

# BUYER'S TERMS & CONDITIONS – ACTION LIFT, INC. PURCHASE ORDER

Form #ACTPO08-23-10

1. **DELIVERY/INSPECTION.** All Equipment called for in this Purchase Order shall be delivered at the time and place indicated above. Time is of the essence for the Equipment called for in this Purchase Order. In the event Seller fails to deliver the Equipment as specified, Action Lift, Inc. (hereinafter referred to as "Buyer") may, at its sole option, decline to accept the Equipment and terminate its Agreement to purchase the Equipment or approve a revised date for the Equipment's delivery. Buyer shall have a reasonable time after receipt of the Equipment to inspect it for conformity to this Purchase Order, and such Equipment shall not be deemed to have been accepted by Buyer until Buyer has had an adequate opportunity to test and inspect the Equipment. Use of or payment for the Equipment by the Buyer shall not constitute acceptance thereof, and Buyer reserves the right to reject any Equipment or revoke any previous acceptance of the Equipment if Seller fails to deliver all or any part of the Equipment in accordance with the terms and conditions of this Purchase Order.
2. **PAYMENT.** Seller shall invoice Buyer for all Equipment delivered in connection with this Purchase Order within thirty (30) days of delivery of the Equipment. Seller's invoice shall reference the Purchase Order number. Buyer shall pay Seller the amount agreed upon within the time set forth in this Purchase Order following the later of: (1) delivery and acceptance of the Equipment; or (2) the date of invoicing. Payment shall be deemed to have been made when Buyer's check is mailed.
3. **TITLE/RISK OF LOSS.** Notwithstanding any f.o.b. term to the contrary, title and all risk of loss to the Equipment shall remain in Seller until the Equipment is accepted for delivery by the Buyer at the time and location specified herein. Seller assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.
4. **WARRANTIES.** Seller warrants and represents that the Equipment shall: (1) be new and not used or refurbished unless indicated otherwise in this Purchase Order; (2) meet the specifications described in this Purchase Order and conform to any sample, model or drawing exchanged by the Parties that is consistent with this Purchase Order; (3) be free from defects in materials and workmanship; (4) be fit for the ordinary purpose for which the Equipment is intended; (5) have good and transferable title; (6) be free from any security interest or lien, charge, claim or encumbrance; and (7) conform to any and all express warranties, whether written or oral, made by Seller. If the Equipment shall fail to satisfy any of the aforesaid warranties, Seller shall, at Buyer's option, repair or replace the Equipment at Seller's expense, including all expenses relating to shipping or transportation of the Equipment for such repair or replacement, or accept return of the Equipment from Buyer and credit Buyer the full purchase price of the Equipment plus any expenses related to the Equipment's return.
5. **INDEMNIFICATION.** Seller hereby agrees to indemnify, hold harmless and defend Buyer, its officers, agents and employees from and against any and all liabilities, damages, losses, suits, claims, judgments, costs and expenses, including attorneys' fees, arising out of or in connection with the Equipment and its actual or alleged sale, use, operation, maintenance, manufacture, selection, delivery possession or modification, including but not limited to claims for personal injury to any person(s) including Buyer's employees, and property damage to the Equipment or other property, including but not limited to loss of use arising directly or indirectly out of or in connection with the use or operation of the Equipment, whether such loss is caused, in whole or in part, by the negligent acts of the Buyer, Seller or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable, and whether Buyer's liability shall be attributable to its status as a Buyer of such Equipment or otherwise. Buyer shall have the right to select or approve the legal counsel; Seller shall provide to defend any Party entitled to a defense from Seller under this paragraph.
6. **INSURANCE.** Seller agrees that it will, at its own expense, maintain all insurance required of it by law, and secure comprehensive general liability insurance, including contractual liability coverage, with liability limits of no less than One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate, which insurance shall include a standard form Vendor's Endorsement naming the Buyer, its agents, employees and assigns, as an additional insured for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the sale, operation maintenance, use, manufacture or selection of the Equipment that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting therefrom. The aforementioned insurance coverage shall be primary for the Seller and the Buyer and shall not be cancelled or modified at any time without at least thirty (30) days advance written notice to Buyer. Seller shall provide satisfactory evidence of the existence of such insurance in the form of a Certificate of Insurance from an insurer licensed to conduct business in the Commonwealth of Pennsylvania prior to the delivery of the Equipment.
7. **TERMINATION.** Buyer may terminate this Agreement upon written notice to Seller of the happening of any of the following events: (a) failure of Seller to deliver Equipment when due; (b) failure by Seller to honor any promise on Seller's part contained in this Purchase Order or to perform any of the obligations under this Purchase Order after Seller shall have been notified by Buyer of such failure and in Seller's opinion shall have failed to correct the same within thirty (30) days after receipt of such notice; (c) repetition by Seller of a failure which is the same or substantially the same as one previously corrected by Seller after Notice as provided in subparagraph (b) above; (d) the material inaccuracy of any information set forth in any application, claim, schedule, certificate or other document heretofore or hereafter furnished by Seller to Buyer; and (e) if Seller shall cease to function as a going concern, or makes an assignment for the benefit of creditors, or any proceeding under any federal or state bankruptcy, receivership or insolvency laws is instituted by or against Seller, or the liquidation, dissolution, merger or consolidation of Seller occurs, or a receiver or trustee for Seller or any of its assets or property is appointed or applied for.
8. **COMPLIANCE WITH LAWS/GOVERNMENT CONTRACT CONDITIONS.** Seller agrees to comply with all applicable state, federal and local laws and regulations governing the Equipment and its sale to Buyer. If Buyer's Purchase Order contains a U.S. Government contract number and orders products to be used in the performance of that contract, those clauses of applicable U.S. Government procurement laws and regulations required by federal statute to be included in U.S. Government subcontracts shall be incorporated herein by reference.
9. **ENTIRE AGREEMENT.** Upon Seller's acceptance hereof, this Purchase Order shall constitute the entire agreement between the Parties hereto with regard to the subject matter hereof. No course of prior dealings between the Parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms set forth herein. No representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement may only be modified in a writing signed by the Parties or their duly authorized agents.
10. **APPLICABLE LAW/FORUM.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, regardless of any conflicts of law provision requiring reference to the rules of, decision in and/or laws of another state or sovereign nation. The Parties agree that any action to enforce the terms of this Agreement, or any action arising from either Party's performance hereunder, must be initiated in the Court of Common Pleas of Luzerne County, Pennsylvania.
11. **NOTICES.** All Notices and other communications hereunder shall be in writing, and shall be addressed to Buyer or Seller and shall be considered given when: (a) delivered personally; (b) sent by confirmed telex or facsimile; (c) sent by commercial overnight courier with written verification receipt; or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.