

General Terms and Conditions for the Sale of Goods

Fox Cities Crane & Fab, Inc.

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods and services ("**Goods**") by the seller Fox Cities Crane & Fab, Inc. ("**Seller**") to Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) These Terms, together with Seller's quotation (if any), Seller's documentary supplements to Seller's quotation, Seller's confirmation, or Seller's invoice as applicable (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to a delivery point as specified by Buyer's purchase order, or to the Buyer's place of business (the "**Delivery Point**") using shipper's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods upon receipt of same at the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, unless otherwise specified in the quotation.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. **Shipping Terms.** Delivery shall be made FOB: Point of Shipment, unless otherwise quoted. Seller shall make delivery in accordance with the terms on the face of the quotation.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer at such time as Goods are shipped unless Seller is acting as the delivery agent. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Wisconsin Uniform Commercial Code.

6. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods upon/within five (5) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at 925 North Bluemound Drive, Appleton, WI 54914. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Price.

(a) Buyer shall purchase the Goods from Seller at the price(s) (the "**Price(s)**") set forth in Seller's quotation. If the Price(s) should be increased by Seller (or Seller's supplier, if applicable) before shipment to Buyer, then these Terms shall be construed as if the increased price(s) were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price(s).

(b) Due to the volatility of raw materials prices, fuel surcharges, other material costs and in light of price-setting privileges retained by the original equipment manufacturer if applicable, pricing will be subject to review and confirmation at time of purchase order placement or processing.

(c) All Prices are exclusive of all use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

(d) Prices quoted are advised and issued net of sales tax due unless otherwise noted. Valid proof of exemption as required by the appropriate jurisdictional tax authority will be necessary to designate any purchase as "exempt" from applicable State and Local sales tax. In the absence of this document or equivalent proof of exemption, sales will be deemed and billed as "taxable" with the address of receipt dictating the rate of tax due. Once billed, sales tax may not be relieved from customer accounts; payment for such tax is expected to accompany the final remittance.

(e) Responsibility for packing, delivery or cartage charges and all applicable taxes associated therewith will be specified at time of quotation and may vary in amount and applicability from project to project.

(f) In the event Buyer or its authorized agent or affiliate elects to cancel, change, discontinue or amend any Agreement or Purchase Order for any reason other than material breach of same by the Seller, Seller reserves the right to bill and collect from Buyer fees which it may incur as a result of the election to cancel or modify the subject order, including but not limited to work completed to date, work in process, charge escalations for additional goods or services required, transit, restocking, cancellation or storage fees. Seller will make reasonable efforts to mitigate these expenses to reduce charges due and owing from the Buyer. Buyer shall remit for costs related to the cancellation of work not later than 30 Days From Date of Invoice, unless otherwise stipulated by the parties in writing at the time of cancellation, revision or amendment. Remittance shall be paid by the Buyer whether or not Buyer has received payment for same from any third party.

8. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller in accordance with remittance terms indicated on Seller's invoice. Buyer shall make all payments hereunder by electronic funds transfer or check, and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

(d) Sale is subject to payment terms disclosed at time of quotation. Buyer's timely remittance to Seller for any balance due for the project in question shall not be contingent upon or governed by Buyer's receipt of any remittance from any third party. In the event Buyer demands Seller's issuance of an affidavit of payment for labor, materials, equipment, or other indebtedness connected with Seller's work, Buyer shall furnish to the Seller its preferred document for this purpose concurrent with Seller's completion of work.

(e) Waiver(s) of lien, if required, will be executed and returned concurrent with Seller's receipt of payment; requests for any advance issuance of waiver(s) of lien will not be honored. Buyer shall supply Seller with its preferred waiver document for Seller's review and execution with each remittance.

9. Limited Warranty.

(a) Fox Cities Crane & Fab., Inc. (hereinafter "Company" or "Seller") warrants that all goods manufactured by the Company shall be free from defects in material and workmanship for a period of 12 months from the date of delivery, or until such time as the equipment in question has attained an operational quota of two thousand (2000) hours, whichever occurs earlier. Seller's obligation under the terms of this warranty statement shall be limited to repairing or replacing (at Seller's option, FOB: POS, freight prepaid by the Buyer) any part of the goods, which if properly installed, used and maintained prove defective in material or workmanship within the specified warranty period. During the warranty period, Fox Cities Crane & Fab., Inc. reserves the right to replace, repair, exchange, or to provide a new, used, or rebuilt component, assembly, sub-assembly, or weldment at their discretion, dependent upon circumstance, situation, and/or availability. Such obligations shall be contingent upon:

- 1) Seller's receipt of Buyer's notification and satisfactory proof of any defect; and
- 2) Buyer's fulfillment of all obligations imposed hereunder.

All parts replaced as set forth above shall become the property of the Seller.

