

## R&M MATERIALS HANDLING, INC. STANDARD TERMS AND CONDITIONS OF SALE

**1. APPLICABILITY.** The sale of any and all R&M Materials Handling, Inc. ("R&M") goods and/or services shall be conditioned upon, and subject to the following terms and conditions which shall form an integral part of any agreement therefor. Buyer's acceptance of any offer made by R&M for the sale of its goods and/or services is expressly made subject to the terms and conditions stated herein. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except as revised in writing by a corporate officer of R&M and all orders received by R&M shall be governed only by the terms and conditions contained herein, notwithstanding any terms and conditions which may be found in any purchase order, release order, or any other form issued by the Buyer. R&M hereby objects to said terms and conditions and notifies Buyer that they are rejected.

**2. PRICE.** All quoted prices shall remain firm for a period of thirty (30) days from the date of quotation. The price for all goods and/or services released for delivery by Buyer after thirty (30) days from the date of quotation are subject to any increase in the published list price that may occur between thirty-one (31) days following the date of quotation and the date Buyer releases shipment. Quotations provided are priced based on Buyer's purchase of the entire scope of goods and/or services identified therein. If less than the entire scope of goods and/or services identified in the quotation is ordered by Buyer, prices may vary. R&M shall bill Buyer to the extent of services provided, or for the quantity of goods shipped should R&M be unable for any reason to provide and/or ship the entire scope of goods and/or services quoted. Prices quoted by R&M are exclusive of all taxes (except taxes levied on R&M's income) including federal, state and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse R&M for any such taxes paid by R&M.

**3. SCOPE OF GOODS AND SERVICES.** The goods and/or services provided by R&M pursuant to the quotation shall, at the express request of Buyer, be limited exclusively to those good and/or services expressly identified therein. As a result, R&M does not assume responsibility and/or liability for the failure to provide any other goods and/or services. Modifications, additions or deletions to or from the scope referenced in the quotation shall only be effective if evidenced in a writing signed by R&M. The sale of any and all goods and/or services effected by such modification, addition or deletion shall be subject to these same Terms and Conditions of Sale whether or not referenced therein.

**4. MINIMUM CHARGE.** All goods and/or services supplied by R&M are subject to a one-hundred dollar minimum charge. If the total quantity of goods and/or services purchased by Buyer (excluding freight charges) results in a charge of less than one-hundred dollars (\$100.00) R&M reserves the right to charge Buyer the difference between the price of the goods and/or services purchased and one-hundred dollars (\$100.00) as an additional charge for the goods and/or services purchased.

**5. PAYMENT TERMS.** All sales are final. All R&M invoices shall be paid by Buyer within thirty (30) days of the date of invoice except for those invoices related to progress payments (applicable to orders in excess of fifty thousand (\$50,000) U.S. dollars) which shall be paid by Buyer upon receipt. A late charge equivalent to the lesser of 1-1/2% per month (18% per annum) or the maximum rate allowed by law will be assessed on all unpaid invoices or invoices not paid in accordance herewith. Buyer shall reimburse R&M any and all expenses, regardless of their nature or type (including attorneys fees), related in any way to R&M's collection of invoices not paid in accordance herewith or otherwise incurred by R&M in the enforcement of any of the terms and conditions hereof.

**6. CREDIT APPROVAL.** All quotations are subject to Buyer credit approval by R&M. R&M reserves the right to refuse shipment of any and all goods and/or services identified in any quotation, to modify the Payment Terms identified therein or in paragraph 5 hereof or to cancel without penalty or charge any contract formed and concerning the goods and/or services identified in its quotation if, in its sole discretion and for any reason whatsoever, R&M requests and is unable to secure acceptable payment assurances from Buyer for the goods and/or services identified in the quotation.

**7. DELIVERY TERMS AND DELAYS.** Unless otherwise identified in the quotation, all shipments within the United States are F.O.B. R&M's plant

or warehouse and title to and all risk of loss with respect to any goods shipped shall pass to Buyer when such goods are delivered to the carrier at such plant or warehouse. Unless otherwise identified in the quotation, all shipments outside the United States are F.C.A. R&M's plant, warehouse or dock, as defined by Incoterms 2000, and title to and all risk of loss with respect to any goods shipped shall pass to Buyer when such goods are delivered to the carrier at such plant, warehouse or dock.

