

AMERIC CORPORATION USED MACHINERY TERMS AND CONDITIONS

GENERAL: These Americ Corporation Used Machinery Terms and Conditions ("Terms and Conditions") set forth the terms and conditions pursuant to which the purchaser ("Purchaser") will purchase and Americ Corporation ("Seller") will sell _____-brand used machinery, parts, and/or accessories ("Machinery").

PURCHASE ORDERS: All purchase orders of Purchaser shall, unless otherwise agreed to in writing by Seller, be in writing and set forth the quantity of the Machinery desired, the specifications therefore, the desired delivery date, the price of the Machinery, and all other relevant information necessary to effectuate shipment of the Machinery by Seller. Such purchase orders shall be limited to, and shall constitute Purchaser's acceptance of these Terms and Conditions and no additional, inconsistent or contrary terms shall become part of these Terms and Conditions or any sale of Machinery to Purchaser unless specifically accepted in writing by Seller.

ACCEPTANCE/RETURN: All orders for Machinery shall be subject to acceptance by Seller at Seller's Elk Grove Village, Illinois office. Purchaser shall not return any Machinery actually delivered to Purchaser without the written consent of, and upon terms agreed to, by Seller.

PRICE: Prices shall be those in effect at the time of order entry. Prices are subject to change by Seller without notice. Seller's prices do not include sales, use, excise or similar taxes. Consequently, the amount of any present or future sales, use or other similar tax applicable to the sale or use of the Machinery shall be paid by Purchaser.

PAYMENTS: Purchaser shall pay all amounts payable to Seller when due, time being of the essence thereof, and shall pay as part of the debt hereby any and all of Purchaser's expenses if incurred by Seller (a) for taxes, insurance, freight, cartage, warehousing, and (b) upon default, for reasonable costs and attorneys' fees of Seller in enforcing Purchaser's obligations or preserving Seller's rights and in taking possession, preserving and disposing of the Machinery.

SECURITY INTEREST: Purchaser grants and Seller hereby retains a purchase money security interest in favor of Seller in the Machinery purchased herein by Purchaser, and in all other Purchaser's equipment purchased from Seller, whether new or used, prior to the date hereof or hereafter acquired by Purchaser from Seller and all attachments and improvements thereto, herein called the Secured Collateral, including any replacements, additions, improvements of the Secured Collateral or proceeds resulting from any disposition thereof and any insurance proceeds payable resulting from any damage or destruction thereof. Such security interest shall be retained by Seller until all obligations of Purchaser as provided herein, which are hereby secured, including full payment of all amounts payable by Purchaser to Seller of all indebtedness by Purchaser to Seller however such indebtedness arose, whether such indebtedness presently exists or hereafter arises, are fully paid or performed by Purchaser:

- a) the Secured Collateral shall be maintained at the location designated herein and not removed without the prior written consent of Seller;
- b) Purchaser agrees not to assert against an assignee of Seller any claim or defense which Purchaser may assert against Seller;
- c) Purchaser shall maintain in good condition and use the Secured Collateral in a careful and proper manner and shall comply with all laws, ordinances and regulations, including, but not limited to any and all regulations relating to the safe possession, use or maintenance of the Secured Collateral;
- d) Purchaser shall not lease, sell or convey or in any manner transfer possession or any interest in the Secured Collateral and, other than the security interest provided for herein, shall not suffer, cause or permit the creation of or maintenance of any prior, competing or subordinate interest, lien or claim on the Secured Collateral, whether by consent or legal process, without the express written consent of Seller, and shall obtain an executed waiver of landlord's lien, mortgagee's waiver or subordination agreement upon demand by Seller;
- e) Purchaser hereby appoints Seller as its attorney-in-fact (and otherwise authorizes Seller) to execute and file financing statements (and, if Seller elects, to file a copy of these Terms and Conditions) covering the Secured Collateral hereunder;
- f) Upon request by Seller, Purchaser shall promptly provide financial information, (certified if available) concerning Purchaser's business, finances, and operating statements as reasonably required by Seller;
- g) Purchaser shall provide Seller written notification immediately upon the occurrence of any change in any purchaser information, as well as the details of each such change. Purchaser shall also promptly respond to periodic inquiries from Seller requesting confirmation and/or updates with respect to any such purchaser information; and

- h) Purchaser shall allow Seller access to Purchaser's premises to inspect the Secured Collateral at any time during regular business hours.