This Warranty Policy does NOT cover damage caused by; shipment, misuse of unit (including operation beyond Factory established limits, loads, and/or specifications), failure to properly service and maintain the unit in accordance with the Company's or component manufacturer's manuals or Factory Service Bulletins nor does it cover "wear items", including but not limited to; brake linings, wire rope assemblies and rope guide assemblies. Damage arising from normal wear and tear shall be excluded from consideration for warranty coverage in all cases. Fox Cities Crane & Fab., Inc. DOES NOT accept any responsibility for alterations or modifications to the unit made by the Buyer, its agents, or assignees, and further asserts this warranty NULL and VOID in the event the Buyer has carried out modifications or reconditioning work upon the goods without the Seller's written consent, or if the equipment has been utilized beyond its rated capability. Seller shall not be responsible for any damages arising or resulting from natural disasters or "Acts of God" (such as fire, flood, wind, lightning), nor shall the Seller assume any responsibility for damage or malfunction arising from any act of terrorism or willful destruction on the part of any party, whether or not said party is affiliated with or employed by the Buyer in any way.

THIS WARRANTY STATEMENT SHALL SUPERCEDE ALL OTHERS PREVIOUSLY ISSUED BY THE SELLER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

If field repair or parts replacement is necessary on any warranted components, in no event shall the Company be liable for any indirect, incidental, consequential, or special damage (including without limitation to loss of profits, loss of revenue, cost of capital, cost of substitute equipment, downtime, examination fees, claims of third parties, and injury to person or property) based upon any claim of breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. This limited warranty statement recognizes the risks and limitations of product failure between Fox Cities Crane & Fab., Inc. and the Buyer. Anything to the contrary as stated herein notwithstanding, Seller's warranty with respect to goods or parts not manufactured by the seller shall further be limited to the warranty policy issued and upheld by the supplier. In all cases, credit or reimbursement for any and all parts or components found to be defective and determined to be covered by this or the supplier's warranty policy shall be issued only at such time as the Seller receives credit for defective parts or components from the supplier. Except as provided hereinafter, Buyer shall be responsible for charges associated with onsite labor, travel time, mileage or related expenses required to conduct any evaluation, inspection, examination, removal

and/or reinstallation of any part or component. Seller, at its sole discretion, may elect to waive such charges, in whole or in part, such election having been mitigated by the findings noted during the warranty investigation. It is understood that Seller's dispatch area for personnel in its direct employ is strictly limited to the State of Wisconsin; warranty claims requiring the conduct of onsite evaluation, inspection, or repair outside the dispatch area specified will necessitate the involvement of third-party providers. All warranty claims involving requests for labor, travel time, mileage, related expenses, or replacement parts will require Buyer's issuance of a purchase order noting the requested goods and/or services. Seller shall require the receipt of written evidence of this order, whether by electronic delivery, regular mail or facsimile, prior to the initiation of investigation, procurement of any replacement part or component or dispatch of repair personnel. This written warranty is also understood to be the complete and exclusive agreement between the parties, superseding all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this warranty. No employee, agent or distributor of the Company, or any other person is authorized to state or imply any additional warranties on behalf of the Company, or to assume for the Company any other liability in connection with any of its products, unless made in writing, dated and signed by an officer of the Company.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in this Section 9. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in this Section 9 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in this Section 9 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 9 (b), 9 (c), 9 (d) and Section 9(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) A copy of Seller's Statement of Standard Limited Warranty will be furnished to the Buyer at Buyer's request. This Statement, together with any supplements included herein, and warranty consideration offered by participating OEM or factory entities, constitutes the entire agreement with respect to warranty coverage. No additional guarantees, warranty or assurances are offered or implied.

(h) Seller makes no warranty against presence or eventual development of "boom drift", which is a condition and consequence potentially inherent or natural to jib crane design and may manifest at any time for several reasons, including but not limited to building settling, the influence of air circulation in the work environment, loading, misuse or abuse. Seller will make every effort to execute proper, level and plumb installation of the jib crane. However, Buyer is hereby notified that boom drift, in the absence of improper installation by the Seller, is not a warrantable occurrence, and is therefore excluded from coverage under the applicable statements of warranty furnished herein.

(i) THE REMEDIES SET FORTH IN THIS SECTION 9 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9(a). FURTHERMORE, SELLER'S LIABILITY SHALL BE FURTHER LIMITED AS PROVIDED IN THIS GENERAL TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO SECTION 10 HEREINAFTER.

10. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF REVENUE OR LOSS OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME OR EXAMINATION FEES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) Seller agrees to indemnify and hold harmless Buyer, its agents, affiliates and assigns except in any case where the actions or omissions of the Buyer, its agents, affiliates and assigns have contributed in any way, whether in whole or in part, through negligence or willful misconduct, to the condition(s) or circumstance(s) from which any complaint, damage or injury to persons or property arose.

