CranePower

General Terms

1 Form of Agreement

ⓐ These Terms apply to each sale of Equipment by Crane Power to the Customer and form part of the Agreement.

ⓑ By submitting a purchase order to Crane Power, accepting a quotation issued by Crane Power or otherwise placing an order for Equipment after being provided with or referred to these Terms and the Remote Management Systems Data and Service Policy, the Customer agrees to be bound by these Terms and the Remote Management Systems Data and Service Policy.

ⓒ An order by the Customer constitutes an offer to purchase the Equipment on the Commercial Terms and these Terms. Crane Power may accept or reject an order in its absolute discretion by notice to the Customer in writing.

ⓓ If there is any inconsistency between these Terms and the Commercial Terms, the Commercial Terms prevail to the extent of the inconsistency. If there is any inconsistency between these Terms and the RMS Data and Service Policy, these Terms will prevail, except to the extent expressly agreed otherwise in the Commercial Terms.

2 Parties in trade

ⓐ The parties acknowledge that each party is in trade and is acting in trade in connection with this Agreement, and that the Equipment is being supplied and acquired for the purposes of operating a business, and accordingly agree to the maximum extent permitted by law, that the provisions of:

(i) the Consumer Guarantees Act 1993 (NZ);

(ii) sections 9, 12A and 13 of the Fair Trading Act 1986 (NZ); and

(iii) any corresponding or similar legislation in any other jurisdiction,

do not apply in connection with this Agreement or the sale or purchase of the Equipment. Each party acknowledges and agrees that the terms of this clause are fair and reasonable for the parties to be bound by this Agreement.

ⓑ The Customer warrants that it has satisfied itself as to the condition, quality, suitability and fitness of the Equipment for any particular purpose and that no representation, warranty or undertaking relating to the Equipment has been or is made or given by or on behalf, or to be implied against Crane Power or their representatives.

3 Price and payment

3.1 Price and payment

ⓐ The Commercial Terms confirm the amount of the deposit payable. This Deposit must be paid by the due date specified in the Commercial Terms. Any Deposit is only refundable if Crane Power rejects the order.

ⓑ The Customer shall pay the remaining amount equal to the Price (plus GST, if applicable) minus any Deposit paid (the **Balance**). The Customer shall pay the Balance within 7 days of the date that Crane Power advises the Customer that the Equipment is ready for shipment.

ⓒ Unless otherwise agreed in writing by Crane Power, the Price:

(i) is inclusive of CIF transportation and insurance charges to the Customer's designated port of entry;

(ii) is exclusive of all taxes, imposts, duties or levies (including, without limitation, GST (if any), sales tax, value added tax, withholding tax, customs/import duty, etc); and

(iii) must be paid in cleared funds directly to Crane Power's bank account without any demand and free from any deductions whatsoever and without any claim to or right of set off.

3.2 Export and import clearance (if any)

The Customer will be responsible for effecting customs importation and clearance and for carrying out all importation formalities required for the importation of the Equipment, including but not limited to obtaining any export license or other official authorisation, carrying out all customs formalities for the export of the Equipment, and for the transit of the Equipment through any country prior to delivery, as well as for the import clearance.

3.3 Exchange rate

The Customer shall bear all bank charges and exchange rate risks associated with the payment of the Price.

3.4 VAT

If VAT or equivalent sales tax other than GST is imposed on any supply made by Crane Power pursuant to this Agreement, the Customer must pay, in addition to any (VAT-exclusive) consideration for the supply payable pursuant to this Agreement, an additional amount calculated by multiplying the prevailing VAT rate by the (VAT-exclusive) consideration.

4 Collection or Delivery (whichever is applicable)

4.1 Collection

ⓐ If arranged with Crane Power, the Customer shall collect the Equipment at the Collection Address (or at another location agreed in writing between the parties) within the time frame agreed upon in writing, by the parties.

ⓑ The Equipment shall be deemed to be collected when the Customer or its employee, agent, Related Company, Associate or contractor (**Customer Representative**) has collected the Equipment at the location agreed between the parties. If the Customer or Customer Representative fails or refuses to collect the Equipment, then the Equipment shall be deemed to have been collected from the time that the Equipment was available to be collected from the location agreed between the parties.

4.2 Delivery

ⓐ The Equipment shall be deemed to be delivered when delivered to the care and control of the Customer or its Customer Representative at the Delivery Address. If the Customer or Customer Representative fails or refuses to take or accept delivery, then the Equipment shall be deemed to have been delivered when Crane Power was willing and able to deliver it.

