

EKKO Material Handling Equipment Mfg., Inc.

Terms and Conditions

1. **Orders and Acceptance:** All orders are subject to acceptance by EKKO Material Handling Equipment Mfg., Inc. ("Seller"). Unless otherwise agreed to in writing by Seller and Buyer, all sales transactions are expressly limited to the terms and conditions set forth below. ALL TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDERS OF BUYER OR OTHER DOCUMENTS SUBMITTED BY BUYER ARE EXPRESSLY REJECTED AND SHALL NOT BE BINDING ON SELLER UNLESS AGREED TO IN WRITING BY AN OFFICER OF SELLER. BUYER'S ACCEPTANCE OF SHIPMENT AND/OR PAYMENT FOR THE EQUIPMENT CONSTITUTES ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. NO WAIVER OF THESE TERMS AND CONDITIONS OR ACCEPTANCE OF OTHER TERMS AND CONDITIONS SHALL BE CONSTRUED FROM SELLER'S FAILURE TO OBJECT TO THE SAME. ALL SALES ARE FINAL. EQUIPMENT CANNOT BE RETURNED WITHOUT SELLER'S PRIOR WRITTEN CONSENT.

2. **Quotations:** Published Prices and Pricing. All written quotations shall automatically expire on the expiration date listed on the quotation, but in no event later than sixty (60) days after issuance, and are subject to withdrawal by notice within that period. Seller, at its sole discretion, may extend the effective date of written quotations. Prices shown on published price lists and other literature issued by Seller do not represent unconditional offers to sell, and are subject to change without notice. Prices do not include costs or fees associated with installation or final on-site adjustments. Prices also do not include shipping charges. All prices are F.O.B. Seller's point of shipment, unless otherwise specifically set forth on the quotation or order acknowledgment. Prices stated are subject to change without notice. No discount will be allowed unless specifically set forth on the face side hereof. Until the purchase price and all other sums due are paid in full, Seller retains a security interest in the materials described on the face hereof (the "Equipment") and in all proceeds of said Equipment.

3. **Prepayment:** Seller may, at its sole discretion, require full or partial payment in advance. Upon Buyer's failure to submit full or partial payment upon request.

4. **Terms of Payment:** Payment terms are net thirty (30) days from the date of Seller's shipment, unless otherwise expressly stated on Seller's quote, order acknowledgement, or invoice. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or the maximum rate permitted by law. All payments are to be made in U.S. funds at par. Unless otherwise specifically agreed upon in writing, exported orders shall be accompanied by a confirmed irrevocable letter of credit for Seller's account with an accredited United States bank, payable in U.S. funds at par. Buyer shall handle all export shipping arrangements through its own forwarding agent, unless specifically agreed otherwise. Orders and shipments are subject to the approval of the Seller's Credit Department. The Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part.

5. **Returns:** If you are not satisfied with a product, contact us within 30 days of receipt. A refund may be arranged excluding freight charges upon inspection. Returned merchandise must be shipped in original

packaging, freight prepaid, unused, and in resalable condition, and are subject to 20% restocking fee. Seller will inspect all returns and reserves the right to refuse credits on damaged, misused or non-resalable items. Buyer is responsible for all freight charges and stocking fee where applicable, provided your return is complete with original packaging, all documentation, warranty cards, cables etc. EKKO Material Handling Equipment reserves the right to authorize product returns after 30 days have passed from the invoice date. If the product is accepted after this period, it is subject to a 20% restocking fee and credit will be issued toward future purchases only.

6. Taxes: Prices do not include federal, state, or local taxes, including sales, use, property, import/export, excise, VAT or similar tax payments. Seller shall bill as a separate invoice line item all such taxes and Buyer agrees to pay and/or reimburse Seller for any such applicable taxes.

7. Substitutions: Seller reserves the right to substitute the latest superseding design and manufactured equivalent Equipment, where interchangeability does not materially affect form, fit or function.

8. Order Changes and Cancellation:

(a) **Changes requested by Buyer:** Changes to orders are subject to Seller's approval and acceptance. Buyer shall reimburse Seller for all additional costs and expenses related to any such change. Orders will not be subject to cancellation by Buyer, either in whole or in part, without the written consent of Seller, and then only under terms that will reimburse Seller for all costs incurred by it, including, without limitation, preparation costs, costs of purchased materials, engineering costs, total factory costs of the items produced up to the date of acceptance of cancellation including direct labor and overhead, cancellation charges from Seller's subcontractors and sellers, any other expenses, and an amount equal to Seller's customary profit, less refund, if any, actually received by Seller on any purchased items which can be returned to vendors.

(b) **Changes by Seller:** Seller reserves the right to change or cancel any order: 1) Whenever Seller deems said change necessary to comply with laws, regulations, or other mandatory authority; or 2) events require reallocation of production and/or delivery resources. Seller additionally reserves the right to change materials and/or design of Equipment.