**a. Delivery.** All dates of shipment and delivery identified by R&M are approximate. R&M shall not be liable for delay in or failure to make shipment by any identified date for any reason whatsoever including, but not limited to, causes beyond its reasonable control such as strikes, fires, floods, epidemics, quarantine restrictions, severe weather, freight embargoes, allocation orders issued by or to the account of the government, acts of God, or public enemy, war, riot, delays in transportation or the inability to obtain necessary labor, materials or manufacturing facilities.

**b. Freight Charges.** Any reference to freight charges contained in the quotation is an estimate. R&M is not responsible for any differences that may occur between freight estimates contained in the quotation and actual freight charges applicable at the time of shipment.

**c. Packaging.** Unless otherwise identified in the quotation, the quoted price does not include the cost for export or special packaging of the goods. Buyer shall assume those extra costs associated with such packaging.

**d. Cost of Goods.** Unless otherwise stated in the quotation, Buyer shall pay all cost increases R&M is assessed for goods or materials, including but not limited to steel, copper, and fuel surcharges, greater than ten-percent (10%) and which occurs subsequent to the issuance of the quotation.

**8. WARRANTIES.** The sale of any and all R&M goods and/or services is conditioned upon, and subject to the R&M Standard Warranty (Revision 010107), copies of which are available at [www.rmhoist.com](http://www.rmhoist.com) or upon request from your R&M Materials Handling, Inc. customer service/sales representatives and are expressly incorporated by reference hereto as if fully rewritten herein. Any verbal or written purchase order, release order, other form issued by the Buyer to confirm any order issued pursuant to this quotation or receipt of any of the goods and/or services identified in the quotation shall serve as conclusive proof that Buyer has reviewed and agrees to be bound by the terms of the R&M Standard Warranty.

**THE R&M STANDARD WARRANTY REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY R&M TO BUYER WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED UNDER THE QUOTATION AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**9. LIMITATION OF DAMAGES.** R&M SHALL HAVE NO LIABILITY TO BUYER OR ANY THIRD PARTY WITH RESPECT TO THE SALE OF PRODUCTS OR PROVISION OF SERVICES UNDER THE QUOTATION FOR LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF R&M WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. IN NO EVENT SHALL R&M BE LIABLE TO BUYER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY BUYER FOR GOODS AND/OR SERVICES REFERENCED IN THE QUOTATION.

**10. CONFIDENTIALITY.** Without limitation, Buyer shall not, at any time disclose to any other person or entity any information relating to the business of R&M, including without limitation, plans and specifications and any other inventions, devices, formulas, processes, programs, software, listings, print-outs, documentation, notes, charts, manuals, programming aids, source codes, object codes, compilations,

technology, know-how, price lists, costs, policies, techniques, trade practices, accounting methods, methods of operation or other data that R&M considers confidential, and trade secrets of every kind relating to R&M's business, whether or not patentable or copyrightable. Such information shall remain the exclusive property of R&M and shall be returned to R&M upon request at any time.

**11. INDEMNIFICATION.** R&M SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, INDEMNIFY AND HOLD R&M, OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH, HARMLESS FROM ANY CLAIMS, DEMANDS, DAMAGES REGARDLESS OF THEIR TYPE INCLUDING, BUT NOT LIMITED TO, DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL, ACCOUNTS, GRIEVANCES, LOSSES AND EXPENSES, WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE, ANY AND ALL LIABILITY, OF AND FROM ANY AND ALL MANNER OF ACTIONS, CAUSE[S] OF ACTION, ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, STATE OR FEDERAL, OF WHATEVER KIND OR NATURE, THIRD PARTY ACTIONS, INCLUDING SUITS FOR CONTRIBUTION AND/OR INDEMNITY ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF THE BUYER, ITS AGENTS OR EMPLOYEES AND RELATING IN ANY WAY TO THE GOODS AND/OR SERVICES PROVIDED UNDER THE QUOTATION OR THE EQUIPMENT RELATED THERETO, INCLUDING, BUT NOT LIMITED TO BUYER'S USE, INSTALLATION, INCORPORATION OR SELECTION THEREOF OR ANY OTHER CAUSE IDENTIFIED HEREIN OR THAT MAY BE REASONABLY INFERRED HEREFROM EXCEPT TO THE EXTENT CAUSED BY THE SOLE NEGLIGENCE OF R&M.

