



Man Lift Standard Terms & Conditions of Sale

1. **Definitions:** Unless otherwise defined herein, all terms which appear in these Man Lift Standard Terms and Conditions of Sale in initial capital letters shall have the meaning ascribed thereto in the applicable Man Lift Quote (the "Quote") and/or any Firm Purchase Order submitted to Man Lift by the Customer pursuant thereto and accepted by Man Lift in conformity therewith.

2. **Credit Terms:** Man Lift reserves the right to approve or reject the credit of any Customer and/or modify the credit and/or payment terms of any Customer at any time, and without incurring any liability to Customer, in the event Man Lift, in its sole discretion, determines there has been a material adverse change in such Customer's financial condition. In addition, in the event the Customer fails to meet any payment terms set forth in any Accepted Purchase Order, Man Lift reserves the right, in its sole discretion and, without any liability to Customer, to delay or cancel, at Man Lift's option, the performance of any work and/or the delivery or provision of any goods or services that Man Lift might otherwise be required to deliver or provide to or for the benefit of the Customer pursuant to any such Accepted Purchase Order. Discounts, if any, are limited to the Accepted Purchase Order in which they appear and are contingent on payment within the terms stated. If payment is not received in strict compliance with such terms, then the prices stated, without considering any such discounts, shall apply.

3. **Pricing:** All prices are quoted and payable in U.S. dollars.

4. **Invoice and Payment:** Unless otherwise agreed in writing in the applicable Accepted Purchase Order, invoices with respect to each item of equipment that is modified by Man Lift pursuant to any Accepted Purchase Order will be issued as each Product is completed and available to be shipped, or if later, the Ship-by Date specified by Customer in the applicable Accepted Purchase Order. Unless otherwise agreed in writing, invoices for goods or services required in connection with installation, maintenance, servicing, and/or non-warranty repairs will be issued as such goods and services are provided. All invoices shall include the purchase price of the goods and services listed therein and shall also set forth all Shipping Charges and/or Customer Taxes due Man Lift in connection therewith as separate line item expenses. Unless otherwise agreed in writing, all invoices shall be due and payable in U.S. Dollars thirty (30) days following the date of the invoice, and any invoiced amounts that remain unpaid after said thirty (30) day period shall accrue interest at the rate of eighteen percent (18%) per annum or, if less, the highest rate permitted by applicable law, from the date of the invoice, until the same are paid in full.

5. **Shipping/Title/Risk of Loss:** Unless otherwise agreed in writing in the applicable Accepted Purchase Order, Man Lift will use commercially reasonable efforts to arrange to have all goods purchased pursuant to each Accepted Purchase Order packed, insured and shipped to the Customer at the Ship-to Address on or before the Ship-by Date; provided that: (i) the Customer shall reimburse Man Lift for all costs and expenses, including overhead, incurred by Man Lift in connection therewith; (ii) title and risk of loss with respect to all goods shall pass to the Customer upon the goods being loaded onto the transport vehicle at Man Lift's manufacturing facility; and (iii) **in no event shall Man Lift assume any responsibility or be liable to Customer or any third party for any loss or damage to any equipment, products or goods which may occur while the same are in transit or any loss, damage, cost or expense caused by any delay in shipment or delivery.**

6. **Shortage or Damage:** All claims with respect to shortages in or damage to any goods, once the goods are delivered to Customer pursuant to an Accepted Purchase Order in conformity with paragraph 5 above, shall be addressed to the designated carrier and/or applicable insurance company.

