

# CARVER COMPANIES — STANDARD TERMS AND CONDITIONS OF SALE

**Version:** v1.0

**Effective Date:** August, 2025

**Applies To:** All sales of goods, materials, equipment, and other physical assets by the Carver legal entity identified on the applicable sales quotation, order acknowledgment, invoice, or bill of sale (the "**Seller**") to any purchaser ("**Buyer**").

**Contact:** Legal@CarverCompanies.com

**Website Hosting URL:** <https://www.carvercompanies.com/about-us/port-tariff-information/>

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## 1. Acceptance; Entire Agreement; Order of Precedence

1.1. **Offer & Acceptance.** Seller's quotations are offers limited to these Terms. Seller's acknowledgment, packing slip, delivery, or invoice confirms acceptance **expressly conditional** on Buyer's assent to these Terms. Any additional or different terms proposed by Buyer (including in a purchase order or standard terms) are **rejected** and are **not binding** on Seller unless expressly agreed **in a signed writing by Seller's authorized representative**.

1.2. **Entire Agreement.** The parties' contract consists only of: (a) these Terms; (b) Seller's quotation, order acknowledgment, sales confirmation, invoice, or bill of sale (the "**Order Documents**"); and (c) any schedule or addendum **signed by Seller** (together, the "**Agreement**"). **No oral statements, course of dealing, or usage of trade** modify the Agreement.

1.3. **Precedence.** If there is a conflict, the Order Documents control over these Terms **only** if they specifically cite the clause being modified. Otherwise, these Terms control. Buyer's terms never control.

1.4. **Online Hosting; Versioning.** Seller may update these Terms at any time. The version posted on Seller's website **as of the Order date** governs that Order. Seller may maintain an archive of prior versions upon request.

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## 2. Scope; Special Categories

2.1. **Goods & Assets.** These Terms cover sales of (i) new or used **goods, materials, and supplies** (collectively, "**Goods**"), and (ii) **physical assets** (e.g., machinery, vehicles, equipment, tooling, structures, surplus, or scrap) (collectively, "**Assets**").

2.2. **Used / Surplus / As-Is.** Except where expressly stated otherwise in a Seller-signed addendum, **all Assets and any used or surplus Goods are sold AS IS, WHERE IS, WITH ALL FAULTS**. See Section 10 (Disclaimers; No Warranties).

2.3. **Facility Rules.** If pickup, load-out, staging, storage, or other services occur at a Seller site (including the Port of Coeymans, Charleston, or any other Carver facility), Buyer and its carriers/contractors must comply with **Seller's posted facility rules, tariffs, and terms** (including **Carver Port Operations Standard Terms of Service**) at: <https://www.carvercompanies.com/about-us/port-tariff-information/> (collectively, "**Facility Terms**"), which are **incorporated by reference**. If there is a conflict, the more protective provision for Seller applies.

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## 3. Pricing; Taxes; Surcharges

3.1. **Pricing.** Prices are those stated in the Order Documents, subject to change for math or clerical errors. Unless expressly stated otherwise, prices are exclusive of taxes, duties, tariffs, customs, brokerage, insurance, packaging beyond standard, and transportation.

3.2. **Taxes & Government Charges.** Buyer is responsible for all sales, use, excise, VAT/GST/HST, customs, import/export, environmental, or similar taxes and governmental charges related to the sale, except taxes on Seller's net income. If Seller pays any such amounts, Buyer shall **reimburse Seller on demand.**

3.3. **Surcharges.** Seller may add reasonable surcharges (e.g., energy, commodity, handling, expedite, demurrage, storage, late pickup, or special packaging) as reflected in Order Documents or Facility Terms.

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#### 4. Payment; Credit; Security

4.1. **Terms.** Unless stated otherwise in the Order Documents, payment is 100% in advance. If Seller approves credit in writing, unpaid balances are due Net 10 days from invoice date.

4.2. **Late Charges; Costs.** Past-due amounts accrue a finance charge of 1.5% per month (18% APR) or the maximum lawful rate, whichever is less, plus all costs of collection, including reasonable attorneys' fees and expenses and third-party collection fees.

4.3. **No Set-Off.** Buyer has no right of set-off, withholding, or deduction. Seller may set off any amounts Seller or its affiliates owe Buyer against amounts Buyer owes Seller.

4.4. **Credit Review.** Seller may require advance payment, letters of credit, guarantees, or other security at any time, and may suspend performance or cancel any Order if Buyer's credit or performance becomes unsatisfactory.

4.5. **Security Interest; UCC Filings.** Until Seller receives full payment, Seller retains a purchase-money security interest in the Goods/Assets and proceeds. Buyer authorizes Seller to file UCC-1 financing statements and take any actions to perfect and enforce such interest.

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#### 5. Delivery, Title, and Risk of Loss

5.1. **Delivery Terms.** Unless stated otherwise in the Order Documents, delivery is **Ex Works (EXW – Incoterms® 2020) Seller's designated facility. Risk of loss transfers** to Buyer upon (a) pickup by Buyer or its carrier, or (b) tender to carrier at Seller's dock, whichever is earlier.

