

MANITOWOC CRANE GROUP UK LIMITED
TERMS AND CONDITIONS OF SALE AND SERVICE/REPAIR

1. Basis of Purchase.

This document is an offer or counter-offer by Manitowoc Crane Group UK Limited ("Seller") to sell the goods and/or services that are identified in this document, or any purchase order to which it is attached, to the buyer identified in this document or purchase order ("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 made upon the condition of acceptance by the Buyer of, 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.

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 oblige 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.

These Terms and Conditions, together with the additional documents attached to this document, as supplemented by agreed upon quantities and shipping dates, constitute the agreement between Seller and Buyer ("Agreement").

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 and any taxes, including without limitation, value added tax 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 for such sums paid on demand.

5. 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 legal fees, costs and expenses.

6. Title and Repossession.

(a) Ownership of goods supplied under this Agreement shall pass to the Buyer upon the earlier of: (i) Seller receiving payment in full for those goods in cash or cleared funds (and not before); and (ii) the Buyer reselling the goods pursuant to its right at (d) below, in which case title to the goods shall transfer from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

(b) Until ownership of the goods passes to the Buyer, the Buyer shall: (i) hold the goods as the Seller's fiduciary bailee; (ii) keep the goods separate from all other goods held by the Buyer and readily identifiable as the property of the Seller; and (iii) maintain the goods in a satisfactory condition.

(c) The Seller may at any time recover the goods or resell them before ownership passes to the Buyer or the goods are resold by the Buyer pursuant to its right at (d) below. The Seller is entitled by its employees or other representatives to enter the premises of the Buyer where the goods are stored (or where the Seller has reasonable grounds to believe the goods are stored) without notice to recover the goods. The Buyer shall at the request of the Seller procure the right for the Seller, its employees and representatives to enter any premises of any third party where the goods are stored for this purpose. All costs incurred by Seller in repossessing the goods shall be paid by Buyer.

(d) Prior to ownership of the goods passing to the Buyer, subject to (e) below, the Buyer may resell or otherwise deal with the goods in the ordinary course of its business (but not otherwise) and pass good title to its customers unless and until the earlier to occur of the following: (i) the Seller terminates the right to do so by notice to the Buyer; or (ii) an Insolvency Event occurs in relation to the Customer, in which case the right to do so terminates with immediate effect. At all times, where the Customer resells the goods, it does so as principal and not as the Seller's agent.

(e) Where ownership of goods transfers to the Buyer by virtue of (a)(ii) above, the proceeds of such a resale up to the equivalent to any amounts owing to the Seller shall be held by the Buyer upon trust for the Seller and paid into a separate bank account designated for that purpose. The Seller shall be entitled to trace the proceeds of sale into that bank account (or wherever the proceeds may in fact be located) and the Buyer authorises the Seller to make enquiries of its bankers (or otherwise as appropriate) relating to those proceeds.

The term "Insolvency Event" means (i) it becomes insolvent or is unable to pay its debts as they fall due or fails or admits in writing its inability generally to pay its debts as they become due; (ii) it suspends payments on any of its debts or announces an intention to do so; (iii) a moratorium is

declared in respect of its indebtedness; (iv) a petition is presented for its winding up or bankruptcy; (v) any action (corporate or otherwise), legal proceedings, or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (A) its reorganisation by way of voluntary arrangement or scheme of arrangement; (B) a composition or arrangement with any creditor of it; (C) the appointment of a receiver, administrative receiver, nominee, supervisor or similar officer in respect of it or any of its assets; (D) the filing of a notice of intention to appoint or a notice of appointment of an administrator or the application to court to appoint an administrator of it; (E) the enforcement of any security over any of its assets; or (F) the commencement of any analogous procedure or step in relation to it in any jurisdiction other than England and Wales.

7. Delivery, Acceptance, Risk and Property.

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 therefrom.

8. 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 insurable interests and Buyer shall pay in full payment of all amounts due in respect of such insurance, 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 8 days following written notice to Buyer, either cancel the sale and take back the goods, or procure such insurance at the expense of Buyer and Buyer shall repay any sums paid by Seller in respect of such insurance on demand. Where ownership of goods supplied under this Agreement are yet to transfer to the Buyer, the Buyer shall hold any proceeds of insurance referred to above on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdraft account.

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. 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.

11. Spare Parts.

Except in relation to second-hand or used goods, 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 10 years after the cessation of manufacture of the goods. The supply of spare parts provided is limited to the availabilities of Seller.

12. Warranties.

Except in relation to second-hand or used goods: (a) 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 of 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; and (b) 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.

Where goods are second-hand or used:

(c) for the purpose of assessing whether the goods are of satisfactory quality or fit for the purpose(s) for which the Buyer requires them, the Buyer has had the opportunity to and is deemed to have carried out a reasonable examination of the goods before the Agreement is made so that it is buying the goods in full knowledge of the actual condition of such goods. Accordingly, the goods are sold to the Buyer as is, where is and with all faults and the Warranty does not apply;

(d) the Seller gives no warranties in relation to the quality of the goods or their suitability for any purpose, whether or not that purpose is known by the Seller; and

(e) all conditions and warranties, whether written, oral or implied, arising by operation of law or otherwise, are excluded to the fullest extent permitted.

In each case, the Buyer shall indemnify and hold harmless Seller in full from and against any and all losses, liabilities, damages and expenses (including but not limited to any legal fees, costs and expenses) that Seller may incur as a result of Buyer or any intermediary purchaser extending any warranties to its customers.

13. Certain Rights and Remedies on Default.

The following terms shall also apply to all services being provided by Seller : (a) except in relation to second-hand or used goods, 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 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 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 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 20 days of notice that they are ready for collection or if, where the goods are to be collected elsewhere, 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; and

(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.

not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

24 **Third Party Rights.**

This Agreement does not create, confer or purport to confer any benefit or right enforceable by a person not a party to it.

**T&C Sales MCG UK – rev. n°1 dated October 1st, 2019
CE DDDY DF 0014-00**

14. **Limitation of Liability and Indemnity.**

Seller's liability with respect to the goods or services sold hereunder shall be limited to the Warranty where it applies, 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, including any willful or deliberate breach of contract, tortious acts or omissions, (including negligence and strict liability), warranty or, breach of statutory duty or misrepresentation or misstatement or any 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 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, loss of reputation; loss of business, revenue or goodwill, anticipated savings, 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 regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties or otherwise.

Buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages and expenses (including but not limited to any legal fees, costs and expenses) 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.

Nothing in the Agreement shall affect the liability of the Seller for death, personal injury, fraud or fraudulent misrepresentation to the extent they cannot be excluded or limited by law.

15. **Intellectual Property and Confidential 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.

The Buyer accepts that the confidential information is valuable and damages may not be an adequate remedy for any breach of this section 15 and accordingly the Seller will be entitled, without proof of special damages, to an injunction and any other equitable relief for any actual or threatened breach of condition 15.

16. **Entire Agreement.**

This Agreement constitutes the entire agreement between Seller and Buyer with respect to the supply of the goods and services and supersedes any prior discussions, oral or written agreement with respect to the supply of the goods and services, provided that nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

17. **Severance.**

If any provision of this Agreement is deemed to be invalid or unenforceable in whole or in part the validity of the remainder shall not be affected.

18. **Variation.**

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 signed by Seller in an order acknowledgment.

19. **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.

20. **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.

21 **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.

22 **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.

23 **Governing Law and Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the laws of the of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and determine any claim, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement. The rights and obligations of the parties hereunder shall