

# Liftup North America Inc. - General Conditions

General conditions for supply (document version 28956386 v5).

## **PREAMBLE**

1. These General Conditions shall apply for all supply from Liftup North America, Inc. Modifications of or deviations from them must be agreed in writing.

The objects to be supplied under these conditions are hereinafter referred to as the Products.

As noted herein, some of the General Conditions apply only to distributors of the product.

## **PRODUCT INFORMATION**

2. All information and data contained in product brochures and pricelists are binding only to the extent that they are by reference expressly included in the Agreement.

## **DRAWINGS AND DESCRIPTIONS (FOR DISTRIBUTORS ONLY)**

3. All drawings and technical documentation relating to the Product or its manufacture submitted by one party to the other shall remain the exclusive property of the submitting party and the submitting party shall own all intellectual property rights and other rights in such drawings and technical documentation. Drawings, technical documentation, or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than the erection, commissioning, operation, or maintenance of the Product. They may not, without the consent of the submitting party, otherwise be used copied, reproduced, or communicated to a third party. The receiving party shall observe full confidentiality regarding all drawings, technical documentation, and other information of a confidential nature that the receiving party has obtained from the submitting party. The duty to keep confidential information strictly confidential also applies after the expiration of these contractors for any reason. These duties shall not apply to the confidential information that: (i) is publicly available, (ii) is obtained from a third party in good faith, (iii) is independently developed without use of the confidential information, or (iv) is disclosed to comply with applicable law that the submitting party is requested by law to disclose any confidential information will give immediate notice of any such request and will disclose only that portion that is legally required to be disclosed.

## **ACCEPTANCE TESTS (FOR DISTRIBUTORS ONLY)**

4. Acceptance tests provided for in the Agreement shall be carried out at the place of manufacture during normal working hours.

5. The Supplier shall notify the Purchaser of the acceptance tests in sufficient time to permit the distributor to be represented at the tests. If the distributor is not represented, the test report shall be sent to the distributor and shall be accepted as accurate.

6. If the acceptance tests show the Product not to be in accordance with the Agreement, the Supplier shall remedy any deficiencies without delay. New tests shall then be carried out at the distributor's request unless the deficiency is insignificant.

7. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall bear all costs for his representative in connection with such tests.

### **DELIVERY, PASSING OF RISK**

8. Any agreed trade term shall be in accordance with the INCOTERMS in force at the formation of the Agreement. If no trade term is specifically agreed the delivery shall be Ex Works (EXW). If, in case of delivery EXW, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial shipment shall be permitted unless otherwise agreed.

### **TIME FOR DELIVERY, DELAY**

9. If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the Agreement is entered into, all official formalities have been completed, payments due at the formation of the Agreement have been made, any agreed securities have been given and any other preconditions have been fulfilled.

10. If the Supplier anticipates that he will not be able to deliver the Product at the time of delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason and, if possible, the time when delivery can be expected.

11. If delay in delivery is caused by any of the circumstances mentioned in Clause 32 or by an act or omission on the part of the Purchaser, including suspension under Clause 17 or 34, the time for delivery shall be extended by a period which is reasonable having regard to the circumstances in the case. This provision applies regardless of whether the reason for delay occurs before or after the agreed time for delivery.

12. If the Product is not delivered at the time of delivery, the Purchaser is not entitled to liquidated damages unless otherwise agreed in writing.

If the Product is not delivered at the time of delivery, the Purchaser may in writing demand delivery within a final reasonable period of time, which shall not be less than two weeks.

If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may terminate the Agreement by notice in writing to the Supplier.

13. In case of delay on the part of the Supplier, termination of the Agreement under Clause 12 is the only remedy available to the Purchaser. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of gross negligence.

In these General Conditions for Supply gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would

normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

14. If the Purchaser anticipates that he will be unable to accept delivery at the delivery time, he shall forthwith notify the Supplier, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price that becomes due on delivery as if delivery had taken place. The Supplier shall arrange for storage of the product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product on the Purchaser's expense.

15. Unless the Purchaser's failure to accept delivery of the Product is due to any circumstances as mentioned in Clause 35, the Supplier may, by notice in writing, require the Purchaser to accept delivery within a final reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may, by notice in writing, terminate the Agreement in whole or in part. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price, which is attributable to that part of the Product in respect of which the Agreement is terminated.

## **PAYMENT**

16. Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Agreement and the final payment at the Supplier's notification of readiness to ship the Product.

17. Whatever means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

18. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest on the amount owed from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the main refinancing facility of the Central European Bank in force on the due date of payment.

