

# TERMS AND CONDITIONS OF SALE

## Purchase of Used Equipment

1. **Purchase of Used Equipment** (the forklift or other products described on the Invoice and the items being said) shall pass to Buyer (the person or company making the purchase) upon Discount Forklift's (here in after - "DF") receipt of payment in full in immediately available funds, the product being deemed ready for delivery, and the acceptance by all parties of these Terms and Conditions.

2. Risk of loss of the equipment (or any part thereof) shall pass to Buyer at the instant that the equipment passes to Buyer under the terms and conditions hereof. Until equipment has passed to Buyer, the equipment shall be subject to prior sale by DF and this transaction shall be subject to written revocation by DF.

3. Unless otherwise expressly indicated on the front hereof, the equipment shall be transported at Buyer's risk and expense and Buyer shall be liable for maintaining all insurance relating thereto.

4. IN THE EVENT THAT ANY CONDITION REPORT HAS BEEN PREPARED BY OR ON BEHALF OF DF AND SUPPLIED TO BUYER, SUCH CONDITION REPORT HAS BEEN PROVIDED FOR THE CONVENIENCE OF BUYER. DF DOES NOT REPRESENT OR WARRANT THE ACCURACY OF SUCH REPORT. The Buyer understands that the equipment being purchased **may not meet OSHA requirements.**

5. Buyer represents and warrants that it was given the opportunity to inspect the equipment and accepts full responsibility relating thereto, including as to its safety and functionality and condition. THE EQUIPMENT HAS BEEN AVAILABLE FOR INSPECTIONS BY BUYER PRIOR TO COMPLETION OF PURCHASE, AND BUYER SHALL RELY UPON SUCH DUE DILIGENCE, IF ANY, AS BUYER UNDERTAKES PRIOR TO PURCHASE. BUYER IS RESPONSIBLE FOR ALL OF BUYER'S TRAVEL, ACCOMMODATIONS AND MEAL EXPENSES.

6. NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS: DF DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH REGARD TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, AS TO THE NATURE, QUALITY, VALUE, OR CONDITION OF THE EQUIPMENT, THE MERCHANTABILITY OF THE EQUIPMENT, ITS FITNESS FOR A PARTICULAR PURPOSE, OR ITS NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS (OF ANY NATURE WHATSOEVER) OF ANY PARTY. THE EQUIPMENT IS SOLD "AS IS -WHERE IS". TO THE EXTENT THAT ANY REPRESENTATIONS HAVE BEEN MADE BY DF OR ITS REPRESENTATIVES ABOUT THE EQUIPMENT, BUYER HAS NOT RELIED ON THOSE REPRESENTATIONS.

7. If the equipment being purchased is represented as a condition rating of anything other than 'NEW'; The equipment may contain aftermarket parts, modifications, and defects. The aftermarket parts may have more or less hours of use than other parts of the equipment Buyer represents and warrants that the number of hours of use of the equipment (or any of its parts) is not a factor in the Buyer's decision to purchase the equipment Buyer understands that hours reported on used equipment may be inaccurate. Therefore, it is agreed that the number of hours of use of the equipment is not a factor that the Buyer has relied upon in making this purchase even if a representation was made them to by DF's agents during the sales process.

8. Buyer agrees to indemnify, defend, and hold harmless DF, together with all of its subsidiaries, divisions, affiliates, assigns, directors, officers, agents and employees, of each (collectively the "Indemnified Parties") from and against any and all claims, demands, actions, causes of action, proceedings, judgments and other liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) of any nature (collectively, the Claims) to the extent: Claims are due to or arise from or are asserted by either the Buyer and/or any third parties relating to a violation of these Terms and Conditions or the negligence of Buyer.

9. These Terms and Conditions and the Invoice shall constitute the entire agreement between the parties with respect to its subject matter, supersede all previous agreements and understandings between the parties, and may not be modified except by an instrument in writing signed by the duly authorized representatives of the parties. These Terms and Conditions shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. DF hereby notifies Buyer that it rejects in advance any inconsistent, additional, or different terms or conditions proposed by Buyer, whether orally or in any document forwarded by Buyer. DF's conclusion of this transaction is expressly conditioned upon Buyer's agreement with all the terms and conditions hereof. The equipment is most likely not OSHA certified.

10. Payment remittance, down payment or payment in full constitutes acceptance of invoice and these terms and conditions.

11. Buyer shall have no right to assign this transaction (including delegation of its obligations hereunder) without the prior written consent of DF. In the absence of such consent no such assignment shall be effective.

12. IN NO EVENT SHALL DF BE LIABLE TO BUYER OR ITS AGENTS OR EMPLOYEES UNDER ANY CIRCUMSTANCES, FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGE (INCLUDING LOST PROFITS, REVENUES, BUSINESS OPPORTUNITIES, GOODWILL, DOWNTIME, INTERRUPTION OF BUSINESS) RESULTING FROM OR ARISING OUT OF: A) NEGLIGENCE, B) ANY BREACH OF THIS AGREEMENT OR ANY DUTIES, OBLIGATIONS, OR RESPONSIBILITIES HEREUNDER OR, C) THE DELIVERY, PERFORMANCE, OR USE OF THE EQUIPMENT, EVEN IF DF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. DF shall not have any liability hereunder for any delay in its performance. It is understood that any time for delivery or preparation of the equipment is speculative, and it may be delayed. **If time is of the essence to Buyer, should consider purchasing new equipment.**

14. DF's sale of the equipment is a sale of hardware only and is not a sale, license, or sublicense of any software/program code in any form, regardless of whether such software/program code is integrated within or otherwise included with the equipment **Any software/program code included with the equipment may be the property of a third party, and Buyer shall destroy it or obtain an appropriate license for Buyer's use of it.**

15. In the event that Buyer wishes to export the equipment, Buyer shall comply fully with all applicable laws and regulations, including obtaining an export license that may be required prior to such export.

