



Materials Handling Equipment
7433 SR 930 E
Fort Wayne, IN 46803

TERMS & CONDITIONS FOR PROVISION OF GOODS AND/OR SERVICES

By ordering goods or services from Fort Wayne Materials Handling, LLC, dba Materials Handling Equipment ("We," "Us," or "Our"), you ("You") agree that the following terms and conditions are applicable to Our agreement with You for the provision of such goods and/or services. No other terms and conditions apply unless such terms are set forth in writing and signed by Our authorized representative. Any waiver, modification or amendment to these terms and conditions is ineffective absent said writing signed by Our authorized representative. Your acceptance of these terms is conclusively presumed upon our acceptance of a signed quotation, estimate, purchase order or the like, your delivery of any product or service provided to You by Us.

1. GOODS AND/OR SERVICES PROVIDED. We will provide to You the goods and/or services, upon our acceptance of a signed quotation, estimate, purchase order or the like, specified in our quote, estimate, invoice or purchase order. We do not agree to be bound by any terms or conditions of any of Your prior proposals or offers. Our agreement to provide You with the specified goods and/or services outlined in Our quotation or estimate or requested in Your order or in Your prior proposals or offers is expressly conditioned on Your acceptance of these Terms & Conditions.

2. PAYMENT. You agree to pay Us for the goods and/or services We provide in the amount specified in our signed quotation or estimate, invoice or purchase order, net fifteen (15) days, unless terms other than net fifteen (15) days have been mutually agreed upon by said parties. Upon Your request, Our invoice to You will be accompanied with a waiver of lien rights to the amount requested in such invoice, conditioned only upon Our receipt of the payment requested in such invoice from You. Invoiced amounts not paid when due shall bear interest at the rate of 1.5% per month (18% per annum). In addition, should we be required to initiate action to collect any amounts owed to Us We shall be entitled to recover all collection costs, *including reasonable attorneys' fees*, that We may incur in collecting unpaid invoiced amounts from You.

3. SCHEDULE. Unless You instruct Us otherwise, We will make a good faith effort to complete delivery of product or perform services as specified on or before the date(s) set forth in a signed quotation, estimate, purchase order or the like, invoice or purchase order. Under no circumstances will We be responsible or liable for any losses or damage resulting from Our inability to so deliver or perform.

4. RETURN POLICY. Regularly stocked items may be returned if item has not been installed, used in any way and in original packaging within 30-days of receipt. Special order items or items shipped directly from manufacturer or distributor may be returned if item has not been installed, used in any way and in original packaging, based on manufacturer or distributor return policy. Equipment orders shipped directly from manufacturer are subject to manufacturer's restocking fees, plus in-coming transportation and delivery preparation expense.

5. ON-SITE SAFETY. When We are performing services at Your or Your client's facility, We will perform all such services in accordance with applicable laws and permits and We will supervise and direct the means, methods, techniques, sequences and procedures used to provide such services to You. We will take reasonable safety precautions related to the performance of such services at Your or Your client's facility.

6. WARRANTY. Goods supplied by Us will be of good quality and new (unless otherwise permitted or presented as used equipment) and will be free from defects in material or workmanship. ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THIS SALE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. If, within 60 DAYS from the date You receive the goods or We complete Our services, such services or goods are found not to be in compliance with the requirements set forth herein, Our sole obligation shall be to correctly re-perform such services or repair or replace such goods, as applicable. **TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL WE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RELATED TO THE SERVICES WE PERFORM AND/OR TO THE GOODS WE PROVIDE HEREUNDER AND.** Our exclusive warranties set forth in this Section 6 of these Terms & Conditions exclude defects caused by abuse, alterations not made by Us, improper or insufficient maintenance, improper operations or normal wear and tear.

7. DELAYS. We shall not be liable for any delay in Our performance of the services or in the delivery of the goods specified by any act or neglect by You, Your client or Your or Your client's employees, subcontractors, suppliers, consultants agents or representatives, by labor disputes, war, riots, insurrection, actions of governmental authorities, acts of terrorism, embargo, fire, explosion, flood, unusual delay in deliveries, adverse weather conditions that could not have been reasonably anticipated, by acts of God or by any other cause beyond Our control. In the event of such a delay, the time for performance shall be extended by a like period to that caused by the delay.

8. INSURANCE. If We are to perform services at Your or Your client's facility, You and/or Your client shall maintain builder's risk "all-risk" insurance coverage to protect Our interests, including compensation for Our services and expenses required as a result of an insured loss. We shall be paid Our just share of insurance proceeds received as a result of a loss insured under such insurance. You will provide us with a copy of such builder's risk insurance policy upon Our request. If We are not performing services at Your or Your client's facility, risk of loss of and/or damage to the goods We deliver to You shall pass to You upon such delivery.



Materials Handling Equipment
7433 SR 930 E
Fort Wayne, IN 46803

9. TERMINATION. If You fail to timely make any payment due to Us or if We are delayed in Our performance of the services or in the delivery of the goods by a cause described in Section 6 of these Terms & Conditions for an aggregate period of 30 or more days, or if You have otherwise defaulted on any of Your obligations under these Terms & Conditions then We, upon 10 days' written notice to You (during which time You fail to cure such default), may terminate our agreement with You and recover from You payment for all services performed and for all goods delivered or available for delivery, for Our demobilization costs and all of Our other expenses resulting from such a termination including for Our reasonable overhead and profit on the services not yet performed and on the goods not yet delivered.

10. LEGAL ACTION. All actions filed by You against Us arising out of or related to this transaction, whether based in contract, tort or otherwise must be commenced not later than one (1) year from the date of Our invoice or purchase order or the date of completion of the delivery of goods or provision of services to you, whichever date is earlier.

11. SET OFF. We are authorized to apply any sums owed to You or any entity affiliated with You by Us to any payments of monies due to Us hereunder.

12. MISCELLANEOUS. Our agreement with You and these Terms & Conditions, represent the entire integrated final agreement between Us and You and supersede all prior negotiations, offers, representations or agreements, written or oral. In the event of any conflict or inconsistency between the terms of these Terms & Conditions and the terms set forth in any other document the terms of these Terms & Conditions and Our obligations set forth herein shall take precedence and control and shall be deemed to express Our sole obligations to You. Our agreement with You and these Terms & Conditions shall be interpreted in accordance with the laws of the State of Indiana. Any action arising out of Our agreement with You shall be maintained exclusively in the state or federal courts located in Fort Wayne, Indiana and You irrevocably and unconditionally consent and submit to the personal jurisdiction of such courts for the purposes of litigating any action arising out of Our agreement with You. Our agreement with You cannot be assigned by You without Our prior written consent. If any of these Terms & Conditions is deemed to be invalid or unenforceable, the remainder of these terms shall remain in effect, shall be valied and enforced to the fullest extent permitted by law. Our agreement with You, including these Terms & Conditions, shall only be amended by written agreement, executed by both Us and You. Should we be required to file suit to enforce any rights under these Terms & Conditions, or should We successfully defend any lawsuit initiated by You, regardless of the nature of that suit, then We shall be entitled to recover any and all litigations costs We incur including but not limited to expert fees, deposition fees, filing fees and **reasonable attorneys' fees.**