



## TERMS AND CONDITIONS OF SALE OF USED EQUIPMENT

- 1. ACCEPTANCE.** All sales of used chassis, tanks, containers and other used equipment by **Transworld Equipment Corp.** ("Equipment"), including any conditional sales of Equipment made subject to later inspection by Purchaser, shall be subject to and expressly conditioned upon the following terms and conditions ("Terms and Conditions"), which shall form an integral part of any agreement between the purchaser of the Equipment ("Purchaser") and **Transworld Equipment Corp.** Purchaser's acceptance of any quotation, proposal or offer by **Transworld Equipment Corp.** for the sale of any Equipment is expressly made subject to the Terms and Conditions and no variation of these Terms and Conditions will be binding upon **Transworld Equipment Corp.** (whether contained in any purchase order issued by Purchaser or otherwise) unless agreed to in writing and signed by an officer or authorized representative of **Transworld Equipment Corp.** All orders for Equipment received by **Transworld Equipment Corp.** from Purchaser shall be governed only by these Terms and Conditions, notwithstanding any other terms and conditions in any purchase order, sales order, release order, or other form used by Purchaser. **Transworld Equipment Corp.** hereby object to any terms and conditions which may be found in any purchase order, release order, or other form used by Purchaser and notifies Purchaser that they are rejected.
- 2. DELIVERY.** Unless otherwise indicated in any sales order relating to the sale of the Equipment which is generated by Transworld Equipment Corp. or accepted in writing by Transworld Equipment Corp. (a "Sales Order"), Purchaser shall be responsible for transportation of all such Equipment from **Transworld Equipment Corp.**'s shipping point noted on the Sales Order, all in accordance with applicable laws. Risk of loss with respect to any such Equipment (including any damage in transit) shall pass to Purchaser at the moment that Purchaser or Purchaser's carrier takes possession of such Equipment at **Transworld Equipment Corp.**'s shipping point noted on the Sales Order. Purchaser shall indemnify, defend and hold **Transworld Equipment Corp.** harmless from and against any and all damages and losses incurred as a result of or in any way in connection with the transportation of the Equipment by Purchaser or Purchaser's carrier, and otherwise for any acts or omissions of Purchaser following the taking of possession of such Equipment by Purchaser or Purchaser's carrier. Purchaser agrees to ensure that Purchaser or Purchaser's carrier at all times maintains insurance providing full coverage for any damage to the Equipment during transit and full coverage for all other damages and losses incurred by any party (including third parties) in connection with the transportation of the Equipment and otherwise for any acts or omissions of Purchaser following the taking of possession of such Equipment by Purchaser or Purchaser's carrier, in amounts, on terms and with insurance companies deemed acceptable to **Transworld Equipment Corp.** Purchaser shall provide evidence of the insurance required under the immediately preceding sentence to **Transworld Equipment Corp.** on request of **Transworld Equipment Corp.** All dates for shipment of the Equipment are approximate. **Transworld Equipment Corp.** shall have no liability whatsoever for loss or damage due to late delivery or non-delivery of any Equipment. In the event of any delay, regardless of the cause, Purchaser and **Transworld Equipment Corp.** shall agree on a new date for shipment and/or delivery of the Equipment. In the event that any delay is caused by the actions or omissions of Purchaser, Purchaser shall pay **Transworld Equipment Corp.** for all damages, costs and expenses incurred by **Transworld Equipment Corp.** related to such delay. Furthermore, in the event that **Transworld Equipment Corp.**'s performance of this sale is, in whole or in part, prevented or hindered by any cause whatsoever, **Transworld Equipment Corp.** shall have the right to cancel, without any liability on its part, all or any portion or portions of any sale between **Transworld Equipment Corp.** and Purchaser so affected.
