



## TERMS AND CONDITIONS OF SALE

All orders placed with Elevator Motors Corporation and/or Elevator Materials Corporation (collectively, "EMCO") and the purchaser of the Equipment (defined below) ("Purchaser"), whether written, verbal or electronic, are subject to the following Terms and Conditions of Sale (the "Terms of Sale"), which may be changed or supplemented by EMCO, in its sole and absolute discretion, at any time.

**PURCHASE OF EQUIPMENT.** EMCO agrees to sell to Purchaser, and Purchaser agrees to purchase from EMCO, the equipment (the "Equipment") identified in the Order Acknowledgment (the "Acknowledgment") provided by EMCO to Purchaser; *provided, however*, to the extent the invoice provided by EMCO to Purchaser (the "Invoice") differs from or conflicts with the Acknowledgment, the description of the Equipment in the Invoice shall prevail. All sales of Equipment are final subject to the Terms of Sale and the warranties contained herein. The Acknowledgment, Invoice and Terms of Sale shall sometimes be collectively referred to herein as the "Agreement".

**PAYMENT.** Purchaser shall pay the purchase price identified in the Invoice (the "Purchase Price") in such amounts and at such times as specified in the Invoice (each, a "Payment"). In the event Purchaser fails to timely make any Payment, EMCO shall, at its option, charge interest on all past due amounts at the maximum interest rate permitted by law per month and shall have the right to exercise its remedies under these Terms of Sale and applicable law. ALL SALES ARE FINAL, SUBJECT TO EXISTING WARRANTIES.

**TAXES AND FEES.** Purchaser will be responsible for all import permits and licenses, and payment of all import duties, tariffs and customs fees. Prices do not include sales, use, excise, or similar taxes. All applicable taxes, assessment and charges will be paid by Purchaser, or in lieu thereof, Purchaser will provide EMCO with a tax exemption certificate acceptable to taxing authorities. All charges resulting from failed attempts at delivery must be paid by Purchaser.

**DELIVERY AND ACCEPTANCE OF EQUIPMENT.** Unless otherwise confirmed in writing (by facsimile, email or otherwise), the Equipment shall be deemed unqualifiedly accepted by Purchaser on the 5<sup>th</sup> day after delivery of the Equipment unless Purchaser notifies EMCO in writing within such 5 day period that it does not accept the Equipment.

**INSTALLATION WARNING.** The installation of the Equipment and other EMCO supplied parts or components in elevator and escalator equipment should be performed only by a trained elevator mechanic who is familiar with the operation and control of the system. Improper installation may endanger the installer, the public and the Equipment. Purchaser hereby assumes all risk and liability associated with the foregoing.

**ACCEPTANCE OF THE TERMS OF SALE.** The Terms of Sale shall be deemed unqualifiedly accepted by Purchaser on the date accepted (by facsimile, email or otherwise) by Purchaser (the "Acceptance Confirmation"). If EMCO has not received an Acceptance Confirmation, Purchaser shall be deemed to have unqualifiedly accepted and agreed to the Terms of Sale on the 5<sup>th</sup> day after delivery of the earliest of the Acknowledgment, the Invoice or the Equipment, unless Purchaser notifies EMCO in writing within such 5 day period that it does not accept the Terms of Sale.

**CREDIT.** EMCO may, in its sole and absolute discretion, require Purchaser to demonstrate its creditworthiness by any reasonable means requested by EMCO. If EMCO is not satisfied with Purchaser's creditworthiness, EMCO may cancel Purchaser's order, require advance payment for Equipment, or ship the Equipment COD.

**INSTALLMENTS/SHIPPING.** Shipment will be made in accordance with the written delivery schedule agreed upon by EMCO and Purchaser or within a reasonable time after EMCO accepts Purchaser's order. In the event that one or more pieces of Equipment are not in stock, EMCO shall have the right to deliver the Equipment to Purchaser in installments. All installments shall be invoiced separately and paid as billed without regard to subsequent deliveries.

All scheduled shipment dates are approximate, and in no event will EMCO be liable for failing to make shipment by a specified date.

**DELIVERY/RISK OF LOSS.** Unless otherwise specified in writing, all shipments are F.O.B. shipping point, with transportation charges paid by Purchaser. Risk of loss, theft, damage, destruction or requisition of the Equipment from any cause whatsoever (collectively, "Casualty") will pass to Purchaser upon delivery of the Equipment to the carrier, and Purchaser agrees that no such Casualty shall relieve Purchaser from its obligations under this Agreement. EMCO shall not be obligated to procure Casualty insurance on the Equipment unless otherwise specified in writing.

**LOCATION/MAINTENANCE.** Until the Purchase Price shall have been paid in full, Purchaser shall (i) ensure that the Equipment remains located in the United States, (ii) operate the Equipment in accordance with any and all applicable manufacturer's manuals and laws; (iii) at Purchaser's sole cost and expense, keep the Equipment in good repair, condition and working order; and (iv) not modify or alter the Equipment without EMCO's prior written consent.