In case of late payment the Supplier may, after having notified the Purchaser in writing, suspend his performance of the Agreement until he receives payment. If the Purchaser has not paid the amount within three months the Supplier shall be entitled to terminate the Agreement by notice in writing to the Purchaser and in the case of distributors, to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

19. The Product shall remain the property of the Supplier until paid for in full so that such retention of property is valid under the applicable law. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned. The retention of title shall not affect the passing of risk under Clause 8.

## **LIABILITY FOR DEFECTS**

20. Pursuant to the provisions of Clauses 20-34 inclusive, the Supplier shall remedy any defect resulting from faulty design, materials or workmanship.

21. The Supplier's liability is limited to defects which appear within two years from delivery. If delivery is delayed for no reason of the Supplier the liability is limited to two years from the contractual delivery.

22. When a defect in a part has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original product for a period of two years.

23. The Purchaser shall, without undue delay, notify the Supplier of any defects which appear. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 21.

Where the defect is such that it may cause damage, the notice shall be given immediately.

If the Purchaser does not notify the Supplier of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.

24. On receipt of the notice in writing under Clause 23, the Supplier shall, free of charge, deliver all necessary spare parts that will allow the Purchaser to remedy the defect. The Purchaser shall bear all other costs in connection with the repair.

Unless otherwise agreed, the necessary transport of parts for the Product in connection with remedying defects for which the Supplier is liable shall be at the Supplier's risk and expense.

25. If the Purchaser has given such notice as mentioned in Clause 21 and no defect is found for which the Supplier is liable, the Supplier is entitled to compensation for the costs he has incurred as a result of the notice.

26. The Purchaser shall arrange, at his own expense, for the dismantling and reassembly of equipment other than the Product to the extent that this is necessary to remedy the defect.

27. Unless otherwise agreed, the Purchaser shall bear any additional costs that the Supplier incurs for repair, dismantling, installation, and transport as a result of the Product not being located in a place other than the place of delivery.

28. The defective parts that have been replaced shall be made available to the Supplier and shall be his property.

29. Where the defect has not been successfully remedied,

a) The Purchaser is entitled to a reduction in the purchase price in proportion to the reduced value of the Product, provided that such reduction shall not exceed 15% of the purchase price.

b) Where the defect is as substantial as to significantly deprive the Purchaser of the benefit of the Agreement, the Purchaser may terminate the Agreement by written notice to the Supplier. The

Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15% of the purchase price.

30. The Supplier is not liable for defects arising from materials provided by or a design stipulated by the Purchaser.

31. The Supplier is only liable for defects, which appear under the conditions of operation provided for in the Agreement and under proper use of the Product. The Supplier's liability does not cover defects caused by faulty maintenance, incorrect erection, or faulty repair by the Purchaser or by alterations carried out without the Supplier's written consent. Finally, the Supplier's liability does not cover normal wear and tear or deterioration.

32. Save as stipulated herein the Supplier shall not be liable for any defects. This applies to any loss the defect may cause, including loss of production, loss of profit, and other indirect loss.

#### **DIVISION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

33. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and while it is in the Purchaser's possession. Nor shall the Supplier be liable for any damages to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

34. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend, and hold the Supplier harmless.

If a third party lodges claims for damage as described in this Clause against one of the parties, the latter party shall forthwith inform the other party thereof in writing. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages against one of them on the basis of damage allegedly caused by the Product.

#### **FORCE MAJEURE**

35. Either party shall be entitled to suspend the performance of his obligations under the Agreement to the extent that such performance is impeded or made unreasonably onerous by any circumstance normally referred to as Force Majeure.

A circumstance referred to in this Clause that occurred prior to the formation of the Agreement shall give the right to suspension only if its effect on the performance of the Agreement could not be foreseen at the time of formation of the Agreement.

36. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstances.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

37. Regardless of what might otherwise follow from these General Conditions either party shall be entitled to terminate the Agreement by notice in writing to the other party if performance of the Agreement is suspended under clause 32 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

38. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Agreement, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the Agreement shall forthwith notify the other party thereof in writing.

#### **CONSEQUENTIAL DAMAGES**

39. As elsewhere stated in these conditions, neither party shall be liable for loss of production, loss of profit, loss of use, loss of Agreements, or for any consequential, economic, or indirect loss whatsoever.

#### **DISPUTES AND APPLICABLE LAW**

40. All disputes arising in connection with the Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said rules, supplemented as necessary by the procedural rules of the law of the country of the Supplier's place of business.

41. The Agreement shall be governed by the substantive law of the country of the Supplier's place of business.