

TERMS AND CONDITIONS

- Agreement of Sale 1. Any terms and provisions of buyers orders which are inconsistent with the terms and provisions hereof are rejected, will not be binding on the seller nor considered applicable to the sale or shipment referred to herein, unless buyer shall notify seller in writing, within fifteen (15) days after receipt of this proposal by buyer, acceptance of the terms and conditions hereof by buyer shall be indicated, and in the absence of such notification, the sale and shipment by the seller of products covered hereby shall be conclusively deemed to be subject to the terms and conditions hereof, no waiver, alteration, or modification of the provisions hereof shall be binding on the seller unless agreed to in writing by a duly authorized official of seller at its headquarters office (s), waiver by either party of any default by the other shall not be deemed a waiver by such party of any default of the other which may thereafter occur.
- Prices 2. Prices and payment terms shown on the face of this proposal apply, inadvertent error in either price or terms is subject to correction.
- Taxes 3. The sellers prices do not include any sales, use, excise or similar taxes which seller may be required to pay in connection with filling any of buyers orders. The amount of any applicable, present or future such tax shall be paid by the buyer as an additional charge or in lieu thereof, The buyer shall provide the seller with a tax exemption certificate.
- Warranty 4. A. Hyster Company, or its subsidiary which last sold the product, warrants new industrial truck products sold by it for use in the United States and Canada, to be free from defects in materials and workmanship and in compliance, at the time of manufacture, with the mandatory design and construction specifications of :1) Part II, ANSI B56.1-1969 (where applicable) as required by OSHA standard 1910.178 (a) (2) and, 2) The OSHA fire protection designation (G, GS, LP, LPS, etc) specified on the product. This warranty covers: A. For six months or 1000 hours of operation from the date of delivery for initial use, whichever occurs first, industrial trucks and other products manufactured by Hyster Company associated with new industrial trucks. The warranty covers the cost of during normal working hours, replacing or, at the option of Hyster Company, repairing by an authorized Hyster dealer, parts found to be defective or not in compliance. B. for 12 months or 2000 hours of operation from the date of delivery for initial use, whichever occurs first, the following major components; internal combustion engine, exclusive of fuel and electrical systems and accessories, oil clutch, transmission, exclusive of torque converter, differential, electric traction and pump motors; SCR static panel components; contractors, exclusive of switches and tips; and SCR controller assembly, of new industrial trucks. This warranty is limited to providing a replacement part, not including freight, special charges or cost of installation to replace that part found to be defective or not in compliance, or in the alternative, at the sole option of Hyster Company, the cost, during normal working hours, of repairs to that part, not including travel. C. for six months or 1000 hours of operation, from the date of delivery, whichever occurs first, all replacement parts. The warranty is limited to providing a replacement part, not including freight, special charges, or cost of installation, to replace that part found to be defective or nit in compliance or in the alternative, at the sole option of Hyster Company, the cost, during normal working hours, of repairs to that part, not including travel. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HYSTER COMPANY AND ITS SUBSIDIARIES SHALL NOT BE RESPONSIBLE FOR DIRECT OR INDIRECT CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSS OF USE FOR ANY REASON. EQUIPMENT OR MACHINERY MANUFACTURED BY OTHER THAN HYSTER COMPANY IS SOLD SUBJECT TO SUCH WARRANTIES AS ARE MADE IN WRITING BY MANUFACTURER THEREOF, COPIES OF ANY SUCH WARRANTIES ARE ATTACHED TO THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, MADE BY EITHER SELLER OR MANUFACTURER ON NEW EQUIPMENT EXCEPT SUCH WARRANTIES AS ARE ATTACHED HERETO. **SUCH WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITY EITHER DIRECT OR CONSEQUENTIAL.**
- Used Warranty B. **WARRANTIES EXPRESSLY ENUMERATED BELOW WITH RESPECT TO USED MACHINERY AND EQUIPMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES OR LIABILITY EITHER DIRECT OR CONSEQUENTIAL.**
- "As-Is" Agreement C. The Complete condition of this machine is not known to seller, **The machine is sold "as-is" and without warranty or return privilege of any sort and is bought at the buyer's entire risk.**
- Buy & Try D. If purchaser, within 3 days after receipt of the machine, returns the same in as good condition as when received, with return transportation prepaid by purchase, to seller at its nearest facility, the sale will be canceled and seller will refund to purchaser all payments made thereon.