**DAMAGE AND LOSS.** All Equipment is packed and marked for shipment in accordance with good commercial practice. Purchaser shall inspect all Equipment promptly upon receipt at the delivery destination as identified in the Invoice (the "Destination") for visible and concealed damage, and shall file any claims for loss or damage directly with the carrier immediately. EMCO will reasonably cooperate with Purchaser and carrier in connection with any investigations of such claims, but in no event shall EMCO have any liability with respect to any such claims.

**SHORTAGE.** Purchaser must notify EMCO in writing, by email or by facsimile (which notice shall include a copy of the packing list) of any shortage in quantity of Equipment delivered within 5 days after receipt of the Equipment at the Destination. If Purchaser fails to notify EMCO in accordance with the foregoing sentence, Purchaser will be deemed to have unqualifiedly accepted the Equipment and the delivery shall be deemed to have fully complied with the Invoice.

**RETURNS.** No Equipment shall be returned by Purchaser without first obtaining a Return Goods Authorization ("RGA") number from EMCO. Returned Equipment must include the RGA number, must be properly packed by Purchaser, and must be shipped prepaid and insured. Returned Equipment must be in original packaging and is subject to a 25% or greater restocking charge (which restocking charge shall exclude any additional costs or fees for repackaging, restocking and similar fees).

**WARRANTY.** ALL EQUIPMENT IS WARRANTED TO BE FREE FROM MATERIAL DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF 12 MONTHS AFTER RECEIPT OF SHIPMENT, IF USED FOR THE PURPOSE FOR WHICH SUCH EQUIPMENT WAS MANUFACTURED AND SOLD. EXCEPT FOR THE FOREGOING, EMCO DOES NOT MAKE ANY REPRESENTATIONS OR GRANT ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

**EVENTS OF DEFAULT.** Until the Purchase Price shall have been paid in full, each of the following events shall constitute an event of default hereunder (each, an "Event of Default"): (i) Purchaser fails to timely make any Payment within 10 days of when it becomes due and payable; (ii) Purchaser fails to perform, comply with or observe any other covenant, term, condition or undertaking contained herein; (iii) any statement, representation or warranty made by Purchaser hereunder proves to be false or misleading; (iv) a petition or proceeding is filed by or against Purchaser under any federal or state bankruptcy or insolvency law; (v) Purchaser makes a general assignment of its assets for the benefit of creditors, or a receiver or trustee is appointed for Purchaser or any of Purchaser's assets; (vi) Purchaser ceases its active



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business operations; (vii) Purchaser is a party to a merger or consolidation, or transfers all or substantially all of its assets or equity to a third party; (viii) Purchaser fails to take possession of the Equipment; and/or (ix) a breach or default by Purchaser of any covenant or other term or condition contained in any other agreement or instrument by and between Purchaser, on the one hand, and EMCO, on the other hand.

**REMEDIES UPON AN EVENT OF DEFAULT.** Upon the occurrence of an Event of Default, EMCO may, in its sole and absolute discretion: (i) declare the unpaid portion of the Purchase Price, *plus* any other sums due EMCO under this Agreement, immediately due and payable; (ii) cancel or terminate any agreement that Purchaser has entered into with EMCO; (iii) require Purchaser to pay all of EMCO's costs and expenses associated with enforcing EMCO's rights hereunder, including but not limited to attorneys' fees incurred; and/or (iv) exercise any other remedy available to EMCO at law or in equity, including all rights and remedies under applicable laws. All rights, options and remedies of EMCO hereunder shall be cumulative and may be exercised singularly or concurrently and in addition to any other remedy available to EMCO at law or in equity. The exercise or enforcement of any one such right, option or remedy by EMCO shall not be a bar or condition to the exercise or enforcement of any other rights and remedies of EMCO.

**LIMITATION OF LIABILITY.** EMCO'S LIABILITY TO PURCHASER WITH RESPECT TO ANY LOSSES ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE. EMCO SHALL NOT BE LIABLE TO PURCHASER FOR ANTICIPATED PROFITS, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER, AND/OR FOR PENALTIES OF ANY DESCRIPTION. IN ADDITION, EMCO SHALL NOT BE LIABLE FOR ANY INJURY, LOSS, DAMAGE, OR OTHER COSTS, DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE USE OF THE EQUIPMENT, OR THE INABILITY OF PURCHASER TO USE THE EQUIPMENT. PURCHASER SHALL DETERMINE THE SUITABILITY OF THE EQUIPMENT FOR ITS INTENDED USE AND PURCHASER ASSUMES ALL RISKS AND LIABILITIES IN CONNECTION THEREWITH.