NOTICE OF READINESS TO SHIP-SHIPMENT: Seller shall notify Purchaser when the Machinery purchased hereunder is ready for shipment to Purchaser ("Notice of Readiness"). Within seven (7) days after receipt of such Notice of Readiness for Shipment, Purchaser shall (a) tender to Seller any portion of the purchase price due prior to shipment and (b) obtain insurance as required herein, providing satisfactory evidence of said insurance if required by Seller.

DELIVERY PRICE ADJUSTMENT: Within three (3) days after Seller's Notice of Readiness for Shipment, Purchaser shall notify Seller of its readiness to accept delivery of the Machinery. If Purchaser does not so notify Seller, Seller is authorized to (a) have the Machinery transported and warehoused for Purchaser, at Purchaser's expense and risk, in which event Seller may declare all payments immediately due or, at Seller's option (b) defer delivery, the purchase price, including applicable taxes, subject to adjustment, if higher, to the Seller's established price of the Machinery at any later date of actual delivery. Purchaser shall be responsible for all freight charges, insurance, and cost of cartage and handling incurred hereunder.

The purchase price, including applicable taxes, shall be subject to increase based on Seller's established price at date of actual shipment if shipment is delayed thirty (30) days or more beyond the scheduled shipment date and such delay is caused in whole or in part by circumstances beyond the reasonable control of Seller as provided in Section 15 of these Terms and Conditions.

TITLE-RISK OF LOSS-INSURANCE: Title to and risk of loss of the Machinery shall pass from the Seller to the Purchaser when the Machinery is received on the Purchaser's dock or designated delivery site.

Purchaser shall procure insurance acceptable in all respects to Seller, insuring the Machinery against "all risks" subject to normal exclusions in an amount not less than the purchase price of the Machinery, from an insurance company acceptable to Seller, such insurance to cover the Machinery during transit from any shipping point, unloading, and continuously thereafter until all amounts payable by Purchaser are paid in full to Seller. Such insurance shall pay any loss first to Seller as its interest may appear herein and shall provide for notice of not less than thirty (30) days to Seller prior to any cancellation, non-renewal or alteration of policy terms. Purchaser shall promptly provide Seller evidence of insurance required herein and of any and all renewals or replacements thereof upon execution. If Purchaser fails to obtain the required insurance set forth herein or fails to evidence such insurance to Seller, upon Seller's demand, Seller shall have the right, but not the obligation, to procure such insurance. In such event, Purchaser shall be liable for and shall promptly reimburse Seller for Seller's expenses and costs in obtaining such insurance.

ACCEPTANCE OF MACHINERY: Purchaser shall be deemed to have effected final acceptance of the Machinery on the date of delivery on the Purchaser's dock or designated delivery site.

REFUSAL TO ACCEPT DELIVERY: In the event Purchaser unreasonably refuses to accept delivery or accept the Machinery reasonably tendered hereunder by Notice of Readiness for Shipment, Seller may at its sole option: a) terminate these Terms and Conditions and retain all monies paid by Purchaser on account as liquidated damages, whereupon neither party shall have any further obligation to the other by virtue of these Terms and Conditions, or b) have the Machinery transported, warehoused and insured for pick up by Purchaser, at Purchaser's expense and risk, and thereupon all sums due under these Terms and Conditions, including the above expenses for transportation, warehousing and insurance, shall be immediately due and payable by Purchaser to Seller.

USED MACHINERY: These Terms and Conditions are for the sale of used Machinery. Purchaser expressly acknowledges and agrees that:

- a) The Machinery is used equipment and is sold "As Is;"
- b) In connection with Purchaser's purchase of the Machinery, Seller has not inspected, tested, modified or retrofitted the Machinery;
- c) Purchaser has had full opportunity, sufficient to Purchaser's satisfaction, to inspect and test the Machinery and/or to engage third parties on its behalf to inspect or test the Machinery, to discuss the Machinery's operation with any current or prior owners of the Machinery, to review any service or operation records with respect to the Machinery, and, in all other respects, to determine, to Purchaser's full satisfaction, that the Machinery will be satisfactory for Purchaser's needs and can be safely and efficiently operated by Purchaser;
- d) The Machinery may currently lack safety devices and/or may fail to comply with applicable standards for safe and efficient operation.

