

# Terms and Conditions



1. **PARTIES:** "Seller" means Dynamic Conveyor Corporation. "Buyer" means the entity or person submitting the purchase order to Seller.
2. **APPLICABILITY:** These terms and conditions (these "Terms"), the proposal or quotation (as applicable) ("Proposal/Quote") and sales order ("Sales Confirmation") provided by Seller to Buyer define the relationship of Buyer and Seller and are the only terms that govern the sale of the equipment, parts, supplies, materials, or other personal property (individually and collectively, "Equipment") listed in the Proposal/Quote and/or the Sales Confirmation. If the Proposal/Quote and/or the Sales Confirmation includes services to be provided by Seller with respect to the Equipment (e.g. engineering or installation services), then these Terms shall also apply to the provision of such services. Buyer acknowledges and agrees that these Terms, the Proposal/Quote and the Sales Confirmation (collectively referred to as this "Agreement") comprise the entire agreement between Seller and Buyer and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Further, Buyer acknowledges and agrees that these Terms are incorporated in, and are a part of, each Proposal/Quote, purchase order, invoice, specification, Sales Confirmation and any other document, whether expressed verbally, in written form or electronic mail, relating to the sale of Equipment by Seller to Buyer. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted such terms or its purchase order. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Any document submitted by Buyer to Seller confirming its intention to purchase Equipment described in the Proposal/Quote and/or the Sales Confirmation will be deemed to constitute a confirmation and acceptance of this Agreement, even if the document states terms in addition to or different from those in this Agreement. Moreover, Seller's acceptance of any order or offer provided by Buyer to purchase Equipment is expressly conditioned upon Buyer's acceptance of and assent to these Terms. Notwithstanding any terms contained in any documents submitted by Buyer in connection with the purchase of Equipment described under this Agreement, the acceptance of delivery by Buyer of Equipment described in this Agreement will constitute a course of conduct constituting Buyer's agreement to the provisions of this Agreement, to the exclusion of any additional or different terms and conditions. No order or offer provided by Buyer to purchase Equipment will be accepted (or deemed to be accepted) by Seller until Seller provides a Sales Confirmation to the Buyer.
3. **PRICES:** The price of the Equipment ordered by Buyer (the "Price") shall be proposed or quoted in United States Dollars ("USD") and such proposed or quoted Price shall be valid for thirty (30) days from the date of proposal or quotation (the "Quote Period") unless otherwise noted by Seller. The Price is subject to change at any time (including, without limitation, during the Quote Period) if the Equipment ordered by Buyer is modified. The Price is exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Seller is not responsible for any pricing, typographical, or other errors in any proposal or quote, and Seller may cancel this Agreement at any time if it was entered into based on any such errors.
4. **PRODUCTS AND SERVICES:** Components and technical specifications for the Equipment are determined by Seller in its sole discretion unless Buyer requests different components or technical specifications in writing at the time Buyer provides its request for proposal or quotation and Seller specifically agrees to such different components or technical specifications in writing in Seller's Sales Confirmation. Unless otherwise specifically agreed to by Seller in writing, Equipment is shipped unassembled and Buyer is responsible for all assembly, installation, and evaluation of Equipment.
5. **PRIMARY PAYMENT TERMS:** Seller may, in its sole discretion, require one or more down payments on orders for Equipment prior to shipping. Unless otherwise specifically agreed to by Seller in writing, Buyer shall pay the Price to Seller, without setoff or other deductions or charges, in accordance with the payment terms set forth in the Sales Confirmation.
6. **OTHER PAYMENT TERMS:** All sales are subject to credit approval; provided, however, that Seller may accept sales paid in advance without credit approval, in Seller's sole discretion. Financing options may be available at Seller's sole discretion. Buyer shall pay interest on all late payments at the lesser of 1 ½% per month (18% annual rate) and the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred collecting any late payments, including, without limitation, actual attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend its performance of its obligations under the Agreement (including, without limitation, the delivery of any Equipment) if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether in relation to Seller's breach, bankruptcy, or otherwise.