7. **Change Orders:** In the event a Customer desires to change any of the previously Provided or Approved Specifications, as defined in the Quote, which apply to any item or items which are on order pursuant to an Accepted Purchase Order, then the Customer may submit a written change request to Man Lift (a "Change Request") specifying the item or items in question and the change or changes the Customer desires to make in the Provided or Approved Specifications that are applicable thereto. Man Lift shall have the right to accept or reject any such Change Request at its sole discretion. In the event Man Lift does accept such Change Request, then Man Lift shall have the absolute right to re-price the item or items identified therein to reflect all additional costs or expenses which may be incurred by Man Lift to make the requested changes, specifically including, without limitation, all additional technical, engineering, labor, material and/or production costs associated therewith; all direct, indirect and administrative expenses related thereto; and such amounts, if any, as may be necessary to provide Man Lift with a reasonable profit margin thereon. In addition, in the event Man Lift does accept such Change Request, Man Lift shall have the absolute right to charge the Customer for any and all losses, damages, costs or expenses Man Lift has or may in the future incur as a result of implementing said Change Request, including, without limitation, all unrecovered technical, engineering, and/or tooling expense; all direct, indirect and overhead costs associated therewith, the cost incurred with respect to all work in process and/or finished goods which are not readily saleable at Quoted full price; the cost of any equipment, fixtures, materials, supplies, accessories, parts or other components that have been purchased by Man Lift and are not readily salable at full price or returnable to Man Lift's vendors for full credit; and Man Lift's lost profit thereon, which amounts, unless otherwise agreed, shall all be due and payable to Man Lift on demand. If Man Lift accepts such Change Request, then all agreements of the parties with respect thereto, specifically including, without limitation, the item or items in question, the nature and extent of all changes applicable thereto, the obligation of the Customer to pay Man Lift for all of the losses, damages, costs and expenses incurred by Man Lift in connection therewith, and the obligation of the Customer to pay Man Lift for the re-priced item going forward shall be reduced to a written amendment; a copy of which shall be signed by both Man Lift and the Customer; be attached to the applicable Accepted Purchase Order as an addendum; and be incorporated therein by reference.

8. **Cancellation:** A Customer may cancel a Firm Customer Purchase Order, in whole or in part, at any time prior to its acceptance by Man Lift by providing written notice of cancellation to Man Lift's Vice President of Sales at its home office in Shelby, North Carolina. A Customer may cancel a Firm Purchase Order that has been accepted by Man Lift (in such case, an "Accepted Purchase Order"), in whole or in part, at any time by providing written notice of cancellation to Man Lift's Vice President of Sales at its home office in Shelby, North Carolina; provided, however, that in the event Customer cancels all or any part of an Accepted Purchase Order, then except as is otherwise provided in Section 15 below, the Customer nevertheless agrees to pay Man Lift for any and all losses, damages, costs and/or expenses which Man Lift has or may reasonably expect to incur at any time in the future as a result of such cancellation; including, without limitation, and as applicable, lost profit in the case of fungible goods and/or in the case of any customized goods which have been fully modified, manufactured or produced at the time of such cancellation, the difference between the selling price to a third party (even if Man Lift is only able to sell at salvage value) and the price stated in the applicable Accepted Purchase Order. All such amounts shall be due and payable to Man Lift on demand.

9. **Delay in Production:** In the event the production of any item or installation of any modification that Man Lift is required to provide to the Customer pursuant to any Accepted Purchase Order is delayed as a result of a delay in the Customer providing any Customer Specifications the Customer is required to provide to Man Lift before the production of such item and/or the installation of such modification can commence and/or as a result of the Customer or any third party designated by the Customer failing to provide any fixtures, equipment, materials, supplies, accessories, parts or other components the Customer is required to furnish, then in that event, the Customer shall reimburse Man Lift for any and all losses, damages, costs or expenses which Man Lift may incur in connection with such delay, including, without limitation, any and all technical, engineering, labor or material costs and/or any direct, indirect or administrative costs or expenses associated therewith.

10. **Delay in Delivery/Demurrage and Storage:** In the event Customer's shipment is delayed beyond the Ship-by Date set forth in the applicable Accepted Purchase Order through no fault of Man Lift, or in the further event any goods are shipped and Customer fails or refuses to take or accept delivery, then: (a) the entire remaining balance of the Purchase Price for such goods together with all Shipping Charges and Customer Taxes applicable thereto shall become immediately due and payable; and, in addition; (b) Customer shall pay Man Lift for all damages and all storage, handling and/or other costs or expenses reasonably incurred by Man Lift as a result of any such delay. All such amounts, including, without limitation, the Purchase Price, the damages and the additional costs and expenses, shall be due and payable to Man Lift on demand. In the event Man Lift is required to store any goods that are owned by the Customer, specifically including, without limitation, any equipment, fixtures, materials, supplies, accessories, parts or other

