

TERMS AND CONDITIONS

1. **ENTIRE CONTRACT:** The terms and conditions set forth herein shall constitute the sole and exclusive conditions of sale regarding all equipment, materials, labor and services (hereinafter collectively referred to as "Products") sold by W. W. Patterson Company ("Seller") to Buyer and the entire and complete contract of the parties with respect to the Products. Said Terms and Conditions shall not, in any way, be modified, changed, limited, controlled, or restricted by any oral statements, by the provisions on any of Buyer's forms, or by letters or papers which are inconsistent herewith. No waiver, consent, modification, amendment or change of these Terms and Conditions shall be binding unless in writing and signed by Seller and Buyer. Acceptance of Buyer's order by Seller is expressly made conditional upon Buyer's assent to these Terms and Conditions, whether such assent is by written acknowledgment or by conduct of Buyer that recognizes the existence of a contract, and no terms, conditions, promises, understandings, representations or warranties, oral or written, other than those set forth herein shall be binding on Seller. THESE TERMS AND CONDITIONS CONSTITUTE NOTIFICATION OF SELLER'S OBJECTION TO AND REJECTION OF ANY OTHER CONDITIONS OF SALE, WHETHER CONTAINED IN BUYER'S PURCHASE ORDER, BID DOCUMENTS OR IN ANY OTHER WRITING, THAT ARE DIFFERENT FROM, INCONSISTENT WITH OR ADDITIONAL TO THE TERMS AND CONDITIONS SET FORTH HEREIN. IF THESE TERMS AND CONDITIONS DIFFER FROM THE TERMS OF BUYER'S OFFER, THIS DOCUMENT SHALL BE CONSTRUED AS A COUNTER OFFER AND SHALL NOT BE EFFECTIVE AS AN ACCEPTANCE OF BUYER'S DOCUMENT. ANY ATTEMPTED ACCEPTANCE BY BUYER THAT CONTAINS TERMS INCONSISTENT WITH OR IN ADDITION TO THESE TERMS AND CONDITIONS IS NOT BINDING UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING. SELLER'S FAILURE TO OBJECT TO TERMS CONTAINED IN ANY SUBSEQUENT COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OR MODIFICATION OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

2. **PAYMENT:** Unless otherwise agreed to in writing by Seller, payment by Buyer for each shipment of Products by Seller shall be made, within thirty (30) days of the shipping date of the Products, in U.S. Dollars at the price quoted on the face hereof, or if none is quoted hereon, then at the price in effect on the day on which shipment is made by or on behalf of Seller, without deductions of any kind for taxes, exchange, permits or licensing fees or any charges, set-off or counterclaims whatsoever. All prices for the Products are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation. A service charge equal to one percent (1%) per month, an effective annual interest rate of twelve percent (12%), shall be added to the net amount of each invoice not paid within thirty (30) days of the shipping date of the Products. Buyer shall pay all costs and expenses, including without limitation reasonable attorneys' fees, disbursements and court costs incurred by Seller in collecting past-due payments. If, in Seller's judgment, the credit of Buyer becomes impaired or Seller deems itself insecure, Seller may, at its sole option, suspend production, shipment or delivery and request that Buyer provide it with reasonable guarantees and/or security, including but not limited to full or partial payment from Buyer in advance. The failure or refusal of Buyer to provide such guarantees and/or security within ten (10) days after Seller's request therefor shall constitute a repudiation of the entire contract and Seller, in addition to all other remedies legally available to it, may accelerate and declare immediately due all of Buyer's accounts with Seller.

3. **SHIPMENT:** If shipping instructions are not given when Buyer's order is placed, said instructions must be given by Buyer within ten (10) days after receipt of the order. Seller will make shipments as nearly as feasible in accordance with such shipping instructions as shipping facilities and Seller's schedule and manufacturing facilities permit. Seller reserves the right to ship any Products covered by any order at any time after receipt of shipping instructions from Buyer and to invoice Buyer for such Products at any time on or after shipment.

