

MACALLISTER TRANSPORTATION TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These terms and conditions of sale (“**Terms**”) are the only terms that govern the sale of the products (“**Products**”) described in the accompanying bid, quotation, sales confirmation, or proposal (“**Sales Confirmation**”) by MacAllister Machinery Co Inc. (“**MacAllister**”) to the person or entity identified on such Sales Confirmation (“**Customer**”).

(b) The Sales Confirmation and these Terms, including any amendment (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. MacAllister and Customer agree that MacAllister will provide the Products to Customer subject only to these Terms.

(c) These Terms prevail over any of the Customer’s terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Any reference in Customer’s purchase order, quote, or other document to any other terms or conditions to control this transaction is void and rejected. Any use of or reference to Customer’s purchase order number on the Agreement or otherwise is for Customer’s convenience only. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The Products will be delivered within a reasonable time after the receipt of Customer’s purchase order, subject to availability of finished Products. MacAllister will not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, MacAllister will deliver the Products to the location specified on the Sales Confirmation (“**Delivery Point**”) using MacAllister’s standard methods for packaging and shipping such Products.

(c) MacAllister may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer’s purchase order.

(d) If for any reason Customer fails to accept delivery of any of the Products on the date fixed pursuant to MacAllister’s notice that the Products have been delivered at the Delivery Point, or if MacAllister is unable to deliver the Products at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses, or authorizations: (i) risk of loss shall pass to Customer; (ii) the Products shall be deemed to have been delivered; and (iii) MacAllister, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Shipping Terms. MacAllister shall make delivery in accordance with the terms on the face of the Sales Confirmation.

4. Title and Risk of Loss. Title passes to Customer upon MacAllister’s receipt of all sums due under the Agreement. Risk of loss passes to Customer upon delivery of the Products at the Delivery Point

5. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

6. Inspection.

(a) Customer will inspect the Products within thirty (30) days of delivery to the Delivery Point (“**Inspection Period**”). Customer will be deemed to have accepted the Products unless it notifies MacAllister in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by MacAllister. “**Nonconforming Products**” means only the following: (i) the product shipped is different than as identified in the Sales Confirmation; or (ii) the product’s label or packaging incorrectly identifies its contents.

(b) If Customer timely notifies MacAllister of any Nonconforming Products, MacAllister will, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. If MacAllister exercises its option to replace Nonconforming Products, MacAllister will, after receiving Customer’s shipment of Nonconforming Products, ship to Customer, at Customer’s expense and risk of loss, the replaced Products to the Delivery Point.

(c) Customer acknowledges and agrees that the remedies set forth in Section 6(b) are Customer’s exclusive remedies for the delivery of Nonconforming Products. Except as provided under Section 6(b), all sales of Products to Customer are made on a one-way basis, and Customer has no right to return Products purchased under this Agreement to MacAllister.

7. Price.

(a) Customer agrees to purchase the Products from MacAllister at the price (“**Price**”) set forth in the Sales Confirmation, subject to Section 7(b).

(b) Both parties acknowledge and agree that market circumstances, such as those in supply chains and transportation logistics, have resulted in high levels of unpredictability in the price of materials and product lead-times. Prices for Products in a Sales Confirmation are current and approved for 15 days from the original date of the Sales Confirmation. After that 15-day period, even if the quoted price has been accepted by Customer, MacAllister may, in its sole discretion, adjust the quoted price on written notice to Customer. Such adjusted price will apply to all accepted, pending, unfilled, and future purchase orders. Within 15 days of receipt of such notice, Customer may terminate the purchase order if it does not agree with the price increase, provided however that Customer must pay any termination fees and actual costs incurred by MacAllister, if any, related to such termination. If the Price should be increased by MacAllister before delivery of the Products to Customer, then these Terms will be construed as if the increased prices were originally inserted herein, and MacAllister will invoice Customer based on such increased prices.

(c) All Prices are subject to and exclusive of all sales, use and excise taxes, tariffs, and any other similar taxes, duties, or charges of any kind imposed by any governmental authority on any amounts payable related to the Products. Customer is responsible for all such charges, costs, and taxes; provided, that, Customer is not responsible for any taxes imposed on, or with respect to, MacAllister’s income, revenues, gross receipts, personnel or real or personal property or other assets, or if Customer provides MacAllister with proof of tax exemption.

8. Payment Terms.

(a) Customer will pay all invoiced amounts due to MacAllister in US dollars within thirty (30) days from the date of MacAllister's invoice.

(b) Customer will pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer will reimburse MacAllister for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which MacAllister does not waive by the exercise of any rights hereunder), MacAllister will be entitled to suspend the delivery of any Products if Customer fails to pay any amounts when due.

