

## Mutual Nondisclosure Agreement

This Mutual Nondisclosure Agreement ("**Agreement**") shall be effective as of \_\_\_\_\_ ("**Effective Date**") by and between \_\_\_\_\_ ("**Supplier**") for itself and on behalf of its subsidiaries and affiliates with its principal office at \_\_\_\_\_ [**Address**] and Manitowoc Cranes, LLC, a Wisconsin company located at 2401 South 30th St., Manitowoc, Wisconsin 54221-0070, for itself and on behalf of its subsidiaries and affiliates ("**Manitowoc.**")

### Purpose:

In order to investigate a potential business relationship between Supplier and Manitowoc concerning but not limited to: processes, designs, specifications, manufacturing, materials, certain business, trade, product, technical, financial, or other information, include services each party may provide the other and that the disclosing party deems confidential or proprietary. In consideration of the receiving party being granted access to such information, the parties agree as follows:

### 1. Confidential Information.

Confidential information shall mean any and all technical or nontechnical information or know-how relating to the business, services or products of the disclosing party or a third party (including customers of the disclosing party), including without limitation any research, products, services, developments, inventions, processes, techniques, designs, components, parts, documents, drawings, electronic files, data, sketches, plans, programs, specifications, software; and/or distribution, engineering, marketing, financial, merchandising, sales information; and/or other material (hereinafter collectively referred to as "**Confidential Information**") that is disclosed by such party or on its behalf to the other party or its employees or agents, directly or indirectly, in writing, orally, electronically, or by drawings or inspection.

Confidential Information does not include technical or non-technical information or know-how that the receiving party establishes:

- a) Is already or becomes published or available to the public other than by a breach of this Agreement or any confidentiality obligation owed to the disclosing party, but Confidential Information shall not be deemed to be in the public domain merely because any part of said Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public;
- b) Is rightfully received from a third party without, and not in breach of, any obligation of confidentiality;

- c) Is independently developed by employees or agents of the receiving party without access to or use of the Confidential Information of the disclosing party;
- d) Is known to the receiving party at the time of disclosure without an obligation of confidentiality; or
- e) Is produced in compliance with applicable law or a court order, provided that the receiving party first gives the disclosing party reasonable notice of such law or order and gives the disclosing party opportunity to oppose and/or attempt to limit such production, unless the law or court order prohibits giving of such notice.

## **2. Nondisclosure and Non-use.**

Each party agrees that it will not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, entity, firm or business, except to the extent necessary for negotiations, discussions, and consultations with employees or authorized agents of the other party, or with the express written consent of the other party. Furthermore, the existence of this Agreement, and any business negotiations, discussions, consultations or agreements in progress between the parties shall not be disclosed or released in any form without the prior written approval of both parties.

The receiving party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, the receiving party shall take at least those measures that the receiving party takes to protect its own most highly confidential information and shall not disclose Confidential Information to any third party or allow any third party access to any Confidential Information.

The receiving party shall have its employees or authorized agents who have access to Confidential Information acknowledge and agree to abide by the same obligations of confidentiality and nondisclosure set forth herein, prior to any disclosure of Confidential Information to such employees or authorized agents.

The receiving party shall reproduce the disclosing party's proprietary rights notices on any such copies in the same manner in which such notices were set forth in or on the original.

## **3. No License.**

Nothing in this Agreement is intended to grant any rights to the receiving party under any patent, copyright, trademark, trade name, mask work or other proprietary right of the disclosing party, nor shall this Agreement grant the receiving party any rights in or to Confidential Information. The receiving party shall not reverse engineer, disassemble or decompile any products, prototypes, software or other tangible objects that embody the Confidential Information of the disclosing party and that are provided to the receiving party hereunder. Nothing in

this Agreement shall limit or restrict the rights of the disclosing party to assert infringement or other intellectual property claims against the receiving party.

#### **4. Warranty.**

Each party warrants and represents that it possesses all necessary power, right, and authority to lawfully make the disclosures subject to this Agreement. The receiving party understands that portions of the Confidential Information may relate to products or services that are under development or planned for development. All information is provided "as is," and the parties make no warranties, expressed, implied or otherwise, regarding its accuracy, completeness or performance.

#### **5. No Further Rights.**

Nothing herein shall require either party to reveal any Confidential Information to the other. Neither party shall have any obligation to the other to: enter into any further agreements; to purchase any product or service; or to offer for sale any product or service to the other using or incorporating any Confidential Information. Neither this Agreement nor receipt of Confidential Information hereunder shall limit either party's independent development and marketing of products or services involving technology or ideas similar to those disclosed, nor will this Agreement or receipt of Confidential Information hereunder prevent the receiving party from undertaking similar efforts or discussions with third parties, including competitors of the disclosing party. The parties do not intend that any agency or partnership be created between them by this Agreement.

#### **6. Term.**

The term of this Agreement shall be from the Effective Date and shall continue for a period of three (3) years thereafter. Notwithstanding the foregoing, trade secrets disclosed to a party must continue to be held in confidence by the receiving party as long as they are protected by applicable trade secret law or until disclosing party sends receiving party written notice releasing receiving party from this Agreement, whichever occurs first. This Agreement shall survive the termination of any negotiations or discussions between the parties hereto, and may not be modified or terminated, in whole or in part, and no release hereunder shall be effective except by written permission of the parties.

