



MANITOWOC CRANES, INC. – TERMS AND CONDITIONS OF PURCHASE

- 1) PARTIES.** “Manitowoc” used herein refers to Manitowoc Cranes, Inc., a Wisconsin corporation and any of its parents, subsidiaries or affiliated companies. “Seller” used herein refers to the named supplier(s) providing goods and services pursuant to these terms and conditions (“Terms”) and any PO (as defined below) issued to Seller by Manitowoc.
- 2) ACCEPTANCE OF TERMS AND CONDITIONS WITHOUT CHANGES; ENTIRE AGREEMENT.** These Terms, including all documents specified by Manitowoc as being a part of these Terms, all addenda and any purchase orders issued to Seller by Manitowoc (“PO”) constitutes the agreement between Manitowoc and Seller and supercedes all other agreements and understandings regarding the subject matter hereof. These Terms shall be deemed to be incorporated within any PO issued to Seller by Manitowoc. These Terms are expressly subject to, and Seller’s acceptance expressly conditioned upon, Seller’s assent to each and all of the terms hereof, and Manitowoc hereby objects to any different or additional terms not specifically agreed to in writing by Manitowoc. The terms of Seller’s forms, invoices or documents shall not be a part of the terms hereof. Reference to Seller’s bids, proposals or acknowledgments of any PO shall not affect the terms hereof and the terms of such items are expressly excluded herefrom. Manitowoc’s receipt and acceptance of goods and services furnished under and pursuant to these Terms and any PO shall not be construed to be conduct inconsistent with the terms of this section.
- 3) CHANGES.** Manitowoc may at any time make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, method of transportation, quantities or other terms of a PO, which changes shall be immediately implemented by Seller. If any such change causes an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made and the PO shall be accordingly modified in writing. No additions to or modifications to a PO under the terms of this section will be effective unless agreed to in writing by Manitowoc and specifically labeled as a modification. Seller shall not change either the location where the goods are produced or the method of producing the goods without providing Manitowoc with prior written notice of such changes.
- 4) STATUS OF PARTIES.** Seller and its employees, agents, representatives, assigns and subcontractors (the “Seller Parties” or singularly a “Seller Party”) shall represent themselves only as independent contractors unrelated to Manitowoc. Seller and Seller Parties are strictly prohibited from using Manitowoc’s trademark(s) or trade-name(s). Nothing in these Terms is intended to create a relationship, express or implied, of employer-employee, principal-agent or partnership between Manitowoc and either the Seller or Seller Parties. Seller shall not have and shall not represent itself as having any authority to make contracts in the name of or on behalf of Manitowoc in any way. Manitowoc shall have no direction or control over Seller or any Seller Party or the manner and method utilized by Seller in performing the services in conformance with the conditions and obligations of these Terms. All Seller Parties shall agree to be bound by all applicable provisions these Terms and Seller shall be liable for all acts or omissions of such Seller Parties as if performed by Seller itself.
- 5) PRICES; TAXES.** Prices specified in any PO may not be changed without the written approval of Manitowoc. Unless otherwise specified in a PO, the prices herein include: (a) all transportation charges to the destination specified in a PO, including without limitation, packing, packaging, freight charges, drayage and insurance; and (b) all federal, state and local taxes, including without limitation, sales and use taxes, customs duties and fees of every kind and nature. No extra charges of any kind will be allowed unless specifically agreed to in writing by Manitowoc.
- 6) PAYMENT; INVOICING.** Unless otherwise specified in a PO, terms of payment are net 60 days after the later of: (a) delivery of the goods; or (b) receipt of invoice. If a PO permits progress payments, Seller shall certify in writing the performance of the applicable payment milestones and Seller’s granting of a security interest in the work or goods to Manitowoc to the extent of such payment. Seller’s sole remedy for late payment is to charge interest at a rate not to exceed .50% (one half of one percent) per month from the date of late payment.
- 7) PACKAGING AND SHIPPING.** All packages shall be clearly marked with Manitowoc’s PO and identification numbers, appropriate description of the goods, manufacturing date codes, part numbers and quantity of items contained in each package. A copy of the packing slip shall also be mailed directly to Manitowoc. Seller shall comply with the best commercial practice for shipments adequate for safe arrival at the destination and for storage against weather and transportation. No additional charges of any kind, including charges for boxing, packaging, cartage or other extras shall be added unless specified in a PO. Seller shall not make partial shipments or deviate from Manitowoc’s shipping instructions without its prior written consent.
- 8) DELIVERY; COMPLETION OF SERVICES.** Seller shall strictly comply with delivery instructions (including the delivery schedule) in a PO. Time is of the essence with respect to Seller’s obligations hereunder. Unless otherwise stated, goods shall be delivered FOB destination designated by Manitowoc. If delivery of items or rendering of services is not completed by the specified delivery date, Manitowoc reserves the right, in addition to its other rights, to return goods and/or terminate all or part of a PO and charge Seller with all costs, expenses and damages associated with such return or termination. If Manitowoc believes that either Seller or Seller Parties are failing to competently and timely perform services specified herein with all necessary means and diligence, Manitowoc may by written notice require Seller to employ/contract more or different personnel or to take other measures to expedite

