

# **TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS AND SERVICES**

## **GENERAL**

The sale by Seller d/b/a AlphaHD Trailers (“Seller”) of any products or services to Buyer shall be subject to the following terms and conditions, and the terms and conditions stated on the Seller’s Purchase Order or Quotation form to which these terms and conditions are attached or on any Seller invoice accompanying the products or services sold by Seller to Buyer (the “Terms and Conditions”). THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT TO THE GOODS AND SERVICES FURNISHED BY SELLER. No representation, promise or condition not set forth in the Terms and Conditions has been relied upon by buyer or shall be binding on Seller

## **OTHER DOCUMENTS; MODIFICATIONS**

These Terms and Conditions are in lieu of and replace any and all terms and conditions set forth in any purchase order or other documents issued by Buyer. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY BUYER AT ANY TIME ARE HEREBY OBJECTED TO AND REJECTED BY SELLER, SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE BY SELLER AND SHALL NOT BE BINDING IN ANY WAY ON SELLER. No modification, waiver or amendment to these Terms and Conditions shall be binding on Seller unless made in a writing expressly stating that it is such a waiver or amendment and signed by Seller at its home office located at: 801 2<sup>nd</sup> Ave. SE, Oelwein, IA 50662. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by Seller at its home office located at: 801 2<sup>nd</sup> Ave. SE, Oelwein, IA 50662.

## **CONTRACT OF SALE**

Any price quotations given by Seller to Buyer (“Quotation”) will be valid for the period stated on the Quotation, and if no period is stated, the Quotation is valid for 15 days from the date of the Quotation, and do not include any sales, use, or other taxes or duties. Seller reserves the right to modify prices at any time to adjust for any raw material price fluctuations. All offers to purchase, and purchase orders of Buyer are subject to final acceptance by, and are not binding upon Seller until accepted by an authorized officer of Seller at its home office located at: 801 2<sup>nd</sup> Ave. SE, Oelwein, IA 50662. Orders accepted by Seller are not subject to cancellation by Buyer except as provided below.

## **PAYMENT TERMS**

All prices are quoted EXW Seller’s production facility, located at 801 2<sup>nd</sup> Ave. SE, Oelwein, IA 50662. Subject to credit approval of Buyer by Seller, standard payment terms are as follows:

- Early Payment Discount. Buyer shall receive a 2.0% discount on the stated purchase price in the Invoice for full payments of the invoice amount made within 5 days after the date of the Invoice. Discounts shall not apply to any freight, taxes or any sums due any third party.

All prices are stated, and all payments must be made in U.S. Dollars. If credit terms have been agreed to by Seller, invoices are due and payable net fifteen (15) days after the date of the invoice unless otherwise noted on the face page of the Purchase Order or Quotation or on Seller’s invoice. The term begins on the date of the

invoice. Seller may invoice parts of an order separately. Buyer agrees to pay interest on all past-due sums at the lesser of 1.5% per month or the highest rate allowed by law, and to pay all costs of collection, including costs of litigation and reasonable attorney's fees incurred by Seller. Unless otherwise agreed in writing, all sales outside of the continental United States must be covered by an irrevocable confirmed letter of credit issued by a U.S. bank acceptable to Seller

Seller reserves the right to require down payment and/or progress payments, which shall be specified on the Purchase Order or Quotation.

## **DESIGN CHANGES**

Final trailer design, including specifications and drawings, shall be mutually developed and agreed upon in writing by Seller and Buyer. Once the final design has been approved in writing by Buyer, subsequent modifications shall be subject to additional charges to be determined by Seller and paid for by Buyer.

## **PICKUP AND DELIVERY SCHEDULES**

Stated pickup and delivery schedules or dates are estimates only and not a commitment or guaranty by Seller as to availability for pickup or delivery on specific dates.

## **SHIPPING**

Regardless of the manner of shipment, delivery occurs and title and risk of loss or damage pass to Buyer, upon completion of the trailer and invoicing of the trailer at Seller's facility. Unless otherwise noted, sales prices do not include transport, freight, shipping or handling charges. Any separate charges for transport, freight, shipping and handling will be shown on Seller's invoice(s). All claims for breakage, loss delay and damage must be made to the carrier.