9. Shipping: Equipment shall be shipped F.O.B. Seller's point of shipment. Title to & risk of loss/damage to the Equipment passes to Buyer upon delivery to the carrier. Buyer shall make claims for losses or damage directly with carrier. Seller reserves the right to apply its discretion regarding the manner and routing of shipments. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer. Any insurance so requested shall be provided at Buyer's expense. If Seller is obligated to pay freight on shipments, Seller may opt to add to the price of Equipment any increase in freight paid by Seller arising after acceptance of Buyer's order may.

9.1 Packaging: Prices stated are based on Seller's standard packaging. Seller reserves the right to package material in pallets, bulk or individual cartons. Packaging will be standard commercial package acceptable to commercial carrier. Special packaging will be used only when specified at Buyer's cost.

9.2 Acceptance and Inspection: Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Equipment. Buyer must note damage/incompleteness of Equipment on the delivery receipt before signing for the Equipment. Unless Buyer provides written notice to Seller of any claim for incompleteness of or

damage to the Equipment within **48** hours of receipt, such Equipment shall be deemed finally inspected, checked and accepted by Buyer.

10. Delivery/Access: All delivery/performance dates are approximate and shall not be deemed to represent fixed or guaranteed delivery dates. All such dates are contingent upon prompt receipt of all necessary information from Buyer regarding Equipment and/or Services ordered. Seller will use reasonable efforts to meet the indicated delivery/performance dates but shall not be held liable for any loss or damage caused by delay resulting from labor disputes, damage to facilities, failure of contractors, subcontractors, or suppliers to fulfill scheduled deliveries, or any other cause outside Seller's reasonable control or causes which make Seller's performance commercially impracticable.

In the event of delivery delay caused or requested by Buyer, Seller will store & handle all Equipment ordered at Buyer's risk and will invoice Buyer for the unpaid portion of the contract price plus storage, insurance & handling charges on or after the date on which the Equipment are ready for delivery. Buyer shall pay such bill within 30 days of the mailing date of the invoice.

11. Security Interest & Repossession: Until Seller is fully paid for Equipment shipped, Buyer will grant Seller a purchase money security interest in the Equipment. Equipment will remain personal property. Buyer shall execute & deliver to Seller security agreements & financing statements evidencing Seller's security interest. Buyer authorizes Seller to file financing statements relating to the Equipment without Buyer's signature as Seller deems appropriate. Buyer appoints Seller as Buyer's attorney-in-fact for the limited purposes of executing financing statements in Buyer's name & performing other acts Seller deems necessary to perfect its security interest & to preserve and protect the goods.

12. Default: Upon submitting this instrument to an attorney to collect past due payments or repossess the Equipment, Buyer shall reimburse Seller for attorney's fees, court costs, & other expenses incurred by Seller to enforce the terms & conditions stated herein.

13. Warranty:

(a) **Limited Warranty Applied to Equipment.** Seller warrants to Buyer that on the date of delivery to the carrier, the Equipment is free from defects in material and workmanship. Seller's product specific Limited Warranty applies to the Equipment for a period indicated in said Limited Warranty.

(b) **Buyer's Exclusive Remedy:** If the Equipment does not meet its warranty standard, Seller will apply the appropriate Limited Warranty (see part 13(a) above). Seller may, at its sole option, either: (1) repair or replace any defective Equipment; or (2) refund the amount received by Seller for defective Equipment, if, after the Equipment is returned to Seller, Seller determines repair or replacement is not feasible. The foregoing is contingent upon Seller receiving Buyer's written notice in accordance with the terms of the appropriate Limited Warranty and, at Seller's request, return of the defective Equipment (F.O.B. Seller's point of shipment) at Buyer's cost. The warranty set forth herein does not extend to any Equipment or Service (including Other Sellers' product and service) which has been misused, modified, repaired, improperly installed or otherwise abused.

(c) **Disclaimer of Implied Warranties:** Sole Remedy. EXCEPT AS PROVIDED IN THIS SECTION, SELLER MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY & FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY DISCLAIMED. THIS WARRANTY CONTAINS

SELLER'S SOLE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDIES AND IS EXPRESSLY IN LIEU OF ALL OTHER REMEDIES BASED IN LAW OR EQUITY. **(See our warranty policy and terms)**

14. Intellectual Property/Drawings and Confidentiality: (a) All specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed, or acquired by Seller incident to procuring and/or carrying out an order shall vest in and remain the property of Seller. (b) Should it be necessary during the performance of an order for Seller to supply technical information to Buyer, then Buyer agrees (i) that the disclosure of such information is in confidence; (ii) such information is the sole and exclusive property of Seller and is subject to return upon demand; and (iii) such information is not to be used by Buyer, its employees or agents, nor copied or disclosed to third parties without the express written consent of Seller, except that prohibitions against disclosure shall not apply to information which is or becomes publicly available or is or becomes available to Buyer from a third party through no fault of Buyer. Similar undertakings shall exist on the part of Seller for confidential information received by Seller from Buyer.