components that the Customer is required to provide to Man Lift in order to permit Man Lift to produce any item or perform any modification Man Lift is required to provide or perform to or for the benefit of the Customer pursuant to the terms of any Accepted Purchase Orders or with respect to which (i) shipping has been delayed beyond the ship by date set forth in the applicable Accepted Purchase Order as a result of a change in the ship-to address and/or the Customer's failure to provide any instructions required to permit Man Lift to deliver an item to the Customer; and/or (ii) the Customer has failed or refused to accept delivery of any item as referenced above, then in such event, Man Lift shall store such goods for the Customer upon and subject to the following terms and conditions: (i) once the same are placed in storage, if not sooner, title to and risk of loss with respect to all such goods shall pass to and at all times thereafter remain with the Customer; (ii) Man Lift shall store such goods at the Customer's sole cost and expense, which costs and expenses will either be paid as provided above or be invoiced to the Customer on a monthly basis and paid in conformity with these Terms and Conditions of Sale; and (iii) so long as the same are in storage, the Customer shall purchase and maintain in force all-risk property insurance on said goods against loss or damage in an amount equal to their full replacement value and shall cause said policies to be endorsed to name Man Lift as an additional insured. Further, so long as said goods remain in storage, the Customer shall assume and be solely responsible for any and all losses or damage, except for any loss or damage that results solely from the willful misconduct and/or unlawful acts of Man Lift and/or its officers, directors or employees, and shall indemnify and hold Man Lift and its officers, directors and employees harmless from and against any and all such losses, damages or expenses.

11. **Responsibility for Designs and Specifications:** For purposes of these Terms and Conditions of Sale, the Customer shall for all purposes have expressly agreed to assume, and for all purposes retain, as its sole and exclusive risk and responsibility, the obligation to carefully review and approve all applicable Provided and Approved Specifications which related to the manufacture, fabrication and/or production of any goods identified in any Quote and determine for itself prior to issuing any Firm Purchase Order in connection therewith, that all goods or services manufactured, fabricated, produced and/or provided in conformity therewith will, when delivered, be merchantable and fit for the Customer's intended purpose and use, which obligation on the part of the Customer shall include, without limitation, the obligation to obtain all such data, documents and information; make all such inquiries and investigations; and request and obtain all such third party reviews, assessments, tests and/or evaluations as the Customer may, at its sole discretion, determine to be necessary or appropriate in order to assure that all goods so provided will, when delivered: (i) be merchantable and fit for Customer's intended purpose and use; (ii) be in conformity with all statutes, laws and ordinances applicable thereto and all rules, regulations and codes promulgated or issued or adopted thereunder (collectively, "Laws"); and (iii) not infringe on the intellectual property rights of any third party. **Man Lift's sole responsibility shall be to provide all goods and services covered by any Quote and/or Accepted Purchase Order in conformity with Man Lift's Specifications and Customer Specifications applicable thereto.**

12. **Allocation of Responsibility:** Except to the extent the same are covered by the Man Lift Limited Warranty, Customer shall defend and hold Man Lift, its officers, directors, employees and agents and their respective successors and permitted assigns (collectively, the "Indemnitees") harmless from and against any and all liabilities, losses, damages, judgments, fines, penalties, costs or expenses (including all reasonable attorney's fees) that any one or more of the Indemnitees may incur in connection with any claim, demand, suit, cause of action, investigation, arbitration or other proceedings (including, without limitation those brought or asserted by third parties, or any governmental instrumentality) which arises out of, relates to, or results, in whole or in part, from: (i) any action taken or omitted by Customer or its employees, agents or third party contractors that results in any injury to or death of any third party (including Customer's personnel) or any damage to any real or personal property; (ii) any claim that the goods, services or any constituent part thereof violates Laws or the intellectual property rights of any third party; (iii) any failure on the part of Customer to observe or perform any obligation or undertaking required to be observed or performed by Customer hereunder; and/or (iv) any representation or warranty given by Customer to Man Lift herein or in any other contract, agreement, undertaking or other document entered into in connection herewith being false or becoming false at any time in the future.

13. **Intellectual Property:** Any Intellectual Property, as hereinafter defined, which has been or is at any time in the future developed by Man Lift alone or in combination with any third party, including Customer, or is used by Man Lift pursuant to any license, permission or consent with any third party, specifically including, without limitation, any Intellectual Property which relates to Man Lift's business, its financial affairs and/or any goods or services offered or provided by Man Lift in connection therewith, and/or each component part thereof shall be and for all purposes remain the sole and exclusive property of Man Lift. For purposes of this paragraph and these Man Lift Standard Terms and Conditions of Sale generally, the term "Intellectual Property" shall mean all patents, patent applications, patent disclosures, and any other patentable subject matter, all trademarks, trade names and trade dress, and any application to register any one or more of the same; all copyrights, applications to register copyrights, works of authorship and any other copyrightable work, all trade secrets, know-how; all non-public concepts, ideas, discoveries, creations; proprietary information; all improvements, innovations or enhancements or additions thereto, whether or not the same are reduced to practice or subject to patent, copyright or other similar protection; and all research, drawings, diagrams, plans, blueprints, specifications, means, methods, processes and/or other data, documents or information of any name, nature

or description which relates thereto, regardless of form and specifically including, without limitation, all software, source codes, executable codes, databases and related documentation.

