

TERMS AND CONDITIONS OF SALE

1 Definitions and Interpretation

- 1.1 **Acknowledgment of Order** means an Acknowledgment of Order or other document which describes the Goods to be supplied by the Seller.
- 1.2 **Act** means the Competition and Consumer Act 2010 (Cth) and any amendment thereof.
- 1.3 **Buyer, you, your** means the person so named in the Quotation or Proposal or otherwise on the Acknowledgment of Order and includes all employees, officers, agents and contractors of the Buyer and/or any other person who orders or purchases any Goods from the Seller.
- 1.4 **Goods** means the goods including any and all parts, inventory or services described in the Acknowledgment of Order.
- 1.5 **GST** has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.
- 1.6 **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999.
- 1.7 **GST Rate** means the rate of GST under the GST Law.
- 1.8 **Law** means any laws or regulations of any of the Commonwealth of Australia, or any of the States, Territories or Municipalities of Australia.
- 1.9 **Major Failure** has the same meaning as ascribed to it under the Act.
- 1.10 **Order** means any order placed by the Buyer with the Seller for the Goods which are described in the Acknowledgment of Order or otherwise agreed between the parties.
- 1.11 **PPSA** means the Personal Property Securities Act 2009 (Cth).
- 1.12 **Price** means the price of the Goods as agreed between the Seller and the Buyer subject to clause 4 of the Terms.
- 1.13 **Quotation** or **Quote** means a quote provided by the Seller to the Buyer in respect of the supply of certain Goods.
- 1.14 **Seller, we, us, our** means 600 Cranes Australasia Pty Ltd (ACN 089 390 803) and its successors and assigns.
- 1.15 **Supply** means the same as in the GST Law.
- 1.16 **Taxable Supply** means any Supply under these conditions in respect of which the Seller is or may become liable to pay GST.
- 1.17 **Terms** means these Terms and Conditions of Sale as the Agreement between the Buyer and the Seller.
- 1.18 In the interpretation of the Agreement unless the contrary intention appears:
- headings are for convenience only and do not affect the interpretation of the Agreement;
 - the words 'includes' or 'including' will not limit whatever follows;
 - a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;
 - a reference to any legislation includes a reference to any modification or re-enactment; and
 - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning
- 1.19 **Warranty** means the Seller's warranty policy provided to the Buyer in respect of the Goods.

2 Acceptance of Terms

- 2.1 These Terms, the Quotation, any proposal, the Acknowledgment of Order, the credit application and any other written instruction of authority provided by the Seller to proceed with any Order, constitutes the entire agreement (Agreement) between the Buyer and the Seller to the maximum extent permitted by Law.
- 2.2 Without limiting the way in which the Buyer may become bound by these Terms, the Buyer will become bound by the Terms by:
- placing an Order with the Seller for the supply of Goods; or
 - accepting the Goods supplied by the Seller.
- 2.3 Where more than one Buyer has entered into the Terms, the Buyers shall be jointly and severally liable for their obligations under the Terms.
- 2.4 No agent or employee of the Seller has the authority to waive or vary these Terms unless the Seller approves such waiver or variation in writing.

- 2.5 To the extent of any inconsistency between the Quotation or Acknowledgment of Order or these Terms, these Terms prevail.
- 2.6 No modification to the Agreement between the Seller and the Buyer will be binding unless in writing and signed by a duly authorized representative of each party.

3 Order

- 3.1 The Goods to be supplied by the Seller are as described in the Acknowledgment of Order.
- 3.2 The Seller is not obligated to supply to the Buyer any Goods ordered by the Buyer until the Seller communicates in writing its acceptance of the Order by issuing an Acknowledgment of Order to the Buyer.
- 3.3 The Seller may in its sole discretion refuse to accept any Order and/or to supply part or all of any Order.
- 3.4 Each and any Order is made subject to these Terms and the terms of any Quotation. The acceptance of an Order by the Seller is further subject to written confirmation by us on receipt of your Order and to the availability in our works of the Goods at the price upon which the quotation was based.