7. **LEAD TIME:** The lead times of shipping Equipment (the "Lead Time") provided by Seller are Seller's estimates only based on information available to the Seller at the time the Lead Time is provided by Seller to Buyer. Seller shall not be liable to Buyer in any manner, nor shall Buyer be entitled to terminate the Agreement, if Equipment is shipped or delivered beyond the estimated Lead Time. For clarification purposes only, the Lead Time provided by Seller does not commence until both of the following occur: (1) Buyer approves the design of the Equipment by signing a design drawing provided by Seller, and (2) Buyer makes any required down payment of the Price as set forth above. Purchase orders must be made out to Dynamic Conveyor Corporation, 5980 Grand Haven Road, Norton Shores, MI 49441.
8. **SHIPPING:** Seller will deliver the Equipment to the carrier selected in accordance with this Section (the "Carrier") within a reasonable time after the latest Lead Time estimated in the Proposal/Quote or Sales Confirmation, as may be adjusted by Seller in accordance with Section 7, any Force Majeure Event(s) as provided in Section 20, and any other delays not within the reasonable control of Seller. Seller may, at its sole discretion ship equipment prior to its quoted leadtime, and Buyer agrees to receive equipment. Buyer may be subject to storage fees detailed in this section if Buyer cannot receive equipment when it is ready to ship. Delivery shall be made FOB (Seller's location). Seller will choose the Carrier unless Buyer requests a specific Carrier in writing at the time Buyer provides its request for proposal or quotation and Seller specifically agrees to use such Carrier in writing in Seller's Sales Confirmation. Handling charges will be added regardless of who makes the shipping arrangements. All international orders must ship Ex Works unless otherwise agreed to in writing by Seller. All shipping and brokerage arrangements must be included on Buyer's written purchase order. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Equipment to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Equipment shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If, for any reason, Buyer fails to accept delivery of any of the Equipment shipped, or if Buyer has selected the Carrier and the Carrier has not picked up the Equipment from Seller's facility within 2 business days after Seller has notified Buyer that the Equipment is available to be picked up by the Carrier, or if Seller is unable to ship the Equipment within a reasonable time after the Lead Time because Buyer has not provided appropriate instructions, documents, licenses or authorizations (each of the foregoing circumstances is referred to as a "Buyer Delivery Delay"), then the following shall apply: (i) risk of loss to the Equipment shall pass to Buyer; (ii) the Equipment shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Equipment until Buyer picks it up, whereupon Buyer shall pay the Storage Fee (as defined below) and be liable for all other storage related costs and expenses, including, without limitation, storage and insurance. If Seller notifies Buyer of a Buyer Delivery Delay, and Buyer fails to take all action necessary within 2 business days after such notice is given to either accept delivery of the Equipment, cause its selected Carrier to pick up the Equipment from Seller's facility, or provide the appropriate instructions, documents, licenses or authorizations to ship the Equipment, each as applicable, then Buyer shall pay to seller a storage fee ("Storage Fee") equal to 1% of the Price per day until Buyer has taken the action necessary to fully cure the Buyer Delivery Delay.
9. **TITLE AND RISK OF LOSS:** Title and risk of loss passes to Buyer upon delivery of the Equipment to the Carrier. As collateral security for the payment of the Price, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Equipment, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Michigan Uniform Commercial Code, MCL 440.1101 et seq., as amended.
10. **NON-DELIVERY:** The quantity of any installment of Equipment as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Equipment (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) business days of the date when the Equipment would in the ordinary course of events have been received. Any liability of Seller for non-delivery of Equipment shall be limited to replacing the Equipment within a reasonable time or adjusting the invoice respecting such Equipment to reflect the actual quantity delivered.