14. **Tooling:** All racks, jigs, molds or other tooling (collectively, "Tooling") which are developed, fabricated, produced or provided by Man Lift in connection with its manufacture or fabrication of any goods that are sold to the Customer pursuant to any Quote or Accepted Purchase Order shall, unless otherwise expressly agreed to in the Firm Purchase Order, be and for all purposes remain the sole and exclusive property of Man Lift.

15. **Force Majeure:** Man Lift shall not, in any event, be liable for any delay or failure in performance under any Accepted Purchase Order to the extent such delay or failure is caused by an event that is beyond the reasonable control of Man Lift, including but not limited to fire, flood, earthquake, explosion, war, acts of terrorism, disease, pandemics, strike, embargo, government requirement, civil or military authority, acts of God, equipment failure or shortages of labor, fuel, materials or equipment, provided Man Lift shall notify Customer of such condition or occurrence as soon as is reasonably possible following its occurrence, and if Man Lift so notifies Customer and such condition or occurrence continues for a period of more than ninety (90) days following Customer's receipt of such notice, Customer shall have the right to cancel any Accepted Purchase Order and, without further liability to Man Lift, obtain any goods or services ordered therein from any third party of its choosing.

16. **Limitations on Warranties, Liability and Damages:** Except to the extent Man Lift and the Customer otherwise expressly agree to amend the Man Lift Limited Warranty in the applicable Accepted Purchase Order, the Customer expressly acknowledges and agrees: (i) that the Man Lift Limited Warranty is an integral part of the Quote; (ii) the Customer has agreed to accept said Man Lift Limited Warranty as the sole and only warranty given by Man Lift to Customer with respect to the goods and services provided to or for the benefit of the Customer by Man Lift pursuant to the applicable Accepted Purchase Order; and (iii) that said Man Lift Limited Warranty is reflected in the Purchase Price. **ACCORDINGLY, AND EXCEPT TO THE EXTENT THE SAME IS OTHERWISE EXPRESSLY AMENDED IN THE APPLICABLE ACCEPTED PURCHASE ORDER, THE CUSTOMER ACKNOWLEDGES AND AGREES THAT:**

- A. **Limitation on Warranties: EXCEPT AS SET FORTH IN THE MAN LIFT LIMITED WARRANTY THAT IS ATTACHED TO THE QUOTE AND INCORPORATED HEREIN BY REFERENCE, MAN LIFT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW, COMMERCIAL USAGE, CUSTOM OR OTHERWISE TO THE CUSTOMER WITH RESPECT TO ANY EQUIPMENT, PRODUCTS, GOODS, WORK OR SERVICES SOLD OR PROVIDED TO THE CUSTOMER PURSUANT TO ANY QUOTE OR ANY ACCEPTED PURCHASE ORDER, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.**
- B. **Limitation on Liability: MAN LIFT'S LIABILITY TO CUSTOMER UNDER THE MAN LIFT LIMITED WARRANTY WITH RESPECT TO ANY EQUIPMENT, PRODUCTS, GOODS OR SERVICES SOLD OR PROVIDED TO THE CUSTOMER PURSUANT TO THE TERMS OF ANY QUOTE OR ANY ACCEPTED PURCHASE ORDER WHICH DO NOT CONFORM TO SAID LIMITED WARRANTIES SHALL NOT, IN ANY EVENT, EXCEED THE ACTUAL COST OF SUCH EQUIPMENT, PRODUCTS, GOODS WORK OR SERVICES, AS DETERMINED BY REFERENCE TO THE APPLICABLE ACCEPTED PURCHASE ORDER.**
- C. **Limitation on Damages: MAN LIFT SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED OR PUNITIVE DAMAGES OF ANY NAME, NATURE OR DESCRIPTION.**

17. **Entire Agreement:** Insofar as any transaction covered by these Terms and Conditions is concerned, the applicable Quote, the applicable Accepted Purchase Order, together with the Man Lift Limited Warranty and these Man Lift Standard Terms and Conditions of Sale collectively constitute the entire agreement of the parties concerning the equipment, any goods or services to be purchased from Man Lift by the Customer pursuant to the Accepted Purchase Order and supersede and replace all prior communications, understandings and/or agreements (whether written or oral) between the parties with respect thereto.