4 Price and Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
- as indicated on the Acknowledgment of Order or any invoices provided by the Seller to the Buyer in relation to the Order; or
 - the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Quote within thirty (30) days of the date of the Quote.
 - the Price quoted is based on the following variable factors at the date of quotation: imported and domestically sourced Goods— price list; exchange rates, current freight and insurance rates, customs tariffs, current labour rates and material costs.
- 4.2 The Seller may by written notice to the Buyer at any time prior to delivery, increase the Price of the Goods to reflect any increase in the cost of the Goods to the Seller from the date of the Quotation (including, without limitation, changes to the Goods requested by the Buyer, delays caused by the Buyer, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Buyer will have 3 Business Days from the receipt of such notice to cancel the Order by written notice to the Seller. If the Buyer fails to provide such cancellation notice then the Buyer is deemed to have accepted the Price increase.
- 4.3 Unless otherwise agreed in writing, payment is to be made by cash, bank cheque, direct deposit, credit card (Limit of \$2,000.00 or Card Charges apply at the rate current at the date of our Tax Invoice), Personal cheques will only be accepted by prior written arrangement that has been made between the Seller and the Buyer. Failure to meet our payment terms may result in charges or commissions and/or collection fees being added to your account.
- 4.4 Unless specified to the contrary on any Quote, invoice or Acknowledgment of Order, the Price shall be deemed to be exclusive of any GST and any other taxes, duties, levies, withholdings, government ordinances and related fines, penalties or interest payable by the Seller in respect of the supply of the Goods (Taxes). The Buyer will indemnify the Seller in respect of such Taxes and will at the same time as paying the Price to the Seller, pay the Seller the amount of such Taxes (if any).
- 4.5 The Buyer shall not set off any amount or make any deductions from the Price for any amounts separately due from the Seller to the Buyer.

5 Specifications

- 5.1 All illustrations, drawings etc. accompanying our Quotation, or contained in our catalogues, price lists or advertisements must be regarded as approximate representations only and are not intended to be binding unless specifically stated to be so in any Quotation.
- 5.2 All weights, measures, powers, capacities and other particulars of the Goods being offered by us are stated in good faith as being approximately correct but small deviations will not void the contract nor be the basis of any claim against the Seller. We will make all reasonable efforts to correct any detected errors and omissions that we become aware of.
- 5.3 All extras ordered but not specified in our Quotation or Acknowledgment of Order will be charged for in addition to the

costs of all tests, alterations, additions or any other work undertaken at the Buyer's request subsequent to the issuing of the Acknowledgment of Order.

6 Liability and Representations

- 6.1 Any Goods or part or parts of Goods which may prove defective through faulty material or workmanship will be replaced or repaired in accordance with the terms of our Warranty.
- 6.2 If the Act or any Law implies in this Agreement any term, condition, warranty or Consumer Guarantee and that law avoids or prohibits provisions in an agreement excluding or modifying the application of same, then that term, condition, warranty or Consumer Guarantee shall be deemed to be included in this agreement provided that the liability of the Seller is limited, at the option of the Seller, to any one or more of the following:
- (a) in the case of Goods:
- (i) the replacement of the Goods or supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the costs of replacing the goods or acquiring equivalent Goods;
 - (iv) the payment of the cost of having the Goods repaired: or
- (b) in the case of services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again
- unless there is a Major Failure with respect to the Goods, in which case the Purchaser may be entitled to a remedy under the Act.
- 6.3 Any of the Terms contained herein which limit or exclude any term, condition or warranty, express or implied, or the liability of the Seller shall apply to the extent permitted by Law and shall not be construed as excluding, qualifying or limiting the Buyer's statutory rights under the Act or remedies arising by virtue of the breach of any implied term of these Terms where such exclusion, qualification or limitation would be prohibited by law.
- 6.4 To the maximum extent permitted by Law and notwithstanding anything contained in these Terms.
- (a) any representations and agreements not expressly contained herein shall:
- (i) not be binding upon us as conditions, warranties or representations;
 - (ii) all other conditions, warranties and representations on our part whether express or implied, statutory or otherwise, whether collateral or antecedent hereto or otherwise are hereby expressly negated and excluded.
- (b) these Terms, including our Quotation, Proposal and Acknowledgment of Order constitute the entire agreement and understanding between the Seller and the Buyer.
- (c) we shall be under no liability to you for any loss (including but not limited to loss of profits or any consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of us or our agents.
- 6.5 Subject to our Warranty and to the Buyer's statutory rights under the Act and without limiting the generality of the preceding sub-paragraph we shall not be liable for:
- (a) any delay in the installation of any Goods;
 - (b) any loss or damage arising out of the installation of the Goods; or
 - (c) any failure of the Goods arising out of the design or operation thereof.
- 6.6 You agree to indemnify us against any loss, damage, costs, claims and expenses arising out of any of the matters referred to in clause 6.