- Certified Buy E. Seller for the number of days/operating hours shown on the face of this agreement, which ever occurs first, warrants those machine components, listed on the face if this order, against unsatisfactory performance due to defective workmanship or material. This warranty being limited to the repair or replacement of such defective parts at the seller's nearest service department within the term of the warranty.
- Bonded Buy F. Seller warrants all machines designated as **bonded buy** machines for the number of days/operating hours shown on the face of this agreement whichever occurs first, against unsatisfactory performance due to defective workmanship or materials; This warranty being limited to the expense of repair or replacement of the defective parts within the terms of the warranty at the seller's nearest service department in an amount not to exceed 25% of the purchase price.
- Liability and Claims 5. **Seller liability on any claim of any kind including claims for negligence, or for any loss or damage, arising out of, or connected with, or resulting from any order accepted by seller, or from the manufacture, sale, delivery, resale or use of any products covered by or furnished under, such an order, shall in no case exceed the price allocable to the product or part thereof which gives rise to the claim.** Any claims against seller for shortages by it in making shipments shall be made in writing to seller within fifteen (15) days after receipt of shipment. Seller's responsibility for shipments ceases upon delivery to a carrier, and any claims for shortages, delays or damages occurring thereafter shall be made direct to the carrier. The fulfillment of any order accepted by seller is subject to strikes, labor disputes, lockouts, accidents, fires, delays in manufacture or in transportation or delivery of materials, floods, severe weather or other act of god. Embargoes, Governmental actions, or any other cause beyond the reasonable control of whether similar to, or different from, the causes above enumerated, and any such cause shall absolve seller from any liability to buyer.
- Changes 6. Seller may, at any time without notice, make changes (whether in design, materials, the addition of improvements or otherwise) in any product, and may discontinue the manufacture of any product. All in its sole discretion, without incurring any obligations of any kind as a result thereof, whether for failure to fill and order accepted by seller or otherwise.
- Compliance with Laws 7. Seller will comply with all applicable federal laws, and represents that any goods to be delivered under an order placed pursuant hereto will be produced in compliance with the requirements of the fair labor standard act of 1938, as amended.
- Shipments 8. Shipment dates are approximate, shipment of products under any order accepted by seller shall be subject to the approval by seller of buyer's financial condition at the time of shipment, whether or not credit terms are specified elsewhere seller at its option, condition shipments under any order accepted by seller upon receipt of satisfactory security or of cash before shipment. If, at buyers request, shipment of products on an order accepted by seller is delayed more than thirty (30) days after shipment date specified on the face, or the date products are ready for shipment whichever is later, seller may require immediate payment in full and/or assess additional charges for storage, and other expenses incident to such delay including interest.
- Cancellation 9. In the absence of other written agreement between buyer and seller governing cancellation. Any order accepted by seller may be cancelled by buyer upon written notice and payment of seller's cancellation charges. At buyers request a statement of such charges will be furnished by seller prior to cancellation and these charges will be not than 20% of the proposed selling price or accrual cost, whichever is greater.
- Indemnification 10. Buyer shall protect, hold harmless and indemnify seller from and against any and all claims, demands, costs, liens, suits, judgements, and penalties, and liabilities of every kind arising directly or indirectly, out of or wholly or partially caused by buyer in connection with or caused by buyers use or operation of this product, except for such seller liability as otherwise stated herein.
- Demo 11. Should this agreement pertain to the demonstration use of the equipment it is understood that ownership of the equipment is retained by Johnson Lift/Hyster. Furthermore any costs associated with the damage or excessive use to the equipment during the demo period will be the responsibility of the customer as would the costs associated with the theft or destruction, regardless of responsibility, of the equipment. The customer agrees to provide necessary comprehensive and liability insurance, naming Johnson Lift/Hyster as additional insured, during the demo period. Demo period is not to exceed 72 hours unless otherwise specified in writing.