(c) Customer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with MacAllister, whether relating to MacAllister's breach, bankruptcy, or otherwise.

9. Manufacturer's Warranty.

(a) Customer acknowledges and agrees that MacAllister did not design or manufacture the Products and is not the agent of those that did. Rather, the Products may be subject to the original equipment manufacturer's warranty, for which MacAllister may provide service and other assistance. But the Products are not covered by any warranty of MacAllister.

(b) MACALLISTER MAKES NO WARRANTY WHATSOEVER, AND SPECIFICALLY DISCLAIMS ANY WARRANTY, WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY OR TITLE; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY THAT THE PRODUCTS ARE FREE FROM DEFECTS OR CONTAMINANTS; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

10. Limitation of Liability.

(a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL MACALLISTER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, OR DATA; DIMINUTION IN VALUE; OR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MACALLISTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT WILL MACALLISTER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES, LOSSES, OR CONSEQUENTIAL PENALTIES CAUSED BY OR RELATED TO THE OPERATION, POSSESSION, OR USE OF THE PRODUCTS, THE FAILURE OF THE PRODUCTS, OR ANY SUPPLIER ISSUES, INCLUDING SUPPLY CHAIN DISTURBANCES, PRICE CHANGES, OR PRODUCT DELAYS.

(c) IN NO EVENT WILL MACALLISTER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO MACALLISTER FOR THE PRODUCTS SOLD HEREUNDER.

(d) The limitation of liability set forth above shall not apply (i) to liability resulting from MacAllister's gross negligence or willful misconduct and (ii) where prohibited by applicable law.

11. Errors. MacAllister will not be responsible for errors made by the Customer, such as bid specification errors, errors made in the selection of options in a co-operative bid, or incorrectly identifying dealer install items. Typographic, stenographic, and mathematical errors are subject to correction.

12. Cancellation. Cancellation of a Sales Confirmation after receipt of a written or verbal purchase order is subject to any cancellation charges incurred by MacAllister. Any Product that cannot be cancelled will be assessed additional charges determined by MacAllister at the time of cancellation.

13. Trade-In.

(a) If the sales transaction involves a trade-in product ("**Trade-In**"), MacAllister offers a trade allowance on a "one-for-one" basis. Customer must have the Trade-In inspected by the relevant government authority, such as the Indiana State Police, and agrees that it will pass inspection at the time of trade, unless otherwise agreed upon by the parties. Changing tires or otherwise devaluing the Trade-In prior to consummation of the transaction is cause for rejecting a Trade-In.

(b) Customer will disclose the mechanical and operational condition of each Trade-In at the time trade values are requested. If mechanical or operational issues are not disclosed and the Trade-In incurs issues requiring repair that exceeds 25% of the trade value provided within the first 10 days of receipt, the price of the original Trade-In bus will be renegotiated, or the Customer can provide a replacement Trade-In of equivalent value agreed upon by both parties.

(c) Customer will make the Trade-In available for pick up upon delivery of the Product. If the Trade-In is not available or is deemed by MacAllister in its sole discretion to be in a condition that would not pass inspection, is unsafe to drive, or otherwise non-conforming, it will be Customer's responsibility to deliver the Trade-In to MacAllister at the location it specifies in the proper condition.

14. Compliance with Law. Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

15. Termination. In addition to any remedies that may be provided under these Terms, MacAllister may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Waiver. No waiver by MacAllister of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by MacAllister. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Confidential Information. All non-public, confidential or proprietary information of MacAllister, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by MacAllister to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized in advance by MacAllister in writing. Upon MacAllister’s request, Customer will promptly return all documents and other materials received from MacAllister. MacAllister will be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

18. Force Majeure. No party will be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to MacAllister hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“**Impacted Party**”) reasonable control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) pandemics, epidemics, or other viral outbreaks; (e) government order or law; (f) actions, embargoes or blockades in effect on or after the date of this agreement; (g) action by any governmental authority; (h) national, regional, state, or local emergency; (i) strikes, labor stoppages or slowdowns, or other industrial, supplier, or supply chain disturbances; and (j) other events beyond its control. The Impacted Party will give reasonable notice after the Force Majeure Event to the other party, stating the period the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party’s failure or delay remains uncured for a period of ninety (90) days following notice, either party may thereafter terminate this Agreement upon thirty (30) days’ written notice.

19. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of MacAllister. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Indiana.

22. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Indiana in each case located in the City of Indianapolis and County of Marion, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

23. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing.

All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), electronic mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.