11. CHANGE/CANCELLATION OF EQUIPMENT ORDERED: Orders for Equipment that are changed by Buyer after a purchase order is received by Seller will incur additional change fees and extend the Lead Time, both in Seller's reasonable discretion. A minimum of 25% of the Price will be charged for orders cancelled after PO, and a minimum of 50% of the Price will be charged for orders cancelled after Buyer's approval of drawings. Seller may charge up to 100% of the Price, in Seller's reasonable discretion, for cancelled orders, depending on the order progress at time of cancellation. Seller reserves the right the cancel or re-price any order that is delayed or does not progress for a period of four weeks of more due to delays by the Buyer.
12. INSPECTION AND REJECTION OF NONCONFORMING EQUIPMENT:
- (a) Buyer shall inspect the Equipment within five (5) business days of receipt thereof ("Inspection Period"). Buyer will be deemed to have irrevocably accepted the Equipment unless it notifies Seller in writing of any Nonconforming Equipment (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Equipment" means only that the items shipped to Buyer are different than the Equipment identified in the Sales Confirmation. Buyer acknowledges and agrees that if Seller conducts any testing or other demonstrations of the Equipment at the Buyer's request (whether at the Seller's site or the Buyer's site), then such testing or other demonstrations are done solely as a courtesy to the Buyer and the results of the same shall not in any way affect whether or not the Equipment is conforming Equipment or Nonconforming Equipment or whether Buyer has accepted the Equipment. Further, Buyer acknowledges and agrees that if Seller installs the Equipment at the Buyer's site at Buyer's request, then such installation shall be subject to a separate charge by Seller and shall not in any way affect whether or not the Equipment is conforming Equipment or Nonconforming Equipment or whether Buyer has accepted the Equipment. Rather, Buyer acknowledges and agrees that (i) the Inspection Period is the only period in which Buyer has to determine whether or not it believes the Equipment is Nonconforming Equipment, (ii) the Inspection Period is a reasonable amount of time for Buyer to determine whether or not it believes the Equipment is Nonconforming Equipment, (iii) if Buyer fails to timely notify Seller within the Inspection Period of its belief that the Equipment is Nonconforming Equipment, and also provide any written evidence or other documentation reasonably required by Seller within the Inspection Period, then Buyer shall be deemed to have accepted the Equipment as conforming Equipment for all purposes, and (iv) the provisions regarding inspection, acceptance and rejection of the Equipment set forth herein are reasonable and enforceable against Buyer.
  - (b) If Buyer timely notifies Seller of any Nonconforming Equipment, then, subject to the balance of this subsection, Seller shall, in Seller's sole discretion, (i) replace such Nonconforming Equipment with conforming Equipment, or (ii) credit or refund the Price for such Nonconforming Equipment, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Unless Seller notifies Buyer that it desires to inspect the Equipment as provided below, Buyer shall ship, at its expense and risk of loss, the Nonconforming Equipment to Seller's facility located at 5980 Grand Haven Road, Norton Shores, MI 49441 promptly after Seller notifies Buyer of which option it chooses as set forth in the immediately preceding sentence. Seller may, at its sole option, elect to inspect the Equipment at Buyer's site, in which case the parties shall meet at Buyer's site promptly after Seller's election to inspect the Equipment (in any case no later than 5 business days after Seller's election to inspect the Equipment) and Buyer shall not disassemble or otherwise move or modify the Equipment prior to such inspection. After any such inspection, Buyer shall ship the Equipment to Seller as provided above. If Seller initially exercises its option to replace Nonconforming Equipment with conforming Equipment as provided above, then either (A) Seller will, within 180 days after receiving Buyer's shipment of Nonconforming Equipment (which the parties agree is a reasonable amount of time for Seller to provide conforming Equipment), ship to Buyer, at Buyer's expense and risk of loss, the conforming Equipment, or (B) if Seller does not ship conforming Equipment to Buyer within the aforementioned 180 day period, then Seller shall instead credit or refund the Price for such Nonconforming Equipment, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.