5.2. **Title.** For Goods, **title passes only upon Seller's receipt of full payment.** For Assets, title passes upon **delivery of a bill of sale (or applicable title document) against collected funds.**

5.3. **Schedules; Storage; Demurrage.** Pickup and shipping windows will be as scheduled by Seller. **Buyer-caused delays** are subject to storage, handling, and demurrage charges per the Facility Terms or as stated in the Order Documents.

5.4. **Packaging; Weights & Measures.** Seller selects packaging and measurement methods in its discretion. Seller's **scale tickets, load counts, and out-turn measurements are conclusive** evidence of quantity delivered unless Buyer proves a manifest error within the claim period in Section 7.

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#### 6. Load-Out; Safety; Insurance

6.1. **Buyer Responsibilities.** Buyer is solely responsible for selecting carriers/contractors; obtaining permits; securing loads; and safe load-out, transport,

installation, and use. Buyer shall ensure all personnel comply with **PPE, safety, and security** requirements posted at the site.

6.2. **Insurance.** From risk transfer, and at all times while on Seller premises, Buyer shall maintain (at minimum): (a) **Commercial General Liability** with \$2,000,000 per occurrence / \$2,000,000 aggregate; (b) **Automobile Liability** with \$1,000,000 combined single limit; (c) **Workers' Compensation/Employer's Liability** as required by law; and (d) **Property/Transit/Cargo** for full replacement values. **Seller and its affiliates shall be additional insureds** (CG 20 10/20 37 or equivalent) with **primary and non-contributory** status and **waiver of subrogation**. Certificates shall be furnished on request.

6.3. **Indemnity for Site Activities.** Buyer shall **defend, indemnify, and hold harmless** Seller, its affiliates, and their personnel from and against any claims, damages, fines, or expenses (including attorneys' fees) arising out of or related to Buyer's or its carriers'/contractors' presence at Seller's sites, load-out, transport, or handling of the Goods/Assets, **except to the extent caused by Seller's gross negligence or willful misconduct**.

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## 7. Inspection; Acceptance; Claims

7.1. **Inspection at Pickup.** Buyer may reasonably inspect at Seller's site **prior to pickup**. After pickup, the sale is **final** except as expressly provided herein.

7.2. **Claims Process.** Any claim for shortage, damage, or non-conformity must be **notified in writing to Seller within three (3) days** after delivery/pickup, with supporting photos and documentation. Buyer shall preserve the Goods for inspection. Failure to strictly comply results in **waiver of the claim**.

7.3. **Deemed Acceptance.** Goods/Assets are deemed **accepted** upon the earliest of: (a) pickup; (b) installation or use; or (c) the 3-day period above.

7.4. **Exclusive Remedies.** Buyer's sole and exclusive remedies are set forth in Section 11 (Remedies; Limitation of Liability).

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## 8. Cancellations; Changes; Returns

8.1. **Buyer Cancellations.** Buyer **may not cancel** any Order, in whole or part, without Seller's prior written consent. If Seller permits cancellation, Buyer shall pay **cancellation charges** equal to all costs and losses (including lost profits).

8.2. **Changes.** Buyer-requested changes (specs, quantities, schedules) require Seller's written consent and price/time adjustments.

8.3. **No Returns.** Returns are not accepted without Seller's **Return Authorization**. Authorized returns are subject to restocking, handling, and freight charges.

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## 9. Compliance; Export; Sanctions; Anti-Corruption

9.1. **Compliance.** Buyer shall comply with all applicable laws, including environmental, transportation, hazardous materials, and workplace safety laws.

9.2. **Export & Sanctions.** Buyer shall comply with U.S. and applicable non-U.S. export control and sanctions laws (including EAR, ITAR, and OFAC). Buyer represents it is not a denied or restricted party and will not export, re-export, or transfer Goods/Assets contrary to law. Buyer shall obtain all licenses and approvals at its expense and **indemnify Seller** for violations.

9.3. **Anti-Corruption.** Buyer shall comply with the U.S. Foreign Corrupt Practices Act and similar laws, and shall not offer anything of value to government officials to obtain or retain business.

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## 10. Disclaimers; No Warranties (Conspicuous)

10.1. **AS-IS SALES OF ASSETS AND USED/SURPLUS GOODS. ALL ASSETS AND ANY USED OR SURPLUS GOODS ARE SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS."** SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUALITY, OR CONDITION, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. BUYER ASSUMES ALL RISKS OF USE, INSTALLATION, AND OPERATION.

10.2. **New Goods.** For new Goods, **Seller provides no warranty.** If a manufacturer's pass-through warranty applies, Seller shall assign it to Buyer to the extent permitted; **Buyer's sole remedy** is against the manufacturer.