ⓑ Crane Power will endeavour to effect delivery at the location agreed by the parties by the Delivery Date. However, Crane Power shall not be responsible for any failure to effect delivery or for any delay or failure in delivery caused by any event or circumstance beyond its reasonable control, including but not limited to force majeure, strikes, lockouts, accidents, breakdowns, shortages, delays by suppliers or carriers, or acts or omissions of the Customer or any third party. In such event, Crane Power shall notify the Customer as soon as practicable and shall use reasonable endeavours to resume delivery as soon as possible. The Delivery Date shall be extended by the period of delay, and the Customer shall not be entitled to cancel the Agreement or claim any damages or compensation for such delay or failure.

4.3 Inspection

The Customer shall inspect the Equipment upon collection or delivery (whichever is applicable) and notify Crane Power in writing of any defects, damages, or discrepancies within two days of collection or delivery (whichever is applicable). If the Customer fails to do so, the Customer shall be deemed to have accepted the Equipment in good condition and in accordance with this Agreement.

5 Risk and Title

5.1 Risk

The risk of loss, theft, damage or destruction of the Equipment passes to the Customer immediately when the Equipment is made available for collection by the Customer, as notified by Crane Power, at the Collection Address outlined in the Commercial Terms, in accordance with International Commercial Terms (**Incoterm**) Cost, Insurance, and Freight (**CIF**).

5.2 Title

Title to the Equipment passes to the Customer immediately upon Crane Power making the Equipment available to the Customer at the Collection Address or Delivery Address outlined in the Commercial Terms (whichever is applicable), prior to clearance for export and loading onto any collecting vehicle. Crane Power will notify the Customer when the Equipment is available for collection.

6 Default

6.1 Rights upon a default

If the Customer does not pay the Balance due within 90 days from the date that the Customer has been notified that the Equipment is ready for shipment, then at the discretion of Crane Power any Deposit paid may be forfeited and the Agreement terminated.

6.2 Termination without prejudice

The termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

7 Warranty, defects, and obligations

7.1 Warranty

ⓐ Crane Power warrants the Equipment will be free from defects in materials and workmanship for a period of thirty-six (36) months from the date of collection or delivery (whichever is applicable).

ⓑ Written Notice of a claim must be provided to Crane Power within five Business Days after the defect is discovered, and no claim shall be accepted if not accompanied by proof of purchase and full details of the alleged defect.

ⓒ Following notification of a potential claim, the Customer must make the Equipment available to Crane Power for inspection and testing. If inspection and testing finds no defect in the Equipment, the Customer must pay Crane Power's costs of service work and testing.

ⓓ If Crane Power finds the Equipment to be defective in materials or workmanship, Crane Power will, in its sole discretion, either:

(i) replace or repair the Equipment or the defective part of the Equipment free of charge; or

(ii) cause the Equipment or the defective part of the Equipment to be replaced or repaired by an approved technician.

ⓔ Crane Power reserves the right to replace defective parts of the Equipment with parts and components of similar quality, grade and composition where an identical part or component is not available.

ⓕ The Customer will arrange and bear the cost of transporting the Equipment to and from the Crane Power factory or to an approved technician as specified by Crane Power.

ⓖ Software upgrades may be released to improve the performance of the Equipment and the Customer consents to Crane Power tracking and recording performance information.

7.2 Exclusions

ⓐ No claim shall be accepted by Crane Power under this clause 7 if:

(i) the defect is due to any abuse or mishandling of the Equipment;

(ii) the Equipment has suffered water damage as a result of flooding;

(iii) the Equipment has been exposed to input power surges, power spikes, or lightning strikes;

(iv) the Equipment has been exposed to a temperature range outside of the product specifications;

(v) the Equipment has been exposed to a salt water marine environment causing corrosion or other damage;

(vi) the Equipment has been dropped or struck with force;

(vii) any attempt to repair, service, or replace the parts of, the Equipment, is made by any person or persons not authorised by Crane Power;

(viii) the Equipment has not been stored or used in an upright position or garaged under cover in a dry environment;

(ix) the Equipment's internal battery has not been maintained at a state of charge of at least 50% while not in use;

(x) the Equipment has not been operated in accordance with the Unit User Manual;

(xi) the Equipment has been dismantled or modified without the approval of Crane Power, or has been misconfigured by the Customer or any person authorised by the Customer; and/or

(xii) The Customer or any user authorised by the Customer has intentionally disabled, blocked or materially impaired the Equipment's Remote Management System functionality. Unavailability of remote monitoring due to circumstances outside the Customer's reasonable control, including network or cellular connectivity limitations, scheduled maintenance, technical faults, or the suspension or discontinuation of RMS or remote monitoring services by Crane Power, will not, of itself, trigger this exclusion.

