

Angel Equipment LLC Terms and Conditions of Sale

1. **Agreement.** These terms and conditions (the "Terms and Conditions"), together with the provisions of the Sales Quotation (the "Quote") and Work Order or Sales Order Acknowledgment, (the "Acknowledgment" and collectively with the Terms and Conditions and the Quote, the "Agreement") constitutes the entire agreement of Angel Equipment LLC ("Seller") and Buyer (as defined on the Quote) with respect to the products ("Products") and/or services ("Services") described on the Quote and/or Acknowledgment and supersedes any other agreement or understanding of the parties with respect to such sale. Acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of all of the terms and conditions contained herein in lieu of those in Buyer's purchase order. Buyer will be deemed to have assented to the terms and conditions of this Agreement unless Seller receives written notice of any objection by Buyer within the earlier of (i) acceptance by Buyer of the delivery of the Products and/or Services or (ii) 10 days after Buyer's receipt of this form. This Agreement represents the complete and final expression of the agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein, including by custom, usage of trade or course of dealing or performance, shall be binding upon Seller unless expressly agreed in writing and signed by an authorized officer of Seller. Notwithstanding the foregoing, if Seller and Buyer have a written agreement in effect that covers the sale of the Products and/or Services sold hereunder that has been signed by an authorized officer of Seller, that agreement will govern the terms and conditions of sale solely to the extent that its terms are in addition to and do not conflict with the terms and conditions of this Agreement.
2. **Pricing, Taxes and Other Charges.** All prices are subject to adjustment, without notice, to Seller's prices in effect at the time of shipment. Any increase in transportation rates and any changes in routing resulting in an increase in transportation costs shall be paid and borne by Buyer. Unless otherwise provided on the face of this form, any manufacturer's tax, occupation tax, sales tax, service tax, excise tax, duty, custom inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore.
3. **Payment.** Payment is due 30 days after the date of Seller's invoice. Interest will be charged at the rate of 18% per annum (but not more than the highest rate permitted by applicable law), prorated from date due to the date paid, on accounts not paid when due. Seller reserves the right to require payment for any shipment hereunder in advance, or satisfactory security, if the financial performance or credit worthiness of Buyer is unsatisfactory to Seller. If Buyer fails to fulfill the terms of payment of any order placed with Seller, Seller may defer further manufacture or shipment of orders until such payment is made or may at its option cancel this order; in such event, Buyer will remain liable for all unpaid accounts.
4. **Title and Delivery.** Unless otherwise stipulated in this Agreement, shipments of Products are made and delivery shall occur F.O.B. Seller's place of manufacture. Regardless of shipping terms or freight payment, delivery of Products to the first carrier shall be deemed delivery to Buyer, and thereupon title to such goods and risk of loss or damage shall be the responsibility of Buyer. Seller reserves the right to make delivery in installments, unless expressly stipulated in this Agreement. All such installments shall be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. All claims for loss or damage to goods in transit are the responsibility of Buyer and should be made to the carrier and not to Seller. Any claim for shortage of Products and/or component parts occurring prior to delivery by Seller to the carrier must be made in writing to Seller within 10 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. The sale of any Product to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property license whatsoever.
5. **Returned Shipments.** If any shipment is returned to Seller as a result of Buyer's unexcused delay or failure to accept delivery, Buyer will pay all additional costs incurred by Seller.
6. **Force Majeure.** All delivery dates are approximate and not guaranteed. Seller shall not be liable for delays in shipment or default in delivery for any cause beyond Seller's reasonable control including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, act of terrorism, delay in transportation, shortage of labor, raw material, production or transportation facilities, labor difficulties involving employees of Seller or others, or other contingencies of manufacture or shipment. In the event of any delay in Seller's performance due in whole or in part to any cause beyond Seller's reasonable control, Seller shall have such additional time as may be reasonably necessary under the circumstances. Without limiting the generality of the foregoing, Seller may, without causing any breach or incurring liability, allocate Products, Services, component parts, or Seller's employees and contractors, which are in short supply, irrespective of the reasons therefore, among buyers in any manner which Seller in its sole discretion deems advisable.
7. **Storage.** If Products are not shipped within 7 days after notification to Buyer that the Products are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may store such Products at Buyer's risk in a warehouse or yard upon Seller's premises, and Buyer shall pay all handling, transportation, and storage costs at the prevailing commercial rates upon submission of invoices therefore.
8. **Modified Products.** Because Seller is continually researching and improving its Products, it reserves the right at any time to make such improvements, corrections and/or modifications in the design or specification of Products, except with respect to Products being made in accordance with Buyer's specifications. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.
9. **Product Warranty.** Subject to the limitations of Section 12, Seller warrants that the Products manufactured by Seller and supplied hereunder will be free from defects in materials and workmanship under normal conditions of use and service for a varying periods depending upon the type of product purchased. The length and duration of the warranty is stipulated in each products warranty document supplied with the product or as found on the Company's website www.angelequipment.net in the Warranty section. The foregoing warranty shall be void in its entirety if the failure of any Product shall be caused by any installation, operation, or maintenance of the Product that does not conform with the requirements set forth in Seller's Owner's Manual, Use Guidelines or Installation Guidelines provided to Buyer explaining proper methods of installation, operation, and maintenance of the applicable Product or is the result of any cause other than a defect in the material or workmanship of the Product. Any description of the Products, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by an authorized officer of Seller.

THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED, AT SELLER'S ELECTION, TO REPAIR OR REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED) OF THE PRODUCTS NOT COMPLYING WITH THIS AGREEMENT. Buyer shall provide written notification within seven (7) days after the date Buyer discovered any warranty defect within the warranty period. Upon receipt of such written notification, Seller shall, at its option, repair or replace, F.O.B. Seller's place of manufacture, the Products found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Buyer shall not return Products that are

claimed to be defective, and Seller will not accept any such Product, unless authorized in advance in writing by an authorized officer of Seller. Such Products must be shipped to Seller in accordance with Seller's instructions and Seller shall be responsible for costs of shipment solely to the extent such Products are returned in accordance with Seller's instructions. Products repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or 90 days from the date of shipment, whichever is longer. Buyer assumes all other responsibility for loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other products/components. This Section 9 applies to any entity or person who may buy, acquire or use the Products, including any entity or person who obtains the Products from Buyer. Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 9, 10 and 12, and such subsequent transferee shall be bound by the limitations herein.

10. **Disclaimer of Warranties.** THE WARRANTY SET FORTH IN SECTION 9 IS THE SOLE AND EXCLUSIVE WARRANTY EXTENDED BY SELLER WITH RESPECT TO THE PRODUCTS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM OR TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S USE OR PURPOSE.

11. **Infringement.** Subject to the limitations of Section 12, Seller shall indemnify Buyer from and against any claim or suit that may be brought against Buyer by a third party alleging that any Product sold hereunder infringes a valid registered U.S. patent, trademark or copyright in existence as of the date of shipment. Seller's indemnity obligation under this Section 11 shall not extend to any claim or suit that: (i) is based on the combination or use of the Products with any other goods or components not manufactured by Seller, including for any infringements of combination or process patents covering the use of the Products in combination with other goods or materials not furnished by Seller; (ii) is based on the use of the Products in a manner for which the Products were not designed by Seller; (iii) is based on or with respect to Products not designed by Seller or which were otherwise manufactured by Seller according to drawings, designs or specifications proposed or furnished by Buyer; (iv) is based on the modification of the Products other than by Seller, with or without authorization; or (v) relates to a claim of contributory infringement resulting from the use or resale by Buyer of Products sold hereunder. As a condition to such indemnification under this Section 11 Buyer must: (i) have made all payments then due hereunder; (ii) promptly notify Seller of such claim or suit; (iii) provide all reasonable assistance and cooperation requested by Seller in settling or defending against the claim or suit; and (iv) permit Seller to control completely the defense, settlement, or compromise of any such claim or suit. If any Product becomes the subject of any claim subject to indemnity pursuant to this Section 11, and the use of such Product is enjoined, or in the event that Seller elects to compromise or settle the claim, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Product, to replace it with a non-infringing Product, to modify the Product to become non-infringing, or to refund the fees and transportation costs paid by Buyer for the Product. In no event, shall Seller be responsible for any compromise or settlement made without Seller's written consent. The foregoing states the entire liability of Seller for infringement.

12. **Limitations of Liability.** IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER FOR ANY CLAIM ARISING UNDER THIS AGREEMENT EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, CONTINGENT OR PUNITIVE DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, DAMAGES CAUSED BY DELAY IN PERFORMANCE, PENALTIES, SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, SHUT-DOWN OR SLOW-DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.

13. **Buyer's Indemnity.** Buyer shall indemnify Seller from and against any and all claims, losses, damages, costs and expenses (including, without limitation, attorney's fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or third parties arising out of or in connection with the Products and/or Services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

14. **Confidentiality.** Any sketches, proposals, models, samples or other information furnished to Buyer by Seller are intended for confidential use by Buyer, shall remain the property of Seller, and shall not be disclosed or used to the detriment of Seller's competitive position. Such information shall not be used or disclosed by Buyer without the express written consent of Seller.

15. **Cancellations; Returns.** Products cannot be returned, and orders once accepted cannot be cancelled or altered, except upon terms and conditions acceptable to Seller, as evidenced in writing and signed by an authorized officer of Seller. If Seller agrees to a cancellation, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation and Buyer shall be required to return all goods already shipped and shall be responsible for all shipping charges, costs of shipment and return associated with such order. Returned Products must be securely packaged to reach Seller without damage; any cost incurred by Seller to put the Products in marketable condition due to damage caused during shipment or otherwise caused by Buyer will be charged to Buyer.

16. **Buyer's Property.** Any property of Buyer placed in Seller's custody for performance of this contract is not covered by Seller's insurance, and no risk is assumed by Seller in the event of a loss or damage to such property by fire, water, burglary, theft, civil disorder, or any accident beyond the reasonable control of Seller.

17. **Governing Law.** This Agreement between Seller and Buyer shall be governed solely by the laws of the State of Illinois, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to its choice of law provisions. No statutes, regulations, rules or orders shall be incorporated herein unless specifically referred to herein. Any dispute arising under or in connection with this Agreement shall be brought in federal or state courts in Cook County, Illinois, and Buyer irrevocably submits to the jurisdiction of such courts and waives any objection it may have to the jurisdiction or venue of such courts. Any and all claims arising out of or relating to this Agreement shall be barred unless a judicial proceeding is commenced within 2 years from the date the complaining party knew or should have known of the facts giving rise to such claim.

18. **Jury Waiver.** SELLER AND BUYER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OF COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

19. **Waiver; Severability.** Waiver by Seller of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.