4. **TAXES/COSTS:** To the extent legally permissible, all present and future excise, transfer, border, personal property, sales and other taxes imposed by any federal, state, foreign or local authority which Seller or its agents, contractors or suppliers may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, installation, use, consumption or ownership of the Products, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes), shall be for the account of Buyer and Buyer agrees to pay or reimburse any such charges which Seller or its agents, contractors or suppliers are required to pay. If Buyer claims any exemption, Buyer must provide a valid signed certificate or letter of exemption for each respective jurisdiction. Additionally, Buyer shall be responsible for and agrees to pay or reimburse Seller for all trade tariffs, import/export permits, charges, customs duties, stamp duties, registration fees, clearances and other permits arising from or connected with the shipment of the Products.

5. **TITLE:** Subject to Seller's right to stop delivery of the Product in transit, title to Products priced at Seller's shipping point shall pass to Buyer upon delivery at such shipping point. Title to Products priced at destination shall pass to Buyer upon delivery at the destination specified, and any charges at destination for spotting, switching, handling, storage, and other accessorial services, and demurrage, shall be for Buyer's account.

6. **RISK OF LOSS:** Notwithstanding any specified shipment terms or any other provision in these Terms and Conditions or in any other writing, the risk of loss for any damage to or destruction of the Products, or any component thereof, sold by Seller to Buyer shall pass to Buyer, and Buyer shall bear such risk, subject to the terms noted below, immediately upon delivery of the Products to the carrier at the designated shipping point. Buyer shall be solely responsible for obtaining and maintaining in force insurance to protect Buyer against such risk of loss.

7. CHECKING PRODUCTS/CLAIMS: Buyer agrees to immediately check Products against shipping papers upon unloading at destination. Claims, including but not limited to shortage claims, must be made within ten (10) days following receipt of the Products by Buyer and Seller must be given a reasonable opportunity to investigate. Any defect of the Products which would have been observable on reasonable inspection by Buyer and which is not objected to in writing within ten (10) days after receipt of such Products by Buyer (which the parties agree is a reasonable period of time for such purpose), is hereby waived, and Buyer shall have no right to reject or revoke its acceptance based upon any such defect, nor shall any such defect give rise to any claim against Seller. In case of loss of or damages to Products in transit, Buyer shall immediately notify the carrier or its agent in writing of such loss or damage and shall do all things necessary to assert and prosecute a claim against the carrier for such loss or damage and shall cooperate fully with Seller in any such claim Seller may, in its sole discretion, assert against a carrier for such loss or damage. Authorization, shipping instructions and other conditions related to the return of any Products, including but not limited to a Return Material Authorization ("RMA") number, must be obtained by Buyer from Seller before returning any Products to Seller, and credit will not be allowed for Products returned without meeting such conditions of Seller. Seller reserves the right to charge Buyer a restocking fee of at least 25% of the purchase price for all returned Products.