**12. HOIST MANUALS.** An R&M Maintenance and Operating Manual is shipped with each hoist unit (applicable exclusively to those units wherein such a manual is produced) identified in the quotation and purchased by Buyer. R&M reserves the right to assess a charge, per manual, for each additional manual requested by Buyer. The Manual is a confidential, proprietary and copyrighted document and may not be copied, published or reproduced in any manner or form without prior written agreement of R&M. Such agreement is at the sole discretion of R&M and R&M may revoke same at its discretion at any time.

**13. SURVIVAL.** Each of the paragraphs hereof intended for the benefit of R&M shall survive expiration or termination of the services or delivery of the goods outlined in the quotation.

**14. ENTIRE AGREEMENT.** These Standard Terms and Conditions of Sale, the quotation together with the R&M Standard Warranty in effect on the date of sale represent the entire agreement between R&M and Buyer. **THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN THE QUOTATION SPECIFICALLY RECOGNIZE THE ALLOCATION OF THE RISKS OF PERFORMANCE OF THE PARTIES AS WELL AS THE LIMITATION OF LIABILITY AND DAMAGES AND THE RECOVERY OF COLLECTION COSTS, AND THE PARTIES EXPRESSLY AGREE THAT THESE LIMITATIONS ON REMEDIES, RESPONSIBILITY FOR COLLECTION COSTS, AND OBLIGATIONS TO INDEMNIFY ARE ESSENTIAL PARTS OF THE AGREEMENT BETWEEN THEM AND ARE SPECIFICALLY BARGAINED FOR.** Any purchase order or other document issued by Buyer shall be deemed to (i) be solely for the record keeping convenience of the Buyer and (ii) confirm these terms and condition and not add to, delete from, or

otherwise change or modify these terms and conditions or those contained in the quotation.

**16. SEVERABILITY.** The partial or complete invalidity of any one or more provisions hereof shall not affect the validity or continuing force and effect of any other provision. If any portion of this Agreement shall be determined to be invalid or unenforceable, that portion shall automatically be modified to the extent necessary to make it valid. Notwithstanding the foregoing, such original determination of invalidity or unenforceability shall not affect any other portion of this Agreement and such other portions shall remain in full force and effect.

**17. GOVERNING LAW; JURISDICTION.** Any controversy arising out of or related to these Terms and Conditions of Sale, the quotation, the provision or goods and/or services thereunder, or any contract between R&M and the Buyer shall be construed and governed by the laws of the State of Ohio, including Article 2 of the Uniform Commercial Code as codified in Ohio Revised Code Chapter 1302, notwithstanding conflicts of law principles. Any action arising from or related to these Terms and Conditions of Sale, the quotation, the provision or goods and/or services thereunder, or any contract between R&M and the Buyer shall be instituted and litigated in any state court located in Clark County, Ohio, or in any federal court with jurisdiction over Clark County, Ohio. R&M and the Buyer hereby irrevocably consent to the jurisdiction of the courts of Clark County, Ohio.

**18. NUCLEAR LIABILITY.** In the event that the work, goods and or services provided by R&M and/or otherwise identified herein or in the quotation are provided, used, or otherwise employed in, on or around a facility generating and/or otherwise employing in any manner nuclear, radioactive or ionizing radiation whether as a fuel, product or any other substance, the Terms and Conditions of the R&M Nuclear Liability Addendum (Revision 010107) a copy of which is attached hereto or otherwise available upon request of Buyer and shall be incorporated as if fully rewritten herein.

**19. NON-DESTRUCTIVE TESTING.** To the extent applicable, the performance of any inspection by R&M utilizing Magnetic Particle Testing (MT) (otherwise known as Magnetic Rubber Testing) and/or Liquid Penetrant Testing (PT), and the preparation of the report derived therefrom, are limited in the following manner:

a. The scope of any inspection performed by R&M utilizing MT and/or PT is limited to the detection of exposed surface flaws no less than 150 nanometers in diameter. MT and PT are highly sensitive to external conditions and to the characteristics of the inspected material, component, or assembly. Further, contaminations on the inspected surface may mask actual defects. As such, notwithstanding the performance of this inspection and regardless of any representation made to the contrary, including the inspection report prepared by R&M, latent, sub-surface, and/or covered surface flaws may exist on the subject material on the date of inspection and Buyer is hereby notified of the potential existence thereof.

**20. AFFIRMATIVE ACTION NOTICE.** Vendors and subcontractors are notified that they may be subject to the provisions of 41 CFR Section 60-1.4(c), 41 CFR Section 60-250.4 and/or Section 60-300.5, and 41 CFR Section 60-741.5 with respect to affirmative action program and plan requirements.