



## TERMS AND CONDITIONS

**Due to the volatility of the American steel market, Mac Rak will pass along all steel price increases in the form of a "steel surcharge". This surcharge will be calculated at time of shipment and added to the invoice. The quote may also contain a line item steel surcharge that is subject to change at time of shipment. Please make sure your customers are aware of this industry standard and pass-along steel surcharge that may be added at any time based on standard hot and cold rolled American metal market pricing. Mac Rak may or may not provide advance notice.**

**For any order where the survey is not performed by Mac Rak Inc. any/all changes will be the sole responsibility of the customer and/or end user.**

These terms and conditions are incorporated in and made a part of the invoice/purchase order between Mac Rak Inc. ("Seller") and the Buyer described in the invoice. These terms and conditions shall apply to Seller's shipment of the Products, products, materials and systems described in the Invoice (the "Product").

1. **Prices:**

- (a) All sales are made subject to Buyer's payment of all applicable State, County, City and Federal use sales and excise taxes. Any such tax may be billed to the Buyer as part of the selling price, or may be separately billed at any time by the Seller, if the Seller is required by any taxing authority to collect or pay such tax.
- (b) Are F.O.B. Seller's warehouse in Crest Hill, Illinois, unless otherwise specified.
- (c) Buyer shall pay all transportation charges and any additional charges for special packaging which the Buyer requests.
- (d) Are conditioned upon Buyer's immediate acceptance and are subject to change without notice or withdrawal at any time.

Protection against change or amount of change is only as specifically stated herein.

2. **Shipping Schedule:**

- (a) Subject to prior sale or confirmation by Seller at time of acceptance of order.
- (b) Subject to unavoidable delays caused by strikes, accidents or other causes beyond our control including but not limited to acts and regulations by the Federal government.
- (c) All shipping dates are approximate only and are subject to delays as provided at (b) above.

3. **F.O.B.:** All quotations are F.O.B. Seller's warehouse, Crest Hill, Illinois, unless otherwise specified. Delivery of Products to a carrier by Seller or supplier(s), consigned by Buyer or as a Buyer may direct, shall constitute transfer of title, ownership, possession and property in and to the Products at such point of delivery, and such carrier shall thereafter be deemed to be acting for Buyer and the Products shall thereafter be at Buyer's risk. In the case of Products sold on leases, contract or other special arrangement, title shall be retained by Seller based upon terms of that agreement.

4. **Cancellation:** Insofar as the Products which are the subject of this invoice are custom made to the Buyer's specifications, orders placed pursuant to this quotation cannot be cancelled except with Seller's consent. In the event of such consent, Buyer shall promptly upon receipt pay to Seller as follows:

- (a) Contract price for all Products which shall be completed prior to receipt of notice of cancellation.
- (b) All actual costs made or incurred by Seller in connection with the uncompleted portion of the order plus normal profit of the total contract price as partial liquidated damages.
- (c) Cancellation charges, if any, of Seller on account of it purchasing commitments made under the order.

5. **Governing Law:** The contract resulting from the acceptance of an order pursuant to this quotation shall be governed by and construed according to the laws of the State of Illinois.

6. **Acceptance:** The terms of this quotation shall be accepted by the Buyer upon the issuance of a purchase order or the shipment of the Products, whichever occurs first. No terms or conditions set forth in any such purchase orders which are at variance with the terms and conditions of this quotation shall constitute a part of this agreement except as provided under Paragraph 8 herein. Orders based upon quotation shall be subject to acceptance by suppliers.

7. **Waiver:** Waiver by Seller of a breach of any of the terms and conditions of this or any other agreement with Buyer shall not be construed as a waiver of any other breach. These terms and conditions, together with the provisions contained on the reverse side hereof, constitute the entire agreement between Seller and Buyer and such agreement shall not be modified or amended except by a writing executed after the date hereof by an authorized officer of the Seller. Seller shall not be bound by any terms of the Buyer's purchase order forms or documents which attempt to impose conditions at variance with these terms and conditions.

8. **Payment Terms:** Terms for payment, unless otherwise stated on the reverse side hereof, are one-third payment upon acceptance of order and the balance paid prior to shipment. Any account unpaid after date due is subject to a service charge of 1-1/2 percent per month on the unpaid balance. Seller shall have a lien on the Product until any amounts due have been paid in full.

