

C&Co Comments 4/8/15

This Order with Sematic USA, Inc. d/b/a Tyler Elevator Products ("Sematic") for the purchase of Goods and/or Services (as defined herein) furnished or performed by Sematic to Customer is subject to the following terms and conditions:



- 1. Entire Contract.** The General and Specific Terms & Conditions contained herein constitute all of the terms of this Order (or "Agreement") between Customer and Sematic. Customer agrees to be bound hereby. All orders are subject to approval by Sematic at its corporate headquarters in Twinsburg, Ohio, United States of America. Except in cases where they directly contradict prior express contracts between Sematic and the Customer, the terms and conditions stated herein govern the Agreement between the parties. As provided in this Agreement, no waiver or alteration of these terms shall be binding unless expressly agreed to, in writing, by both Parties. Any waiver or alteration by Sematic shall be made only by a writing, signed by a duly authorized officer or director of Sematic at its corporate headquarters.
- 2. Price.** Prices are quoted in U.S. dollars and are valid for thirty (30) days from date of quotation. Prices quoted are subject to revision due to Customer-mandated modifications or revisions. Sematic reserves the right to adjust its prices due to variations in currency exchange rates, if applicable, the cost of raw materials and or components. Prices quoted are EXW unless otherwise specified in Specific Terms & Conditions or agreed to in writing by Customer and Sematic. Until purchase price and all other sums due are paid in full, Customer grants Sematic a security interest in the Goods described in the quotation for Goods." Customer shall execute appropriate financing statements or similar documents upon specific request by Sematic.
- 3. Payment & Credit Terms.** Invoices are due and payable net thirty (30) days from date of shipment unless otherwise set forth herein. Any outstanding balances unpaid on the date when due to Sematic shall be subject to a finance charge of 1½% per month (or the maximum allowed by law) on such balance until paid, together with Sematic's costs of collection (including court costs and reasonable attorney fees). Payment terms and conditions on existing and subsequent Orders may be revised by Sematic, in its sole discretion, upon a showing of late or failure to pay by a Customer, which revisions may include immediate payment for any and all Goods shipped, prepayment of future shipments, recapture of shipped but unpaid Goods, and termination of this Agreement. All orders and shipments shall, at all times, be subject to the approval of Sematic's Credit Department. Additionally, Sematic may seek adequate assurances from Customer regarding payment, reserving the right to decline to make further shipments or otherwise suspend performance until such payments and/or assurances have been received whenever, for any reason, there is doubt in Sematic's sole judgment, as to Customer's financial responsibility or solvency, and Sematic shall not, in such event, be liable for breach of nonperformance of this Agreement in whole or in part.
- 4. Services.** Services to be provided by Sematic shall be governed by a written and mutually agreed upon "Quotation" (which may also be referred to as "Work Statement"), and shall constitute the complete and exclusive specifications (hereinafter "Specifications") for the Goods to be sold and/or Services to be performed and shall become part of this Agreement. All Specifications shall be based upon information provided by Customer, who shall be solely responsible for its accuracy and completeness and who shall indemnify, defend and hold harmless Sematic, including reasonable attorney fees, court costs, and costs of investigation and defense from any harm or damages or liability caused to it by any inaccuracy or incompleteness of the Specifications. Consequently, no delivery lead time shall commence until Sematic has final, accurate and complete Specifications confirmed by Customer. In the event Customer requests a change to this Agreement and/or the Specifications, or if any information or the Specifications provided by the Customer are determined by Sematic, in its sole discretion, to be inaccurate or incomplete, Sematic reserves the right to: (a) stop work until an agreement with Customer on changes and an equitable solution and adjustment is reached, which may include a revised price, lead/delivery timetable; or (b) upon ten (10) days prior notice, terminate this Agreement immediately, without liability to Customer, and assess Customer cancellation charges.
- 5. Acceptance.** Upon receipt of shipment, Customer shall immediately inspect and/or test all Goods and/or Services. Goods and/or Services shall be deemed accepted unless Customer provides written notice of the contrary to Sematic within thirty (30) days after receipt of shipment, describing in reasonable detail any defect(s) in the performance of Goods or discrepancy in the quantity of Goods received. Customer's testing shall be governed by the Manufacturer's