18. **Amendment/Modification:** These Man Lift Standard Terms and Conditions of Sale give Man Lift and the Customer specific legal rights and obligations which have been expressly negotiated and are reflected in the purchase price. As such, the terms of these Man Lift Standard Terms and Conditions of Sale may not be modified, expanded, supplemented or otherwise amended except to the extent any such amendment is expressly set forth as "Additional Warranty Obligations and/or Terms and Conditions of Sale" in an applicable Firm Purchase Order that has been accepted by Man Lift, and as provided in the Quote. **Unless expressly amended as provided above, these Man Lift Standard Terms and Conditions of Sale may not, under any circumstances, be modified, expanded, supplemented or otherwise amended in any way by the terms of any other purchase order, acceptance, continuation, acknowledgement or other commercial document issued to Man Lift by the Customer or any third party.**

19. **Waiver:** No waiver of any provision of the Quote, the Accepted Purchase Order, the Man Lift Limited Warranty and/or these Man Lift Standard Terms and Conditions of Sale shall be binding unless the same is set forth in a written document that is signed by a duly authorized officer of the party to be charged therewith and against which enforcement is sought and any such waiver, unless otherwise agreed in writing, shall be limited to the circumstances or events specifically referenced therein and shall not be deemed to be a waiver of any other terms or conditions thereof or the same circumstance or event upon its reoccurrence at any time in the future.

20. **Interpretation:** Any uncertainty or ambiguity existing in any Quote, Accepted Purchase Order, the Man Lift Limited Warranty and/or these Man Lift Standard Terms and Conditions of Sale shall not be interpreted against either party because such party prepared any portion thereof, but shall be interpreted according to the rules of interpretation generally applicable to contracts.

21. **Survival:** Except as is otherwise expressly provided herein, all representations and warranties, all rights, remedies, obligations, covenants and all agreements, obligations, and understandings set forth in an applicable Quote, Accepted Purchase Order, the Man Lift Limited Warranty and/or these Man Lift Standard Terms and Conditions of Sale which, by their terms, require or contemplate performance which is to extend beyond or occur after the delivery or performance of any goods or services, or the termination or cancellation of any Accepted Purchase Order shall survive delivery or performance of the goods and services, and any such termination or cancellation and shall nevertheless remain in effect and be enforceable as between the parties for the statute of limitations periods applicable thereto.

22. **Non-Assignment:** Customer shall not assign, subcontract, or transfer any of its rights or obligations under any Quote or Accepted Purchase Order, by operation of law or otherwise, without the prior written consent of Man Lift, whose consent may be granted, conditioned, or withheld by Man Lift, at its sole discretion.

23. **Governing Law:** The Quote, the Accepted Purchase Order, the Man Lift Limited Warranty and/or these Man Lift Standard Terms and Conditions of Sale shall be governed by, and construed in accordance with, the internal laws of the State of North Carolina, USA. Any legal action or proceeding arising under or with respect to the Accepted Purchase Order, the Man Lift Limited Warranty and/or these Man Lift Standard Terms and Conditions of Sale shall be brought only in the district courts of North Carolina, or the United States District Court for the District of North Carolina, and, by execution and delivery of the Accepted Purchase Order, the Customer hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and hereby irrevocably waive any objection thereto, including, without limitation, personal jurisdiction or *forum non conveniens*.

24. **Purchase Money Security Interest:** Customer hereby grants to Man Lift a purchase money security interest in and first lien upon any and all Products or other goods delivered to Customer by Man Lift pursuant to any Accepted Purchase Order as security for the payment when due of any and all sums payable to Man Lift by Customer hereunder and hereby consents to Man Lift's filing of one or more UCC financing statements with respect to such collateral. Further, Customer agrees to take all such further action and to execute, deliver, and file or deliver all such further instruments

or documents as Man Lift may reasonably request in order to perfect and preserve its first lien and security interest in the collateral.

25. **Right of Offset/Right to Suspend Performance:** Man Lift shall have the absolute right to offset any amounts due Man Lift from Customer hereunder against any amounts due Customer from Man Lift.

Man Lift
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