8. LIMITED WARRANTY/DISCLAIMERS: Seller warrants that its winches, under normal use and service, will be free from defects in materials and/or workmanship for a period of 180 days from the date the Product is shipped to the end-user and warrants that its jacks, turnbuckles, tensors and any other product manufactured by or on behalf of Seller under normal use and service, will be free from defects in materials and/or workmanship for a period of 90 days from the date the Product is shipped to the end-user. Seller further warrants that all Products sold to Buyer pursuant to this contract will be conveyed free and clear of all liens, claims, charges and encumbrances, except for security interests retained by and/or granted to Seller. EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, AND AS FURTHER DESCRIBED IN SELLER'S LIMITED WARRANTY WHICH IS HEREBY INCORPORATED BY REFERENCE INTO THESE TERMS AND CONDITIONS, SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PERFORMANCE OF ANY SERVICE, OR THE SHIPMENT, DELIVERY, PERFORMANCE OR CONDITION OF ANY PRODUCTS OR COMPONENT THEREOF, WHETHER OR NOT MANUFACTURED, DESIGNED OR DEVELOPED, IN WHOLE OR IN PART, BY SELLER. SELLER SPECIFICALLY DISCLAIMS, AND BUYER, ON BEHALF OF ITSELF AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS AND ALL OTHER PURCHASERS OR USERS OF THE PRODUCTS, HEREBY WAIVES, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, RELATING TO THIS CONTRACT, INVOICE, OR THE PRODUCTS PURCHASED PURSUANT HERETO. [Notwithstanding the foregoing, any equipment or components of the Products not manufactured by or on behalf of Seller are sold only under such warranty as the manufacturer thereof provides to Seller and which Seller is able to enforce, but such items are not warranted by Seller in any way.] Buyer warrants and agrees that in entering into this contract it did not rely upon any representation or warranty of Seller or any director, officer, employer, agent or representative of Seller not set forth herein or incorporated by reference. The warranty obligations of Seller are conditioned upon the installation and use of the Products in complete accordance with Seller's instructions and requirements, which are hereby incorporated by reference into the contract between Seller and Buyer. SELLER SHALL NOT BE RESPONSIBLE FOR ANY DEFECT OR DEFICIENCY IN, OR ANY DAMAGE WHATSOEVER CAUSED BY, ANY PRODUCTS WHICH HAVE BEEN MODIFIED, ALTERED OR CHANGED BY ANY PERSON OR ENTITY OTHER THAN THE SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, AND ANY SUCH MODIFICATION, ALTERATION OR CHANGE SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

9. REMEDIES OF BUYER: Seller, at its sole option, will replace or repair, at the delivery point specified herein, any Product or component thereof manufactured by it that is proven to be defective or otherwise fails to conform to the conditions of this contract, or (2) repay Buyer the price paid for such Product, plus any transportation charges paid by Buyer in addition to such price; provided, however, that the foregoing (a) does not cover damage caused by improper use, storage, handling or normal wear and tear, including but not limited to any effects of weathering, misuse, alteration or neglect, (b) does not apply to defects arising from Buyer's faulty maintenance or unauthorized modification or alteration of the Product, (c) does not cover damage from handling in shipment, (d) does not cover damage from accident, disaster or event of force majeure, (e) will be void in the event the Product is operated in a manner inconsistent with Seller's instructions and manuals for the use thereof, (f) requires that any allegedly defective Product or components thereof be returned to Seller if requested by Seller, and (g) will not operate to extend any warranty applicable to any repaired Product or component thereof, except that components provided in replacement of defective components will be covered by any applicable warranty. BUYER'S REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS WARRANTY OR CONTRACT OBLIGATIONS SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT TO REPAIR OR REPLACEMENT OF ANY PRODUCT OR COMPONENT THEREOF THAT IS PROVEN TO BE DEFECTIVE TO THE SATISFACTION OF SELLER OR FAILS TO OTHERWISE CONFORM TO THE CONDITIONS OF THIS CONTRACT OR TO REPAYMENT OF THE PURCHASE PRICE, AS ABOVE PROVIDED.

10. LIMITATION OF LIABILITY: NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, SELLER SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY),

INDEMNIFICATION OR OTHERWISE FOR DAMAGE TO OR LOSS OR USE OF PROPERTY OR EQUIPMENT, INJURY TO PERSONS (INCLUDING DEATH) CAUSED BY, WITHOUT LIMITATION, MISUSE, UNSAFE OPERATION, MODIFICATION, ALTERATION OR CHANGE OF THE PRODUCTS, LOSS OF TIME, LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF TEMPORARY PROPERTY OR EQUIPMENT (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING FACILITIES), OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SELLER (A) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) IS NEGLIGENT. THIS WARRANTY GIVES BUYER SPECIFIC LEGAL RIGHTS, AND BUYER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO BUYER.

