

**Demag Cranes & Components Pty. Ltd.**  
**("Seller")**

**TERMS & CONDITIONS OF SALE**

**1. Terms and Conditions.** These Terms and Conditions of Sale cancel and supersede any and all terms of sale or purchase pertaining to Parts, Equipment and Services (and any supplements thereto) previously issued by Seller to Buyer or Buyer to Seller and are subject to change without advance notice. The prices, charges, discounts, terms of sale and other provisions referred to or contained herein shall apply to Parts and Equipment (collectively referred to as "Products") sold and shipped to Buyer and Services provided by Seller on and after August 15, 2013, and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products or Services by Seller shall be deemed to constitute a binding agreement between the parties pursuant to the terms and conditions contained herein and Buyer agrees that the order may not thereafter be cancelled, countermanded or otherwise changed without the prior written consent of Seller. This agreement supersedes any prior agreements, representations, or other communications between the parties relating to the subject matter set forth herein. No other terms and conditions shall apply including the terms of any purchase order submitted to Seller by Buyer, whether or not such terms are inconsistent or conflict with or are in addition to the terms and conditions set forth herein. Seller's acceptance of Buyer's purchase order is conditional upon Buyer's acceptance of all the terms and conditions contained in this agreement. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to the terms and conditions set forth herein. The Products are intended for industrial/commercial use by professional contractors, professional end-users and their trained employees and are not intended for use by consumers.

**2. Terms of Payments.** Payment for Products or Services purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products or Services to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller may charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Seller shall be entitled to an equitable adjustment in the price of Products or Services in order to account for increases in the cost to Seller of labour or materials, or in the event of unanticipated or unforeseen circumstances.

**3. Taxes and Duties.** Unless otherwise specified, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of any Products or Services. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of any Products or Services from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are AUSTRALIA. DOLLARS unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of any Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

**4. Risk, Title, Transportation and Delivery.** Unless otherwise stated in writing, all prices and delivery are FCA, Seller's Premises (Incoterms 2010). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2010. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. In the event delay in shipment of Products is caused by Buyer's failure to furnish necessary information with respect to data and details for Buyer's specifications, Seller, may, in its sole discretion, extend the date of shipment for a reasonable time.. In the event delay in shipment is caused by Buyer or at Buyer's request, and there are Products that are not shipped within ten (10) days from the first date they are ready to be shipped, Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. All payments shall be made in accordance with the terms of the applicable invoice. In addition, storage charges due to delay in furnishing delivery instructions, arranging and establishing a method of payment satisfactory to Seller, or submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, will be for the account of Buyer. **THE**

**SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR FOR ANY OTHER INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES OR LOSSES DUE TO DELAY IN SCHEDULED DELIVERY.** Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

**5. PPSA.** (a) Buyer grants Seller a security interest in the Products purchased and the proceeds of those Products and agrees that this agreement will be a security agreement under the PPS Act. (b) The security interest so created or granted shall continue until payment in full of the purchase price of those Products and payment and performance by Buyer of all of its other obligations hereunder. Seller is entitled to all remedies of a secured party after default under the PPS Act or other applicable law, in addition to all other rights provided by contract and by operation of law. Buyer agrees to pay to Seller, in addition to the interest on overdue sums due, reasonable attorney fees, court costs and other expenses of Seller incurred in enforcing Seller's rights. The Products purchased shall remain personal property and shall not become or be deemed a fixture or a part of any real estate on which it may be located. Buyer agrees to do anything (including execute any security agreement or other instrument or document or provide any information or grant any security interest) considered necessary or convenient by Seller to perfect or evidence a security interest in the Products purchased and the proceeds of those Products, to maintain an effective security interest or set out in further detail the terms and conditions it requires in a security agreement, including, but not limited to, executing financing statements, financing change statements, chattel mortgages, deeds of trust, deeds to secure debt, mortgages or other security instruments. (c) Buyer consents to Seller effecting and maintaining a registration on the register (in any manner it considers appropriate, including as a purchase money security interest) in relation to any security interest contemplated by this agreement and waives the right to receive notice of a verification statement in relation to any registration on the register. (d) Buyer undertakes to not register a financing change statement in respect of a security interest contemplated by this agreement without the prior written consent of Seller. (e) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising in connection with this agreement, for the purposes of section 115(1) of the PPS Act, the following provisions of the PPS Act will not apply and Buyer will have no rights under them: section 95; section 121(4); section 125; section 129(2) and 129(3); section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143. (f) Unless otherwise agreed and to the extent permitted by the PPSA, Seller and Buyer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. Buyer agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information. (g) For the purposes of section 20(2) of the PPS Act, the collateral are Products including those Products which are described in the invoices, Sales Order Acknowledgements, forms or other documents provided by Seller from time to time in connection with each delivery or supply of Products to Buyer. (h) Seller may apply amounts received in connection with this agreement to satisfy obligations secured by a security interest in any way it determines in its absolute discretion. (i) In this agreement, 'PPSA' means the *Personal Property Securities Act 2009 (Cth)* (as amended) ('PPS Act') and any other legislation and regulations in respect of it; and the following words have the respective meanings given to them in the PPS Act: *collateral*; *financing change statement*; *financing statement*; *interested person*; *purchase money security interest*; *register*; *registration*; *registration commencement time*; *security agreement*; *security interest* and *verification statement*. If the Products are to be delivered to the Buyer at Seller's premises, Seller will give notice when the Products are ready for delivery and if for any reason the Buyer fails to collect the Products within fourteen (14) days from the date of such notice, then risk in the Products shall pass immediately to the Buyer and Seller shall be entitled to payment for the Products. Seller will arrange for storage of the Products, the reasonable cost of which and all other incidental costs shall be payable by the Buyer.

