

## **MIDWEST LIFTS LLC TERMS AND CONDITIONS**

Midwest Lifts, LLC ("Midwest Lifts") hereby offers for sale to the purchaser named in the invoice ("Customer") the car lift product(s) listed on the invoice which could include car lifts, parts and other products (these will be collectively referred to in this Agreement as the "Lift(s)") on the express condition that Customer agrees to accept and be bound by the terms and conditions set forth herein. The invoice and these terms and conditions are collectively the "Agreement". Customer's payment for or acceptance of delivery of the Lift(s) will constitute Customer's acceptance of this Agreement. This Agreement is the complete and exclusive statement of the contract between Midwest Lifts and Customer with respect to Customer's purchase of the Lift(s).

### **PRICE**

All prices published by Midwest Lifts or quoted by Midwest Lifts' representatives may be changed at any time without notice. All prices quoted by Midwest Lifts or Midwest Lifts' representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Lift(s) will be as specified by Midwest Lifts, or if no price has been specified or quoted, will be Midwest Lifts' price in effect at the time of order.

### **TERMS OF PAYMENT/ACCEPTABLE PAYMENT METHODS**

Midwest Lifts accepts payment by credit card or bank transfer via Quickbooks or physical check/cash. Midwest Lifts is entitled to its costs, including attorneys' fees, in trying to collect payment or otherwise enforcing the terms of this Agreement.

### **DELIVERY, TAXES AND OTHER CHARGES**

If Lift(s) is delivered by Midwest Lifts to Customer, Customer shall pay the costs of delivery of the Lift(s). Midwest Lifts will quote a delivery/install price. Customer shall pay all sales, use, excise or similar taxes, or other charges, which Midwest Lifts is required to pay, or to collect and remit, to any government (national, state or local) and which are imposed on or measured by the sale.

### **TRANSFER OF PROPERTY**

Midwest Lifts retains the right and title to the Lift(s) sold to Customer until Midwest Lifts is paid in full for the Lift(s). Customer shall obtain the right and title to the Lift(s) upon payment to Midwest Lifts of the purchase price and any taxes, excise, delivery fees, or other charges.

### **DELIVERY; CANCELLATION OR CHANGES BY CUSTOMER**

Customer will supply Midwest Lifts with delivery instructions promptly on notification to Customer that the Lift(s) is ready for delivery. Alternatively, Customer may elect to transport the Lift(s) via another method at Customer's expense, such as pickup of the Lift(s) by Customer at Midwest Lift's warehouse location. If delivery instructions are not received or if Customer requests that delivery or transport by Customer be postponed for more than ten (10) days after the date Customer is notified that the Lift(s) is ready for delivery/possession, Midwest Lifts shall be entitled to make arrangements for storage of the Lift(s) at Customer's risk and expense and to charge Customer accordingly. In such case, Midwest Lifts' obligation to deliver the Lift(s) will

be deemed satisfied and Customer will become responsible for the risk of loss of or damage to the Lift(s) and for paying the purchase price.

The Lift(s) will be delivered to the destination specified by Customer unless Customer elects to transport the Lift(s). Reasonable efforts will be made to make deliveries of the Lift(s) as scheduled, but delivery dates are approximate only, and Midwest Lifts will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Midwest Lifts' reasonable control. In the event of a delay due to any cause beyond Midwest Lifts' reasonable control, delivery will be made within a reasonable period of time thereafter.

Lift(s) delivered to the destination will be deemed accepted unless Customer notifies Midwest Lifts in writing within 5 days that the Lift(s) is not in compliance with this Agreement/specifications. Lift(s) received by Customer at Midwest Lifts' warehouse must be inspected by Customer and Customer must notify Midwest Lifts immediately if the Lift is not in compliance with this Agreement/specifications.

Orders in process may be canceled by Customer only with Midwest Lifts' written consent and if permitted, upon payment of Midwest Lifts' cancellation charges. No returns or refunds are allowed on custom Lift(s). Orders in process may not be changed by Customer except with Midwest Lifts' written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price. Credit will not be allowed for Lift(s) returned without the prior written consent of Midwest Lifts.

### **TITLE AND RISK OF LOSS**

Notwithstanding the terms indicated above and subject to Midwest Lifts' right to stop delivery of Lift(s) in transit, title to and risk of loss of the Lift(s) will pass to Customer upon delivery of possession of the Lift(s) by Midwest Lifts to Customer or Customer's agent, whether at Customer's or Midwest Lifts' location. Therefore Customer should have insurance for the Lift(s) upon delivery of possession.