**PURCHASER'S INDEMNITY.** Purchaser shall indemnify and hold EMCO harmless from and against any claim, loss, cost, expense, damage or liability and from all court costs, attorneys' fees and other expenses paid or incurred by, or imposed upon EMCO resulting in connection with any claim arising from or related to the Equipment and/or its purchase; Purchaser's breach of any covenant or obligation under this Agreement. At EMCO's request, Purchaser will undertake, at its own cost and expense, to defend EMCO in any action the cause for which Purchaser is obligated to indemnify EMCO.

**FURTHER ASSURANCES.** EMCO and Purchaser will execute and deliver to each other such other documents and do such other acts and things as any party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

**NOTICE.** Any notice required or given hereunder shall be in writing and delivered to the address of the recipient as set forth on the Invoice using either of the following methods: (a) by certified or regular U.S. Mail, postage prepaid (which shall be effective 3 business days after mailing) and by email to [invoice@elevatormotors.com](mailto:invoice@elevatormotors.com); or (b) a nationally recognized overnight courier, with all fees prepaid (which shall be effective 1 business day after sending) and by email to [invoice@elevatormotors.com](mailto:invoice@elevatormotors.com).

**ATTORNEYS' FEES AND EXPENSES.** Purchaser shall pay, or will upon demand, reimburse, EMCO for all attorneys' fees and other expenses incurred by EMCO in connection with of any Event of Default, the exercise of EMCO's remedies hereunder and/or the preservation or protection of EMCO's rights hereunder, whether or not an action or proceeding has been commenced and/or an Event of Default exists.

**FORCE MAJEURE.** In no event will EMCO be responsible or liable for any loss, damage, or delay arising out of or caused by, directly or indirectly, acts

of God, acts of the government, labor troubles or disputes, fire, flood, accidents, pandemics, epidemics, quarantine, restrictions, embargoes, or other transportation delays; damage to or destruction in whole or in part of equipment or manufacturing plant; lack of or inability to obtain raw materials, labor, fuel, or supplies; or any failure on part of Purchaser or its representatives to approve or comment on drawings or other technical documents within the period of time specified by EMCO; and/or any other causes, contingencies, or circumstances beyond EMCO's control. Any such causes of delay, even though existing on the date of the contract or on the date of the start of manufacture, shall extend the time of EMCO's performance by the length of delays occasioned thereby, including delays reasonably incident to the assumption of normal production.

**REVERSAL OF PAYMENTS.** To the extent Purchaser makes any Payment to EMCO or EMCO receives any sale proceeds, and such Payment or sale proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or are repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such Payment had not been made or such proceeds had not been received.

**REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser hereby represents and warrants to EMCO as follows: (i) Purchaser has all necessary corporate authority to purchase the Equipment and consent to the terms of this Agreement; (ii) the performance of Purchaser under this Agreement will not result in any breach of, or constitute a default under, or violation of, Purchaser's organizational documents or any agreement to which Purchaser is a party or by which it is bound; (iii) Purchaser is solvent and has the ability to pay its debts when due; and (iv) any financial information provided by Purchaser to EMCO is current, true and accurate.

**GOVERNING LAW/VENUE.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the internal laws of the State of New York, without giving effect to any conflict of law principles. EMCO shall have the option to choose the venue and forum of any litigation, action or proceeding arising directly or indirectly from this Agreement, and Purchaser consents that any such litigation, action or proceeding may be heard in the State Courts of the State of New York, County of Nassau or in the U.S. District Court located in the Eastern District of New York. Notwithstanding the foregoing, if Purchaser commences any litigation, action or proceeding against EMCO, Purchaser may only do so in the State Courts of the State of New York, County of Nassau or the U.S. District Court for the Eastern District of New York. Purchaser hereby waives any defense of *forum non conveniens*.

**ENTIRE AGREEMENT/ WAIVER/ SEVERABILITY/ SURVIVAL.** This Agreement constitutes the entire agreement between EMCO and Purchaser with respect to the purchase of Equipment, and supersedes any and all prior oral and written agreements, understandings and quotations relating hereto. Any terms in Purchaser's terms of sale or similar documents that add to, vary from or conflict with this Agreement are expressly rejected. No waiver, amendment, modification or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties. If any provision hereof is determined to be invalid or unenforceable, such provision will be enforced only to the extent that it is not in violation of the law or is not otherwise unenforceable, and all other provisions of this Agreement will in full force and effect. In the event of a conflict among the Terms of Sale, the Acknowledgment, the Invoice or any purchase order or similar instrument, the Terms of Sale shall prevail. All representations, warranties, covenants, and indemnities made by Purchaser under this Agreement shall survive the delivery of this Agreement and the Equipment, regardless of any investigation at any time or of any information which EMCO may obtain or have in respect thereof and regardless of any non-exercise by EMCO of any rights hereunder