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Product Data Sheet. Customer's election to delay inspection and/or store Goods after receipt of shipment shall not relieve Customer's duty to inspect within the thirty (30) day inspection period. In the event that Customer alleges that any Goods received are non-conforming to the Work Statement, Customer shall immediately notify Sematic providing a description in reasonable detail of the Goods non-conformity. Customer shall then have the right to accept all non-conforming Goods, reject all nonconforming Goods, or accept some and reject all other Goods. Sematic shall have the option to deliver conforming Goods to any rightfully rejected Goods where the time for performance has not expired. Customer shall hold all rejected Goods with reasonable care a time sufficient to permit Sematic to remove them. Customer shall pay for all Goods accepted according to the terms provided herein. In the event Sematic delivers nonconforming Goods after the expiration of the time for performance, customer shall have the right to cure any defect in the non-conforming Goods, but shall notify Sematic of its election to do so promptly upon inspection of the Goods. In the event Customer incurs cost to cure any non-conforming delivery, Customer shall provide documentation in reasonable detail of such costs and Customer shall be entitled to a credit against the price specified on the invoice, provided that in no case shall the credit exceed seven percent (7%) of the invoiced price.



6. Title and Risk of Loss. Title to Goods sold and risk of loss shall pass to Customer in accord with the designated INCOTERM. Customer will demonstrate by certificate of insurance, property damage coverage in amounts sufficient to insure the fair market value of the Goods. In the event Customer delays delivery, or any portion thereof, which may be acceptable to Sematic, risk of loss shall pass to Customer on the date Goods were scheduled and ready for shipment.

7. Limited Warranty for Sematic Workmanship and Assembly. Sematic warrants that its Goods and/or Services for new construction to be free from defect in Sematic workmanship or assembly for twelve (12) months from the date of shipment. Goods and/or Services for other than new construction are warranted to be free from defect in Sematic workmanship or assembly for ninety (90) days from the date of shipment. If any of the Goods and/or Services are found by Sematic to be defective by reason of Sematic workmanship or assembly, such Goods and/or Services will, at Sematic's option be replaced, repaired at Sematic' cost or the purchase price refunded. If Customer elects to remedy any defects in Sematic workmanship or assembly, Sematic will be liable only for such remediation charges as agreed to by the Parties in advance and in writing. The foregoing warranty is in lieu of all other warranties, express or implied, including but not limited to, warranties of merchantability and warranties of fitness for a particular purpose not expressly set forth in this Agreement and those set forth below. All other warranties, express or implied, are disclaimed by Sematic. Sematic's warranty does not apply to any Goods and/or Services which have been subject to misuse, normal use resulting in "wear and tear," mishandling, adverse storage conditions, misapplication, neglect (including, but not limited to improper maintenance) accident, modification, improper installation, adjustment or repair by Customer or any third party, or the negligence of the Customer or any third party, or the like. Any affirmation of fact or promise made by Sematic shall not be deemed to create an express warranty that the Goods shall conform to the affirmation or promise. Any description of the Goods which contains an affirmation of act or promise is for the sole purpose of identifying them and shall not be deemed to create an express warranty that the Goods shall conform to the description. Any sample or model is for illustrative purposes only and shall not be deemed to create an express warranty that the whole or the Goods shall conform to the sample or model, and no affirmation or promise, or description, or sample or model shall be deemed part of the basis of the agreement between the Parties.

8. Disclaimer of Other Warranties. Other than as specifically provided above, Sematic makes no representation or warranty, either express or implied, as to design, compliance with written specifications, operation, condition, installation or acceptance of the Goods and/or Services sold. There are no representations or warranties outside this Agreement upon which Customer has relied in entering into this Agreement.

9. Limitation of Liability. Sematic's liability (whether under the theories of breach of contract, tort liability, misrepresentation, fraud, warranty, negligence or strict liability) for the Goods and/or Services shall be limited to repairing or replacing the Goods and/or Services found by Sematic to be defective, or at Sematic' option, refunding the purchase price of such Goods and/or Services. At Sematic's request, Customer will send, at Sematic' sole expense, any allegedly defective Goods to Sematic. Customer's remedies and/or relief of payment shall not include return of Sematic Goods and/or Services unless and until Sematic issues any Return Material Authorization ("RMA").

