such payments are due. All orders are subject to credit approval by Towlift. Towlift reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations as Towlift in its discretion may require, notwithstanding any order confirmation issued by Towlift.

3. **TAXES** - Towlift's price for goods is exclusive of any Federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of any order. Towlift will list separately on its invoice any such taxes applicable to any such goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Towlift evidence of exemption.

4. **DELIVERIES** - Towlift will use commercially reasonable efforts to meet the delivery dates, specifications, and quantities as set forth in Buyer's purchase order. Towlift will not, however, be liable for damages or delays in delivery due to causes beyond its reasonable control.

5. **WARRANTIES** - Towlift warrants for a period of sixty (60) days from the date Towlift completes performance of any services for Buyer (the "Services") that such Services will be performed: (a) in a professional and workmanlike manner; and (b) in accordance with industry standards and all applicable laws and regulations. Towlift further warrants that the Services will be done in accordance with the appropriate manufacturer's manual, if applicable. The warranties stated in this Clause 5 are the only representations and warranties Towlift has given Buyer in connection with the provision of Services to Buyer and shall not void longer guarantees by the manufacturer of the equipment (or its components) on which Towlift performs the Services. Except as set forth in this Clause 5, Towlift has not made and hereby expressly disclaims any other or further representation or warranty, either express or implied, concerning the goods. **THE WARRANTIES GIVEN IN THIS CLAUSE 5 ARE IN LIEU OF ALL OTHER WARRANTIES TOWLIFT MIGHT HAVE GIVEN BUYER, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR INTENDED USE.** All other warranties Towlift or anyone purporting to represent Towlift may have given, or which may be provided or implied by law or commercial practice, **ARE HEREBY EXCLUDED.** The warranties stated in this Clause 5 will be null and void if the goods are altered, overhauled, or repaired (or are tampered with) by anyone other than Towlift during the warranty period.

8. **LIMITATION OF LIABILITY - BUYER'S SOLE REMEDY HEREUNDER SHALL BE RETURN OF FEES PAID TO TOWLIFT FOR ANY SERVICE WHICH BUYER DEMONSTRATES TO BE IN BREACH HEREOF OR OTHERWISE ACTIONABLE BY BUYER. IN NO EVENT SHALL TOWLIFT'S LIABILITY HEREUNDER EXCEED THE AMOUNT PAID TO TOWLIFT FOR THE SERVICES GIVING RISE TO SUCH LIABILITY, WHETHER ARISING OUT OF CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, ANY OTHER TORT, INCLUDING INTENTIONAL TORTS, OR ANY OTHER CAUSE OF ACTION.**

9. **DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES** - TOWLIFT SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GOODS, OR THE SERVICES INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON TOWLIFT HEREUNDER OR IN CONNECTION HERewith, EVEN IF IT HAS BEEN ADVISED OF A POSSIBILITY OF SUCH DAMAGES. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT.

10. **INDEMNITY** - Buyer shall indemnify, defend and hold Towlift and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including reasonable attorneys' fees) resulting or arising from: (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the goods or any product or waste derived therefrom, (c) a claim by a third party for injury or death to any person or damage to property as a result of the negligent performance or non-performance by Towlift Inc. of its obligations under this Agreement, except to the extent that such injury, death, or damage is caused solely and directly by Towlift's recklessness or willful misconduct. The foregoing shall apply, without limitation, to injury to persons (including death) or damage or harm to property or the environment.

11. **FORCE MAJEURE** - Except for the payment of monies owed, neither party will have any liability for any breach or failure to perform that is the result of an event, condition or circumstance beyond that parties' reasonable control, including, without limitation, acts of God, war, insurrection, or terrorism, fire, inclement weather, strikes, boycotts, or other similar circumstances. If a party becomes aware of any such event, condition or circumstance, then such party will promptly advise the other party and both parties will cooperate to ameliorate the circumstance or condition as quickly as possible.

12. **GOVERNING LAW** - The sale of goods hereunder shall be governed, interpreted and construed by and in accordance with the internal substantive laws of the State of Ohio, United States of America, without regard to the conflict of laws provisions thereof, and expressly excluding the United Nations Convention on Contracts for the

International Sale of Goods. Any dispute arising hereunder shall be resolved in the United States federal courts serving Cleveland, Ohio, U.S.A. or in the courts of the State of Ohio, as may be applicable. Such courts shall have exclusive jurisdiction and venue for resolution of all such disputes and the parties hereto do hereby irrevocably submit to such jurisdiction and venue, and waive any objection to the contrary hereafter.

13. **COMPLIANCE WITH LAWS**. Buyer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and service of the goods and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 7.

14. **COMPLETE AGREEMENT** - These Terms contain the complete and final agreement between Buyer and Towlift and supersede all other and further agreements, representations, warranties, covenants, promises, and other contractual obligations between the parties in respect of the subject hereof unless otherwise agreed to in a writing signed by Towlift. These Terms may be amended, modified or waived only by a written instrument that refers expressly to this paragraph and is signed by an authorized representative of Towlift. E-mails and electronic on-line, internet or other terms of Buyer shall not be deemed a means of modifying or amending these Terms.

15. **REPAIR PARTS** - All parts which are removed from any of Buyer's equipment and replaced by Towlift while performing the Services shall become the property of Towlift.

16. **REGULAR LABOR** - Unless otherwise agreed in writing, it is understood that the Services shall be performed during Towlift's regular working hours and working days. Regular labor time will be charged at Towlift's standard rates unless discounted pricing is agreed to in writing. The Service price will incur a minimum of one (1) hour of labor at standard rates. All additional labor incurred past one (1) hour will be charged to the Service price in half-hour increments.

17. **OVERTIME LABOR** - Unless otherwise agreed in writing, it is understood that the Services shall be performed during Towlift's regular working hours and regular working days. If overtime work is mutually agreed upon and performed, an additional charge therefore, at Towlift's standard rates for such work, shall be added to the Service price. All labor will be charged to the Service price in half-hour increments.