15. Compliance with Standards: Buyer is solely responsible for identifying and complying with laws, regulations, ordinances, national standards incorporated into law or regulation, and all other authority applied to the Equipment where it is used.

16. Limitation of Liability: SELLER SHALL NOT BE LIABLE FOR ANY LOSS, CLAIM, EXPENSE OR DAMAGE CAUSED BY, CONTRIBUTED TO, OR ARISING OUT OF THE ACTS OR OMISSIONS OF BUYER OR THIRD PARTIES, WHETHER NEGLIGENT OR OTHERWISE. IN NO EVENT, SHALL SELLER'S LIABILITY FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE COST OF THE EQUIPMENT GIVING RISE TO THE CLAIM, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. IN NO EVENT, SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER SUCH INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, PROFITS OR OPPORTUNITIES), WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

18. Force Majeure: Delivery dates are approximate and are subject to confirmation. Seller shall not be responsible for excusable delays, nor shall Buyer refuse to accept delivery because of any such delays. "Excusable delays" include, without limitation, delays resulting from accidents, acts of God, strikes, fire, floods, weather disturbances, acts of terrorism, governmental controls, inability to obtain materials from sellers, failure of materials correctly ordered by Seller to meet specifications, or other causes reasonably beyond Seller's control, including any delay attributable to the carrier or third party seller. If Buyer delays shipment, Buyer will accept title to the Equipment, the Equipment will be invoiced and payment in full nevertheless shall be due thirty (30) days after the date of such invoice and the Equipment shall be held at Buyer's risk and subject to reasonable storage charges. Any delays caused by Buyer will not extend the stated start-up or warranty period.

19. Waiver: No condoning, excusing or waiver by any party of any default, breach or nonobservance by any other party, at any time or times with respect to any covenants or conditions set forth herein shall operate as a waiver of that party's rights with respect to any continuing or subsequent default, breach or nonobservance, and no waiver shall be inferred from or implied by any failure to exercise any rights by the party having those rights.

20. **Severability:** Should any provision of these terms and conditions be declared invalid or unenforceable, the remaining provisions shall not be affected thereby, it being the intent of the parties that they would have executed the remaining portion without including any such part or portion which may for reason be declared invalid.

21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of California (excluding its conflict of law's provisions), including the provisions of the UCC in the State of California. Any proceeding pertaining to any such claim shall be venue in Pomona, California.

22. **Entire Agreement/Amendment:** Seller and Buyer agree that the terms and conditions set forth herein constitute their complete and exclusive agreement regarding the subject matter of Buyer's order and supersede any prior communications, representations or agreements of the parties, whether oral or written and cannot be altered, amended, or modified except in writing executed by an authorized representative of each party.

23. **Assignability:** Neither party may sell, assign, or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the other; provided, however, that Seller reserves the right to (a) assign its rights, duties and obligations to any party purchasing substantially all of Seller's assets and (b) subcontract the manufacture of Equipment. To the extent that assignment is permitted, this Agreement shall inure to the benefit of and be binding upon each party and its permitted successors and assigns.

24. **Headings:** Captions or headings are inserted only for convenience and shall not be construed as part of the foregoing terms and conditions or as a limitation upon the scope of the section to which they refer.

25. **Buyer's Default:** If Buyer defaults in any payment of performance hereunder or becomes subject to any insolvency, receivership or bankruptcy proceeding or makes an assignment for the benefit of creditors or, without Seller's consent, voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Equipment and/or parts delivered hereunder, Seller may terminate the order with Buyer and treat all amounts then or thereafter that Buyer owes hereunder to be immediately due and payable (subject only to credits required by law) or Seller, at its option, without prejudice to any other lawful remedies, may defer delivery or cancel any order then outstanding or repossess said equipment and/or parts by any means available by law. Seller shall be entitled to receive reimbursement for its reasonable and proper cancellation charges, plus, in any proceeding or action relating to a default by Buyer, Seller shall be reimbursed by Buyer for Seller's attorney's fees and cost incurred by Seller in respect thereof.

26. **Assignability:** No assignment of this order by Buyer without the consent of Seller in writing shall be binding. Seller reserves the right to (a) assign its rights, duties and obligations to any party purchasing substantially all of Seller's assets and (b) subcontract the manufacture of Equipment. To the extent that assignment is permitted, this Agreement shall inure to the benefit of and be binding upon each party and its permitted successors and assigns.

27. **Errors:** Any clerical errors, typos are subject to correction.