

SERVICE TERMS AND CONDITIONS – ACTION LIFT, INC. SERVICE

Form #ACTSER08-23-10

- 1. WARRANTIES.** Action Lift, Inc. warrants that it shall perform all work in connection with this Agreement in a good and workmanlike manner. THE FOREMENTIONED WARRANTIES ARE EXPRESSLY MADE IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, DURABILITY AND FITNESS, ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF WORK BY ACTION LIFT, INC. CUSTOMER ACKNOWLEDGES THAT IT IS NOT RELYING ON THE SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE DESCRIBED ABOVE. CUSTOMER AGREES THERE HAVE BEEN NO REPRESENTATIONS UPON WHICH IT RELIED OTHER THAN THOSE SET FORTH ABOVE.
- 2. CUSTOMER'S REMEDIES/LIMITATION OF LIABILITY.** Customer's sole and exclusive remedy in the event the work provided to Customer does not conform to the description or Action Lift, Inc.'s warranty set forth above shall be, at Action Lift, Inc.'s option, to either use reasonable commercial efforts to reperform or cause to be reperformed any services not in substantial compliance with the warranty or to refund amounts paid by Customer related to the portion of the work not in substantial compliance. These remedies shall only be available if Customer has notified Action Lift Inc. of any alleged failure of Action Lift Inc.'s work to conform to this warranty within five (5) business days after delivery of the work to Customer. Under no circumstances shall Action Lift, Inc. be liable for any indirect, special, incidental, consequential or punitive damages arising from connected with or relating to this Agreement, whether or not such damages are foreseeable and whether or not Action Lift, Inc. has been advised of the possibility of such damages, including but not limited to damages for economic losses or property damage arising from, connected with or relating to Action Lift, Inc.'s acts or omissions, whether under contract, warranty, negligence, strict liability, enterprise liability or other theories, and including any claims, demands or actions against Customer by any third party.
- 3. PAYMENT.** Payment shall be due at the time the work is completed and prior to any serviced Equipment being returned to Customer unless stated otherwise in any quotation, proposal or work order prepared by Action Lift, Inc. Any delay in payment beyond such time, for any reason, shall accrue an additional charge of seven percent (7%) per month. Action Lift, Inc. reserves the right at any time to modify or withdraw credit terms without notice and to require guarantees, security or payment in advance of the amount of the credit involved. If Action Lift, Inc. at any time doubts Customer's financial responsibility, Action Lift, Inc. may decline to provide service to Customer except upon cash payment in advance or receipt of security or other proof of responsibility satisfactory to Action Lift, Inc.
- 4. TITLE.** Title to all Equipment shall remain with Customer, and Action Lift, Inc. shall retain a security interest in, and right to possess, any such Equipment until all work called for in this Agreement is paid in full.
- 5. INDEMNIFICATION.** Customer hereby agrees that Action Lift, Inc. shall not be liable for any defect or deficiency in any Equipment serviced under the Agreement. Customer shall, to the fullest extent permitted by law, indemnify, hold harmless and defend Action Lift, Inc., its officers, agents and employees from and against any and all liabilities, damages, losses, causes of action, suits, claims, judgments, costs and expenses, including attorneys' fees, arising out of or in connection with Action Lift, Inc.'s work under this Agreement, including but not limited to claims for personal injury to any person(s), including Customer's employees, and property damage to the serviced 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 Action Lift, Inc. Customer or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable, and whether Action Lift, Inc.'s liability shall be attributable to its status as a Seller, Lessor, Distributor or Servicer of such Equipment.
- 6. INSURANCE.** Customer hereby agrees to assume all risk of loss of and damage to any Equipment serviced under this Agreement after the Equipment is returned to Customer. By signing this Agreement Customer agrees that it will, at its own expense, maintain insurance on the Equipment against all physical loss or damage thereto in an amount equal to the full insurable value of the Equipment. Customer further agrees that it shall 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 insure the Customer, its agents, employees and assigns, for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the work performed under this Agreement that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting there from. Customer's liability insurance shall include coverage for Customer's indemnity obligations to Action Lift, Inc. as set forth in paragraph 5, above.
- 7. TERMINATION.** Either Party may terminate performance of a service for cause if the other Party fails to cure a material default within five (5) days of receiving written Notice of Termination. In the event of any termination of the services, Customer will pay Action Lift, Inc. for all work performed and expenses incurred up to and including the date of termination plus any applicable termination fee. Customer also agrees to pay Action Lift, Inc. out-of-pocket direct costs resulting from Customer's termination. Upon termination, all rights and obligations of the Parties under this Agreement will automatically terminate except for any right of action occurring prior to termination, payment obligations and obligations that expressly or by implication are intended to survive termination (including, but not limited to, limitation of liability and indemnity and this survival provision). All indebtedness of Customer to Action Lift, Inc. shall become immediately due and payable on the effective date of termination without demand, and Action Lift, Inc. may deduct from any sums it owes to Customer sums owed to Action Lift, Inc. Any Equipment being serviced by Action Lift, Inc. and in Action Lift, Inc.'s possession at the time of termination of the services under this Agreement will be released after Customer has paid Action Lift, Inc. all outstanding obligations as set forth in this paragraph.
- 8. CONTINGENCIES.** Action Lift, Inc. shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action; prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or control, whether or not such cause be similar or dissimilar to those enumerated, Action Lift, Inc. shall promptly notify Customer of the happening of any such contingency and of the contemplated affect thereof on the services.
- 9. TAXES.** All work is subject to present and future government laws, regulations and orders. Customer is responsible for all sales, use, value-added or other taxes, and all customs, duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the services provided by Action Lift, Inc. Customer shall pay any penalties, interest and collection or withholding costs associated with taxes on the service.
- 10. ENTIRE AGREEMENT.** These Terms and Conditions, along with any Proposal, Quotation, Work Order or other document generated by Action Lift, Inc. in connection with the service, shall constitute the entire Agreement between the Parties hereto with regard to the subject matter hereof, and supersedes any and all prior oral or written negotiations, communications and agreements by or on behalf of the Parties. This Agreement may not be varied by any Purchase Order, Acknowledgement, Confirmation, Invoice or shipping document issued by either Party. 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 duty authorized agents.
- 11. TIME FOR BRINGING ACTION.** Any action for the breach of this Agreement must be commenced within one (1) year after such cause of action has accrued.
- 12. 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.
- 13. GENERAL.** (A) Any Notice required or permitted to be given under this Agreement shall be in writing and shall be mailed registered or certified, return receipt requested, to the Party for whom intended at its address as first set forth in this Agreement or at such other address as such Party shall designate for the purpose by written Notice to the other Party, and shall be deemed to have effectively given to the recipient Party on the date of actual receipt. (B) Except as otherwise expressly provided in this Agreement, no failure on the part of either Party to exercise, and no delay in exercising, any right, privilege or power under this Agreement shall operate as a waiver or relinquishment thereof; nor shall any single or partial exercise by either Party of any right, privilege or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, privilege or power, waiver by any Party of any breach of any provision of this Agreement shall not constitute or be construed as a continuing waiver, or as a waiver of any other breach of any provision of this Agreement. (C) The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.