

**MANITOWOC CRANE GROUP
GERMANY GMBH TERMS AND CONDITIONS OF SALE AND SERVICE/REPAIR**

1. **Offer, Governing Provisions and Cancellation.** This document is an offer or counter-offer by Manitowoc Crane Group Germany GmbH ("Seller") to sell the goods and/or services that are identified in this document to the buyer identified in this document ("Buyer") in accordance with these Terms and Conditions of Sale ("Terms and Conditions"), it is not an acceptance of any offer made by Buyer. All sales by Seller to Buyer are subject to, and are expressly conditioned upon assent to, these Terms and Conditions. Seller hereby objects to any additional or different terms or conditions, and notifies Buyer that Seller is unwilling to sell on any terms or conditions other than these Terms and Conditions. These Terms and Conditions and the additional terms and conditions contained in or attached to this document, as supplemented by agreed upon quantities and shipping dates (collectively, the "Agreement"), shall be the entire agreement between Seller and Buyer on the subject of the transactions described herein; and there are no conditions to this Agreement that are not expressed herein. This offer and the agreement shall be governed by and construed according to the laws of Germany (without reference to principles of conflicts of laws). The rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Seller's place of business shall be the court venue. However, Seller is permitted to start legal proceedings at the appropriate court at Buyer's place of residence.

No order may be cancelled or altered by Buyer except upon terms and conditions accepted by Seller in writing; and no changes to this document or the Agreement will be binding unless set forth in writing and manually signed by Seller in an Order Acknowledgment. This offer may be revoked by Seller at any time before it is accepted by Buyer, and shall automatically expire 30 calendar days after its date if Buyer has not accepted it before then. Neither Buyer's acceptance of this offer nor any conduct by Seller (including but not limited to shipment of goods) shall obligate Seller to sell to Buyer any quantity of goods in excess of the quantity that Buyer has committed to purchase from Seller at the time of such acceptance or conduct Seller's Terms and Conditions of Sale shall only apply in relationship to business persons within the meaning of § 310 BGB [German Civil Code].

2. **Price.** Unless otherwise specified on the face of this document or agreed to in writing, the price for goods sold hereunder shall be Seller's distributor list price in effect as of the date of Buyer's order. Notwithstanding the foregoing, Seller may increase the price of the goods correspondingly if, following the conclusion of the contract, increases in the costs arise, in particular due to the conclusion of collective wage agreements or due to increases in the price of materials, upon notice to Buyer. This shall not apply where goods are to be delivered or services be provided within 4 months following the conclusion of Agreement. Buyer has the right to terminate Agreement if the increase of prices exceeds 5 % of the original agreed product price. The termination notice must be received by Seller with 14 days after receipt of the notice of Seller to Buyer to increase prices. Upon request, Seller shall provide evidence to Buyer of the increase of costs. Prices are stated and payable in the currency set forth in the price list.

3. **Credit Approval; Payment Terms.** All payment terms set forth in this document are subject to Seller's approval of Buyer's credit, in Seller's discretion; and if such approval is withheld, payment shall be due in advance of Seller's performance. Except as otherwise agreed to in writing or otherwise provided on the face of this document or in the preceding sentence, payment is due upon Buyer's receipt of Seller's invoice following shipment. Interest will be charged at the highest rate permitted by applicable law, on accounts more than 30 calendar days past due. If Buyer fails to make any payments in accordance with the terms of this Agreement, Seller may, in addition to its rights and remedies provided hereunder or at law or equity, (a) defer or suspend further shipments or provision of goods until Buyer reestablishes satisfactory credit, (b) make shipment of goods to Buyer on a C.O.D. or cash in advance basis. If production or shipment of completed goods, or other Seller performance, is delayed by Buyer, Seller may immediately invoice, and Buyer shall pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, Buyer shall compensate Seller for storage of completed goods or work in process during any such delay, whether stored at Seller's facility or an independent storage company's facilities.

4. **Taxes and Other Charges.** Any cargo insurance, manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, import, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or other charges, Buyer shall reimburse Seller therefor on demand.