completion of the services in accordance with the delivery schedule. If Seller fails to effectively expedite the services, Manitowoc may, in addition to any other remedies, employ any other means to complete the services, and Seller shall reimburse Manitowoc for such additional costs and expenses as it incurs. Manitowoc may delay delivery and/or acceptance for causes beyond its control.

9) INSPECTION AND ACCEPTANCE. Manitowoc shall have the right of inspection, testing, approval and acceptance within a reasonable time after arrival of the goods at their destination or completion of services. However, inspection, testing or acceptance shall not relieve Seller of its warranty or other obligations hereunder. If inspection discloses that some or all of a shipment of goods received are not in accordance with Manitowoc's specifications, Manitowoc may, at its option, and at Seller's expense: (a) return the entire shipment and cancel any unshipped portion of a PO, in which event Seller shall immediately ship sufficient quantities of conforming goods; (b) procure, upon terms and in a manner it deems appropriate, goods similar to those terminated (in which event, Seller shall be liable for additional costs, if any, for the purchase of such similar goods to cover such default); or (c) accept the goods subject to an equitable adjustment in the price. If services are not in accordance with Manitowoc's specifications, Seller shall at Manitowoc's option: (i) repair, remedy or re-perform the defective services; or (ii) accept the services subject to an equitable adjustment in price. Payment shall not constitute acceptance of any shipment, and if made, shall be without prejudice to any and all claims that Manitowoc may have against Seller. In the event the goods must be installed, tested, inspected or assembled prior to commercial use, they shall not be deemed finally accepted until such installation, testing, inspection or assembly indicates that the goods are in accordance with specifications and are operating properly. Upon notice, Manitowoc may make inspection visit(s) at the site where the goods are being designed or manufactured, or services being performed. Upon request, Seller shall provide Manitowoc with written performance and status reports.

10) TERMINATION FOR CONVENIENCE OR CAUSE. Manitowoc may, at any time and without further liability, terminate a PO or any part thereof for its sole convenience, at which time Seller shall immediately stop all work related to a PO. Manitowoc shall pay Seller's actual direct costs for goods produced or work performed up until the date of termination, provided that such costs were incurred by Seller in good faith to fulfill a PO in accordance with its terms. Seller's claims under this section must be provided in writing with sufficient detail within thirty (30) days of receipt of Manitowoc's termination notice. Further, Manitowoc may rescind or cancel a PO, in whole or part, at any time and without penalty or liability if: (a) Seller breaches any terms or conditions of a PO, including without limitation, late delivery; (b) Seller ceases operations or fails to make progress or meet progress milestones; or (c) a petition in bankruptcy is filed by or against Seller, Seller is declared insolvent or has a receiver or trustee appointed for it or its assets, or Seller makes an assignment for the benefit of creditors or commences proceedings under any insolvency or similar laws. Payments to Seller hereunder shall be the sole and exclusive remedy available to Seller in the event of a termination by Manitowoc.

Seller shall protect Manitowoc's property, work or goods in Seller's (or Seller Party's) care, custody or control until final transfer of such property, work or goods has been made to Manitowoc. Seller shall at Manitowoc's sole option, direction and benefit deliver to Manitowoc or dispose of any partially completed goods or obsolete materials.

11) REMEDIES. Manitowoc's remedies granted herein are not exclusive, but are in addition to any other remedies provided by law or equity. Where specified herein, Seller's remedies are exclusive of all other remedies.

12) RISK OF LOSS; TITLE. Unless otherwise specified in a PO, Seller shall bear all risk of loss or damage to goods until acceptance of delivery by Manitowoc at its facility specified in the PO. Seller shall remain responsible for any hidden damages. Title to goods shall pass upon delivery, or sooner if otherwise specified in PO.