## **TAXES**

Sales prices do not include, and Buyer is responsible for and agrees to pay (unless Buyer shall provide Seller at the time an order is submitted with exemption certificate or other documents acceptable to taxing or custom authorities), all sales, use, value added, excise and all other federal, state or local or foreign taxes, import or customs fees and duties associated with an order, however designated, except for Seller's net income. If applicable, a separate charge for taxes will be shown on Seller's invoice.

## **LIMITED WARRANTY POLICY**

Seller warrants to the first purchaser only ("Purchaser") that each new AphaHD lowbed trailer (herein-after referred to as "Trailer") manufactured by Seller will be free from defects in materials and workmanship for the time periods specified below from the delivery of the Trailer to the Purchaser (the "Commencement Date") subject to and in accordance with the terms and conditions set forth below (the "Limited Warranty"):

1. Warranty Periods and Costs. The Limited Warranty is provided only to those defects and failures to conform that occur during the warranty period, which is indicated below beginning on the Commencement Date ("Warranty Period"). The portion of the costs which shall be borne by Seller to repair or replace any part of the warranted Trailer found to be defective in accordance with the terms of the Limited Warranty (the "Seller Covered Cost") is set forth below:

<b>Components</b>	<b>Warranty Period</b>	<b>Seller Covered Cost</b>
Trailer Structural Members and Supports	2 Years	Year 1 – 100% Year 2 – 50%
All other Seller manufactured components	1 Year	100%
Paint (excluding scratching, shipping damage, surfaces usage/wear and tear)	1 Year	100%
Axles, Suspensions, Landing Gear, Wheels, Rims, Hubs, Hydraulic Valve Bodies	1 Year	100%
Air Lines, Springs, Air Bags, Leveling Valves, Bearings, Brake Valves, Oil Seals, Brake Drums, Shock Absorbers, Electrical, Cylinders, Hydraulic Hoses & Connections	6 months	100%
Wood Components	Not covered	0%

Except as listed above, this Limited Warranty does not include components, accessories, or other parts of the Trailer not manufactured by Seller (“Excluded Components”), including but not limited to, tires, engines, and/or tarps. Such Excluded Components are covered only by warranties, if any, of their respective suppliers or manufactures, and not by Seller. All warranties, if any, extended by the makers and suppliers of component parts, accessories, or other goods included in the manufacture of the Trailer will be assigned, if contractually permitted, to the Purchaser.

2. Terms and Conditions of Limited Warranty.

(a) Any warranties provided herein are expressly conditioned upon the occurrence of all of the following ongoing conditions: the Trailer warranted hereunder is operated by the Purchaser in accordance with normal use and service for the purpose intended, including but not limited to: loads, including the weight of the Trailer, not exceeding the vehicle manufacturer’s gross vehicle weight rating; the loading of each axle not exceeding the gross axle rating; or the load, including the weight of the Trailer, not exceeding the concentrated load rating; and any and all other listed limitations or information on the vehicle identification plate, all in accordance with and subject to the terms and conditions of this Limited Warranty.

(b) Seller’s sole obligation under this Limited Warranty shall be limited to repairing or replacing, at its option, in accordance with the scheduled Warranty Periods and Seller Covered Costs, any defective part of the warranted Trailer, which shall be returned to Seller’s factory location or authorized service facilities and then Seller’s examination shall disclose to its satisfaction to have been defective; provided, however, that the Purchaser notifies Seller warranty department immediately upon identification of defect, and such defective Trailer is returned by the Purchaser to an Seller location authorized by Seller with transportation and freight charges prepaid within fifteen (15) days after discovery of defective conditions.

(c) The customer shall not be required to deliver defective Trailer to Seller if the Trailer was destroyed as a result of defect covered in this Limited Warrant and the Seller warranty department is reasonably satisfied that the Trailer was defective at the time of the sale.