- 3. CONDITION OF EQUIPMENT; DISCLAIMER OF WARRANTIES.** PURCHASER IS AWARE THAT ALL EQUIPMENT SOLD IS USED EQUIPMENT AND IS SOLD ON AN "AS IS" "WHERE IS" BASIS. **TRANSWORLD EQUIPMENT CORP.** DISCLAIMS AND PURCHASER WAIVES AND RELEASES **TRANSWORLD EQUIPMENT CORP.** FROM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION (A) THE DESIGN, CONDITION, AVAILABILITY, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE EQUIPMENT, (B) THE FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR USE OR PURPOSE OF THE PURCHASER, AND (C) THE CONFORMITY OF THE EQUIPMENT TO ANY SPECIFICATIONS REQUIRED (WHETHER REQUIRED BY PURCHASER, ANY COUNTRY OR POLITICAL SUBDIVISION WITHIN WHICH THE EQUIPMENT MAY BE USED OR ANY THIRD PARTY). PURCHASER ACKNOWLEDGES AND AGREES THAT **TRANSWORLD EQUIPMENT CORP.** SHALL HAVE NO LIABILITY TO PURCHASER FOR ANY CLAIM, LOSS OR DAMAGE CAUSED OR ALLEGED TO HAVE BEEN CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY OR CONSEQUENTIALLY BY THE EQUIPMENT, OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, OR BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH WHETHER ARISING IN STRICT LIABILITY OR OTHERWISE.
- 4. TAXES.** Purchaser agrees to assume exclusive liability for and to pay, indemnify and hold **Transworld Equipment Corp.** harmless from all sales or use taxes, transfer, title, and registration fees, VAT, domestication, personal property taxes or other taxes, tolls, levies, imposts, duties or governmental charges imposed in connection with the sale of any Equipment or services rendered by **Transworld Equipment Corp.** in connection therewith including any penalties, fines or interest thereon.
- 5. DEPOSIT; PAYMENT DEFAULTS.** Any deposit made by Purchaser in connection with this sale may be used by **Transworld Equipment Corp.** pending payment of any outstanding balance due to **Transworld Equipment Corp.** In the event Purchaser shall fail or refuse to accept delivery of the Equipment hereunder or shall default in the performance of any of the terms, covenants or conditions in these Terms and Conditions, **Transworld Equipment Corp.** may retain the deposit and apply the same toward payment of its damages. Any balance of the price owed for the Equipment which is not paid when due shall bear interest at 1 ½% per month (18% per annum), or the maximum rate permitted by law, whichever is less, until paid.
- 6. SECURITY INTEREST.** Purchaser hereby grants **Transworld Equipment Corp.** a security interest in the Equipment to secure any unpaid balance owed in connection with the sale of the Equipment and all other obligations of Purchaser however arising. Purchase authorizes **Transworld Equipment Corp.** to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably grants **Transworld Equipment Corp.** a power of attorney to execute any documents on behalf of Purchaser relating thereto.
- 7. DISCLAIMER OF CERTAIN DAMAGES.** UNDER NO CIRCUMSTANCES SHALL **TRANSWORLD EQUIPMENT CORP.** BE LIABLE FOR ANY LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE RELATING TO THE SALE OF ANY EQUIPMENT OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, EVEN IF **TRANSWORLD EQUIPMENT CORP.** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **TRANSWORLD EQUIPMENT CORP.**'S LIABILITY WITH RESPECT TO THE SALE OF ANY EQUIPMENT OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH IS LIMITED TO THE AMOUNT OF PURCHASER'S DAMAGES UP TO THE PRICE PAID FOR THE EQUIPMENT OR SERVICES AND IN NO EVENT SHALL **TRANSWORLD EQUIPMENT**

**CORP. BE LIABLE TO PURCHASER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY PURCHASER FOR THE EQUIPMENT OR SERVICES.**

8. **JOINT AND SEVERAL LIABILITY; INDEMNITY.** If there be more than one Purchaser, each Purchaser shall be jointly and severally liable for the obligations of the Purchaser hereunder. Purchaser agrees to indemnify and hold harmless **Transworld Equipment Corp.**, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that **Transworld Equipment Corp.** may sustain or incur as a result of any claim against **Transworld Equipment Corp.** based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Purchaser, its officers, agents, employees, successors or assigns, by Purchaser's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of any Equipment sold by **Transworld Equipment Corp.**, or by reason of Purchaser's failure to perform its obligations contained herein. Purchaser shall notify **Transworld Equipment Corp.** in writing within fifteen (15) days of Purchaser's receipt of knowledge of any accident, or incident involving any Equipment sold by **Transworld Equipment Corp.** products which results in personal injury or damage to property, and Purchaser shall fully cooperate with **Transworld Equipment Corp.** in the investigation and determination of the cause of such accident and shall make available to **Transworld Equipment Corp.** all statements, reports and tests made by Purchaser or made available to Purchaser by others. The furnishing of such information to **Transworld Equipment Corp.** and any investigation by **Transworld Equipment Corp.** of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by **Transworld Equipment Corp.**
9. **REMEDIES** The remedies reserved to **Transworld Equipment Corp.** herein shall be cumulative and in addition to any other or further remedies provided by law.