(d) To the extent a third-party claim is brought against Buyer, including by an employee of Seller, Seller's obligation to indemnify Buyer shall be strictly limited to Seller's insurance coverage, if any.

(e) Seller shall not be liable for any consequence for delayed performance which can be attributed to circumstances beyond its direct control, including but not limited to revisions to the schedule of work initiated by the Buyer, Owner or any parties affiliated therewith, materials suppliers' unanticipated inability to timely fulfill orders for goods or materials required for the performance of work and/or delays arising during transport by third parties.

Seller shall not, without its express consent evidenced in writing, be liable for increased transportation costs associated with Buyer's election to modify, escalate, or expedite transit.

11. Insurance. In the event Seller is engaged to perform onsite services at Buyer's facility, Seller reserves the right to request evidence of Buyer's insurance coverage during the term of this Agreement and for a period of three (3) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, and except as it pertains to Buyer's Workers' Compensation policy, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

(a) Any references to Seller's insurance requirements, lines or limits imposed by Buyer or End User under any Agreement shall be stricken in entirety and replaced with Seller's standard Accord Certificate of Liability Insurance (copy available upon request). Buyer accepts Seller's insurance coverages detailed therein "as is"; no additional coverages or limits are offered or implied.

(b) Except as expressly agreed in writing, requests for Seller's Waiver of Subrogation pertaining to Worker's Compensation Insurance will not be honored.

12. Onsite Labor by Seller In the event that Seller is required to furnish personnel, labor, tools, work materials or equipment required for the prosecution of work performed onsite at a facility owned, operated, or overseen by Buyer or a third party with whom the Buyer is engaged:

(a) Seller agrees to prosecute work on a schedule deemed mutually agreeable to both parties. Any revision to the schedule of work, whether instigated by the Buyer or the Seller, must be promptly reported the other party for its consideration. Non-payment of progress billings due, if applicable, and revisions or changes to the schedule of work by others will impact the pace at which completion is achieved.

(b) Seller and its employees, agents or designates will adhere to Fox Cities Crane & Fab., Inc.'s standard practices for worksite safety. It is expected that Buyer's employee(s), agent(s) or designate(s) will advise Buyer's requirements for worksite safety to Seller, including its preferred practice for securing or restricting of access to the worksite and its immediate area. Buyer is advised that cordoning or utilization of physical barriers, if desired, to control access to the worksite will require coordination between the parties for the duration of the onsite portion of this project and may further require monitoring or enforcement by the Buyer to ensure compliance by its employees, agents, or visitors to the work area.

(c) Area must be free and clear for work, with ready access to the work site and all areas of required ingress or egress for personnel, vehicles, tools, equipment, and materials. Some coordination between Seller and Buyer, its employees or designates will be required. Delays associated with access encumbrances or obstructions may affect the work schedule, and further may result in the assessment of additional charges.

(d) Buyer is advised that certain access and material handling equipment may be required to permit Seller's performance of installation required under this Agreement. Unless otherwise acknowledged in writing, Buyer has not indicated that special protective enhancements (booties, non-marking tires, planking, emissions mitigation devices, i.e., "scrubber", etc.) are required for Seller's conduct of work. If such protective enhancements are determined to be necessary at a later date, Buyer must advise Seller of this revision at time of contract award or order. Unless otherwise indicated, charges for protective enhancements are not included in any quotation price and will be invoiced as a separate item.

(e) It is understood that tools, work materials or equipment may reside at the jobsite for a nominal period of time, including but not limited to occasions where the progress of work continues over multiple days, or at the conclusion of work, while awaiting collection by a third-party provider of such equipment obtained by rental contract between Seller and the third-party provider. Removal of such tools, work materials and equipment shall be undertaken in an expeditious manner so as not to unduly burden, encumber or otherwise inconvenience Buyer or its employees. However, under no circumstances will Buyer permit its employees or assigns to remove, utilize, or operate such tools or equipment without the express permission of an authorized agent of Seller. Any use of such tools and equipment shall be at Buyer's sole risk.

(f) It is expected that Buyer or its assign will prominently mark any routes which are not sufficiently developed, finished, or cured to permit and sustain traffic and passage of vehicles and/or equipment which customarily require access to the work site in a project of sufficient scope. Seller will comply with special routing or access requests as advised by the Buyer. As such, Seller disclaims all responsibility for damage to asphalt or concrete drives or approaches which must be utilized to deliver or transport goods needed for the conduct of work.

(g) Seller, in accordance with applicable regulatory guidelines and requirements, specifies that the conduct of a certified load test shall be conducted on all newly installed or modified overhead material handling equipment prior placement of such equipment into active service. Unless otherwise indicated in writing, this testing is not included in the scope of quotation. Quotation for such testing will be furnished upon request. Conduct of certified load testing of any equipment must be approved, ordered, performed, and invoiced as a separate item.