13) CALIBRATION. Any required calibration on goods supplied to Manitowoc must be performed with equipment calibrated against a national or international standard as part of a calibration system determined to be acceptable to Manitowoc.

14) TOOLING. Unless otherwise agreed to in a writing signed by Manitowoc, all property furnished to Seller by Manitowoc shall remain the property of Manitowoc. Unless otherwise agreed in a writing signed by Manitowoc, Seller shall be fully responsible for all tools, dies, jigs, molds or other property ("Tooling") furnished to Seller that are in its care, custody and control. Seller shall insure Tooling at replacement value with financially sound insurers reasonably acceptable to Manitowoc. Seller shall keep accurate written records of all Tooling, and will provide such records to Manitowoc upon request. Manitowoc may at any reasonable time, with or without notice to Seller, inspect the premises where such property is located. Seller shall mark or affix labels to each item indicating that Manitowoc is the sole owner of such property. Seller shall return all Tooling to Manitowoc upon demand by Manitowoc. Legal and beneficial title to the Tooling shall at all times remain with Manitowoc. Seller shall not transfer any interest in, or otherwise deliver possession of, the Tooling to any person or entity other than to Manitowoc or such other person or entity designated by Manitowoc in writing. Manitowoc shall have the right to take possession of and/or remove Tooling at any time or from time to time in the event it deems itself insecure. Manitowoc shall further have the right to file UCC financing statements or other public evidence or notice of its ownership of the Tooling.

If the price as stated in any PO includes tools, dies, jigs, molds or other property or other special equipment and manufacturing aids used in the manufacture of the goods (collectively "Special Equipment"), such Special Equipment shall become the property of Manitowoc upon acquisition by Seller. Such Special Equipment shall not be used for any customer of Seller other than Manitowoc, except with the written permission of Manitowoc.

15) INDEMNIFICATION. Seller shall defend, protect, indemnify and save harmless Manitowoc and its directors, officers, employees, customers, successors and assigns from and against all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees) arising out of or resulting in any way from: (a) enforcement by Manitowoc of its rights hereunder; (b) any act

or omission of Seller or Seller Parties, whether based upon claims of negligence, breach of warranty, or strict liability in tort or otherwise; (c) any breach of the terms and conditions of these Terms or a PO; and/or (d) any actual or alleged: (i) defect in the goods or services; (ii) failure by Seller or Seller Parties to comply with Manitowoc's specifications or with the express or implied warranties of Seller; (iii) violation by the goods, or in their manufacture or sale, or in the provision of services, of any federal, state, local, foreign or international law, rule or regulation; or (iv) infringement of any patent, trademark, trade name, trade secret, copyright or other property right by reason of the sale or use of the goods or services ordered by Manitowoc.

Seller may employ counsel of its own choice; provided, however, that Manitowoc shall have the opportunity to participate in its own defense and to engage counsel of its own choice at Seller's expense. Seller shall have the right to settle any such matter when settlement is at Seller's sole cost and expense and with Manitowoc's consent, which shall not be unreasonably withheld. Further, Seller will reimburse Manitowoc for any defense costs incurred by Manitowoc, as well as any costs incurred by Manitowoc in enforcing Seller's obligations hereunder.

16) INSURANCE. Seller shall obtain and maintain general liability insurance (including products) in amounts no less than \$5 million per occurrence, worker's compensation insurance in accordance with all state laws, and property insurance sufficient to cover the work or any Manitowoc property that is in the care, custody or control of Seller. Such insurance shall be primary (with deductibles or SIR no greater than \$500) and shall pay in full before any other insurance available to Manitowoc. Seller shall obtain waivers of subrogation for the benefit of Manitowoc and shall name it as an additional named insured under all such insurance policies.

17) COMPLIANCE WITH LAWS. Seller warrants that all goods and services provided hereunder comply with all federal, state, local or agency laws or regulations as applicable.

18) WARRANTIES. Seller warrants that all goods delivered and services performed shall, for a reasonable period of time, but no less than three (3) years: (a) be merchantable and free from defects in design, materials and workmanship; (b) strictly conform to all specifications, statements of work, drawings, samples, descriptions, designs and any other requirements specified by Manitowoc; (c) be free from all liens and encumbrances (this warranty shall continue without limitation as to time); and (d) be fit and safe for their intended purpose. Seller further warrants that all goods provided hereunder shall have a useable life of no less than ten (10) years. Seller shall, at no cost to Manitowoc and at Manitowoc's option, expeditiously repair or replace all defective work or goods at the exact place the goods are, or the work is, located, time being of the essence. Seller shall reimburse Manitowoc all of Manitowoc's direct and indirect costs associated with the defects, including without limitation lost profits and loss of use. All warranty work shall be warranted for an additional three (3) years from the completion of repairs or new installation. Without limiting in any way the foregoing warranties, Seller also warrants that it shall obtain and assign or otherwise provide to Manitowoc the benefits of warranties and guarantees provided by manufacturers or suppliers of material or equipment incorporated into the goods or services, and shall perform its responsibilities so that such warranties or guarantees remain in full effect. Unless a PO expressly provides otherwise, any goods which discolor or create discoloration, or emit an odor, are not merchantable.