10. **WAIVER.** **Transworld Equipment Corp.'s** failure to insist on performance of any of the Terms and Conditions herein, or **Transworld Equipment Corp.'s** waiver of any breach, shall not act as a waiver of any other term or condition or any subsequent breach.
11. **ASSIGNMENT.** Purchaser may not assign this Agreement nor any of its rights or obligations herein without **Transworld Equipment Corp.'s** prior written consent, which consent may be withheld for any reason.
10. **RESOLUTION OF DISPUTES; JURISDICTION.** If Purchaser or **Transworld Equipment Corp.** believes that the other party has breached these Terms and Conditions or the terms of any Sales Order, notice thereof shall be given to the other in writing. The receiving party shall respond in writing to any such notice within seven (7) business days after receipt. If the dispute is not promptly resolved, there shall follow within thirty (30) days, or at such later time as may be mutually agreed to by **Transworld Equipment Corp.** and Purchaser, a meeting of **Transworld Equipment Corp.** and Purchaser. The purpose of such meeting shall be to discuss and negotiate in good faith a resolution to any outstanding disputes in Monmouth County, New Jersey. In the event that **Transworld Equipment Corp.** and Purchaser are unable to resolve any outstanding disagreement or dispute as a result of such meeting, then **Transworld Equipment Corp.** and Purchaser may, if they mutually agree, submit said outstanding disagreement or dispute to arbitration. If **Transworld Equipment Corp.** and Purchaser are not able to agree on the method or rules of arbitration that would apply to resolve such disagreement or dispute, then, in consideration of the Agreements contained herein, **Transworld Equipment** and Purchaser agree that any such disagreement or dispute, may be litigated in the state or federal courts located in the State of New Jersey and **Transworld Equipment Corp.** and Purchaser hereby consent to be subject to the jurisdiction of such courts. **Transworld Equipment Corp.** and Purchaser agree that service of process upon the other may be made by mailing a copy (by registered or certified mail) postage prepaid, addressed to the respondent Party at the address shown below. Service shall be complete seven days after such process has been mailed to the respondent Party. Nothing herein shall affect the right of either Party to serve legal process in any other manner permitted by law or affect the right of either Party to bring any action or proceeding against the other Party or its property in the courts of any other jurisdiction.
11. **GOVERNING LAW.** The sale of any Equipment or services in connection therewith and these Terms and Conditions shall be construed and interpreted according to the laws of the State of New Jersey.
12. **ENTIRE AGREEMENT.** It is understood and agreed that the Sales Order and these Terms and Conditions embody the complete understanding of Purchaser and **Transworld Equipment Corp.** relative to the sale of any Equipment or services in connection therewith and that these Terms and Conditions may not be revised or modified in any way except by a written instrument specifically purporting to do so signed by the Purchaser and **Transworld Equipment Corp.**
13. **MARKETING AND ID PLATES** Prior to release of any Equipment to Purchaser, **Transworld Equipment Corp.** will remove all ownership markings and identification plates. If circumstances prevent this from being carried out, the Purchaser hereby warrants that all such markings will be removed prior to Purchaser or Purchaser's carrier taking possession of any Equipment.
14. **TITLE** **Transworld Equipment Corp.** hereby agrees to transfer title to the Purchaser on receipt of payment in full, and will at the same time deliver to the Purchaser any documents of title (if applicable).
15. **RELATIONSHIP OF THE PARTIES.** The relationship between Purchaser and **Transworld Equipment Corp.** is that of independent contractors. Nothing contained in the Sales Order or these Terms and Conditions shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
16. **FORCE MAJEURE.** **Transworld Equipment Corp.** shall not be liable or responsible to Purchaser, nor be deemed to have defaulted or breached these Terms and Conditions of Sale, for any failure or delay in fulfilling or performing any of the terms stated in these Terms and Conditions of Sale when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of **Transworld Equipment Corp.**, including without limitation acts of God, flood, fire, weather, earthquake, explosion, governmental acts, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, telecommunications breakdowns and power outages.
17. **ATTORNEY FEES.** In any litigation, arbitration, bankruptcy or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment or order.