(d) All labor and parts repairs or replacements under this Limited Warranty must be authorized by Seller. Failure to do so will result in no warranty payment of any kind. To the extent a repair or cost covered pursuant to this Limited Warranty is not Seller Covered Cost, Purchaser is required to pay such costs, including sales and other taxes immediately upon completion of work performed.

(e) This Limited Warranty excludes such parts or accessories which are not defective, but may wear out and require periodic replacement during the Warranty Period, including, but not limited to, light bulbs, paint, brake lining, brake drums, and wood pieces and equipment.

(f) This Limited Warranty excludes such parts or accessories that have been repaired, replaced, or altered by someone other than Seller or one of its authorized dealers during the Warranty Period.

### 3. Limitations and Exclusions

#### (a) **EXCLUSION OF WARRANTIES:**

THE LIMITED WARRANTY EXPRESS ABOVE IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WHICH WARRANTIES ARE EXCLUDED. DEFECTS RESULTING FROM MISUSE OR LACK OF PROPER MAINTENANCE, INCLUDING (WITHOUT LIMITATION) LOADING, UNLOADING AND/OR TRANSPORTATION OF NON-UNIFORMLY DISTRIBUTED LOADS, USE WITH CORROSIVE CARGO, AND/OR FAILURE TO ADEQUATELY RESTRAIN OR SECURE LOADS SUCH THAT THE TRAILER OR ANY PORTION OF THE TRAILER IS SUBJECTED TO STRAINS OR IMPACTS GREATER THAN ARE IMPOSED BY NORMAL USE, SHALL NOT BE CONSIDERED DEFECTS UNDER THIS LIMITED WARRANTY.

#### (b) **LIMITATION OF LIABILITY:**

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.

#### **LIMITATION OF REMEDY**

IN NO EVENT SHALL SELLER BE LIABLE TO THE PURCHASER FOR ANY LOSS OR CLAIM IN AN AMOUNT IN EXCESS OF THE PURCHASE PRICE, OR, AT THE OPTION OF SELLER, THE REPAIR OR REPLACEMENT, OF THE PARTICULAR COMPONENT ON WHICH ANY CLAIM OF LOSS OR DAMAGE IS BASED. THIS LIMITATION OF LIABILITY APPLIES IRRESPECTIVE OF WHETHER THE PURCHASER CLAIM IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER CAUSE AND WHETHER THE ALLEGED DEFECT IS DISCOVERABLE OR LATENT.

#### **PATENT INFRINGEMENT INDEMNITY**

Where the trailers or accessories purchased on Buyer's order are manufactured or portions thereof are manufactured by Seller, Seller agrees to (a) assume the defense of any suit brought against Buyer for

infringement of any United States Patent arising solely from use and/or sale of said specific goods, (b) defray the expense of such defense, (c) indemnify Buyer against any money damages and/or costs awarded in such suit; provided (i) Seller be given exclusive control of the defense of such suit and all negotiations relative to the settlement thereof, (ii) the liability claimed shall have arisen solely because of Seller's selection as to the design, composition or manufacture of said goods, and (iii) Buyer promptly informs Seller in writing of any such claim. Seller shall have no obligation to Buyer under this section with respect to claims for infringement resulting from unauthorized modifications of products manufactured by Seller or for infringement claims to the extent related to products manufactured by Seller to designs and specifications originated and furnished by Buyer. If the goods or any parts thereof subject to this indemnity obligation is held to constitute an infringement and its use is enjoined, or during the pendency of any such claim or suit, Seller may at its expense, and in its discretion (i) procure the right to continue use of the goods or part thereof for Buyer, (ii) replace the goods, or such part or parts with non-infringing parts or modify the goods to be non-infringing, provided that the modification does not materially and adversely affect the performance of the goods as contemplated by this Agreement (less wear and tear or alterations other than by Seller), or (iii) accept return of the goods and refund the Purchase Price thereof (less a reasonable depreciation charge) to Buyer. The foregoing states the entire liability of Seller, and sole remedy of Buyer, for patent infringement by said goods or any part thereof.