16. Any portion of this document that is found by competent judicial authority to be invalid, illegal, or unenforceable in any respect shall be deemed severed without affecting the validity and legality of the rest of it. All obligations and duties herein that by their terms survive the expiration or termination hereof shall remain in effect beyond any expiration or termination.

17. Buyer shall comply with all applicable laws and regulations as it is their responsibility to provide adequate accommodations and preparation in regard to the final destination/location where the equipment has/will be delivered. (ex: step deck, loading dock, shipping platform) DF will not be held responsible for any lack of preparation, adequacy or lack of information provided prior to the time of delivery. Buyer is responsible for inspection of the unit prior to it being unloaded. It is the responsibility of Buyer to take note of any new damages listed on the bill of lading.

18. After the equipment has been released to Buyer or any company used to deliver it, DF will no longer be held responsible for any damages which may have occurred due to a transportation company and/or transporter (even if selected by DF), including to the exterior body of the purchased unit and/or any unforeseen incidents during transport. Buyer hereby acknowledges to agree upon these terms and conditions pertaining to the delivery and shipment of the purchased unit and that it will maintain insurance to cover any such damages.

19. Buyer agrees to have the equipment professionally inspected within seven (7) days of receipt and shall notify DF of any defects that exist with respect to the equipment that may be covered under warranty, if any, or reasonable and necessary repair for the unit to run. If Buyer fails to do so, it shall be deemed to have waived any claim or causes of action relating to any such defects.

20. Dispute Resolution Process: If there are any disputes relating to this transaction, or the purchase of the equipment, including any claims of a defect in the equipment or a misrepresentation in the sales process by DF or its agents, then it is agreed that this dispute resolution process shall be binding on DF and Buyer and each of their agents:

**Dispute Resolution Process:** If there are any disputes relating to the transaction, or the purchase of rental ready used equipment, including any claims of a defect in the equipment or a misrepresentation in the sales process by DF or its agents, then it is agreed that this dispute resolution process shall be binding on DF and Buyer and each of their agents. DF and Buyer agree that before Buyer may file any claim, lawsuit, or cause of action in any court, Buyer will first allow DF to troubleshoot the equipment over the phone, and if unable to resolve the issue, then Buyer authorizes DF to have the unit serviced by a technician of DF's choosing to troubleshoot the issue, including DF employees. Troubleshooting may include equipment being brought back to a DF location for repairs. After inspecting the equipment, and it is found that the issue at hand is in the scope of DF's seven (7) day rental ready swap policy, DF shall offer Buyer one of the following options of DF's discretion: (a) Lift Exchange Program: DF will offer a swap into a comparable lift, if available. (b) Credit: DF will hold in trust all funds paid by Buyer to DF to place towards a future purchase. DF will pick up the unwanted equipment and absorb freight costs. (c) DF can provide parts at DF's cost. Shipping will be at the Buyer's expense. (d) Repair: If Buyer and DF agree on the scope of the needed repair(s) or part(s) replacement, then DF will repair the unit at the Buyer's expense for parts and labor. Buyer acknowledges and understands that the use of a third party for estimates or diagnoses is prohibited. (e) Restock: DF will re-stock unit at a 25% fee for paid in full invoices. (f) Resale: DF will use its commercially reasonable best efforts to resell the equipment. The Buyer shall receive the proceeds from the resale of the equipment, less a 15% resale fee and DF's out of pocket costs associated with the resale. DF will not agree to a resale without Buyer's consent. (g) Repurchase: DF will make an offer to repurchase the equipment from the Buyer. (h) Reject: If DF disagrees with Buyer's disputes, then it shall notify customer of this via email and shall make the equipment available for Buyer to pick up. If the equipment has been assessed at a DF facility Buyer agrees that it will cause the equipment to be picked up within 21 days after DF informs Buyer to do so and if Buyer fails to do so, the Buyer shall incur a \$25.00 per day storage fee up to thirty (30) calendar days. As to each of these options (repair, resale, repurchase, reject) Buyer shall coordinate for, and pay the shipping charges associated with transporting the equipment to and from a DF location and shall maintain insurance on the equipment. Buyer agrees to take no action to prevent or frustrate the repair, resale, or repurchase of the equipment. (i) In the event that Buyer and DF cannot come to an amicable resolution of any issues, Buyer acknowledges and agrees not to seek legal representation, and will **accept mediation to resolve any dispute(s).** Mediation fees will be divided equally between the Buyer and DF and Mediation will take place in Denver, CO. A list of three (3) Mediators will be provided to Buyer and Buyer may cross off one Mediator and DF will cross off one Mediator, the Mediator left will be chosen to oversee Mediation. Buyer is responsible for all of Buyer's travel, accommodations, and meals.

**BUYER, BY PLACING A DOWN OR FULL PAYMENT, ACKNOWLEDGES AND AGREES TO HAVE READ THE ABOVE TERMS AND CONDITIONS IN FULL AND ACCEPTS THESE TERMS AND CONDITIONS**