11. INDEMNIFICATION: Buyer hereby agrees to and does release, indemnify, defend with competent and experienced counsel and hold harmless Seller, its subsidiaries, affiliates and divisions, and their respective directors, officers, employers, agents and representatives from and against any and all claims, liabilities, damages, actions, causes of action, suits, demands, losses, costs and expenses (including, but not limited to, attorneys' fees and disbursements and court costs), arising out of any third party claim, whether in contract, breach of warranty, tort (including, but not limited to, strict liability, negligence or fraud), or any other cause of action or claim (including but not limited to any copyright, trademark, patent, trade secret or any other intellectual property cause of action or claim by a third party claiming rights in or to products sold or offered for sale by Seller), arising from or by reason of: (1) any liability for which Seller is not responsible under the terms of this contract including, but not limited to, those liabilities for which Seller has specifically disclaimed liability hereunder; (2) any breach by Buyer of any term or provision of this contract; (3) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (4) any personal injury or death to any person or persons including, but not limited to, employees of Buyer or any other person, and any damage to or destruction of the property or equipment of any person, firm or entity, arising out of the acts or omissions of Buyer or its employees, agents, representatives or contractors (including, but not limited to, operation of the Products in any unsafe or hazardous manner, misuse of the Products, failure to comply with Seller's specifications or instructions related to the Products, or removal, disconnection or disengagement of any safety device or feature on the Products); or (5) any modification, alteration or change of the Products or any component thereof without Seller's prior written approval or the use of the Products in an application or environment for which they were not designed. This indemnification obligation shall not be limited in any manner by any limitation on the amount or type of damages, compensation or benefits payable by or for Buyer or any other person, firm or entity under workers' or workmen's compensation acts, disability benefit acts or any other employee benefit acts.

12. MODIFICATION OF PRODUCTS: Buyer hereby agrees not to modify, alter or change the Products or any components thereof, in any way, including the removal, disconnection or disengagement of any safety device or feature on the Products, without providing Seller with prior written notification of such modification, alteration or change and receiving written approval thereof from Seller. ANY UNAUTHORIZED MODIFICATION, ALTERATION, REPAIR OR SERVICE OF THE PRODUCTS BY OR ON BEHALF OF BUYER SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

13. SECURITY INTEREST AND DEFAULT: Notwithstanding any provision contained herein, Buyer hereby grants to Seller a purchase money security interest in all of the Products for the purpose of securing payment of the purchase price and Seller shall have a first lien against all such Products until the purchase price is paid in full. Buyer appoints Seller as Power of Attorney to sign and file any financing statement required to perfect such security interest. If Buyer fails to pay to Seller any portion of the purchase price in accordance with the terms set forth herein or otherwise materially fails to perform any of its obligations hereunder (a "Default"), all amounts paid by Buyer to Seller at any time may, at the sole option of Seller, be retained by Seller. In addition to the foregoing, Seller will be permitted, upon the occurrence of a Default, to delay or cancel shipment of the Products or any portion thereof and/or remove and recover any Products. The foregoing remedies will not be deemed to limit the remedies available to Seller upon the occurrence of a Default by Buyer hereunder.

14. CANCELLATION: If Buyer terminates this contract, in whole or in part, or refuses to accept or delays delivery of the Products, Buyer shall reimburse Seller for Seller's lost profits, together with all costs reasonably incurred by Seller. Orders for Products in process may not be cancelled by Buyer under any circumstances. Orders for Products in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. The foregoing will not be deemed to limit any other remedies which Seller has hereunder or at law.

