

# Reliable Automotive Equipment, Inc.

## Terms & Conditions

### 1. Offering and Governing Provisions

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Reliable Automotive Equipment, Inc., ("Seller") offer for sale and for resale to the buyer (the "Buyer"), identified in the attached price quotation (the "Quote") equipment and services on the terms and conditions set forth herein. Seller offers to sell equipment identified in the Quote (the "Equipment") and services identified In the Quote (the "Services") subject to the following terms and conditions. Seller has separately contracted with certain manufacturers (each a "Manufacturer") to provide equipment to Seller for inclusion in the Seller's catalog (the "Catalog"). Seller's offer for sale is expressly conditioned upon Buyer's assent to these terms and conditions, and Buyer's placement of any order for Equipment and/or Services shall constitute Buyer's unconditional acceptance of these terms and conditions Buyer agrees to abide by these terms and conditions and not substitute additional or different terms. Seller hereby rejects any different or conflicting terms or conditions set forth on any purchase order, acknowledgement, or other document furnished by the Buyer and no such additional different terms will be of any force or effect. Any failure by Seller to object to any other terms and conditions shall not be construed as an acceptance of such terms and conditions or a waiver of these terms and conditions.

### 2. Product Changes

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From time to time product enhancements, and/or additional products or superseded items may be available. While these items may not be specifically called out in the current Catalog, please see Seller's Sales Manager for details.

### 3. Prices

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Prices of Equipment and Services shall be the prices cited in the Quote and are valid provided that a purchase order and/or contract for work quoted is received within 30 days of the date of the Quote. The Quote may contain discounts based on unit volume. If unit volume commitments identified in the Quote are not met, Seller reserves the right to renegotiate prices or revert to published prices in Seller's then current Catalog. Trade show and promotional pricing are only applicable for the time period stated or for 90 days from the date of the formal quote. Seller reserves the right to modify pricing from

time to time. Seller further reserves the right to charge Buyer for any unanticipated expense. These may include, but are not limited to: encountering rock, water, or other unknown obstacles during excavation, unanticipated compliance requirements such as independent UL certifications, uncommunicated facility changes in structure, power or utilities, or anything outside of the originally agreed scope of work. Upon Seller's knowledge of any unanticipated expense, Seller shall notify Buyer of the circumstances surrounding the unanticipated expense and provide a new purchase order and/or Quote for the unanticipated expense.

## 4. Payment

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Buyer shall select one of the two methods of payment outlined below, subject to the approval of Seller. Once the method of payment is selected and approved, Seller will process orders and invoices via the chosen payment method. Buyers may change their method of payment, subject to Seller's approval and upon written notice to Seller. Any change in method of payment may be subject to a change fee to cover administrative and financial costs. The payment terms on any amount are pre-paid unless payment terms are established by Seller's Sales Manager. Payment terms of Net thirty (30) days can be established but subject to change at discretion of the Seller. Seller reserves the right to charge interest of up to 2% per month (but not more than the highest rate permitted by law) on all overdue accounts. Seller reserves the right to charge a processing fee for all credit card orders up to a maximum of 4%. This fee will be applied to the invoice.

### 4.1 Direct Billing

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Buyer must complete a Credit Summary form and provide any financial documents required by Reliable Automotive Equipment, Inc. If the application is approved, Buyer shall pay an advance a deposit of 30% of the total order if the order exceeds \$10,000.00 unless otherwise approved Reliable Automotive Equipment, Inc. Upon payment of the deposit, the order will be processed by Seller. Prior to delivery of order, payment from the Buyer needs to be settled with the Seller unless there is an exception noted from Seller's Sales Manager.

### 4.2 Leasing

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Buyer must complete an application and provide any financial documents required by the leasing company. Buyer may apply for leasing through a leasing company of Buyer's choice. All required documentation must be submitted, approved and the lease documents executed by Buyer prior to orders being

processed by Seller. All leases must be structured on "Master Leases" with pre-arranged funding schedules agreed in advance with the leasing company and Seller.

## 5. Sales and Similar Taxes

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Any Manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection and testing fee, or any other tax, fee, interest, or a charge of any nature whatsoever imposed by any governmental authority, on or measured by the sale by Seller to Buyer, shall be paid by Buyer in addition to the prices quoted or invoiced. If Buyer is exempt from any such tax or charge, Buyer shall provide Seller the applicable exemption certificate. If Seller is required to pay any such tax, fee, interest or charge, Buyer promptly shall reimburse Seller therefore.

## 6. Errors

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Stenographic and/or clerical errors may occur from time to time in the Catalogs, price schedules, program bulletins and announcements, order paperwork, and other documents developed and distributed by Seller in connection with the marketing of Equipment. All such errors are subject to correction by Seller.

