

MANITOWOC CRANE GROUP PORTUGAL LTD 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 Portugal Ltd ("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 Portugal (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 of 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.

2. **Price.** Unless otherwise specified on the face of this document or agreed to in writing, the price for goods sold hereunder shall be at the Seller's distributor list price in effect as of the date of the Seller's acceptance of the Buyer's order. Notwithstanding the foregoing, Seller may increase the price of the goods upon notice to Buyer to reflect any additional increases in Seller's cost of producing the goods. 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 on unpaid amounts from the due date to the date of actual payment at the lesser of (i) 18% per year, or (ii) the statutory 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) cancel the unshipped or unperformed portion of any order and invoice Buyer for incurred costs and reasonable profit without any liability on the part of Seller for failure to ship or provide goods, or (c) make shipment of goods to Buyer on a cash on deposit 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.** Buyer hereby grants to Seller and Seller hereby retains a purchase money security interest in all goods sold hereunder and all accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired, all spare parts and components therefor, and all proceeds of the sale or other disposition including, without limitation, cash, accounts, contract rights, instruments and chattel paper. Buyer hereby authorizes Seller and its agents to file any financing statements and other documents necessary to create, perfect and maintain the security interest granted hereunder.

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. 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 within 10 calendar days after receipt of shipment; and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller.

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 unless such inability is due to the willful misconduct or severe fault of the Seller.

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 nonavailability 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 at <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.

9. **Consequential Damages and Other Liability; Indemnity.** Seller's liability with respect to the goods or services sold hereunder shall be limited to the warranty and indemnity provided in section 8 of these Terms and Conditions and, with respect to any other breaches of its contract with Buyer, shall be limited to the contract price. Seller shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence and strict liability) or under other theories of law or equity, with respect to goods or services sold by seller, or any undertakings, acts or omissions relating thereto. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute goods or services, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages, costs or losses. Seller shall not be liable for and disclaims all consequential, incidental, indirect and contingent damages whatsoever.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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; unauthorised 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 howsoever 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 the 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.

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 Portugal – rev. N°1 dated October 1st, 2019
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