9. **Warranty:**

- (a) The Seller warrants that the title conveyed under the terms of this contract shall be good and its transfer rightful; and that the Products shall be delivered free from any security interest or other lien or encumbrance whatsoever;
- (b) All Product offered, unless otherwise specified on the reverse side hereof, is warranted for Ten years from date of shipment to be free of defects. In the event that within said Ten Year period the Product proves to be defective, it may be returned to Seller, freight prepaid, for replacement only conditioned upon Seller receiving written notice of Buyer's intention to return the Product within the said Ten Year period and actual return of the Product within 10 days from the expiration of the Ten year warranty



period. Upon the expiration of the 10 year warranty period without notice of return by Buyer, Buyer shall have no further rights under this warranty and the Products shall be construed to be sold "AS IS";

(c) THE WARRANTY PRINTED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PURCHASE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED;

(d) LIMITATION OF LIABILITY: IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT APPLY TO A FAILURE OF RACKING ABOVE THE AREA OF REPAIR TO THE EXTENT SUCH FAILURE WAS NOT THE RESULT OF SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT. SELLER SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF RACKING FAILURE ABOVE THE AREA OF REPAIR TO THE EXTENT SUCH FAILURE WAS NOT THE RESULT OF SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT.

10. **Indemnification:** Buyer agrees to indemnify, hold harmless and defend Seller from and against any and all claims, demands, liabilities, costs or lawsuits arising out of or in any way involving injury or accident occasioned by said Product. Said agreement includes, but is not limited to, the duty to indemnify, hold harmless and defend Seller in any of the following situations: Claims involving or alleging improper or negligent design, maintenance, construction, reconstruction, repair, alteration or modification of the Product by Seller, its agents or employees; claims involving allegations of failure, negligent or otherwise, on the part of the Seller to equip said Product with safety devices or equipment as required by Federal, state or local government statutes, rules or regulations, or as is customary in the trade; and claims involving or alleging negligence by Seller, either alone or jointly with Buyer or any other person, firm or organization. Buyer specifically agrees to indemnify, hold harmless and defend Seller from any and all claims alleging negligence on the part of Seller and waives benefit of any law, rules or regulations contrary to, or in the limitations of this Agreement. If the Seller, in the enforcement of any part of this indemnity Agreement, shall incur necessary expenses or become obligated to attorney's fees or court costs, the Buyer agrees to reimburse the Seller for such expenses. The covenants expressed herein shall be severable and the invalidity, now or in the future, of any of the covenants recited herein, shall not affect the validity of the remaining covenants.

#### **TERMS AND CONDITIONS Cont.**

11. **Waiver of Right to Jury Trial/Submission to Jurisdiction/Designation of Law and Forum:** In any action brought by Buyer or any Successor or Assignee of Buyer, arising out of or related to this Contract, or the Products sold hereunder, Buyer hereby waives its right to a trial before a jury. The parties agree that the laws of the State of Illinois shall control in construing this Contract and in any such dispute and that all such actions brought arising out of or related to this Contract shall be brought in a court of competent jurisdiction located in Will County, Illinois.

12. **Bankruptcy:** In the event Buyer files a petition in bankruptcy, is adjudicated a bankrupt, a petition in bankruptcy is filed against Buyer, Buyer becomes insolvent or makes an assignment for the benefit of creditors or other arrangement pursuant to any bankruptcy law, discontinues business or a receiver is appointed for Buyer, then in said event, at Seller's election, Seller shall have no obligations to deliver the Product of other Products.

13. **Patents and Intellectual Property.** By the purchase of the Product, Seller shall acquire no patent, trademark, copyright or other intellectual property rights in the Product, all such rights to remain with Seller. Buyer shall not utilize any proprietary information associated with the Product for its own use or disclose such information to any third party without the express written authorization of the Seller, and shall hold the Seller harmless from loss and reimburse the Seller for all costs in association with any infringement or violation of the foregoing. Seller shall have the right to affix appropriate marks and labels identifying the Product and identifying Seller as the origin thereof.

14. **Compliance with All Laws in Connection with its Assembly, Construction, Resale of the Product.** Buyer shall be in compliance with all federal and state laws respecting and prohibiting discrimination in employment including, but not limited to, the Age Discrimination and Employment Act, 42 U.S.C., §Sec. 621-634 as amended by the Older Worker's Benefit Protection Act, Title 7 of the Civil Rights Acts of 1964, 42 U.S.C., §§ 2000(e), et. seq., the Employer Retirement Income Security Act of 1974, 29 U.S.C., §§ 1001, et seq., and the American With Disabilities Act, 42 U.S.C. §§1210, et seq. Seller and Buyer affirm that they are an equal opportunity employers regarding applicants for employment or promotion and will not discriminate because of race, age, sex, creed, color and national origin.