## 7. Orders

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Orders for Equipment may be placed by phone, fax or by delivery of a copy of the Quote signed by the Buyer to Seller's Sales Manager. Orders may also be placed by Buyer mailing one of Seller's standard order forms to Seller. All orders are subject to these Terms and Conditions, as amended or revised from time to time by Seller. At Seller's discretion, Seller may require Buyer to confirm in writing any order placed by phone or fax. Buyer may place additional orders, subject to Paragraph 4 above, for Equipment at any time during the duration of the Quote. If an order is changed with Seller's written consent or canceled pursuant to Paragraph 8, below, Buyer may be liable to Seller for costs, cancellation charges or restocking charges. All such changes made to orders shall be subject to these Terms and Conditions.

## 8. Cancellation

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No order, once received and accepted by Seller, may be canceled or altered by Buyer except upon Seller's written consent. If any order is canceled by Buyer, Buyer shall pay a cancellation fee to Seller as reasonably assessed by Seller.

## 9. Returns

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Equipment may be returned only upon Seller's advance written permission, except as provided below\*. If Buyer wants to return any Equipment, Buyer's request to return such Equipment shall be made on a return goods authorization (RGA) form available from Seller (please see Seller's Sales Manager). Returned Equipment must be new, unused, and in the original carton, must be securely packaged to reach the location designated by Seller without damage, and must be shipped F.O.B. to designated location, freight prepaid. Returned Equipment may also be subject to restocking fee or similar charges, as determined by Seller. Seller will issue credit to Buyer for any Equipment returned only to the extent that the Manufacturer of such Equipment issues credit to Seller for the return of such Equipment. \* This Paragraph 9 shall not apply to any Equipment that Seller delivers in error. If Seller delivers Equipment in error, Seller's Sales Manager will coordinate the return of such Equipment and the reorder and shipment of replacement Equipment. Please see Seller's Sales Manager for additional details.

## 10. Delivery

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Except as otherwise specified in the Catalog, or as noted in the Quote, or except as otherwise agreed by Buyer and Seller in writing, Equipment shall be sold F.O.B. Manufacturer's shipping point, commercial carrier freight prepaid. Seller has the right to select the carrier and mode of transportation. Seller will manage and coordinate all such deliveries and unless agreed upon in advance and stated in the Quote, Seller reserves the right to make delivery in installments. Unless agreed otherwise in the Quote, all installments shall be separately invoiced and paid for as provided in Paragraph 4 (Terms of Payment), without regard to subsequent deliveries. Title to Equipment and risk of loss or damage shall pass to Buyer at the F.O.B. point. In the event of in-transit damage to the Equipment, Buyer shall accept the shipment and immediately contact Seller, who will assist Buyer in filing its claim with the delivering carrier. Claims must be filed within three (3) days after receipt of the damages shipment (with a copy to Seller) or such claims will be deemed to have been waived. For all claims for shortages or other errors in delivery, please contact Seller for assistance in filing any claims with the Manufacturer. Claims must be made in writing to manufacturer (with a copy submitted to Seller) within three (3) days after receipt of shipment. Failure to give any notices required under this Paragraph 10 shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Any Build A Bay order in production that needs to be delayed for any reason requires a two week notice prior to the ship date. Any order that is delayed after the two week prior will need to go into storage, arranged by, and paid for by the customer. The product ownership will become the property of the customer, and any damage to the product will be the responsibility of the customer. Customer will be invoiced for the

product at the time of shipping. Notification of any delay will need to be submitted in writing, and signed by the customer.

## 11. Unloading of Equipment

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When agreed upon in advance, and noted in the Quote, the Seller will manage the unloading of Equipment and staging in preparation for installation. Unless explicitly stated in the Quote, the Buyer will be responsible for unloading of Equipment. Buyer shall be solely responsible for providing such unloading devices (e.g. fork lift, tow truck) as may be required to unload Equipment from the carrier.

## 12. Installation of Equipment

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Seller generally prefers to install equipment for Buyer: however, unless otherwise agreed upon at the time of order and stated in the Quote, the Buyer will be responsible for installation, on site testing, or start-up of Equipment. Seller shall cause the Manufacturer to furnish Buyer with all written installation manuals, directions, and instructions that the manufacturer ordinarily supplies with the Equipment. Certain Manufacturers and types of Equipment include on-site testing and start-up of equipment. Please see Seller's Sales Manager for additional information regarding such on-site testing and start-up of equipment by Manufacturers. Furthermore, certain Manufacturers offer extended service contracts for certain Equipment. Please see Seller's Sales Manager to learn more about the terms and conditions under which such extended service contracts are available to Buyer. Such extended service contracts and their terms and conditions shall be determined between Buyer and Manufacturer.

## 13. Security Interest

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The Buyer hereby grants Seller a security interest in all Equipment ordered or delivered, until Buyer has paid its bill in full. Buyer shall execute and deliver any financing statements or other documents as may be requested by Seller in order for Seller to establish and maintain a perfected security interest in the Equipment.