#### **7. Return of Materials.**

The receiving party shall, upon request of the disclosing party: (i) return to the disclosing party or destroy all documents, drawings, equipment and other tangible materials, including all Confidential Information and all manifestations thereof, delivered to the receiving party under this Agreement, and all copies and reproductions thereof; and (ii) certify to the disclosing party that all such Confidential Information has been returned or destroyed.

#### **8. Miscellaneous.**

The parties hereby also agree to the following miscellaneous provisions:

- a) The receiving party shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export to any proscribed countries any technical data or products received from the disclosure or the direct product of such technical data.
- b) Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the disclosing party may be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- c) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- d) Neither party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party; such consent shall not be unreasonably withheld. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.
- e) Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. A waiver given by either party on any one occasion is effective only in that instance and will not be construed as a waiver of any right on any other occasion.
- f) This Agreement shall be governed in all respects by the substantive laws of the State of Wisconsin without regard for conflict of law principles.
- g) This Agreement sets forth the entire understanding and agreement of the parties with regard to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements, arrangements and understandings related to the subject matter hereof. In the event of any inconsistency between this Agreement and any statement contained in or transmitted with any Confidential Information, this Agreement shall control. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. The captions to the several sections hereof are not a part of this Agreement, but are included merely for convenience of reference only and shall not affect its meaning or interpretation. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same agreement.
- h) IN NO EVENT SHALL EITHER PARTY BE LIABLE, ONE TO THE OTHER, FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- i) If any Confidential Information is subject to disclosure pursuant to an order, decree, subpoena or other validly issued judicial or administrative process

requiring either party or their respective representatives (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose such Confidential Information, such party will promptly notify the other party of such request or requirement so that such other party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any Confidential Information so disclosed is maintained in confidence to the maximum extent possible by the agency or other person receiving the disclosure, or, in the discretion of such other party, to waive compliance with the provisions of this Agreement. In any such case, and in addition to providing notice to the other party, the party in receipt of such Confidential Information will use its reasonable efforts, in cooperation with the other party or otherwise, to avoid or minimize the required disclosure and/or to obtain such protective order or other relief to protect the Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder, a party or its representatives are compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or penalty, such party will disclose only so much of the Confidential Information to the person compelling disclosure as it believes in good faith on the basis of advice of counsel as required by law. Such party shall give the other party prior notice of the Confidential Information it believes it is required to disclose.

- j) In all circumstances, the receiving party shall immediately notify the disclosing party in the event of any unauthorized use or disclosure of the Confidential Information of which it becomes aware.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date(s) written above:

**MANITOWOC CRANES, LLC****SUPPLIER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**SUPPLIER IDENTIFICATION FORM**

Company Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Contact Phone: \_\_\_\_\_  
City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_ Email: \_\_\_\_\_

If you are a "LARGE BUSINESS" OR "not a SBA certified business" please check here:  Large Business

SMALL BUSINESS CERTIFICATIONS & AUDIENCES

As the owner of a small business, you may qualify for specific SBA programs based on a variety of factors. Please review the qualifications and information provided on their website at [www.sba.gov](http://www.sba.gov) to determine which programs could apply to you or your geographic place of business. You may also go directly to the SBA Certifications page found at: <http://www.sba.gov/category/navigation-structure/contracting/working-with-government/small-business-certifications-audiences>

If you are a SBA certified business, please indicate your status from the options below. Please check all that apply:

- Small Business Concern
- Woman-Owned Small Business
- Certified HUB Zone, Small Business
- Certified Small Disadvantaged Business
- Alaskan Native Corporation or Indian Tribe that has not been certified by SBA as Small Disadvantaged
- 8(a) Small Business
- American-Indian Owned Business
- Veteran Owned Small Business
- Service Disabled Veteran Owned Small Business
- Alaskan Native Corporation or Indian Tribe that is not a Small Business

COMMODITIES CATEGORY

Please check all that apply:

- Electrical
- Welding
- Hydraulics
- Components
- Fabrications
- Electronics
- Consulting
- Transportation
- Plastics
- Chemicals
- Tooling
- Other \_\_\_\_\_

If you still have questions or for free assistance in completing this form and/or applying for certification, please contact your local Procurement Technical Assistance Center (PTAC) or go to their website at to the link <http://www.aptac-us.org>

***Any firm that has misrepresented its status in the above listed categories in order to obtain a subcontract from Manitowoc Crane Group will be subject to the punishments as defined in 115 U.S.C.645 (d) and FAR 52-219-1 (d)(2).***

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title of Authorized Representative

**Please return this form (mail/fax/email) to:**

Manitowoc Cranes, LLC  
Attn: Ida Bridges  
1565 Buchanan Trail East  
Shady Grove, PA 17256

Phone (717) 593-5223  
Fax (717) 593-5091  
[Ida.Bridges@Manitowoc.com](mailto:Ida.Bridges@Manitowoc.com)