15. **Insurance.** Buyer agrees to carry, at its own expense, worker's compensation, public liability and property damage insurance satisfactory to the Seller and, upon request, shall obtain and provide certificates of such insurance to the Seller and any Owner certifying such insurance coverage. Buyer shall not commence any work relative to the Product until such insurance coverage is in place. Seller may request the stoppage of any work in the event such required insurance has not been procured.

16. **Permits and Regulations.** The Purchaser shall, at its own expense, obtain any necessary permits and certificate, together with all licenses and bonds required in the conduct of any work necessary to assemble and install the Product. Seller shall observe all federal, state and local laws, ordinances, rules and regulations in carrying on such work, and Buyer shall indemnify Seller for any cost, loss or claim associated with Buyer's violation thereof.

#### **TERMS AND CONDITIONS SPECIFIC TO MAC RAK CONTRACTED INSTALLATIONS**

1. Customers will be required to move floor location pallets from floor and from beams that must be removed to complete repair. Customers must keep a minimum of 3 repair locations ahead of repair crew or down time will apply for each repair member affected.

2. Mac Rak, Inc. may restrict access to repair area while repairs are being performed.

3. Mac Rak, Inc. may ask for overhead pallets to be repositioned for safety reasons prior to commencing repair on a specific location



4. Mac Rak, Inc. will require inside staging area for materials and equipment in the same building as, and near repair area.
5. Customer will be required to unload materials and stage in an area mutually acceptable with the Mac Rak, Inc. repair crew.
6. Safety glasses, supplied by customer will be required by all non – Mac Rak, Inc. personal entering repair area.
7. Mac Rak, Inc. does not provide fire watch after repair has been completed. Customer is responsible for satisfying additional fire watch requirements of hot work permit.
8. A Propane powered welders and generators may be used during installation.
9. If applicable, all welding will be performed by A.W.S. certified welders, certified in Mig welding light gauge steel down.
10. All work performed during normal 1st shift hours and overlapping 2nd shift to accommodate up to a 10 hour work day.
11. Customer is responsible for disposing of cut off, damaged rack materials. Mac Rak, Inc. crew will stack discarded materials on customer supplied pallets or in hoppers for customer removal and disposal.
12. Anchors for repair kits are included by Mac Rak (unless otherwise noted).
13. No Welding (Unless otherwise noted)
14. All work quoted normal work hours, at Ambient Temperatures.
15. Mac Rak Inc. complies with OSHA safety requirements.
16. Additional labor rates per man hour; In Town Foreman \$50.00, Laborer \$45.00. Temporary Labor \$35.00
17. Additional labor rates per man hour; Out of Town; Foreman \$73.00, Laborer \$61.00. Temporary labor \$35.00
18. Hourly equipment costs will be billed for all additional work performed.
19. Welder in town per hour \$ 80.00, Out of Town \$ 100.00 plus fire watch if required.
20. 3rd shift add 25%, Freezer work add 35%.
21. Insurance: the "Contractor" agrees to carry, at our own expense, workman's compensation, General Liability, Auto and property insurance. All proposals will be covered the "Contractors" base policy. Certificates of insurance are issued upon request. If additional insurance beyond the base policy is required, any additional costs will be noted and added to the invoice. To be added as additional insured on Contractors policy \$265.00 Additional Cost. (per customer/ job)
22. The "Dealer": shall, at his own expense, obtain all necessary permits and certificates, together with all licenses and bonds necessary for the work to be conducted. Should special permits, bonds or licensing be required, it would be at an additional cost to the "Dealer".
23. Scheduling: Project start date shall be assigned once the "Contractor" has received a purchase order. Every effort will be made by the "Contractor" to commence work on the project on that date. The "Contractor" shall not be held liable for any losses and/or damages should this date be missed. Scheduled start date for a project shall not be considered a guaranteed date.
24. After work has begun, all changes to this contract or additional work required to complete this contract will require a Mac Rak Inc. contract change order/additional work authorization form, to be completed by on-site supervisor, approved and signed by "Dealer" or "Dealers" designated on-site contact or end use customer, with a copy sent to "Dealer" for final approval, prior to commencement of work. Additional work will be billed Time & Material. All additional work will be performed after completion of original contract, and may require overtime and additional travel expenses.
25. For any order where the survey for the required repair kits is not performed by Mac Rak Inc., any or all changes will be the sole responsibility of the dealer and/or end user. No Shipping included. Materials due 10 days from shipment, labor 30 days.

If you require an PC Engineering Letter to certify the rack repair kit to your type of racking additional fees will be required.

**Mac Rak Inc. uses qualified, insured sub-contracted installation crews.**