  - (c) Buyer acknowledges and agrees that the remedies set forth in Section 12(b) are Buyer's exclusive remedies for the delivery of Nonconforming Equipment. Except as provided under Section 12(b), all sales of Equipment to Buyer are made on a one-way basis and Buyer has no right to return Equipment purchased under this Agreement to Seller.
13. LIMITED WARRANTY:
- (a) Seller warrants products of its own manufacture against failure under normal use due to faulty material or defective workmanship for a period of five (5) years from the date of shipment (the "Warranty Period"), subject to the terms of this Section 13. Wear and Tear (as defined below), and also Misuse and Abuse (as defined below), of components and other items contained in, incorporated into, attached to and/or packaged with the Equipment is specifically excluded from the warranty set forth in the preceding sentence. The phrase "Wear and Tear" is defined by expected degradation and/or failure of individual components or other items contained in, incorporated into, attached to and/or packaged with the Equipment once they have exceeded their service life when used and maintained correctly. The service life of components and/or other items contained in, incorporated into, attached to and/or packaged with the Equipment that are subject to Wear and Tear varies with each such component or other item and can be affected by a number of different variables, including, without limitation, hours of use, products being conveyed or the environment in which the Equipment is placed in service. The phrase "Misuse and Abuse" is defined by unexpected failure of individual components or other items contained in, incorporated into, attached to and/or packaged with the Equipment due to use not consistent with the purpose of the Equipment caused by either accidental, intentional, or unintentional actions. Seller shall reasonably determine if any warranty claim related to the Equipment is the result of Wear and Tear or Misuse and Abuse. Without limiting the generality of the foregoing, components and other items subject to Wear and Tear include, but are not necessarily limited to, belting, sprockets, belt supports, belt hold ups / down and bearings.
  - (b) Products manufactured by a third party ("Third Party Product") may constitute, contain, or be contained in, incorporated into, attached to, or packaged together with, the Equipment. Third Party Products are not covered by the warranty in Section 13(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. FURTHER, IF SELLER CONTACTS A MANUFACTURER OF A THIRD PARTY PRODUCT ON BEHALF OF BUYER IN AN ATTEMPT TO RESOLVE ANY ISSUES WITH SUCH THIRD PARTY PRODUCT, THEN ANY SUCH CONTACT OR EFFORTS BY SELLER ARE DONE FOR BUYER AS A COURTESY ONLY AND SHALL NOT IN ANY WAY IMPOSE, IMPLY OR OTHERWISE OBLIGATE SELLER TO WARRANT, REPLACE, REPAIR OR TAKE ANY OTHER ACTION WITH RESPECT TO SUCH THIRD PARTY PRODUCT.**
  - (c) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
  - (d) Seller shall not be liable for a breach of the warranty set forth in Section 13(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) business days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Equipment and Buyer (if requested to do so by Seller) returns such Equipment to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Equipment is defective.
  - (e) Seller shall not be liable for a breach of the warranty set forth in Section 13(a) if: (i) Buyer makes any further use of the relevant Equipment after providing the notice required under Section 13(d)(i); (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the relevant Equipment; or (iii) Buyer alters or repairs the relevant Equipment without obtaining prior direct authorization from Seller in writing.
  - (f) Subject to Section 13(d) and Section 13(e) above, with respect to any Equipment not in compliance with the limited warranty set forth in Section 13(a) during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Equipment (or the defective part) or (ii) credit or refund the Price of such Equipment at the pro rata contract rate; provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Equipment to Seller in accordance with the procedures set forth in Section 14.
