

TERMS AND CONDITIONS OF SALE

- 1) OFFER, GOVERNING PROVISIONS AND CANCELLATION. These Terms and Conditions of Sale ("Terms and Conditions") is an offer or counter-offer by Manitowoc Crane Group Middle East FZE ("Seller") to sell the goods and/or services that are identified in any Agreement (as defined below) or any order or quote for the sale of the Seller's goods and services to a buyer identified in such Agreement or quote or order ("Buyer") in accordance with these 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 including or any other terms that Buyer may refer to, seeks to rely on, impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and notifies Buyer that Seller is unwilling to sell on any terms or conditions other than these Terms and Conditions. These Terms and Conditions, including any quotes or orders agreed between the parties in regards to the sale of Seller's goods or services and any additional terms and conditions contained in or attached to these documents agreed between the parties, 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 the Dubai International Financial Centre ("DIFC"). The parties irrevocably consent to the exclusive jurisdiction of the DIFC courts in respect any dispute arising between the parties relating to this Agreement. No accepted offer and no distributor order may be cancelled or altered by Buyer except upon terms and conditions accepted by Seller in writing; and no changes to an Agreement will be binding unless set forth in writing and manually signed by Seller. Neither the Seller's acceptance of an Agreement, 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 an Agreement 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 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 Seller's price list.
- 3) CREDIT APPROVAL/ PAYMENT TERMS. All payment terms set forth in an Agreement 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 an Agreement or in the preceding sentence, payment for goods and services is due in advance (otherwise payment shall be due upon Buyer's receipt of Seller's invoice following shipment where the Seller has agreed to such payment terms in writing). Interest will be charged at the lesser of (i) 18% per year, or (ii) 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 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, (c) make shipment of goods to Buyer on a cash on delivery (C.O.D.) or cash in advance basis, or (d) terminate any Agreement without the need for a court order. If production or shipment of completed goods, or other Seller performance, is delayed by Buyer, Seller may immediately invoice Buyer, 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, customs, 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 agrees to indemnify (on a dollar for dollar basis) Seller for any liability for tax or other charges or shall immediately reimburse Seller therefor on demand.
- 5) TITLE, SECURITY INTEREST, RECALL. Where goods are paid in full, title to goods shall pass ex works Seller's loading dock upon goods delivered to the carrier. Notwithstanding the foregoing and where goods and any accessories relating to the goods have not been paid for in full, Buyer shall: (a) hold the goods on a fiduciary basis as Seller's bailee; (b) store the goods separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the goods; (d) maintain the goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery; (e) notify the Seller immediately if it is unable to pay its debts or suffers any event which could be reasonably considered to indicate that it is insolvent or at serious risk of becoming so, enters insolvency liquidation, there is a declaration of bankruptcy of the Buyer or a presentation of a bankruptcy or a winding up petition which is not withdrawn, dismissed or discharged or there is an appointment of an administrator, receiver or similar over any of its assets or undertaking; and (f) give Seller such information relating to the goods as Seller may request from time to time. In the case of any of the event of (e) above where goods have not been paid for, and the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Seller may have, Seller may at any time require the Buyer to deliver up the goods and, if the Buyer fails to do so promptly without notice, Seller may enter any premises of the Buyer or of any third party where the goods are stored in order to recover them and Buyer agrees to grant access or procure that access is granted to such premises for this purpose. Buyer hereby authorizes Seller and its agents to file any financing statements and other documents necessary to create, perfect and maintain Seller's remedy mentioned in (a) of this section. In the event that Seller initiates a recall, market withdrawal, or stock recovery program with respect to any goods, or part thereof, Buyer shall use its best efforts to assist Seller in identifying the purchasers of the affected goods. To this end, Buyer shall maintain all relevant records with respect to its customers where it acted as a distributor of the goods for a period of five (5) years after creation of such records.
- 6) DELIVERY, RISK OF LOSS IN TRANSIT, CLAIMS AND FORCE MAJEURE. Unless otherwise provided on the face of an Agreement or agreed to in writing, goods shall be delivered, ex works Seller's loading dock (as defined in Incoterms 2023). 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 delivery dates are approximate. 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 fulfill 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 therefrom.
- 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 non-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 at <http://manitowoccranes.com/termsandconditions>; goods modified at the request of Buyer are subject to the warranty provided by Seller at the time of each corresponding transaction (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. SELLER'S LIABILITY WITH RESPECT TO THE GOODS OR SERVICES SOLD HEREUNDER SHALL BE LIMITED TO THE WARRANTY 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, INCLUDING, WITHOUT LIMITATION, THE SALE OF GOODS MODIFIED AT THE REQUEST OF BUYER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY DAMAGES, 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. 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 ANY CLAIM BY BUYER OR BY BUYER'S CUSTOMERS OR BY ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THE GOODS OR SERVICES SOLD HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM BASED UPON THE NEGLIGENCE OF SELLER IN DESIGNING, MANUFACTURING, PERFORMING AND/OR SELLING SUCH GOODS OR SERVICES, UNLESS SUCH LOSSES, LIABILITIES, DAMAGES OR EXPENSES ARE ULTIMATELY DETERMINED TO BE ATTRIBUTABLE SOLELY TO THE WILLFUL MISCONDUCT OF SELLER. BUYER'S OBLIGATIONS UNDER THIS PARAGRAPH, INCLUDE, WITHOUT LIMITATION, INDEMNITY OBLIGATION TO SELLER FOR GOODS MODIFIED AT THE REQUEST OF BUYER.
