

## **Standard Terms And Conditions Of Sale**

Last updated **July**, 2020

These Standard Terms and Conditions of Sale (these "Terms"), constitute an offer for the sale by Carl Stahl American Lifting, Inc. and/or its affiliates ("CSA") of products through [www.carlstahl-hebetechnik.us](http://www.carlstahl-hebetechnik.us) (the "Website") to the customer purchasing such products through the Website ("Customer"). If these Terms are deemed an acceptance of a prior offer by Customer, such acceptance is limited to the express terms contained in these Terms. Customer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. CSA hereby objects to and rejects any additional, different or varying terms proposed by Customer. Such proposal of additional, different or varying terms by Customer will not operate as a rejection of CSA's offer, and CSA's offer will be deemed accepted without such additional, different or varying terms. Customer's assent to these terms and conditions shall be presumed from Customer's receipt of CSA's acknowledgment, or from Customer's acceptance of all or any part of the products ordered. CSA reserves the right to accept or reject any order. THESE TERMS CONSTITUTE THE FINAL EXPRESSION OF THE AGREEMENT BETWEEN CSA AND CUSTOMER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THAT AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THESE TERMS WILL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY CUSTOMER AND AN AUTHORIZED OFFICER OF CSA. CSA's sales representatives are without authority to change, modify or alter these Terms.

### **Prices, Payment And Delivery**

The prices displayed on the Website: (a) are in U.S. Dollars, EXW (INCOTERMS 2010) the location designated by CSA; (b) are available for orders placed through the Website; (c) do not include freight, handling fees, taxes and/or duties; and (d) are subject to change or correction at any time and without notice.

Customer is responsible for payment of all applicable taxes, fees and costs including without limitation any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, packaging, loading, unloading, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including without limitation interest, imposed on, in connection with or measured by any transaction between CSA and Customer, in addition to the prices quoted or invoiced.

Payment is due upon Customer's submission of an order. All payments must be made in U.S. dollars through the Website. CSA has the right of set-off and deduction for any sums owed by the Customer to CSA.

CSA will deliver the products EXW (INCOTERMS 2010) the location designated by CSA. All risk of loss, damage or delay will pass from CSA to Customer upon CSA's delivery of the products at the delivery point. Title to the products will not pass until full payment therefor has been received by CSA. Partial shipments will be permitted. All delivery dates are approximate. Delivery dates given by CSA are based on prompt receipt of all necessary information regarding the order. CSA will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by CSA to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery will not be of the essence. Claims for shortages or other errors must be made in writing to CSA within 10 days after CSA's delivery. Failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Customer.

CSA may charge a shipping and handling fee (including without limitation internal handling and related costs) on each order which is applied at time of order and reflected on Customer's invoice. Other terms and conditions may apply for other than standard ground delivery ("Other Freight Services"), including without limitation expedited same day delivery, less than truckload (LTL) shipments, air freight, freight collect, export orders, hazardous materials, Customer's carrier, shipments outside the contiguous U.S. or other special handling by the carrier. Any charges incurred for Other Freight Services must be paid by Customer. Fuel surcharges may be applied. If any product is damaged in transit, Customer's only recourse is to file a claim with the carrier.

### **Returns, Cancellations And Changes**

No products may be returned to CSA without CSA's prior, written authorization. Products may be returned only on the terms or conditions specified in such authorization. CSA does not take title to returned products until received by CSA at the applicable return location. Returned products must be in original packaging, unused, undamaged, and in saleable condition. Proof of purchase is required in all cases. Orders for undelivered products may be cancelled by Customer only upon written approval of an authorized representative of CSA. Cancellations and returns may be denied or made subject to restocking fees and other charges by CSA. Customer may not change its order or any part thereof without the prior, written consent of an authorized representative of CSA. CSA reserves the right to change the price, terms of payment and delivery dates for any products affected by any changes to which it consents.

### **Dispute Resolution**

Any dispute of any sort that might arise between CSA and Customer, including without limitation any matters or disputes relating to or arising from the purchase or use of any product, service, or information offered or made available through CSA, or arising from or relating to any communication between Customer and CSA or its agents, will be determined by binding arbitration before a single, neutral arbitrator administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration will be Milwaukee, Wisconsin and the arbitration will be conducted in English. Judgment on any arbitration award may be entered in any court of competent jurisdiction, and the parties intend that it will be enforceable in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Any claim by Customer with respect to any transaction must be initiated within one year after the cause of action has arisen. CSA and Customer both agree that either party may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

### **Warranty Disclaimer; Limitations Of Liability; Indemnity**

CSA WARRANTS TO CUSTOMER THAT, AT THE TIME OF DELIVERY, THE PRODUCTS MANUFACTURED BY CSA WILL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH PRODUCTS SET FORTH ON THE WEBSITE. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING SENTENCE, NO WARRANTY OR AFFIRMATION OF FACT OR DESCRIPTION, EXPRESS OR IMPLIED, IS MADE OR AUTHORIZED BY CSA. CSA DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

In addition to the products manufactured by CSA, the Website also lists products available for sale that were procured by CSA from third parties ("Third Party Products"). Third Party Products may be shipped from CSA's facility or drop-shipped by a third party. CSA'S LIMITED WARRANTY SET FORTH ABOVE DOES NOT APPLY TO THIRD PARTY PRODUCTS. THE PRODUCT WARRANTY

PROVIDED BY THE MANUFACTURER AND/OR SUPPLIER OF THE THIRD PARTY PRODUCT (IF ANY) WILL BE CUSTOMER'S SOLE REMEDY.