ⓑ In any event, Crane Power shall not be obliged to carry out any work to make good any defects nor be under any liability under this clause for so long as the Customer is in default in relation to any payment or in the performance of any obligation under this Agreement.

7.3 Customer's obligations

The Customer will:

ⓐ apply in its own name for any licences, approvals, permits and applications required by any government agency in the Territory in connection with the importation, distribution, promotion, use, supply, installation, maintenance, repair or operation of the Equipment;

ⓑ comply with all applicable laws and regulations in the Territory, including the licences, approvals, permits and applications referred to in clause 7.3ⓐ; and

ⓒ obtain and maintain, at the Customer's own cost, the relevant insurance (including endorsements evidencing product liability cover) over the Equipment, from the Collection Date or the Delivery Date (whichever is applicable).

8 Limitation and exclusion of liability

ⓐ To the maximum extent permitted by law, the liability of Crane Power (whether in contract, tort, negligence or in any other way) arising out of all claims under this Agreement (including Equipment warranty claims, RMS, RMS Data and any related services) is limited to $25,000.

ⓑ To the maximum extent permitted by law, Crane Power shall not be liable for any personal injuries (including death) to any person (including the Customer) or for any other loss or damage, either direct, indirect, or consequential, whether to the Equipment or to any other property, arising out of or in connection with any use, collection, negligence, misuse, mishandling, delivery, maintenance, transportation, or repossession of the Equipment, or by any other cause or reason whatsoever. Additionally, in no circumstances shall Crane Power be liable for loss of profits whether or not caused or contributed to by the negligence or default of Crane Power. All limits of Crane Power's liability contained in this Agreement or elsewhere shall survive the termination of this Agreement.

9 Liability

The Customer shall indemnify and keep indemnified Crane Power (and its Related Companies, employees, and agents) for any loss, damage, costs and expenses (including any legal costs and expenses), claims, or liabilities suffered or incurred by Crane Power in connection with the Customer's breach of this Agreement.

10 Dispute

If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, the parties agree to endeavour to settle the dispute with good faith negotiations between the parties before having recourse to litigation.

11 General

11.1 Notices

ⓐ Unless expressly stated otherwise in this Agreement any notice or communication (a **Notice**) given under this Agreement must be in legible writing and in English, signed by an authorised person of the sender and marked for the attention of and addressed to the addressee.

ⓑ Notices must be hand delivered or sent by prepaid express post (next day delivery), or email to the addressee's address specified in the Commercial Terms or as otherwise agreed by the parties.

ⓒ A Notice given in accordance with this clause takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

(i) if hand delivered, on delivery;

(ii) if sent by prepaid post, the third Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from a place outside New Zealand); and

(iii) if sent by email, on the date and time at which it enters the recipient's information system (unless the sender receives a notice from the recipient's email server or internet service provider that the message has not been delivered to the recipient),

but if the delivery, receipt or transmission is not on a Business Day, or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

11.2 Confidentiality

ⓐ Neither party may, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.

ⓑ A party may disclose anything in respect of this Agreement as required by any applicable law, but to the extent possible, it must consult with the other party before making the disclosure and use reasonable endeavours to agree on the form and content of the disclosure.

ⓒ Nothing in this clause prevents Crane Power from using Data for the purposes expressly permitted under the RMS Data and Service Policy, including the creation and use of aggregated Data and derived insights, provided that Crane Power does not disclose the Customer's confidential information or information identifying the Customer, except as otherwise permitted under this Agreement.

11.3 Governing law and jurisdiction

This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

11.4 Variation

A variation of any term of this Agreement or a right or obligation created under it must be in writing and signed by all the parties. Notwithstanding this clause, Crane Power may update the RMS Data and Service Policy in accordance with that Policy, provided that such updates do not materially reduce the Customer's contractual rights or materially increase its obligations under this Agreement without the Customer's agreement.

11.5 Assignment and subcontracting

ⓐ Unless otherwise expressly stated the Customer must not, without Crane Power's prior written consent (such consent not to be unreasonably withheld or delayed) assign, novate, transfer, subcontract, delegate or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement (or any document referred to in it), or purport to do any of the same. The Customer shall in all cases remain solely responsible for the performance of the obligations assigned to it under this Agreement, regardless of the use of authorised subcontractors.