### **WARRANTY**

Midwest Lifts provides the following warranties:

Replacement Parts for all Lifts: Midwest Lifts will, without charge, provide the necessary spare parts to make any necessary repairs or replacement of parts to remedy any defect within one (1) year of delivery, provided that Midwest Lifts is notified in writing of the nature of such defect within one (1) year following the date of delivery of the Lift(s). Midwest Lifts shall not be responsible for retrieving or removing defective parts, or for reinstalling the same when repaired or replaced, or for any cost incurred by Customer in connection with such retrieval, removal or reinstallation. Customer must provide any defective parts to Midwest Lifts unless otherwise agreed to in writing with Midwest Lifts.

Four-Post Car Lift only: In addition to the replacement parts warranty above, Midwest Lifts will, without charge, provide the necessary electrical spare parts to make any necessary repairs or replacement of electrical parts to remedy any defect within two (2) years of delivery, provided

that Midwest Lifts is notified in writing of the nature of such defect within two (2) years following the date of delivery of the Lift(s). Midwest Lifts shall not be responsible for retrieving or removing defective parts, or for reinstalling the same when repaired or replaced, or for any cost incurred by Customer in connection with such retrieval, removal or reinstallation. Midwest Lifts will, without charge, make any repairs necessary to remedy any defect to the steel frame structure for a period of five (5) years from delivery, provided that Midwest Lifts is notified in writing of the nature of such defect within five (5) years following the date of delivery of the Lift(s).

In no event shall Midwest Lifts have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Customer or others, including the failure to follow instructions (iv) use of the Lift(s) in a manner for which they were not designed, (v) causes external to the Lift(s) such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Lift(s), (vii) use of the Lift(s) in combination with equipment or software not supplied by Midwest Lifts, (viii) your installation that differs from our recommended installation procedure, or (ix) bypassing safety features.

**To maintain this warranty, all repairs and maintenance have to be performed by Midwest Lifts.**

If Midwest Lifts determines that Lift(s) for which Customer has requested warranty services are not covered by the warranty hereunder, Customer shall pay or reimburse Midwest Lifts for all costs of investigating and responding to such request at Midwest Lifts' then prevailing time and materials rates. If Midwest Lifts provides repair services or replacement parts that are not covered by this warranty, Customer shall pay Midwest Lifts therefor at Midwest Lifts' then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE LIFT(S) PERFORMED BY ANY PERSON OR ENTITY OTHER THAN MIDWEST LIFTS WITHOUT MIDWEST LIFTS' PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY MIDWEST LIFTS, SHALL EACH IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED LIFT(S).

The limited warranties and remedies contained in this section are the only warranties and remedies pertaining to the Lift(s). Replacement parts may be new or refurbished, at the election of Midwest Lifts. All replaced parts shall become the property of Midwest Lifts unless Midwest Lifts agrees otherwise in writing.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF CUSTOMER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, THE LIFT(S) IS SOLD AS IS. MIDWEST LIFTS DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE LIFT(S), INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AND CONDITIONS AGAINST HIDDEN OR LATENT DEFECTS. THIS AGREEMENT IS GOVERNED BY MINNESOTA LAW. IF A COURT SHOULD DETERMINE THAT SOME OTHER STATE'S LAWS APPLY, THOSE STATES MAY OR MAY NOT ALLOW LIMITATION OF WARRANTIES TO THIS EXTENT. MIDWEST LIFTS DOES NOT WARRANT THAT THE LIFT(S) ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

### **INDEMNIFICATION**

Customer shall indemnify, defend and hold harmless Midwest Lifts, its affiliates, directors, officers, employees and agents from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including legal fees and expenses), claims, causes of action and suits (the "Liabilities") by, to or in favor of any third party, including without limitation employees, subcontractors or agents of CUSTOMER and its affiliates and any other persons using the Lift(s) or in close proximity to the Lift(s) for (a) personal injury (including death) or real and/or tangible property damage, arising out of any damage or loss due to or by reason of any accident, or other casualty, theft or from the claims or demands of liability arising out of the Lift(s), or its use, operation, ownership or maintenance, (b) any acts or omission to act under this Agreement of employees, contractors or agents of Customer or (c) any negligence, fraud or willful or other tortious misconduct by Customer, its employees or agents or any other person or entity for whose conduct Customer is legally responsible; provided, however, such Liabilities are not directly the result of actions by Midwest Lifts' employees.