5. **Security Interest.** Seller reserves title in the goods sold until the receipt of all payments arising from the business relationship with Buyer. In the case of Buyer's breach of contract, in particular in the case of default of payment, Seller shall be authorized to repossess the goods sold. The repossession by Seller of the goods sold shall not represent a cancellation of the contract unless Seller gives an express written declaration to this effect. Following the repossession of the goods sold, Seller shall be entitled to realize its value. The proceeds from the realization shall be set off against the liability of the Buyer – less the reasonable costs of realization. Buyer shall be obliged to handle with care the goods sold; in particular, Buyer shall be obliged at his own cost to insure the same adequately against fire, water damage, theft and other damage at their replacement value. Where maintenance and inspection works are necessary, Buyer shall carry out the same in due time at his own expense. In the case of seizure or other interference by third parties, Buyer shall immediately notify Seller in writing so that Seller may institute interpleader proceedings in accordance with § 771 ZPO [German Civil Proceedings Ordinance]. Buyer shall be entitled to resell the goods sold in the ordinary course of business; however, already now Buyer assigns to Seller all claims against his customers or third parties which accrue to him from such re-sale in the amount of the final invoice sum (including V.A.T.), regardless of whether the goods sold were resold with or without further processing. Buyer shall remain authorized to collect this receivable, even following the assignment. Seller's authority to collect the receivable remains unaffected hereby. Seller undertakes, however, not to collect the receivable so long as Buyer fulfills his payment obligations from the proceeds of sale collected, is not in default of payment and, in particular, no application to open insolvency proceedings has been made and the Buyer has not ceased to make payments. Where, however, his is the case, Seller may demand that Buyer notifies Seller of the claims assigned and their debtors, gives Seller all information necessary in order to collect them, provides to Seller the documents pertaining thereto and informs the debtors (third parties) of the assignment. Any processing or refinancing by Buyer of the goods sold shall be carried out in Seller's behalf. If the goods sold are processed with other goods not belonging to us, Seller shall acquire co-ownership in the new item in the ratio of the value of the goods sold to the other goods processed as at the time of the processing. In all other respects, in relation to the item created through the processing, the same shall apply as for the goods which were delivered subject to the reservation of title. If the goods sold are inseparably mixed with other goods not belonging to us, Seller shall acquire co-ownership in the new item in the ratio of the value of goods sold to the other goods mixed as at the date of the mixing. If the mixing is carried out in such a manner that the item of the Buyer is to be regarded as the main object, it is deemed to be agreed that Buyer transfers to Seller proportional co-ownership. Buyer shall act as bailee for Seller in relation to the sole or co-ownership so arising. Buyer also assigns to Seller, by way of security for Seller's claims, the claims which accrue to Buyer against a third party through the combination of the goods sold with real estate property. Upon request of Buyer, Seller undertakes to release the securities to which Seller is entitled in so far as the value of Seller's securities exceeds the claims to be secured by more than 20 %; the choice of the securities to be released shall lie with Seller.

6. **Delivery, Claims and Force Majeure.** Unless otherwise provided on the face of this document or agreed to in writing, goods shall be delivered, ex works Seller's loading dock (as defined in [Incoterms 2010](#)). Delivery of goods to the carrier shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage in transit. Transport carried out by Seller and/or Seller's means of transport is also performed exclusively at the risk of Buyer, i.e. the performance of the transport shall be comparable to the handing-over of the goods to the carrier, haulage contractor or other persons or institutions instructed to carry out the transport as required in § 447 para. 1 BGB [German Civil Code]. If the transport is carried out by Seller, Seller assumes liability for damages only if the damages are caused by willful intent or gross negligence. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be invoiced upon shipment of the first installment and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to Seller and in accordance with § 377 HGB [German Commercial Code] but no later than 10 calendar days after receipt of shipment. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller. All delivery dates are approximate. Further, the approximate delivery date is subject to punctual and proper fulfillment of Buyer's obligations. Seller shall not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, act of terrorism, riot, delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. All

timeframes provided by Seller, whether verbally or in writing, are good faith estimates of the expected delivery date for the goods. Seller shall use commercially reasonable efforts to fill Buyer's orders within the time stated, but in no event shall Seller be liable for any damages associated with Seller's inability to meet any such timeframes or deadlines, including, without limitation, incidental or consequential damages arising there from. If Seller is in default of delivery for reasons for which Seller is responsible, Buyer shall set Seller a reasonable extension (at least 4 weeks) for performance or subsequent fulfillment. After this period of time has expired without Seller's performance, Buyer is entitled to terminate the contract. Buyer is entitled to claim damages on breach of contract in the amount of foreseeable damages if the delay was caused by willful intent or gross negligence of Seller; in all other respects the claim of Buyer shall be limited to 5 % of the purchase price. The above limitations on liability shall not apply if a commercial fixed date of transaction (delivery) was expressly agreed in writing.

