

## EQUIPMENT PURCHASE AND SALE AGREEMENT

### TERMS AND CONDITIONS OF PURCHASE AND SALE

1. **Binding Agreement.** The Proposal set forth on the previous page(s) along with these Terms and Conditions shall become a binding purchase and sale agreement ("Agreement") upon execution of the previous page by both the "Buyer" (set forth on page one) and Ogden Forklifts, Inc ("Seller"), each of whom may be referred to as a "Party" or, collectively, the "Parties". Buyer's execution of this Agreement and/or acceptance of delivery of the Equipment shall be evidence of Buyer's acceptance of these Terms and Conditions. This Agreement contains the entire agreement between Buyer and Seller in regard to the purchase and sale (but not the financing) of the Equipment, and supersedes any other proposal, promise, or agreement, written or oral, related to the purchase and sale of the Equipment.
2. **Purchase Price.** The proposed purchase price of the Equipment set forth herein (the "Total Cash Investment") shall be valid for 21 days. If this Agreement is not executed within 21 days, the Total Cash Investment amount shall be subject to change without notice.
3. **Payment.** **THE TOTAL CASH INVESTMENT PLUS TAXES AND DELIVERY CHARGES ARE DUE IN FULL UPON DELIVERY.**
4. **Acceptance.** Accepting delivery or possession of the Equipment shall be evidence of Buyer's acceptance of the Equipment as delivered, and Buyer's acknowledgement that Buyer has examined the Equipment, that the Equipment meets Buyer's specifications and is without defects requiring correction or replacement.
5. **Title.** Title to the Equipment shall remain with Seller until such time as the full Net Purchase Price, all taxes and delivery charges, and any applicable additional charges have been paid in full. Seller retains a security interest in, and the right to repossess the Equipment, until Seller has been paid in full.
6. **Delivery Date.** **NO DELIVERY DATE IS GUARANTEED.** The delivery date is an estimated date based on the best information available at the time estimated. In no event shall Seller be liable for incidental or consequential damages or for lost profits due to delivery delays. If Buyer fails to take delivery, Seller will invoice Buyer for the Total Cash Investment, taxes, delivery charges and storage charges for up to 90 days, after which Seller will consider the Equipment abandoned, and may exercise any other right or remedy available at law or in equity.
7. **Risk of Loss.** Unless otherwise noted in writing elsewhere in this Agreement, all Equipment is shipped FOB Manufacturer's factory or shipping point. Risk of loss for the Equipment shall pass to Buyer upon shipment.
8. **Manufacturer Warranties.** For new Equipment, the only applicable warranty shall be the "Manufacturer Warranty" provided by the Manufacturer of the Equipment ("Manufacturer"), unless Seller provides written information to the contrary. The Manufacturer Warranty is usually provided upon delivery, or may be available online at the Manufacturer's website. Seller assumes no liability for the Manufacturer Warranty. Buyer hereby acknowledges that Seller is not the Manufacturer of the Equipment and makes no representation of latent or patent defects in material or workmanship.
9. **Seller Warranties.** For used Equipment, a "Seller Warranty" applies and is attached hereto, and incorporated herein. Seller offers no warranty of capacity or performance, and no warranty that the Equipment will meet requirements of any law, regulation, or ordinance. Seller's Warranty is exclusive and is in lieu of any other warranties, express or implied, or statutory, including warranty of merchantability and warranty for fitness for a particular purpose. Buyer hereby acknowledges that the Equipment is sold "as is" with all faults or defects except as otherwise expressly provided in the Seller Warranty or this Agreement.
10. **Product Modifications By Seller.** Buyer hereby acknowledges that the Equipment may have been modified by Seller at the Manufacturer's direction or request to update or improve the Equipment after it left the Manufacturer's plant, and that Seller may have painted or repaired damage to the Equipment suffered prior to this sale of the Equipment to Buyer. Buyer hereby consents to such modifications, repairs, or repainting and waives any further notice or disclosure thereof.
11. **Product Modification by Buyer.** Should Buyer modify the Equipment without the express written consent of Seller, or should Buyer fail to implement any modifications directed by Seller or the Manufacturer, Buyer shall indemnify, defend, and hold Seller harmless from any and all claims, demands, suits, costs, expenses, or other damages arising in whole, or in part, from such unauthorized modification or failure to modify, whether in contract, tort, or otherwise. Further, any such modification shall render the Seller Warranty null and void.
12. **Miscellaneous.** Buyer's rights and obligations may not be assigned without the express written consent of Seller. Seller may, at any time, assign its rights and obligations hereunder. This Agreement is governed in accordance with the laws of the State of Georgia. The invalidity of any portion of this Agreement shall not affect the remaining provisions, which shall remain in full force and effect. All claims or suits against Seller shall be made within one (1) year of the date the cause of action occurred (regardless of when discovered) or be forever barred. Time is of the essence for this Agreement. The terms hereof may be waived only by a written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by the other Party to this Agreement shall not be construed as a waiver of rights to any subsequent or continuing breach of such other Party's duties, obligations or agreements herein. No failure of either Party to exercise any power given hereunder and no custom or practice at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof. This Agreement shall not be modified, changed or altered in any respect except by a written instrument signed by the Parties hereto.
13. **Limitation of Liability.** In the event that Buyer claims that Seller has materially breached this Agreement, Seller may require return of the Equipment and, upon receipt of the Equipment shall refund the Net Purchase Price less a reasonable allowance for depreciation and/or damage to the Equipment. Buyer shall deliver the Equipment to Seller per Seller's delivery instructions. **THIS SHALL BE THE SOLE RECOURSE FOR BUYER AGAINST OGDEN FOR BREACH BY OGDEN OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, IN NO EVENT SHALL OGDEN BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING UNDER THIS AGREEMENT OR FROM OGDEN'S SALE OF THE EQUIPMENT TO BUYER, NOR SHALL OGDEN BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE NET PURCHASE PRICE OF THE EQUIPMENT.**
14. **Termination.** Either Buyer or Seller may terminate this Agreement if the other Party materially breaches its obligations hereunder, and fails to cure such breach within a time reasonable under the circumstances. Seller may terminate this Agreement if (a) Buyer fails to timely pay any amount due hereunder, (b) Buyer fails to accept delivery of the Equipment, (c) Buyer provides to Seller any information that proves to be materially false, or (d) Buyer enters bankruptcy or ceases to exist as a going concern.