19) FORCE MAJEURE. Each party shall be excused from performance under these Terms or any PO while and to the extent that it is unable to perform, for a cause beyond its reasonable control. Force majeure shall not include Seller's mechanical failure or failures, labor shortages or work stoppages. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under these Terms or any PO, then the party affected by force majeure shall give written notice with explanation to the other party within ten (10) days of the occurrence of such cause. Following such notice, the affected obligations of the party giving notice shall be suspended only during the continuance of the events giving rise to the force majeure provided that the affected party is acting with due diligence to remedy the events giving rise to the force majeure.

20) INTELLECTUAL PROPERTY. All rights, title and interest in and to all information developed by Seller specifically related to these Terms or any PO on behalf of Manitowoc, (including, but not limited to, designs, drawings, specifications, tests, promotional materials, financial information, software, digital information, models, inventions, discoveries, trade secrets, patents, copyrights, trademarks, service marks, trade names, methods of manufacture) (the "Information") are, by these Terms or any PO, irrevocably assigned to Manitowoc. Seller shall have no right or license in or to any Information, except as expressly granted in writing by Manitowoc. All Information shall be the sole property of Manitowoc and may be used, disclosed, assigned, licensed or otherwise exploited by Manitowoc for any purpose without any additional fees, royalties or compensation to Seller. Seller shall take timely actions as may be requested by Manitowoc, at Manitowoc' expense, to protect, maintain, preserve, use or exploit any Information.

21) CONFIDENTIALITY. All information, in any form, which is owned by Manitowoc or which is disclosed or made available in any manner by or on behalf of Manitowoc to Seller, including these Terms or any PO ("Confidential Information") shall be deemed to be confidential and proprietary. Except to the extent that Confidential Information is in or comes into the public domain through no fault of Seller, Seller warrants that Seller shall maintain Confidential Information in strict confidence, and shall not disclose Confidential Information to any third party or use any Confidential Information for any purpose other than the performance of these Terms (on a strict need-to-know basis) without the prior written consent of Manitowoc. Upon request by Manitowoc, Seller's employees or agents performing work under these Terms shall execute an agreement that provides that such person or entity will not use or disclose any Confidential Information.

22) ASSIGNMENT. Seller shall not have the right or power to assign its rights (including monies due or to become due) or delegate its obligations hereunder without the express written consent of Manitowoc. Any attempt to do so without such consent shall be null and void and shall permit Manitowoc the right to cancel and terminate this Agreement. In the event these Terms are properly assigned, the provisions of these Terms shall bind and benefit the parties hereto and their representatives, successors and assigns.

23) SETOFF. Manitowoc may setoff any amount due from Seller to Manitowoc, whether or not under these Terms, from any amounts due to Seller whether or not under these Terms. If Seller breaches any of these Terms, any PO or other agreement with Manitowoc, Manitowoc may, in addition to all other remedies, withhold any payments due Seller until Seller cures its breach.

24) MISCELLANEOUS. (a) These Terms, the PO and the parties' performance hereunder shall be interpreted, construed and enforced in all respects in accordance with the internal laws (and not the law of conflicts) of the State of Wisconsin; (b) Manitowoc's failure to insist on performance of any of the terms of these Terms or a PO, its failure to exercise any right or privilege or its waiver of any breach hereunder shall not effect a waiver of any other right or privilege, whether of the same or similar type; (c) the invalidity or unenforceability of any provision of a these Terms or a PO shall not affect the validity or enforceability of any other provisions of these Terms or a PO; (D) Seller agrees that any disputes between it and Manitowoc relating to a PO shall be heard before the courts situated in Manitowoc County, Wisconsin, or if the Wisconsin courts refuse jurisdiction, by a court located in the State and county where Manitowoc's subsidiary that has executed a PO is located; and (f) no arbitration provision in any of Seller's documents shall be binding on Manitowoc.