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10. Disclaimer of Consequential Damages. Notwithstanding anything to the contrary in this Agreement, in no event shall Sematic be liable for any indirect, incidental, special or consequential damages, including without limitation loss of profits, loss of data or loss of goodwill, regardless of the form of action arising out of or in connection with this Agreement, the furnishing of, and any other material and/or services provided for, or performed in connection with this Agreement or Sematic's failure to perform its obligations to any third party, even if Sematic has been advised of the possibility of such damages, unless such damages are proven to be caused by the intentional, willful or grossly negligent act of such responsible party or are subject to the indemnification obligations under this Agreement.



11. Taxes. Unless specifically provided herein, the price for Goods and/or Services purchased does not include sales, use, excise or similar taxes whether federal, state or local. Customer is responsible for all applicable taxes on any Goods and/or Services after title passes to Customer. If Customer is exempt from paying sales tax, a certificate evidencing such in the form and content required by the applicable state shall be provided to Sematic upon request.

12. Export. Customer agrees not to directly or indirectly export any Goods (whether or not modified by services), including, but not limited to parts, equipment, software or technical data/documentation without first obtaining the required United States government export license(s). If Customer intends to export Goods outside the United States, Customer shall determine whether an export license is required and, if so, obtain that license from the U.S. Government. Customer shall indemnify Sematic from any loss or liability due to Customer's failure to comply with export regulations, including but not limited to reasonable attorney fees, court costs, and costs of investigation and defense. Customer further warrants that the Goods sold under this Agreement will not be resold, transferred, exported or reused in any way by Customer in violation of any laws, regulations or export control imposed by the United States of America.

13. Anti-Terrorism. Customer is not subject to sanctions of the United States government or in violation of any federal, state, municipal or local laws, statutes codes, ordinances, orders, decrees, rules or regulations ("Laws") relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"). Customer is not a "Prohibited Person", which term is defined as follows: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom Seller is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-money laundering law, including the Executive Order and the Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website, <http://www.treas.gov/ofac/tlstdn.pdf> or any replacement website or other replacement official publication of such list. Customer does not nor will Customer (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in, any transaction relating to any property or interest in property blocked pursuant to the Executive Order, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

14. Delays. Sematic will not be liable for any nonperformance of the Agreement caused by mistakes or deficiencies in the Customer documents or drawings, or unresolved technical detail material to performance. Further non-performance attributable to strikes, fires, disasters, riots, acts of god or other causes or conditions beyond Sematic's reasonable control impose no liability on Sematic. In the event of such delay or nonperformance, Sematic may, at its option, and without liability, cancel any portion of this Agreement and/or reasonably extend any date upon which any performance is due. Delays by Sematic shall not relieve Customer of its obligations hereunder unless otherwise provided in this Agreement. No penalty related to delays by Sematic shall be accepted unless specifically agreed to at the time of order confirmation.

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15. Time. Time is not of the essence in this Agreement unless specified by the Customer and any failure to meet any date of delivery or scheduled performance by Sematic shall not be considered a material breach of the Agreement unless Customer makes such date a specific term of the Agreement on the order delivered to Sematic.



16. Termination. In addition to the termination rights set forth in Section 4, if Customer (a) fails to pay any amount owed when due, or (b) assigns or transfers this Agreement without Sematic's consent, or (c) makes an assignment for the benefit of creditors, or (d) files or has filed against it, a petition for relief under federal or state bankruptcy laws, or (e) breaches any other term or condition of this Agreement, Sematic may terminate any portion of this Agreement in addition to Sematic's other available remedies. If either Party fails to perform any obligation when due, and if such failure is not remedied within thirty (30) days after receipt of written notice from the other Party, said non-defaulting Party may terminate any portion of this Agreement. If this Agreement is terminated by Customer for any reason other than default by Sematic, Customer shall be liable for all work in process at the time of termination plus an administrative fee equal to fifteen percent (15%) of the amount of such services and expenses as determined by Sematic. Upon acceptance of payment in full of the amounts set forth herein, Customer's contract with Sematic shall be deemed terminated.

17. Returns and cancellation. Customer may not cancel any order or return any Goods which have been special or custom ordered, custom manufactured, tested or configured, or Goods, which Customer has been notified are non-cancelable and/or nonreturnable Goods. Customer may not return shipment(s) to Sematic without the RMA stipulated in Section 9.