Accordingly, Purchaser undertakes and agrees to assume full responsibility for the inspection and testing of the Machinery and to assure that its operation will be in conformity with all applicable standards and regulation for safety and otherwise. PURCHASER RELEASES SELLER, AND SELLER'S AFFILIATES, FROM, AND PURCHASER AGREES TO ASSUME FULL RESPONSIBILITY FOR, THE SAFE MAINTENANCE AND OPERATION OF THE MACHINERY. PURCHASER ASSUMES ALL LIABILITY FOR ANY ACCIDENTS, DAMAGES OR LOSSES ARISING OUT OF, OR IN CONNECTION WITH, THE MAINTENANCE AND/OR OPERATION OF THE MACHINERY. PURCHASER FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER, AND SELLER'S AFFILIATES, AND MANUFACTURER HARMLESS FROM ANY AND ALL LIABILITY, DAMAGES OR COSTS ARISING OUT OF, OR IN CONNECTION WITH, THE MAINTENANCE AND/OR OPERATION OF THE MACHINERY.

SELLER, SELLER'S AFFILIATES AND MANUFACTURER MAKE NO REPRESENTATIONS, ASSURANCES OR WARRANTY, EXPRESS OR IMPLIED, OF THE SAFETY, MERCHANTABILITY OR FITNESS OF THE USED MACHINERY WHICH IS THE SUBJECT OF THIS SALE OR OF SUCH MACHINERY MEETING STANDARDS OF SAFETY AND FITNESS FOR USE ESTABLISHED BY ANY GOVERNMENTAL ENTITY OR INDUSTRY GROUP. PURCHASER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND MANUFACTURER FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF SUCH MACHINERY.

DELAY OR NONPERFORMANCE: Seller shall not be liable for failure to ship or delay in shipment, or failure or delay in other performance hereunder, if such failure or delay is due in whole or in part to strikes, work stoppages, fires, accidents, wars, rebellions, civil commotion or public strife, acts of any government, whether legal or otherwise, acts of public enemies, force majeure, inability to secure or delay in securing transportation, inability to obtain or delays in obtaining machinery, materials, or sufficient qualified labor, or any other causes beyond Seller's reasonable control whether similar or dissimilar to the foregoing.

DEFAULT AND SELLER'S REMEDIES UPON PURCHASER'S DEFAULT: Purchaser shall be in default under these Terms and Conditions if Purchaser: (a) fails to make any payments when due; (b) fails to properly insure the Machinery; (c) transfers any interest in the Machinery; (d) suffers a lien or levy to be placed upon the Machinery; (e) allows the Machinery to be substantially diminished in value; (f) substantially alters or modifies the Machinery without Seller's written consent; (g) makes any false or misleading inducement or representation to Seller in connection with these Terms and Conditions or the sale of the Machinery by Seller to Purchaser; (h) participates either voluntarily or involuntarily in any bankruptcy, insolvency, assignment for the benefit of creditors or other proceedings under which Purchaser seeks relief as a debtor or is subjected to restrictions or other requirements because of the commencement of a proceeding by certain of its creditors; (i) breaches any warranty, covenant, obligation of Purchaser, or other condition of these Terms and Conditions; or (j) upon receipt of a notice from Seller advising Purchaser that Seller deems itself to be insecure, Purchaser does not immediately give assurances reasonably adequate to Seller.

In the event of any such default, and upon Seller's written notice of default to Purchaser:

- a) All unpaid sums due pursuant shall become immediately due and payable;
- b) Seller shall have the right of immediate possession of the Machinery which Purchaser agrees to peaceably tender to Seller;
- c) Seller shall have all rights and remedies of a secured party as established or permitted by the Uniform Commercial Code in addition to all other rights established herein which rights and remedies, shall be cumulative. In the event of any claim, action or proceeding relating to a default hereunder, Seller shall be entitled to recover from Purchaser all costs and expenses and fees incurred defending or enforcing any right reserved to Seller hereunder, including without limitation, reasonable attorneys' and paralegal fees;
- d) Seller shall have the right to immediately disconnect, disable, or render unusable the Machinery (and Purchaser hereby agrees not to assert any claim for damages alleged to have been sustained by Purchaser by reason of Seller's election to utilize such remedy) and, after notice from Seller, Purchaser shall immediately cease using the Machinery; and
- e) Seller may suspend performance of any of its obligations under these Terms and Conditions.