#### **APPLICABLE LAW**

The validity, performance and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of Iowa, USA. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Fayette County, Iowa, USA, and the parties agree to submit to such jurisdiction. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are specifically excluded and shall not apply to this Agreement.

#### **ASSIGNMENT**

Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller; and any such assignment, without such consent, shall be void.

#### **FORCE MAJEURE**

Seller shall not be liable in any way for any default or delay due to contingencies beyond its control, or the control of its suppliers or subcontractors, which prevents or interferes with Seller providing the products on the dates specified, including but not limited to, acts of nature, fire, flood, accident, riot, war, terrorism, government intervention, embargoes, strikes, labor difficulties, equipment failure, late deliveries by suppliers or manufacturers and any other contingency affecting Seller, its suppliers, or sub-contractors; and Seller shall have the right to cancel a contract of sale or to extend the delivery date in the event that one or more of such contingencies prevent or delay completion of the product or delivery. Seller's contractual obligations may be modified by Seller necessary to sustain business at a commercially practicable level, including but not limited to Seller's use of alternate sources of supply and Seller's cancellation or modification of existing orders. Seller may impose surcharges due to sudden increases in Seller's costs for obtaining transportation, fuel or material costs. Such surcharges will be added to the purchase price to be paid by Buyer.

#### **SECURITY**

If the product is purchased on credit from Seller, Buyer hereby grants Seller a purchase money security interest in the product, and in all attachments, accessories, improvements, replacements and proceeds, including insurance proceeds, resulting from any sale, assignment or other conveyance, or damage or destruction thereof (collectively, the "Collateral"), as security for the payment of all indebtedness of Buyer to Seller, Buyer hereby

authorizes Seller, or its assignee, to sign and file financing statements in order to perfect the security interest of Seller hereunder. Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code which rights and remedies, to the extent permitted by law, shall be cumulative. Buyer shall pay any expenses, including reasonable attorney's fees, incurred or paid by Seller in the preservation or enforcement of Seller's rights under this Agreement. Prior to receipt of payment in full by Seller, Buyer shall not create any other security interest in the product or suffer or permit any lien or attachment thereto, or transfer its interest in the product without the prior written approval of Seller

### **ACCEPTANCE OF PRODUCT**

When the product is certified as complete by Seller, and operates in good order within design parameters, Buyer shall accept the product in writing. Notwithstanding the foregoing, the product shall be deemed accepted by the Buyer as soon as the product is used by the Buyer.

### **ORDER CANCELLATION**

In the event that the Buyer retracts the purchase order for any reason, Seller shall be paid a reasonable cancellation charge consisting of a percentage of the purchase order price reflecting the percentage of the work performed and material costs incurred by Seller prior to the notice of termination, plus actual direct costs resulting from cancellation, provided that in no event shall such cancellation charge be less than 15% of the price quoted multiplied by the number of months (or parts thereof) from the date the order was accepted by Seller until the date the order was cancelled, in order to compensate Seller for material and labor commitments made by Seller

### **SAFETY**

The products manufactured by Seller meet or exceed the requirements of the following codes and regulations established by various private and government agencies: National Highway Traffic Safety Administration (NHTSA) and Federal Motor Vehicle Safety Standards (FMVSS).

### **GOVERNMENT REGULATIONS**

Any order accepted by Seller is at all times subject to Governmental proclamations, laws and regulations now or hereafter in effect, pertaining to priorities, allocations, prices and other such acts affecting this transaction or the production or sales by manufacturers of the products.

### **SEVERABILITY**

These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.

### **MISCELLANEOUS**

These Terms and Conditions, together with terms and conditions set forth on the face page of the purchase order/quotation or in Seller's invoices to Buyer (a) contain the entire agreement between Seller and Buyer relating to this sale, and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to said sale, including any terms and conditions on any of Buyer's documents or purchase orders, and (b) shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties. The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision hereof.

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All terms and conditions of customer's purchase order are hereby waived. Only the terms and conditions referenced in this document apply.

Signature: \_\_\_\_\_

Company \_\_\_\_\_

Name: \_\_\_\_\_

Address \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_