10.3. **No Reliance.** Buyer acknowledges it has **not relied** on any description, sample, model, drawing, statement, estimate, or forecast not expressly included in the Agreement and **has conducted its own due diligence.**

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## 11. Remedies; Limitation of Liability

11.1. **Seller's Option.** For timely, valid claims, Seller may, **at its sole option**, (a) repair the non-conforming Goods, (b) replace them, or (c) accept return (if authorized) and **refund the price paid** for the affected units **as Buyer's sole and exclusive remedy.**

11.2. **Monetary Cap. SELLER'S TOTAL LIABILITY** arising out of or relating to the Agreement shall **not exceed the price actually paid** for the specific Goods/Assets giving rise to the claim.

11.3. **No Consequential Damages. IN NO EVENT** shall Seller be liable for **any** indirect, consequential, incidental, special, exemplary, punitive, or multiplied damages; loss of profits, revenue, or business; loss of use; downtime; or cover costs.

11.4. **Shortened Limitations Period. ANY ACTION** arising out of or relating to the Agreement must be commenced within **one (1) year** after the cause of action accrues.

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## 12. Buyer Indemnity

Buyer shall **defend, indemnify, and hold harmless** Seller, its affiliates, and their directors, officers, employees, and agents against all claims, losses, liabilities, fines, penalties, and expenses (including attorneys' fees) arising from or related to: (a) Buyer's transportation, installation, operation, resale, or use of the Goods/Assets; (b) Buyer's breach of the Agreement or law; (c) injury to or death of persons or damage to property caused by Buyer or its carriers/contractors; and (d) **environmental** releases, contamination, or disposal relating to the Goods/Assets after risk transfer.

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## 13. Force Majeure; Allocation

Seller is not liable for delays or failure to perform due to causes beyond its reasonable control, including acts of God, extreme weather, flood, fire, epidemic, war, terrorism, embargo, sanctions changes, labor issues, raw-material shortages, utility outages,

transportation disruptions, or government actions. If supply is constrained, Seller may **allocate** among customers in any manner it deems fair.

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#### **14. Confidentiality; Publicity; Data**

Buyer shall keep **confidential** the pricing and commercial terms and any non-public information received from Seller and shall not issue public statements, use Seller's names, logos, or marks, or identify Seller as a supplier without Seller's prior written consent.

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#### **15. Notices; Electronic Transactions**

15.1. **Notices.** Notices must be in writing and deemed given when sent by reputable overnight courier, certified mail (return receipt requested), or email with confirmation, to the addresses on the Order Documents (with a copy to **Legal@CarverCompanies.com**).

15.2. **E-Signatures.** The parties agree to use electronic signatures and records; sales confirmations, bills of sale, and click-through acceptances are binding.

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#### **16. Assignment; Subcontracting; Affiliates**

Buyer may not assign the Agreement without Seller's prior written consent. Seller may assign to affiliates or financiers and may subcontract any portion of performance. Seller's affiliates are third-party beneficiaries of these Terms.

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#### **17. Governing Law; Venue; Jury Waiver; Fees**

17.1. **Law.** The Agreement is governed by the **laws of the State of New York**, without regard to conflicts rules and excluding the U.N. Convention on Contracts for the International Sale of Goods (CISG).

17.2. **Venue.** The **exclusive venue** for all disputes is the state courts located in **Albany County, New York**, or the U.S. District Court for the Northern District of New York, and Buyer **consents to personal jurisdiction** there.

17.3. **Jury Waiver. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL.**

17.4. **Attorneys' Fees. Seller is entitled to recover its reasonable attorneys' fees and costs** if it is the prevailing party in any dispute or in collecting amounts due.

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#### **18. Special Provisions for Asset Sales**

18.1. **Removal & De-Installation.** Buyer is solely responsible for de-installation, rigging, craning, cutting, and site restoration. Work plans and insurance must be approved by Seller. Buyer shall not damage surrounding property and shall promptly repair any damage.

18.2. **Title Documents.** For vehicles or titled equipment, transfer will be effected via applicable DMV/registrar procedures. Buyer shall promptly register title and bear all taxes and fees.

18.3. **Records; Software; Licenses.** Sales **exclude** manuals, maintenance records, software, firmware, licenses, and data unless expressly included in the Order Documents. If provided, they are transferred **without warranty** and on an **as-is** basis, with any OEM license restrictions.

18.4. **Encumbrances.** Assets are sold free and clear of Seller-created liens. Buyer accepts responsibility for any third-party landlord's liens, warehouseman's liens, or statutory liens disclosed in the Order Documents or arising from Buyer's actions.

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## **19. Miscellaneous**

19.1. **Severability.** If any provision is invalid, it will be enforced to the maximum extent and the remainder will continue in effect.

19.2. **No Third-Party Beneficiaries.** Except as stated in Section 16, there are no third-party beneficiaries.

19.3. **Waivers.** No waiver is effective unless in a signed writing. A delay or failure to enforce is not a waiver.

19.4. **Headings; Counterparts.** Headings are for convenience only. The Agreement may be executed in counterparts and by electronic means.

19.5. **Language.** The governing language is English. Translations are for convenience only.

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