CSA DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF ANY ACTS OF CUSTOMER OR THIRD PARTIES, PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. CSA EXPRESSLY DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR FOR LOST PROFITS OR REVENUES DIRECTLY OR INDIRECTLY INCURRED, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CSA'S LIABILITY IN ALL EVENTS IS LIMITED TO THE PURCHASE PRICE PAID FOR THE PRODUCT THAT GIVES RISE TO ANY LIABILITY.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY AND OTHER RIGHTS MAY BE AVAILABLE.

Customer hereby releases and agrees to indemnify, defend and hold harmless CSA and its shareholders, directors, officers, employees, agents, successors, assigns, affiliates and suppliers (individually and collectively, "CSA's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, losses, suits, demands, fines, penalties, judgments, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs incurred by or against CSA or any of CSA's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (a) misrepresentation or breach of this Contract, or violation of any law, by Customer or any of Customer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Customer's Parties"); (b) any infringement or other violation of third party intellectual property rights by any specifications, materials or the like supplied by Customer; (c) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Customer or any of Customer's Parties; or (d) actions, threatened actions, losses, damages or injuries to person or property (including death) related to or caused by the products. Prior to settling any claim, Customer will give CSA an opportunity to participate in the defense and/or settlement of such claim. Customer will not settle any claim without CSA's written consent. In the event of any recall affecting the Products, CSA will have the right to control the recall process and Customer will fully cooperate with CSA in connection with the recall.

### **Product Compliance And Suitability**

Jurisdictions have varying laws, codes and regulations governing construction, installation, and/or use of products for a particular purpose. Certain products may not be available for sale in all areas. CSA does not guarantee compliance or suitability of the products it sells with any laws, codes or regulations, nor does CSA accept responsibility for construction, installation and/or use of a product. It is Customer's responsibility to review the product application and all applicable laws, codes and regulations for each relevant jurisdiction to be sure that the construction, installation, and/or use involving the products are compliant.

### **Cross-Reference Information**

Product cross-reference comparisons or product alternatives that are presented do not imply that products are available or perfectly comparable. CROSS-REFERENCED PRODUCTS OR PRODUCT

ALTERNATIVES ARE NOT REPRESENTED OR WARRANTED AS FUNCTIONAL OR PERFORMANCE EQUIVALENTS. Customer shall review all cross-referenced product or product alternative specifications prior to purchase and use to determine suitability of the product for Customer's intended use.

### **Website Information**

Product depictions on the Website are for illustrative purposes only. CSA reserves the right to revise errors in the Website. Occasional pricing errors may occur in the Website, and CSA reserves the right to correct or change such pricing errors without notice. CSA further reserves the right to cancel any and all orders resulting from such pricing errors, even if Customer has received an order confirmation from CSA.

### **Product Substitution**

Products and/or country of origin may be substituted and may not be identical to descriptions and/or images published on the Website.

### **Intellectual Property**

Customer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights ("IP") reserved by CSA, or any IP owned by manufacturers and/or suppliers to CSA. All materials contained on the Website are subject to the ownership rights of CSA and its manufacturers and/or suppliers. Customer shall have no right to copy or use any IP of CSA or its manufacturers and/or suppliers without CSA's permission.

### **Independent Contractors**

CSA and Customer are independent contractors and not principal and agent. Nothing contained in these terms and conditions shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Customer does not have the right to bind or otherwise obligate CSA in any manner, nor may Customer represent to anyone that it has the right to do so.

### **Force Majeure**

CSA shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from any force majeure event, including without limitation acts of God, labor disruptions, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, shortages, communication or power failures, fires, accidents, explosions, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstance or cause beyond the reasonable control of CSA in the conduct of its business.

### **Assignment**

Customer shall not assign any order, or any interest therein, without the prior written consent of CSA. Any actual or attempted assignment without CSA's prior written consent shall entitle CSA to cancel such order upon notice to Customer.

### **No Third Party Benefit**

The provisions stated herein are for the sole benefit of the parties hereto, and confer no rights, benefits or claims upon any person or entity not a party hereto.

### **Waiver, Choice Of Law And Venue**

The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent non-performance of any such term or condition by the other party. All transactions shall be governed by the laws of the State of Wisconsin, excluding its conflict of law rules, and to the extent allowed under these terms and conditions, both CSA and Customer agree that venue shall be proper either in the state or federal courts located in Milwaukee County, Wisconsin. The rights and obligations of the parties under these terms and conditions shall not be governed by the provisions of the 1980 United Nations Convention of Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods.

### **Severability**

If any portion of these terms and conditions is found to be invalid or unenforceable, the invalid or unenforceable term shall be severed from these terms and conditions, and the remaining terms and conditions shall be valid and fully enforceable as written.

### **Authorization**

Customer represents that any person accepting these Terms of Sale on behalf of Customer is authorized to do so and that all employees and representatives of Customer who access the Website on behalf of Customer or otherwise purchase products from CSA on behalf of Customer have the legal right, and are duly authorized, to make such purchases on behalf of Customer. Customer hereby agrees to indemnify and hold CSA harmless against any breach of this representation.

### **Export Controls And Related Regulations**

Customer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Customer shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation the regulations administered by OFAC, the Export Administration Regulations ("EAR") administered by BIS, and the International Traffic in Arms Regulations administered by DDTC.