(h) In all cases where applicable, design, construction, and installation of footings, etc., as well as the materials necessitated for conduct of work, shall be dictated by the original equipment manufacturer's recommendations, specifications, or requirements.

(i) Unless otherwise specified in writing, Buyer is advised that performance of, or costs associated with, regular maintenance, inspection, or repair of the goods (warranty issues excepted) requested under this order are not included in this Agreement. Such services must be ordered and invoiced as separate items.

(j) It is understood that Seller's dispatch area for personnel in its direct employ is strictly limited to the State of Wisconsin.

(k) Given the vast array of original equipment manufacturers, models, designs, and ages of overhead material handling equipment in use in the marketplace today, the increasing number of organizations gaining recognition as authoritative in the industry, and the evolution of standards and practices recommended by such manufacturers and various regulatory bodies (hereinafter referred to collectively as "agencies" within this Section 12), Fox Cities Crane & Fab., Inc. ("Seller") makes no assertion, warranty or guarantee that its inspection or service of any component or system encompasses or adheres to all guidelines set forth by these agencies. Buyer understands that as such, agencies' recommendations or requirements may in some cases be omitted from standard inspection or repair procedure commonly performed by any provider (including the Seller) for any number of reasons, some of which are beyond the control of the provider/Seller. Underlying conditions capable of compromising safe operation of equipment may exist and are potentially undetected and/or undetectable during the course of ordinary examination.

(l) A completed inspection or service report is not intended to be, nor should it be, construed as an assurance of future or continued component or system health. Buyer's vigilance in its own performance of inspection (e.g., daily, weekly, etc.), maintenance, and safe operation are key contributors to the continued performance of any equipment, including overhead material handling systems, components, and accessories.

(m) Seller's conduct of any inspection does not replace or relieve Buyer's responsibility to perform its own routine inspection and maintenance activities, including but not limited to cleaning or other housekeeping as is required to remove accumulations of dust, dirt, or other debris on or about components and aspects of interest. Buyer is advised that the presence of such debris will impede or impair Seller's ability to conduct visual examination

of the affected components and surfaces. Unless otherwise specified in writing, cleaning/housekeeping activities of this type are excluded from Seller's scope of work; Buyer is encouraged to remove such accumulations in preparation for the performance of any inspection or service visit.

(n) In addition to retention of Seller's inspection and service report(s), Buyer may be subject to additional documentary production or retention obligations, including those required to detail Buyer's own inspection and maintenance efforts as may be required. Buyers wishing to implement a customized inspection protocol unique to their facility(ies) and equipment are encouraged to contact our office for assistance.

13. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement, and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information

(a) All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: in the public domain; known to Buyer at the time of disclosure; or rightfully obtained by Buyer on a non-confidential basis from a third party.

(b) Any drawing, document, specification, or other correspondence relating to the design, construction or installation practice or process created, issued, or supplied to the Buyer by the Seller shall remain in all cases the exclusive property of the Seller, who may elect to use this material in any form, fashion or manner it deems appropriate for any reason at any time. Evidence of the Company's purchase, receipt or use of systems or components detailed with the subject materials will be obscured, redacted, or otherwise eliminated prior to distribution to any other client.

(c) Drawings, documents, specifications, manuals, correspondence or other materials generated by original equipment manufacturers (OEMs) which are communicated to Buyer, whether through the Seller or through another party as a result of Buyer's engagement with the Seller for the provision of goods or services shall remain the exclusive property of the OEM, who may similarly use or disclose the materials to parties of its choosing as it deems appropriate for any reason at any time without any encumbrance arising from Seller's participation in any Agreement.

(d) Seller operates as a privately-owned corporation with no governing influence or operational control over the suppliers with whom it engages to procure materials or services required to prosecute work on behalf of its customers or for its customers' benefit. Therefore, while Seller may direct such suppliers to conform to the tenets of any provision addressing the handling of information or materials designated as "confidential" by the Buyer, Seller cannot in any way assure, warrant, or guarantee compliance with same by parties outside Seller's governing control, and therefore will not be responsible for disclosures by suppliers or affiliates which might otherwise be construed a violation of any Agreement.

17. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic (declared or not), lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Wisconsin.

22. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Wisconsin in each case located in the City of Appleton and County of Outagamie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

23. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

24. Notices. All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. All provisions of these Terms which by their nature shall apply beyond their terms will remain in force after any termination or expiration of this Agreement.

27. Seller expressly rejects any demand for personal guarantees by its Ownership, as well as any demand for review or provision of its financial statements, audited or otherwise. Should the Buyer wish to confirm the financial condition or health of Seller, Seller will furnish trade and banking references to the Buyer upon its request for this purpose.