15. DELAYS: Seller shall not be liable for failure to perform or for delay in performance due to causes beyond its reasonable control including, but not limited to: fire; explosion; flood; war; riot; embargo; accidents at Seller's facility; strike or other difference with workmen; shortage of utility, facility, material or labor; delay in transportation, breakdown or accident; act or requirements of any governmental or civil authority; terrorist act or threat of terrorist act; acts or omission of Buyer; acts of God; or any cause beyond Seller's reasonable control. If any such event occurs, Seller shall have such additional time within which to perform this contract as may be reasonably necessary under the circumstances and shall have the right to apportion its production among its customers in such a manner

as it may consider to be equitable, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Notwithstanding the foregoing, nothing contained herein shall relieve Buyer of the obligation to pay in full the purchase price or any other amounts due for Products actually delivered hereunder. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES ATTRIBUTABLE TO THE DELAYED SHIPMENT OR LATE DELIVERY OF THE PRODUCTS INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING THERETO.

16. **INSPECTION CHARGES:** Seller shall not be liable for any charges by others for inspection and testing of the Products.

17. **ESTIMATIONS:** All weights, lengths, dimensions, performance data and specifications set forth herein or in any brochure, sales literature or other documentation provided by Seller, its directors, officers, employees, agents or representatives are approximations and guidelines and should be considered as estimates only.

18. **WAIVER:** Any waiver by Seller of any breach of default by Buyer of any of Buyer's obligations under this contract, or any failure by Seller to enforce any rights arising under this contract, shall not be construed as a waiver of any other breach or default by Buyer or of Seller's right to enforce its rights in any other circumstances.

19. **SEVERABILITY:** If any provision(s) of these Terms and Conditions are held by a court of competent jurisdiction to conflict with any federal, state or local law or otherwise are held to be invalid or unenforceable, either generally or with respect to any particular facts or circumstances, such provision(s) shall be deemed to be of no force and effect, either generally or with respect to the applicable particular facts or circumstances, and these Terms and Conditions shall continue in full force and effect and shall be construed as if such provision(s) had not been included herein or had not been applicable to the circumstances resulting in such holding.

20. **ASSIGNMENT:** Neither this contract nor any rights or obligations hereunder may be assigned by Buyer without the prior written approval of Seller.

21. **BINDING EFFECT:** The parties' obligations hereunder shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

22. **MODIFICATION:** No terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to amend, modify or revise these Terms and Conditions or this contract shall be binding on the parties hereto unless hereafter made in writing signed by each of the parties.

23. **APPLICABLE LAW:** These Terms and Conditions, including, without limitation, the validity of this contract, the capacity of the parties hereto, the form of this contract and the interpretation of its language, and the parties' performance thereof, shall be governed by the internal laws of the Commonwealth of Pennsylvania without reference to its choice of law provisions. In the event of any breach of contract by Seller or Buyer or any dispute relating to this contract, Buyer consents to the exclusive jurisdiction of the state and federal courts located in Allegheny County in the Commonwealth of Pennsylvania, and Buyer waives any objections or defenses it may have to jurisdiction or venue in such courts. The parties further agree that any action at law or equity against Seller arising hereunder may be brought only in the state and federal courts located in Allegheny County, Pennsylvania, and that such courts shall have exclusive jurisdiction over any such actions. In the event of any legal proceeding between the Seller and Buyer relating to these Terms and Conditions, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to trial by jury. No actions commenced or removed to the federal courts located within Allegheny County, Pennsylvania, shall be transferred to any federal court located outside Allegheny County, Pennsylvania, and each party waives any other venue to which it may be entitled by domicile or otherwise. The application to these Terms and Conditions of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

24. **INCONSISTENCIES:** In event of any inconsistency between the Terms and Conditions set forth herein and the terms and conditions of any purchase order or other document from Buyer, the Terms and Conditions herein shall prevail.

25. **NOTICE:** Any notice required or permitted to be given under these Terms and Conditions shall be in writing and shall be delivered to the party to receive such notice by registered or certified mail, addressed to Buyer at its address last known to Seller and to Seller at 3 Riversea Roads, Pittsburgh, PA 15233.

26. **INTEGRATION:** Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. No promise, understanding, representation, inducement or condition not set forth herein has been made or relied on by any party.