

# OBERHOF MACHINERY, CO. INC.

## TERMS AND CONDITIONS OF SALE

**(1) ACCEPTANCE:** The written sale confirmation is an acceptance and contains all of the terms of the contract between Buyer and Seller, all prior representations and understandings having been merged therein. It may not be modified except by a writing signed by a duly authorized representative of Seller. The terms and conditions on the face thereof and following also apply to any change orders issued under Seller's order number except as expressly stated on the face thereof; notice is hereby given that Seller objects to any additional or different terms.

**(2) SHIPMENT AND DELIVERY:** Unless otherwise specified on the face hereof, all goods and services are sold F.O.B. Seller's or manufacturer's plant. Delivery of goods to the carrier shall constitute delivery to Buyer, and all risk of loss or damage in transit shall be borne by Buyer.

**(3) PARTIAL SHIPMENT:** Seller reserves the right to make delivery in installments. When such installments are separately invoiced, they shall be paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

**(4) SECURITY INTEREST:** Seller retains a security interest in the goods described on the face hereof, together with any proceeds of such goods, until Seller has received payment in full. A copy of this agreement may be filed as a financial statement.

**(5) ASSURANCE OF PERFORMANCE:** Seller reserves the right to revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due Seller's opinion there is a material adverse change in Buyer's financial condition. Seller shall have the right to suspend further shipments until receipt of adequate assurance of Buyer's ability to pay therefore. Buyer's refusal to furnish such assurance within a reasonable time of failure of Buyer to perform its obligations under this or any other existing contract with Seller shall entitle Seller without notice to Buyer, to cancel this contract or so much of it as may remain unexecuted, all without prejudice to any claim for damage or any other remedy Seller may be entitled to make.

**(6) WARRANTIES:** Seller warrants the goods to be as described on the face hereof and, in accordance with the notation shown on the face hereof, further provides one of the following warranties.

**NEW:** When the warranty noted on the face hereof is marked "New", Seller extends to Buyer on the warranty to the manufacturer.

**REBUILT:** When the warranty noted on the face hereof is marked "Rebuilt", Seller has dismantled the goods to the basic frame, has inspected each part and has either put the part in first-class condition or has replaced it, has reassembled the goods and ran them to test for proper operation. Seller warrants rebuilt goods to be free of defects in parts or workmanship for a period of ninety (90) days from the date of shipment. During such period, Seller will replace or repair any defective parts F.O.B. original point of shipment. All disassembling, reinstallation, and shipment costs for such parts shall be paid for by Buyer when required by Seller. Any new component parts shall carry only the warranty provided by the manufacturer.

**RECONDITIONED:** When the warranty noted on the face hereof is marked "Reconditioned", Seller has partially dismantled, cleaned and repaired the goods for normal functions, has checked all bearing and electrical parts, has reassembled and has run the goods under power to test for proper operation. Seller will replace or repair any defective parts F.O.B. original point of shipment. All disassembly, reinstallation, and shipment costs for such parts shall be paid for by Buyer when required by Seller. Any new component parts shall carry only the warranty provided by the manufacturer.

**AS IS:** Goods sold "as is" carry no warranty whatsoever.

Modification or repair of the goods by anyone other than Seller or its agents shall void the above warranties.

EXCEPT AS ABOVE PROVIDED SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND.

**(7) LIABILITY:** Seller liability with respect to this contract, any warranty, or the manufacture, delivery, installation, repair or use of any goods under this contract shall not exceed the stated selling price of the defective goods upon which liability is based. The remedies of Buyer set forth herein are exclusive and Buyer can bring no action more than one year after accrual of the cause of action therefore.

**(8) TAXES:** Unless otherwise agreed any taxes or duties now or hereafter imposed by the United States or any other government on the manufacture, sale, export, import of use of the goods and services specified on the face hereof shall be the responsibility of Buyer. Prices on the face hereof are exclusive of tax, unless otherwise indicated.

**(9) DELAYS:** Seller shall not be liable for any delay in manufacture, reconditioning, repair, or delivery due to fire, strikes, disputes with workers, war, civil commotion, epidemics, floods, accidents, delays in transportation, shortage of fuel or other materials, shortage of labor, mechanical breakdown, acts demands or requirements of the Government of the United States or of any state or other government, or to any other causes beyond reasonable control of seller, or of manufacturer. The existence of such cause of delay shall justify the suspension of work and shall extend the time of performance on the part of the Seller to such extent as may be necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If the performance of the contract by Seller be rendered more burdensome by reason to any of the causes above mentioned, Seller may request an increase in the price of all goods covered in the contract in an amount to compensate for such extra burden and may cancel the contract without penalty upon failure of the purchaser to agree to such price increases and to satisfactorily secure their payment. If the delay shall continue for ninety (90) days, then either party may, by written notice to the other, cancel this contract except as to goods specifically acquired by Seller for this contract or in the process of rebuilding or reconditioning at the time such notice is received.

**(10) CANCELLATION:** Except as provided in paragraph 5 and 9, this order shall not be cancelled except by mutual consent. Notice to hereby given that the Seller will not be consent to cancellation if processing of Buyer's goods has commenced, special goods have been purchased for this order or been assembled for loading.

**(11) PRICES:** Prices shown here on are quoted as the prevailing prices as of the date hereof. If new goods are involved and the price therefore changed by the manufacturer to Seller is increased prior to delivery, the price shall be the increased price at the time of delivery.

**(12) INSTALLATION:** Unless otherwise agreed in writing, Seller provides no installation assistance.

**(13) RESTOCKING CHARGE:** Any goods accepted for return by Seller are subject to Seller's restocking charge.

**(14) GOVERNING LAW:** This contract shall be governed by the construed according to the Uniform Commercial Code and other laws of the State of Washington, United States of America.

**(15) ATTORNEY'S FEES:** Buyer agrees to pay the costs of collecting any money due under this contract, including attorney's fees.

**(16) WAIVER:** Seller's failure to insist upon strict performance of any provision of this agreement shall not be deemed to be a waiver of the Seller's rights or remedies, or a waiver by the seller of any subsequent default by the Buyer in the performance of or compliance with any of the terms of this agreement