  - (g) In order to make a claim based upon the limited warranty set forth in Section 13(a) above ("Warranty Claim"), Buyer must contact the Seller's customer service department and provide all information and documentation requested by Seller's customer service department to review and process the Warranty Claim. Upon receipt of all such information and documentation, Seller's customer service department will make a reasonable determination as to whether the Warranty Claim may be covered by the limited warranty in Section 13(a) above. If Seller's customer service department determines that the Warranty Claim may be covered by the limited warranty in Section 13(a) above, then it will issue the Buyer a return materials authorization ("RMA") which details that Equipment (or portion thereof) that Buyer must ship to the Seller for further inspection to determine if the Warranty Claim is in fact covered by the limited warranty in Section 13(a) above. Buyer

shall then promptly return the applicable Equipment (or portion thereof) to Seller in accordance with Section 14 below. If Buyer desires replacement Equipment (or applicable portion thereof) while Seller is determining whether the Warranty Claim is covered by the limited warranty in Section 13(a) above, then Buyer must first send Seller a purchase order for the same ("Replacement Equipment Order"). If Seller determines that the Warranty Claim is covered by the limited warranty in Section 13(a) above, then Seller will credit Buyer for the amount set forth in the Replacement Equipment Order. If Seller determines that the Warranty Claim is not covered by the limited warranty in Section 13(a) above, then Buyer shall pay the full amount of the Replacement Equipment Order (plus all other costs and expenses associated with the Replacement Parts Order) to Seller net 30 days from the shipment date of the Equipment (or portion thereof) that was sent to Buyer.

**(h) THE REMEDIES SET FORTH IN SECTION 13(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 13(A).**

14. **RETURN OF EQUIPMENT:** Once shipped, all sales are final unless Seller elects to replace, credit, or refund the Equipment (or portion thereof) under Section 12(b) or Section 13(f), as applicable, and a return is authorized in writing by Seller by issuing the Buyer an RMA. Buyer must contact Seller for an RMA, RMA number, and any additional specific instructions. All returns must reference the RMA number and original Sales Confirmation number and follow Seller's instructions exactly. All Equipment (or portion thereof) for which Seller has issued an RMA must be received within fifteen (15) days of Seller's issuance of such RMA.
15. **CONFIDENTIAL INFORMATION:** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
16. **LIMITATION OF LIABILITY:**
  - (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING, BUT NOT LIMITED TO ANY DAMAGES FOR ANY LOSS OF USE, REVENUE, OR PROFITS, DIMINUTION IN VALUE, OR PROPERTY DAMAGE, WHETHER ARISING OUT OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
  - (b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE EQUIPMENT SOLD HEREUNDER.**
  - (c) **BUYER SHALL NOT BRING ANY ACTION OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT MORE THAN SIX MONTHS FROM THE DATE OF DELIVERY OF THE EQUIPMENT TO BUYER, OTHER THAN A CLAIM FOR A VIOLATION OF SECTION 13.**
17. **TERMINATION:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement, (ii) has not otherwise performed or complied with any of the provisions of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
18. **COMPLIANCE WITH LAWS:** Buyer shall be responsible for compliance with any and all federal, state, and local laws and regulations respecting safety or use of the Equipment and shall indemnify and hold Seller harmless from and against any and all claims of violations of laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance, or operation of the Equipment.
19. **NO THIRD PARTY BENEFICIARIES:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
20. **FORCE MAJEURE:** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within three (3) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 20, either party may thereafter terminate this Agreement upon three (3) days' written notice.
21. **EQUIPMENT CONSTITUTES AN IMPROVEMENT TO REAL PROPERTY.** Buyer hereby acknowledges and agrees that the Equipment shall constitute an improvement to real property and that if Buyer fails to timely pay any monies due and owing to Seller, Seller shall have the right to file and/or record with the appropriate county register of deeds or recorder's office a construction, mechanic's, materialmen or similar lien against the real property where the Equipment is located or has otherwise been installed.
22. **CONFLICT WITH OTHER DOCUMENTS.** To the extent that these Terms conflict with any other terms and/or conditions set forth in any other documents exchanged between Buyer and Seller, including, but not limited to, a proposal made by Seller, these Terms supersede and govern over any other such terms and/or conditions, unless solely to the extent that any other document that is signed by Buyer and Seller expressly states that it shall supersede and govern over a particular term and/or condition contained in these Terms.
