



# Standard Terms and Conditions

01/2021



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**GENERAL.** Acceptance of this Proposal is expressly conditioned upon Buyer's assent to the Polar King Mobile (PKM) Conditions of Sale as set forth below and this Proposal may not be assigned. PKM agrees to furnish the equipment and services only upon these conditions. The Proposal and the following conditions shall constitute the entire agreement between PKM and Buyer, notwithstanding the terms and conditions of any purchase order of the Buyer. Any changes to this Proposal or to the Conditions of Sale shall be reduced to writing and agreed to by PKM and Buyer.

**DELIVERY.** All equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. shipping point. Where the scheduled delivery of equipment is delayed by Buyer or by Force Majeure, PKM may deliver the equipment by moving it to storage for the account of and at the risk of Buyer. Shipping dates are based upon prompt receipt of all necessary information and approvals from Buyer. All delivery dates are approximate. Claims for shortages or other errors in delivery must be made in writing to PKM within ten days of delivery. Buyer will be responsible for providing clear access to delivery site for Polar King to unload and set-the-equipment in place. Buyer shall be responsible for additional permitting costs if shipment is delayed or rescheduled by the Buyer. Set in Place fees are included in this Proposal. Delivery site conditions may require additional charges for which PKM, after consulting with Buyer, may require a Change Order to be executed prior to shipment.

**PAYMENT - TITLE.** Except as set forth in the proposal for this order or otherwise agreed to by PKM in writing, payment terms are in full before equipment will be shipped or released. If Buyer delays delivery, payment shall become due on the date PKM is prepared to ship. If payments are not made when due, Buyer shall pay a late charge equal to 1 ½% per month (18% per annum) on all such overdue amounts. Buyer shall pay attorney fees and court costs incurred by PKM in collection of overdue payments. Title to the equipment sold shall remain with PKM until fully paid for in cash.

**FORCE MAJEURE.** PKM shall not be liable for loss, damage, or delay, nor be deemed to be in default from causes beyond its reasonable control or from fire, strikes, floods, tornados, earthquakes, hurricanes, war, terrorism, sabotage, labor difficulties, act or omission of any governmental authority, compliance with import or export regulations, insurrection, riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials or manufacturing facilities from usual sources, or from delays in the performance of its suppliers due to any of the foregoing causes. In the event of delay due to any such cause, the time for performance will be extended by a period of time equal to the time lost by reason of such delay and other affected contract provisions shall be equitably adjusted.

**EQUIPMENT WARRANTY.** The foregoing warranties apply only to the original equipment Buyer. PKM warrants the internal foam insulation for trailers to be free of defects in both the materials and workmanship for a period of one (1) year from the date of delivery. This warranty covers only the replacement materials and labor. PKM warrants the structural integrity for trailers for a period of one (1) year from the date of delivery of the unit. This covers the structure, roof, doors, interior and exterior surfaces and frame to be free of both defects in material and workmanship. This warranty covers only the replacement materials and labor. PKM warrants the refrigeration system and miscellaneous components for trailers for the period of one (1) year from the date of delivery of the unit. This covers the motors, compressors, condensers, evaporators, controls, electrical components, valves and piping attached and installed by PKM to be free of both defects in material and workmanship. This warranty covers only replacement materials and labor. This warranty is non-assignable. This warranty is in lieu of all other warranties expressed or implied and does not apply to equipment damage, malfunctions attributed to normal wear and tear, accidents, improper installation, abuse, misuse, flood, fire, war, nuclear contamination, improper and/or unauthorized repairs, negligence, or any casualty unforeseen other than an operating defect or failure within the warranty period. PKM's obligation hereunder shall be limited to the current PKM cost to repair or replace any item. In no event shall PKM be liable for any direct, indirect, or consequential damages for loss due to the defects warranted herein including, but not limited to, the loss of contents stored within the unit, lost profits or revenues. This warranty does not cover any products installed outside of the contiguous United States. All warranty service claims made must be made in accordance with the PKM's "Warranty Work Policy".

**LIMITATIONS OF LIABILITY.** In no event shall PKM or its suppliers be liable, whether arising under performance of this contract, breach of this contract, or otherwise, for loss of anticipated profits, loss by reason of service interruptions, product loss, cost of money, loss of use of capital or revenue, or for any special, incidental or consequential loss or damage. PKM's liability on any claim of any kind, including negligence or strict liability, for any loss or damage arising out of, or resulting from this contract, or from its performance or breach, or from the manufacture, sale, delivery, resale, installation, startup or inspection, repair, operation, or use of any equipment covered by or furnished under this contract shall in no case exceed the purchase price allocable to the equipment, part, or service which gives rise to the claim. In no event, regardless of cause, shall PKM assume responsibility for or be liable for penalties or penalty clauses of any kind or for indemnification of customer or others for costs, damages, or expenses each arising out of or related to the goods or services of this order.

**TAXES.** The Unit Price does not include any federal, state or local property, sales, use, excise, gross receipts, franchise, or other like taxes which may now or hereafter be applicable to the Buyer for this sale. PKM has estimated the sales taxes for this transaction on the Proposal and is required by law to collect these taxes, if applicable, unless the Buyer supplies PKM with an exemption certificate. Buyer agrees to pay or reimburse any such taxes which PKM or its suppliers are required to pay or collect in the event the estimated sales tax is deficient.

**PROPRIETARY INFORMATION - CONFIDENTIALITY.** Any specifications, design, drawings, plans, notes, technical data or other information of PKM submitted to the Buyer remain the exclusive property of PKM and may not, without its consent, be copied or communicated to a third party.

**CANCELLATION.** Any order or contract may be terminated by Buyer only upon written notice and payment of reasonable and proper termination charges, including but not limited to all costs identified to the order or contract incurred up to the later of the date of the notice or PKM's receipt of the notice of termination and all charges incurred by PKM in respect to the termination, plus 10% of the final net selling price.

**PARTIAL INVALIDITY.** If any provision herein or portion thereof shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions or portion thereof, but these Conditions of Sale shall be construed as if such invalid or unenforceable provision or portion thereof had never been contained herein.

**CHOICE OF LAW.** The laws of the State of Indiana shall govern this agreement.

**INVENTIONS, PATENTS, TRADEMARKS, COPYRIGHTS.** PKM warrants that the equipment purchased hereunder shall be delivered free of rightful claims for infringement of any United States patent or trademark, provided however that where equipment is manufactured from patterns, plans, drawings or specifications furnished by Buyer. All right, title and interest in any inventions, developments, improvements or modifications of or for equipment or services furnished to the Buyer shall remain with PKM unless otherwise agreed to in writing between the parties.