### **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF MIDWEST LIFTS UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF MIDWEST LIFTS FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER THE WARRANTY SECTION ABOVE)) SHALL NOT EXCEED THE TOTAL PURCHASE PRICE PAID BY CUSTOMER TO MIDWEST LIFTS FOR THE LIFT(S).

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AND ABSENT MIDWEST LIFTS' WILLFUL OR INTENTIONAL MISCONDUCT, IN NO EVENT SHALL MIDWEST LIFTS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER MIDWEST LIFTS (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT. THIS AGREEMENT IS GOVERNED BY MINNESOTA LAW. IF A COURT SHOULD DETERMINE THAT SOME OTHER STATE'S LAWS APPLY, THOSE STATES MAY OR MAY NOT ALLOW LIMITATION OF LIABILITY TO THIS EXTENT. ANY CLAIM AGAINST MIDWEST LIFTS MUST BE COMMENCED WITHIN ONE YEAR OF THE ACCRUAL OF THE CLAIM.

## **ASSIGNMENT**

While Midwest Lifts may assign this Agreement, CUSTOMER may not assign this Agreement without the express written consent of Midwest Lifts.

## **MISCELLANEOUS**

Customer agrees that they are solely responsible for the space in which the Lift(s) will be installed. This includes, but is not limited to, the flooring (concrete or other material), ceiling, walls and other requirements such as electricity and wiring. Midwest Lifts will provide the requirements and specifications for the Lift(s) to be installed upon request but the Customer will be responsible to repair, modify, or make other changes necessary. Midwest Lifts will not alter, modify, repair or conduct any changes to the space in order for the Lift(s) to be properly installed. If Midwest Lifts arrives at Customer location and the space has not been properly prepared, Midwest Lifts reserves the right to reschedule or cancel the Lift(s) and installation. (Customer will be provided with a refund upon cancellation due to space issues).

This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota without regard to the provisions thereof regarding conflicts of laws. Any such dispute, claim or cause of action shall first be subject to mediation before a mediator in Hennepin County, Minnesota. If the dispute is not resolved through mediation, it will be heard in courts serving Hennepin County, Minnesota. The parties agree that said courts have proper jurisdiction and hereby waive objections to venue.

This Agreement is the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any other document received from Customer or submitted to Midwest Lifts. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed, in writing and signed by the parties.

If any part or provision of this Agreement is invalid or unenforceable for any reason, this invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions which shall remain in full force and effect.

Customer agrees that all pricing, discounts and technical information that Midwest Lifts provides to Customer are the confidential and proprietary information of Midwest Lifts. Customer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Customer's internal purposes and in connection with the Lift(s) supplied hereunder. Nothing herein shall restrict the use of information available to the general public.

Any notice or communication to Midwest Lifts required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to Midwest Lifts at 9425 County Road 101, Corcoran, MN 55340 or by email at byron@midwestliftsllc.com or at such other addresses as Midwest Lifts may from time to time designate.

The Section headings are for convenience only and shall not affect the meaning of the provisions to which they refer.

Notwithstanding anything to the contrary in this Agreement, provisions which by their nature and intent should survive the expiration or termination of this Agreement, including but not limited to the confidentiality, indemnification, and limitation of liability provisions, shall so survive.

This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the Parties with respect thereto. The Parties agree that this Agreement cannot be waived, altered, amended or modified, except by a writing signed by an authorized representative of each Party.

The electronic signatures, whether digital or encrypted, of the Parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such a record, pursuant to the Minnesota Uniform Electronic Transactions Act, as amended from time to time.

This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all Parties. Each counterpart shall be deemed an original, but all counterparts shall constitute a single instrument. Any facsimile copy, electronic copy, other copy or reproduction of a single counterpart original of this Agreement shall be as fully effective and binding as an original signed counterpart of this Agreement.

**Customer acknowledges they have been thoroughly informed on proper usage of the Lift(s) and of Midwest Lifts' (1) repair and maintenance policies, and (2) safety measures regarding the Lift(s).**

IN WITNESS WHEREOF, the Parties have signed this Agreement effective on the date set forth below.

The signers represent and warrant that they are authorized to enter into this Agreement for all Services contemplated under this Agreement.

**Date:**

CUSTOMER	MIDWEST LIFTS LLC
Signature:	Signature: <i>Byron Moyle</i>
Printed Name:	Printed Name: Byron Moyle, Owner