7 Damage or Lost in Transit

When the price quoted includes delivery we will repair or replace, at our option, free of charge, goods damaged or lost in transit provided the carriers and ourselves receive written notice of such loss or damage within the following period:

- (a) goods by rail or sea. Within 3 days of receipt of goods, or, in the case of loss, 21 days from the date of dispatch as notified by us.

- (b) goods by road transport or airfreight. Within 3 days receipt of goods, or in the case of loss, within 7 days from the date of dispatch as notified by us.

8 Government Imposts

Quoted price does not include GST and this or any other impost by the Government or by governmental authority shall, if applicable be paid by the purchaser, and will be added to and treated as part of the purchase price by us.

9 Delivery

- 9.1 Goods sold ex our warehouse will be dispatched according to Buyer's instructions but will be at Buyer's risk and cost from the time of loading.
- 9.2 Goods sold and delivered will be dispatched by any means of transport, at our option, unless otherwise agreed in writing, and all unloading and demurrage charges will be for Buyer's Account.
- 9.3 Where we undertake to sell Goods which will be delivered to Buyer's premises or site, the Buyer undertakes that adequate facilities exist by Road, and/or Rail and/or Ship.
- 9.4 All packing will be charged when specifically incurred or required by the Buyer.
- 9.5 Except as otherwise agreed delivery shall be deemed to have occurred as soon as the goods are shipped from our premises to the Buyer.
- 9.6 The time given for the execution of your order shall be reckoned from the date on which we accept the order. We will use our best endeavours to despatch by the date given, but will not accept any liability for failure to do so unless an undertaking in writing shall have been given by us under agreed penalty (as liquidated damages) for late despatch and you have suffered loss by our delay. Should despatch be hindered or delayed by your instructions or lack of instructions or by any cause whatsoever beyond our reasonable control (including the effects of war, strikes, blackouts, fire, accidents, work breakdowns, material and labour supply difficulties, delays in transport or compliance with government requirements) a reasonable extension of time shall be granted. In the event that preparation of your order is suspended by your instructions or lack of instructions the contract price shall be increased to cover any extra expenses incurred by us thereby. Should you be unable to take the goods when they are ready for despatch it is understood that we have the right to invoice for payment and charge for all storage costs incurred.
- 9.7 If you cancel your order at any time prior to delivery but before the goods are ready for despatch, we reserve the right to invoice you for all expenses involved in the preparation of your order. If we are unable, for any reason, to deliver the goods subject of the contract, the contract shall be voidable at our option with no right by either of us to claim against the other in respect of any loss, cost or expense which may have been incurred.

10 Title and Risk

- 10.1 Any Goods supplied by the Seller to the Buyer will remain the property of the Seller until:
- (a) the Buyer has paid the Seller all amounts owing for the Goods under these Terms; and
 - (b) the Buyer has paid all other amounts owed to the Seller in respect of all agreements between the Seller and the Buyer.
- 10.2 Receipt by the Seller of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods will continue.
- 10.3 It is further agreed that in addition to any rights the Seller may have under Chapter 4 of the PPSA (refer clause 11 below) until payment of all amounts owing by the Buyer to the Seller:
- (a) the Buyer will keep separate the Goods until the Seller has received payment in full and all other obligations owed by the Buyer are met;
 - (b) the Seller may give notice to the Buyer to return the Goods or any of them to the Seller. Upon such notice, the rights of the Buyer to obtain ownership or any other interest in the Goods will cease;