- 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 AND CONFIDENTIALITY. 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. All information, in any form, which is owned by Seller or which is disclosed or made available in any manner by or on behalf of Seller to Buyer, including these Terms and Conditions and any Agreement ("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 Buyer, Buyer warrants that Buyer 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 and Conditions or any Agreement (on a strict need-to-know basis) without the prior written consent of Seller. Upon request by Seller, employees or agents of the Buyer in performance of these Terms and Conditions and any Agreement shall execute an agreement that provides that such person or entity will not use or disclose any Confidential Information.
- 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 these Terms and Conditions and any 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 Terms and Conditions and any 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 any Agreement shall not be deemed a waiver of any right or remedy that Seller may have under Terms and Conditions and any 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 Terms and Conditions and any Agreement.
- 14) COST OF COLLECTION. In the event legal action is necessary to recover monies due from Buyer, goods sold or services provided by the Seller to the Buyer which remain unpaid for or otherwise or to enforce any provision of this Terms and Conditions and any 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 these Terms and Conditions, any Agreement or as 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 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; 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 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 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) 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), UAE Federal Law No. 2 of 2019 on the Protection of Personal Data and the DIFC Data Protection Law (Law 5 of 2020) and its implementing regulations. 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.
- 19) 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.
- 20) TERMINATION FOR CONVENIENCE OR CAUSE. Seller may, at any time and without further liability, terminate, without the need for a court order, these Terms and Conditions or any Agreement or any part thereof for its sole convenience or for non-payment pursuant to section 3(d) above, at which time the Seller shall immediately stop all work related to any Agreement. Buyer shall pay Seller's actual direct costs for goods produced or work performed up until the date of termination for any reason. Further, Seller may terminate or cancel any Agreement, in whole or part, at any time and without penalty or liability if: (a) Buyer breaches any terms or conditions of an Agreement, including without limitation, non-payment; (b) Buyer ceases operations; or (c) a petition in bankruptcy is filed by or against Buyer, Buyer is declared insolvent or has a receiver or trustee appointed for it or its assets, or Buyer makes an assignment for the benefit of creditors or commences proceedings under any insolvency or similar laws.
- 21) REMEDIES. Seller's remedies granted herein are not exclusive but are in addition to any other remedies provided by applicable law. Where specified herein, Buyer's remedies are exclusive of all other remedies.
- 22) INDEMNIFICATION. Buyer shall defend, protect, indemnify and hold harmless Seller, its parents, subsidiaries, affiliates, 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 Seller of its rights hereunder; (b) any act or omission of the Buyer, whether based upon claims of negligence, or strict liability in tort or otherwise; (c) any breach of these Terms and Conditions or any Agreement; (d) violation of any federal, local, foreign or international law, rule or regulation, including any penalty, interest, tax or other charge that may be levied or assessed as a result of any delay or failure of Buyer to pay any taxes payable by Buyer or file any return or information required to be filed by Buyer under any applicable laws.
- 23) INTELLECTUAL PROPERTY. All rights, title and interest in and to all intellectual property of Seller, 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 belonging to Seller) (the "Seller's IPR") may not be used, disclosed, assigned, licensed or otherwise exploited by Buyer for any purpose without additional fees, royalties or compensation to the Seller. These Terms and Conditions and any Agreement does not transfer or license any of the Seller's IPR to Buyer or provide Buyer with any rights to use the Seller's IPR without the express written consent of Seller.
- 24) SETOFF. Seller may setoff any amount due from Buyer to Seller, whether or not under these Terms and Conditions or any Agreement until Buyer cures its breach.
- 25) NOTICES. All forms of legal communication(s) or legal notice(s) hereunder, shall be made by Buyer to Seller in writing, in English language and delivered personally, or sent by courier, or email, at the relevant address set out below. A notice delivered personally or by courier shall be deemed delivered at the time of delivery and a notice sent by email shall be deemed delivered at the time the email was sent if no delivery notification is received by the sender's server. Seller may change its address from time to time upon written notice to Buyer.
- Manitowoc Crane Group Middle East FZE
Address: JAFZA Views, 19 – 4th Floor, Makani n°0763464501, Jebel Ali Free Zone, Dubai, UAE
Email: invoices.me@manitowoc.com
- 26) ORDER OF PRECEDENCE. If there is an irreconcilable conflict among the provisions of these Terms and Conditions and any other documents that form part of any Agreement that these Terms and Conditions also form part of, the following order of precedence applies: (a) any specific special conditions agreed between the parties in the Agreement; and (b) these Terms and Conditions.
- 27) NO PARTNERSHIP OR THIRD PARTY RIGHTS. Nothing in these Terms and Conditions or any Agreement is intended to, or shall be deemed to, constitute a partnership, employer employee relationship or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way. A person who is not a party to any Agreement shall not have any rights under or in connection with it.
- 28) COSTS AND EXPENSES. All costs and expenses incurred in connection with these Terms and Conditions and any Agreement, including, without limitation, costs incurred in recovering goods or non-payment of goods, shall be to Buyer's account.
- 29) COMPLIANCE WITH LAWS. Buyer agrees that it will comply with all local or agency laws or regulations as applicable, including, without limitation, export and import laws, anti-corruption, anti-boycott, anti-slavery, anti-human trafficking, fair labor, and laws that protect humans, forestry, wildlife, and the environment.