ENTIRE AGREEMENT: These Terms and Conditions sets forth the entire agreement and understanding between the parties concerning the subject matters hereof and supersedes all prior written or verbal discussions and negotiations between them with respect to such matters. Seller shall not be bound by any conditions, definitions, representations or warranties with respect to the subject matters hereof other than as expressly provided herein or as set forth on or after the date hereof in writing signed by a duly authorized representative of Seller. These Terms and Conditions shall be deemed a part of any purchase order of Purchaser accepted by Seller and any contract with respect to the Machinery covered by these Terms and Conditions. If any provision of any purchase

order, sales contract, quotation, acknowledgment or other document sent or delivered to Seller by or on behalf of Purchaser is inconsistent with or contrary to the provisions of these Terms and Conditions, the terms and provisions of these Terms and Conditions shall control to the extent of any such inconsistency or contrary provisions. If Purchaser utilizes any term or condition in any purchase order or other document to create or extend an obligation on the part of Seller, or to create or extend any rights or benefits for Purchaser, Seller hereby expressly objects to each such term or condition and, in order to become effective or binding upon Seller, such term or condition must be expressly and separately affirmatively agreed to in writing by Seller (and by any other party to be so bound), and any such term or condition shall not become part of the parties' agreement merely by reason of the fact such term or condition appears in such purchase order or other document without written objection by Seller.

GENERAL TERMS:

- a) Assignment. There shall be no assignment of these Terms and Conditions by Purchaser, nor shall any amendment or other modification of these Terms and Conditions be effective without the express written consent of an authorized officer of Seller.
- b) Applicable Law/Consent to Jurisdiction. THESE TERMS AND CONDITIONS SHALL BE DEEMED TO HAVE BEEN MADE IN ILLINOIS, AND SHALL BE GOVERNED BY THE SUBSTANTIVE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARDS TO CONFLICTS OF LAWS PRINCIPLES. PURCHASER SHALL SUBMIT ANY CLAIM OF PURCHASER AGAINST SELLER ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, THE MACHINERY, SERVICE OR SUPPLY OF PARTS, IN CONNECTION THEREWITH, TO THE AMERICAN ARBITRATION ASSOCIATION FOR ARBITRATION IN CHICAGO, ILLINOIS, PURSUANT TO SUCH ASSOCIATION'S RULES FOR COMMERCIAL ARBITRATION. THE NUMBER OF ARBITRATORS SHALL BE THREE (3). THE ARBITRATORS SHALL HAVE NO AUTHORITY TO CHANGE THE TERMS OF THESE TERMS AND CONDITIONS OR TO AWARD PUNITIVE DAMAGES. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. ANY DISPUTE OF, OR CLAIM BY, PURCHASER AGAINST SELLER, SELLER'S AFFILIATES OR MANUFACTURER SHALL BE DEEMED WAIVED BY PURCHASER UNLESS ARBITRATION OR OTHER ACTION EXPRESSLY PERMITTED HEREUNDER IS BROUGHT WITHIN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION. IN THE EVENT PURCHASER INSTITUTES ANY PROCEEDINGS OTHER THAN AS PROVIDED HEREIN, IT SHALL ASSUME ALL OF THE COSTS OF SELLER, SELLER'S AFFILIATES OR MANUFACTURER IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' AND PARALEGAL FEES. NOTHING IN THE FOREGOING SHALL IN ANY WAY LIMIT THE RIGHT OF SELLER TO SEEK ANY OF ITS REMEDIES HEREUNDER IN ANY COURT OF COMPETENT JURISDICTION, INCLUDING A STATE OR FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS AND, IN THE EVENT SELLER FILES AN ACTION IN SUCH COURT, PURCHASER HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURT AND AGREES TO ACCEPT SERVICE OF PROCESS VIA REGULAR, FIRST CLASS MAIL DELIVERY OR VIA PERSONAL MESSENGER SERVICE.
- c) Binding on Successors and Assigns. These Terms and Conditions shall be binding upon the successors, legal representatives and permitted assignees of the parties hereto.
- d) Notices. All notices permitted or required hereunder shall be in writing, and shall be effective, unless otherwise noted herein, as of the day on which deposited in the United States mail in a properly stamped and addressed envelope.
- e) Waiver/Severability. Any failure by Seller to enforce at any time any term or condition under these Terms and Conditions shall not be construed as a waiver of Seller's right thereafter to enforce each and every term and condition of these Terms and Conditions. A judicial or administrative declaration in any jurisdiction of the invalidity of any one or more of the provision hereof shall not invalidate the remaining provisions of these Terms and Conditions in any jurisdiction, nor shall such declaration have any effect on the validity or interpretation of these Terms and Conditions outside of that jurisdiction.
- f) Waiver/Trial By Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THESE TERMS AND CONDITIONS AND/OR THE PURCHASE, SALE, RESALE, LICENSE, OR USE OR REPAIR OF THE MACHINERY OR PARTS THEREFOR.