- (c) the Seller will have the right to stop the Goods in transit whether or not part or previous delivery has been made;
 - (d) if the Buyer fails to return the Goods to the Seller, then without prejudice to any other rights and without prior notice, the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee and licensee of the Buyer, where the Goods are situated and take possession of the Goods which remain the property of the Seller pursuant to this clause 10;
 - (e) the Buyer will not deal with any money of the Seller in its possession in any way which may be adverse to the Seller;
 - (f) the Buyer will hold any proceeds from its sale or disposal of the Goods on trust for the Seller;
 - (g) the Buyer will not encumber or charge the Goods in any way or grant or otherwise give any interest in the Goods while they remain the property of the Seller;
 - (h) the Seller may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
 - (i) if the Goods are converted or made part of any end product, or are commingled or are accession Goods for the purposes of the PPSA, the parties agree that the Seller will be the owner of the end product.
- 10.4 If there is any inconsistency between the Seller's rights under this clause 10 and its rights under Chapter 4 of the PPSA, this clause 10 prevails.
- 10.5 Upon delivery of the goods the risk of any loss or deterioration of, or damage to, the goods from whatever cause arising shall be borne by the Buyer.
- 10.6 You shall, at your own expense, insure any goods in the possession of you, your employees or agents, against loss or damage by fire, impact, earthquake, aircraft, riots civil commotions and malicious damage, storm and/or tempest and/or rainwater, flood, water damage, accidental or negligent damage or howsoever and shall keep such insurance on foot until the property in the Goods passes to you.
- 10.7 Ownership and property in the Goods delivered remains with us until payment in full has been received and if payment is not made within fourteen (14) business days of final demand in writing made by us, we shall, without prejudice to any other remedies, be entitled to retake possession of the Goods and hold them until payment in full has been received.
- 11 Personal Property Securities Act**
- 11.1 The Buyer acknowledges and agrees that following the commencement of the PPSA, the following provisions will apply to this Agreement. Unless otherwise stated, a term contained in these Terms that is defined in the PPSA (but not otherwise defined in this Agreement) has the meaning given to it in the PPSA.
- 11.2 The Buyer acknowledges and grants the Seller a security interest for the purposes of the PPSA in:
- (a) all Goods and any proceeds previously supplied by the Seller to the Buyer;
 - (b) all Goods and any proceeds that will be supplied in the future by the Seller to the Buyer created under this Agreement (as the accepted and adopted security agreement between the Parties);
 - (c) all Goods that become an accession or are commingled with other property; and
 - (d) this security interest secures all moneys owing by the Buyer to the Seller under these Terms or otherwise.
- 11.3 The Buyer acknowledges and agrees the security interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 11.4 The Buyer grants to the Seller where and when applicable, a purchase money security interest (PMSI) to the extent that it secures payment of the amounts owing in relation to the relevant Goods in accordance with, and to the extent prescribed by, section 14 of the PPSA.
- 11.5 For the avoidance of doubt and without prejudice to the Seller's rights under the PPSA:
- (a) the Buyer may process the Goods supplied by the Seller to the Buyer and accession and/or commingle them with other property in which case the Seller will have a security interest in any processed, accession and/or commingled goods; and
 - (b) the Buyer may sell the processed, accession and/or commingled goods to its customers and if it does so, then the Seller will have a security interest in the proceeds of sale.
- 11.6 The Buyer will do everything reasonably required of it by the Seller to enable the Seller to register its security interest(s) with the priority the Seller requires and to maintain those registrations including:
- (a) signing any documents and/or providing any information which the Seller may require to register a financing statement or a financing change statement in relation to a security interest; or
 - (b) to correct a defect in a financing statement.
- 11.7 The security interests arising under this clause 11 will be perfected by the Seller prior to the Buyer obtaining possession on delivery of the Goods and the parties confirm they have not agreed that any security interest arising under this clause 11 attaches at any later time.
- 11.8 The Seller does not need to give the Buyer any notice under the PPSA (including notice of a financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 11.9 Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with these Terms, the Seller may apply that payment:
- (a) first, to satisfy an obligation that is not secured;
 - (b) second, to satisfy an obligation that is secured, but not by a PMSI; and third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
 - (c) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source; or
 - (d) despite the foregoing, any manner the secured party sees fit.
- 11.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under this Agreement, the Buyer agrees that the following sections of the PPSA will *not* apply to the enforcement of those security interests sections 95, 96, 120, 121(4), 123, 125 128, 129, 130, 132 (3)(d), 132(4) 134 (1), 135, 142 and 143.
- 11.11 The Buyer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including the security agreement between the Buyer and the Seller.
- 11.12 The Buyer will notify the Seller immediately in writing if the Buyer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of this Agreement.
- 11.13 The Buyer agrees to keep and maintain all Goods free of any charge, lien, or security interest except as created under this Agreement and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of the Seller under these Terms or the PPSA.
- 11.14 The Buyer irrevocably grants to the Seller the right to enter any premises or property of the Buyer without notice, and without being in any way liable to the Buyer or any other person, if the Seller has cause to exercise any of its rights under the PPSA (particularly in respect of section 123) and the Buyer agrees to indemnify the Seller against any such liability.
- 12 Governing Law**
- The law of the State or Territory of Australia from which the quotation was issued shall be the governing law of this agreement - Victoria.
- 13 Jurisdiction**
- All contracts between the Seller and the Purchaser shall be subject to the laws of the State of Victoria and the Purchaser agrees to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.