## 14. Right of Set-Off

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In addition to any right of set-off provided by law to Seller, all monies and accounts owed Buyer hereunder shall be considered net of indebtedness of Buyer to Seller (including all its divisions, operating units and subsidiary corporations) arising from whatever cause; in addition, Seller has the right to deduct any amounts due to or that

become due hereunder to Seller from any amounts due or to become due to Buyer from Seller.

## 15. Notice of Defect

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"Defective Equipment" is equipment that fails to perform upon delivery and installation. In the event Equipment supplied hereunder is claimed to be Defective, Buyer will contact Seller for assistance in filing any claims with the Manufacturer of such Equipment (please see Seller's Sales Manager for assistance). All claims must be made within thirty (30) days after Buyer's receipt of Defective Equipment. Seller shall be given ample opportunity to inspect the Defective Equipment; hence only satisfactory, non-Defective Equipment commences the terms of warranty. Buyer acknowledges and agrees that Seller shall not be liable for any transportation, fabrication, installation, or other expenses incurred by Buyer in connection with Defective Equipment.

## 16. Warranty: Limitation of Liability

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Seller makes no warranty to Buyer regarding the Equipment (other than a warranty of title) and Seller authorizes no third person or party to assume any warranty obligation or liability on Seller's behalf. The only warranties applicable to the Equipment are those, if any, extended by the respective Manufacturer. The Manufacturer shall furnish to Buyer any and all applicable warranty documents. Seller hereby assigns to Buyer, without recourse, any applicable warranties extended to Seller. Such assignment shall constitute Seller's sole obligation and Buyer's sole and exclusive remedy from Seller with regard to defective Equipment. SELLER SHALL HAVE NO OBLIGATION OR LIABILITY TO BUYER UNDER, AND HEREBY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTY RELATED TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AGAINST INFRINGEMENT OR ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's liability with respect to the Equipment sold hereunder shall be limited to the obligation to assign the Manufacturer's warranty as provided above, and with respect to other performance of the contract shall be limited to the contract price SELLER SHALL NOT BE SUBJECT TO AND HEREBY DISCLAIMS (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, costs of any

equipment recall, loss of use of equipment or any associated parts, costs of capital, costs of substitute equipment, facilities or services, downtime, shutdown, or slowdown costs, or for any other types of economic loss, or claims of Buyer's customers or any third party for any such damages.

## 17. Failure or Delay of Performance

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All delivery dates are approximate. Neither party shall be liable for any costs, expenses, or damages of any nature, whether general, consequential, as a penalty, or liquidated or otherwise caused by or arising out of failure or delay in the performance of any of its obligations (other than payment obligations) under this Agreement or for any consequence thereof if such failure or delay is due to reasons beyond its reasonable control, including but not limited to, fire, flood, war, terrorist attack, accident or explosion, acts or omissions of any governmental authority or Buyer, civil unrest, riot or insurrection, strikes or labor difficulties, breakdown of essential machinery, priorities or embargoes, shortages, delays in transportation or inability to obtain labor services, energy, fuel, or materials from Seller's usual sources. In the event of such delay, the time for performance by the party liable to perform shall be extended by a period equal to the period of delay.

## 18. No Agents

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From time to time sales representatives of various Manufacturers may visit Buyer to promote the sale of Equipment. Buyer understands and acknowledges that all such representatives act for and on behalf of their respective Manufacturers only, and that no statements or representations made by such sales representatives are to be attributed to Seller or any of its divisions or other operating units, or subsidiaries, unless otherwise agreed in writing.

## 19. Equipment Changes

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Seller has the right to discontinue or suspend the sale of any Equipment and to make or permit changes in design or specifications of any Equipment at any time without incurring any obligation or liability to Buyer with respect thereto; provided, however, that if any pending orders placed by Buyer would be affected by such a design or specification change, Seller shall give Buyer advance notice thereof and an opportunity to cancel such orders.

## 20. Waivers

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Except as otherwise provided herein, no omission or delay by either the Seller or Buyer at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms and conditions herein, shall be a waiver of any such right or remedy to which either party is entitled, nor shall it in any way affect the right of either party to enforce such provision(s) thereafter.

## 21. Entire Agreement

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This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all previous negotiations, agreements, commitments and representations written or oral with respect to the subject matter hereof. Each party undertakes that it has not entered into this Agreement in reliance upon any representation, promise or statement which is not expressly set out in this Agreement. This Agreement shall not be discharged, changed or modified in any manner except by instruments signed by duly authorized representatives of both parties.

## 22. Choice of Law

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These Terms and Conditions, and any contract for the sale of Equipment or Services by Seller, shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to its principles of conflicts of laws. Any claims arising hereunder, which are not settled by negotiation, shall be exclusively prosecuted in the appropriate court of the State of New Jersey or in a federal court located in the State of New Jersey, and both parties hereby consent to the exclusive jurisdiction of such courts.