7. **Changes.** Seller may at any time make such changes in design and construction of products, components or parts as Seller deems appropriate, without notice to Buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or no availability of materials from suppliers.

8. **Warranties.** The goods sold by Seller to Buyer hereunder are warranted by Seller pursuant to Seller's applicable written warranty available <http://manitowoccranes.com/termsandconditions> or available upon request (the "Warranty"). The Warranty is exclusive and in lieu of all other warranties, whether written, oral or implied, arising by operation of law or otherwise, including, but not limited to, any warranty of satisfactory quality or fitness for a particular purpose.

Buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defense) that Seller may incur as a result of Buyer or any intermediary purchaser extending any warranties to its customers beyond the Warranty. Performance of the remedy provided in the Warranty shall be Seller's sole obligation and the end-user's exclusive remedy with respect to defective goods. Any parts repaired or replaced under the Warranty are warranted only for the balance of the warranty period on the part that was repaired or replaced. However, the foregoing does not constitute a guarantee in terms of § 443 BGB. Should Seller refuse subsequent fulfillment, or should the type of subsequent fulfillment to which Buyer is entitled be unsuccessful or where he cannot reasonably be expected to accept the same, Buyer shall be entitled to cancel the contract, or, alternatively, to demand a corresponding reduction in the purchase price and to claim damages or reimbursement of expenditure incurred in vain. Buyer shall only be entitled to claim damages for breach of duty under § 280 BGB where the breach of duty was a result of willful intent or gross negligence. Buyer may only demand damages in the amount of the foreseeable damage in place of performance (§ 281 BGB) where the breach of duty is substantial. Buyer may only claim damages an account of breach of other duties (§ 282 BGB) where he can no longer reasonably be expected to accept our performance. If and to the extent permitted by law, Buyer's claims are limited to the amount of the typical and foreseeable damages. Seller's obligation to pay compensation for material damage shall be limited to the amount of compensation payable under our product liability insurance. Seller will allow Buyer to inspect Seller's insurance policy upon request.

9. **Installation.** If Buyer purchases any goods that require installation or erection, Buyer shall, at its expense, make all arrangements necessary to install, erect and operate the goods. Buyer shall install the goods in accordance with any Seller instructions. Buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defense) arising from or otherwise connected with Buyer's or its agent's failure to properly install the goods.

10. **Technical Information.** Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made without the express, prior written consent of Seller.

11. **Assignment.** Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent, and any attempted assignment without such consent will be void and of no effect or consequence.

12. **No Waiver.** No waiver of this Agreement or any of its provisions is valid unless expressly agreed to in a writing signed by Seller. No waiver by Seller of any default under this Agreement is a waiver of any other or subsequent default. The failure of Seller to insist upon strict and timely performance of any term or condition of this Agreement shall not be deemed a waiver of any right or remedy that Seller may have under this Agreement or at law or equity, and shall not be deemed a waiver of any subsequent default in performance of the terms and conditions of this Agreement.

13. **Cost of Collection.** In the event legal action is necessary to recover monies due from Buyer or to enforce any provision of this Agreement, Buyer shall be liable to Seller for all costs and expenses associated therewith, including, without limitation, Seller's actual attorneys' fees and costs.

14. **Insurance.** Unless otherwise specified on the face of this document or agreed to in writing, Buyer shall be solely responsible from the point of delivery of the goods by Seller for all consequences as a result of theft, loss or partial or total destruction, for any reason whatsoever, including accidental reasons or as a result of force majeure. Buyer shall insure, at its expense, the goods against all aforementioned Buyer has made full payment of all amounts due Seller, and shall provide evidence of this insurance, upon request by Seller. Should Buyer fail to comply with these requirements, Seller may, at Seller's sole discretion, within eight days following written notice to Buyer, either cancel the sale and take back the goods, or procure such insurance at the expense of Buyer.

15. **Spare Parts.** Seller shall determine in its sole discretion the period of time for which it supplies spare parts manufactured by it; provided however, in no event shall Seller supply spare parts manufactured by it more than ten (10) years after the cessation of manufacture of this good. The supply of spare parts provided is limited to the availabilities of the Seller.