ⓑ For the purposes of clause 11.5ⓐ, and except where the Customer is listed on the main board of a public stock exchange, any change in the legal or beneficial ownership, membership, partnership or issue of new capital of the Customer shall be deemed an assignment requiring Crane Power's prior consent in accordance with clause 11.5ⓐ.

ⓒ Notwithstanding clause 11.5ⓐ, Crane Power may at any time assign, novate, transfer, subcontract, delegate, or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement (or any document referred to in it), including the Equipment, whether in full or in part, or purport to do any of the same.

11.6 Waivers

ⓐ A waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.

ⓑ A failure or delay in the exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not prevent the exercise of or result in a waiver of that right, power, authority, discretion or remedy at a later time.

ⓒ A waiver is only effective in the specific instance and for the specific purpose for which it is given.

11.7 Further assurances

Each party must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

11.8 Entire agreement

This Agreement records the entire understanding and agreement of the parties relating to the sale and purchase of the Equipment dealt with in this Agreement. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.

11.9 Non-merger

No provision of this Agreement merges on execution, completion or termination.

11.10 Relationship

The parties acknowledge and agree that nothing in this Agreement will constitute one party the partner of, employee of, agent of, or joint venturer with, the other and that other than as expressly provided for in this Agreement no party will have the right to bind the other without the other's prior written consent.

11.11 Prohibition or unenforceability

If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed modified to the minimum extent necessary to render that provision valid and enforceable, and if the parties cannot agree (acting reasonably) to such modification, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

11.12 Interpretation

In this Agreement headings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

ⓐ when the day on which something must be done is not a Business Day, that thing must be done on the preceding Business Day;

ⓑ an expression importing a natural person includes any individual, company, partnership, joint venture, association, company or other body corporate and any government agency; and

ⓒ a reference to:

(i) a clause, party, or schedule is a reference to a clause of, and a party and schedule to, this Agreement and a reference to this Agreement includes any schedule;

(ii) a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;

(iii) a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document;

(iv) "law" includes legislation, the rules of the general law, including common law and equity, and any judgment order or decree, declaration or ruling of a court of competent jurisdiction or governmental agency binding on a person or the assets of that person; and

(v) unless otherwise specified in the Commercial Terms, a monetary amount is a reference to New Zealand Dollars.

12 Definitions

In this Agreement unless the context otherwise requires:

Agreement means the agreement between Crane Power and the Customer comprising the Commercial Terms, these Terms and the Remote Management System Data and Service Policy;

Associate means, in relation to a person, a person associated with, or related to that person including any shareholder, subsidiary or other related or affiliated person in which any of those persons have an interest (whether directly or indirectly and whether by legal or beneficial ownership);

Balance has the meaning given to it in clause 3.1ⓑ;

Business Day means a day on which banks are open for general banking business in the relevant Territory and Auckland, New Zealand excluding Saturdays, Sundays or public holidays in the relevant Territory or Auckland, New Zealand;

Collection Address means the collection address specified in the Commercial Terms;

Collection Date means the collection date specified in the Commercial Terms;

Commercial Terms means the quotation, order confirmation, or invoice issued by Crane Power, any purchase order accepted by Crane Power, or other written terms agreed between Crane Power and the Customer setting out the specific commercial terms applicable to the relevant sale of Equipment;

Crane Power means the Crane Power group company identified as the supplier or the seller in the Commercial Terms;

Customer means the purchaser of the Equipment under the Commercial Terms;

Customer Representative has the meaning given to it in clause 4.1ⓑ;

Delivery Address means the delivery address specified in the Commercial Terms;

Delivery Date means the delivery date specified in the Commercial Terms;

Deposit means the deposit amount specified in the Commercial Terms;

Equipment means the equipment specified in the Commercial Terms;

GST means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985 (NZ), and includes, but is not limited to, any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of goods and services tax;

Notice has the meaning given to it in clause 11.1;

Price means the purchase price for the Equipment specified in the Commercial Terms;

Related Company has the same meaning given to it in the section 2(3) of the Companies Act 1993, amended such that the term “company” where used in that section includes any corporate entity wherever incorporated and **Related Companies** means any number of such companies;

Remote Management System Data and Service Policy means Crane Power's policy governing access to and use of the Remote Management System and related Data and services, as amended in accordance with these Terms;

Terms means these terms and conditions of sale;

Territory means the jurisdiction in which the Customer will import, distribute, promote, use, supply, install, maintain, repair or operate the Equipment; and

Unit User Manual means the latest user manual as provided by Crane Power.