23. **ASSIGNMENT:** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
24. **WAIVER:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
25. **GOVERNING LAW:** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.
26. **RESOLUTION OF ACTIONS:** Any legal suit, action, or proceeding (each, an "Action") arising out of or relating to this Agreement shall be instituted in accordance with the provisions of this Section, which the parties acknowledge and agree are reasonable. If Buyer seeks to institute an Action, then such Action shall initially be instituted in the Muskegon County Circuit Court or the United States District Court for the Western District of Michigan located in the City of Grand Rapids, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding, irrespective if the action seeks to foreclose on a construction, mechanic's, materialmen or similar lien and the real property where the Equipment is installed or otherwise located is outside of Muskegon County; provided, however that after such

Action is instituted by Buyer as provided above, Seller may require that the Action be resolved by arbitration as provided below. If Seller seeks to institute an Action, then Seller may, at its sole discretion, either institute the Action in court as provided above or via arbitration as provided below. If Seller elects to resolve an Action via arbitration (regardless of which party initially instituted the Action), then the following shall apply: (a) the forum for arbitration shall be Muskegon, Michigan, (b) the arbitration shall be conducted by a Qualified Arbitrator (as defined below) (or a panel of 3 Qualified Arbitrators) who will be determined as provided below, (c) the arbitration shall be conducted in accordance with the "fast track" rules of the American Arbitration Association applicable to commercial disputes and such other rules and procedures determined by the Qualified Arbitrator, (d) the substantive law governing the arbitration shall be the laws of the State of Michigan, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Michigan, (e) the Qualified Arbitrator(s) shall make a decision regarding the Action no later than 180 days after the Qualified Arbitrator(s) has (or have) been appointed pursuant to the above process, (f) the decision rendered by the Qualified Arbitrator, or by two of the three Qualified Arbitrators (if applicable), shall provide that the non-prevailing party (as determined by Michigan law) shall bear all costs associated with the arbitration including, without limitation, the costs associated with engaging the Qualified Arbitrator(s) and any fees, costs and/or expenses, including without limitation attorneys' fees, incurred by the prevailing party in connection with the arbitration, (g) the decision rendered by the Qualified Arbitrator, or by two of the three Qualified Arbitrators (if applicable), shall be final and binding on Buyer and Seller, and shall be non-appealable, and judgment on the decision may be entered in any court of competent jurisdiction in the State of Michigan and/or United States. A "Qualified Arbitrator" as used herein means a lawyer who has had experience as an arbitrator and at least 15 years' experience as a practicing attorney specializing in corporate and commercial matters. Buyer and Seller shall use good faith efforts to agree upon a Qualified Arbitrator within 15 days after Seller notifies Buyer that it desires to resolve an Action via arbitration. If Buyer and Seller cannot agree on a Qualified Arbitrator within the aforementioned fifteen (15) day period, then Buyer shall select a Qualified Arbitrator and Seller shall select a Qualified Arbitrator. Thereafter, the Qualified Arbitrators so selected shall select a third Qualified Arbitrator such that there is a panel of 3 Qualified Arbitrators.

27. **NOTICES:** All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail (in each case, with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
28. **SEVERABILITY:** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
29. **SURVIVAL:** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 2, 5, 6, 9–16, 18, 19, 21, 22, and 24–30.
30. **AMENDMENTS AND MODIFICATION:** These Terms may only be amended or modified in a writing that specifically states that it amends these Terms and is signed by an authorized representative of each party.

Rev. 2025



5980 Grand Haven Road | Norton Shores, MI 49441 | 231.798.1483 | [www.DynamicConveyor.com](http://www.DynamicConveyor.com) | [Sales@DynamicConveyor.com](mailto:Sales@DynamicConveyor.com)