16. **Services.** The following terms shall also apply to all services being provided by Seller. (a) Seller will repair or, at its option, replace any part which is or becomes faulty if, in the opinion of Seller, the fault is in workmanship (and not the result of ordinary wear and tear; negligence; acts of God; vandalism; abuse; misuse; neglect; accident or disasters such as fire, flood, wind and lightning; overloading; unauthorized altered, modified or changed products or parts; products or parts which have not been properly installed, stored, operated or maintained or which have been improperly adjusted; any products or parts not manufactured by Seller), provided that the fault is brought to the notice of Seller within twenty (20) days of the date of delivery of the goods to Buyer on completion of the services. (b) The goods, while in Seller's possession are at the risk of the Buyer and Seller shall not be liable for the loss of or damage to the goods or their contents whatsoever arising unless the same is caused by the negligence of Seller. In the event of such negligence, Seller's liability shall be limited to the replacement or at Seller's option, repair of the lost or damaged goods and under no circumstances whatsoever shall Seller be liable for any other loss, damage or expense suffered by the Buyer as a result of the loss or damage to the goods. (c) If the goods are not paid for and collected from Seller's premises within twenty (20) of notice that they are ready for collection or if, where the goods are to be collected elsewhere, the Buyer fails to collect them at the agreed time and place, Seller reserves the right, in its sole discretion, to charge for storage or disposal of them. (d) If Seller is required to go to a location other than Seller's premises, Buyer shall be solely responsible to make sure such premises are safe and suitable for the services to be provided by Seller. Seller reserves the right, in its sole discretion to reject the premises if Seller determines they are not safe and/or suitable. Seller further reserves the right, in its sole discretion, to charge if it is waiting for the site to be prepared or if it leaves a site it determines not safe and/or suitable.

17. **Provision for Repair Works.** The provisions of these Terms & Conditions also apply to repair works provided by Seller unless this paragraph provides for something different. Buyer has to provide support on his own costs while repair works are being performed. This includes provision of any necessary operational and support staff, energy and other operation supply items. Buyer has to inform the leader of the repair personnel on any safety instructions to be observed and has to advise him on possible violations and has to make possible a test of the repaired unit. Buyer has to make sure that the repair personnel finds safe working conditions and – if necessary – a room protected against theft and that the repair personnel can start working immediately after arriving at the working site. Any delays caused by a breach of the foregoing obligation shall be borne by the Buyer. Payment of a requested upfront payment and the final amount of the invoice without any deduction shall be made within 14 days of the respective date of the invoice. The prices for works and spare parts provided by Seller are stated in Seller's price list. If Seller provides a cost estimation, this is not binding. Further, Seller does not guarantee a certain time of completion of the works. Seller is liable after statutory laws if the repair works are not performed properly. The warranty period for repair works is one year after approval of the repair work. For the rest, paragraph 8 applies accordingly.

18. **Second-hand or used Goods.** If the Buyer is buying the equipment as secondhand equipment, the Buyer recognized that he had an opportunity to inspect the equipment and is buying it in full knowledge of its condition. The equipment is being sold to Buyer as is, where is, and with all faults; and Seller hereby specifically disclaims any and all warranties and representations of any nature whatsoever,

express or implied, with respect to the equipment, including, without limitation, any implied warranty or satisfactory, quality or fitness for a particular purpose, any warranty arising by course of dealing or usage of trade.

19. **Protection of Personal Data.** For the purpose of this Agreement, each party may have access and process personal data of employees of the other party. As such, each party represents that it takes reasonable measures to ensure the protection and confidentiality of the information it holds or that it processes in compliance with applicable laws, including, without limitation, the European Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR). Each party represents that it informs its employees that they have the right to request access, correction, modification and erasure regarding their personal data in case of inaccuracy, as well as a right to the limitation of processing, to data portability and to opposition for legitimate reasons which they may exercise by sending an email to the other party's data protection officer or similar responsible person. Each party also represents that it informs its employees about their right to lodge a claim before the competent authorities.

20. **Telematic system.** The goods sold by Seller to Buyer may be equipped with a remote-connection machine-data-collection system (the "Telematic System"). Use of the Telematic System is condition upon acceptance of the "Telematic System Terms and Conditions of Use" available at <http://manitowoccranes.com/termsandconditions>. Buyer agrees that its use of the Telematic System constitutes acceptance of the Telematic System Terms and Conditions of Use.

21. **Place of Performance.** Unless otherwise provided in Seller's confirmation order, Seller's place of business shall be the place of performance.

**T&C Sales MCG Germany – rev. N°1 dated October 1st, 2019
CE DDY DF 0011-00**