18. Patents and copyrights. In no event shall Sematic be liable for damages arising from infringement of patents or copyrights. In the event that Customer is enjoined in such suit or proceeding from using any of the Goods purchased pursuant to this Agreement, Sematic, at its option, shall either (a) secure termination of the injunction and procure for Customer the right to use such Goods without obligation or liability, or (b) replace or modify said Goods with non-infringing materials to Customer's reasonable satisfaction, or (c) remove infringing Goods at Sematic's expense and refund the purchase price of the infringing Goods to Customer provided, however, that in no event shall Sematic be liable for or have any obligations under this section if the alleged infringement is by reason of the specifications provided by Customer to Sematic under this Agreement. This shall be Customer's exclusive remedy against Sematic with respect to patent or copyright infringement. The sale of Goods does not convey any license or copyright under any proprietary or patent rights of any manufacturer. Sematic shall not have any liability if the alleged infringement is based upon the use or application of the Goods in combination with other Goods, and Customer shall indemnify Sematic thereof, including but not limited to reasonable attorney fees, court costs, costs of investigation and defense. Sematic disclaims all other liability for infringement of intellectual property rights and further disclaims any liability for incidental or consequential damages arising in connection with such infringement. Sematic retains all intellectual property rights with respect to models, cost estimates, drawings, designs and other proprietary information, in print or electronic media, and under no conditions should such information be disclosed to third parties without the express written consent of Sematic.

19. Packaging. Packaging will be standard commercial package and acceptance to commercial carriers. Special customer packaging will be furnished only when specified and so stated herein and the cost thereof shall be borne by Customer.

20. Substituted or Repaired Goods. If substituted, additional, or repaired Goods or repair parts are purchased by Customer from Sematic, the terms and conditions of this Agreement shall be applicable thereto, the same as if such substituted, additional or repaired Goods or repair parts had been originally purchased hereunder.

21. Modification. This Agreement cannot be changed or modified or amended in any respect except by the written consent of a duly authorized officer or director of Sematic at its corporate headquarters.

22. Other Conditions. No agent, salesman or other party is authorized to bind Sematic to any agreement, warranty, statement, promise or understanding not expressed herein. Any notice which is required under the terms of this

Agreement shall be in writing and delivered to the address to the Party set forth in this Agreement and shall be effective when actually received. The remedies reserved by the Parties shall be cumulative and in addition to other remedies provided by law. Sematic shall not be required to proceed with the performance of any obligation under this Agreement so long as Customer is in default or breach of any of Customer's obligations or agreements herein. Any clerical errors are subject to correction. The sale of Goods and/or Services pursuant to this Agreement shall be governed by the laws of the State of Ohio. Sematic and Customer acknowledge and agree that the U.S. District Court of Ohio, or if such Court lacks jurisdiction, the Common Pleas Court for Summit County, Ohio shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising either directly or indirectly under or in connection with this Agreement and the relationship between Sematic and Customer. The Parties further agree, in the event of litigation arising out of or in connection with this Agreement in these Courts, they will not contest or challenge the jurisdiction or venue of these Courts. No delay or omission by Sematic in exercising any right or remedy shall constitute a waiver of such right or remedy. The waiver, invalidity or unenforceability of any provision in this Agreement shall not affect the validity of this Agreement as a whole or the validity of any other provision(s) herein.



23. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of Customer and Sematic. Customer may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Sematic. For the purposes of this Agreement, the Customer and Sematic agree that, notwithstanding any of items sold not constituting "Goods" as defined in Article 2 of the Uniform Commercial Code as adopted and amended from time to time in the State of Ohio, for the purposes of interpreting this Agreement, all items shall be deemed to be "Goods" and that there are no promises, agreements, conditions, undertakings, or warranties or representations, oral or written, express or implied, between Customer and Sematic or upon which any Party has relied other than as set forth herein. Sematic and Customer hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto, against the other on, or in respect of, or any matter whatsoever arising out of or in any way connected with this Agreement, the relationship between Sematic and Customer hereunder, and the Customer's use, purchase, and resale of any Goods and/or Services purchased from Sematic, and/or any claim of injury or damage.

24. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effected during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be effected thereby, and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

THESE GENERAL TERMS & CONDITIONS SHALL APPLY TO ALL FUTURE ORDERS BY CUSTOMER, AND INCLUDED THEREIN BY REFERENCE, UNLESS SPECIFICALLY AMENDED AND AGREED TO BY CUSTOMER AND SEMATIC IN WRITING

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