**6. Cancellation.** Prior to delivery to place of shipment, a Products order may be cancelled only with Seller's prior written consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete a Products or Services order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, or in the event Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall make reimbursement to Seller, as follows: (i) any and all work that can be completed within (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

**7. Inspection and Acceptance.** Buyer agrees that it shall inspect the Products or Services immediately after receipt of

Products or completion of Services and promptly notify Seller in writing of any non-conformity or defect within 10 days after the Products are put into service or the Services are completed, but not more than thirty (30) days after delivery or completion. Buyer further agrees that failure to give such prompt notice or the commercial use of the Products shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind.

**8. Warranty.** Seller warrants its new Equipment manufactured and sold worldwide, to be free, under normal use and service, of any defects in material or workmanship for a period of twelve months from the date of delivery. Seller warrants its OEM replacement Parts ordered from its Parts Department to be free of defects in manufacture or materials for a period of: (i) twelve (12) months from the date of delivery or, (ii) or the period remaining on the Equipment warranty for the affected Equipment (if any), whichever is shortest. Seller warrants the Services to be free of defects in workmanship for a period of twelve (12) months from date of completion of the Services. This warranty shall only be valid if Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Product, or any equipment subject to any Service, has been maintained and operated within the limits of rated and normal usage; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by Buyer, its agents or employees. If requested by Seller, Buyer must return the defective Product to Seller's facility for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in Products of Seller, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. This warranty shall be void in the event Buyer has carried out modifications or reconditioning work on the Products without the prior written consent of Seller. This warranty shall not cover any item that has been used for other than a single shift operation. This warranty shall not cover any defect resulting from a specification stipulated or required by the Buyer. The costs associated with any travelling time, travel costs, access equipment, accommodation and expenses are the responsibility of Buyer. The suitability of Buyer's runways, gantries, buildings, foundations, roof trusses and any other structures is the sole responsibility of Buyer. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of Buyer. This warranty is limited to the first retail purchaser and is not assignable or otherwise transferable without written agreement of the manufacturer. **OTHER THAN WARRANTIES THAT ARE IMPLIED BY THE OPERATION OF THE TRADE PRACTICES ACT OR ANY OTHER APPLICABLE LEGISLATION IN ONE OF THE STATES OR TERRITORIES OF THE COMMONWEALTH OF AUSTRALIA WHICH CANNOT BE EXCLUDED, THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Products. This warranty shall not apply to any of Seller's Products or any part thereof, or any equipment which was the subject of any Service, which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive this limited warranty without the prior written consent of Seller. **IN NO EVENT SHALL SELLER, OR ANY SUBSIDIARY OR DIVISION THEREOF BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES RESULTING FROM A BREACH OF WARRANTY INCLUDING, WITHOUT LIMITATION, LABOUR COSTS, LOSS OF USE OF OTHER EQUIPMENT, THIRD PARTY REPAIRS, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, IMPROPER PERFORMANCE OR WORK, PENALTIES OF ANY KIND, LOSS OF SERVICE OF PERSONNEL, OR FAILURE OF PRODUCTS TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL LAWS.**

**9. Remedies for Breach. IN THE EVENT OF ANY BREACH OF THE WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE PRODUCT OR THE REPERFORMANCE OF ANY DEFECTIVE SERVICES COVERED BY THE WARRANTY.**

**10. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL SELLER, OR ANY RELATED BODY CORPORATE OR DIVISION THEREOF BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES RESULTING FROM A BREACH OF WARRANTY INCLUDING, TO THE EXTENT PERMITTED BY LAW, WITHOUT LIMITATION, DUTIES, TAXES, ENVIRONMENTAL FEES, LABOUR COSTS, LOSS OF USE OF OTHER EQUIPMENT, THIRD PARTY REPAIRS, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, IMPROPER PERFORMANCE OR WORK, PENALTIES OF ANY KIND, LOSS OF SERVICE OF**

**PERSONNEL, OR FAILURE OF EQUIPMENT TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL LAWS. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL SELLER'S LIABILITY EXCEED ONE HUNDRED PERCENT (100%) OF THE TOTAL ORDER VALUE.**

**11. Limitation of Actions.** Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.

**12. Specification Changes.** In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Products, perform any additional Services, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer. In no event shall any changes in specifications be made or accepted thirty (30) days prior to the shipment date or thereafter.

**13. Insurance.** Until the purchase price of any Product is paid in full or the Service is completed, the Buyer shall provide and maintain insurance equal to the total value of any such Product delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, by adding Seller as additional insured with waiver of subrogation, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer's responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.

**14. Patents, Copyrights, Trademarks, Confidentiality.** No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products or the provision of Services. Buyer shall not identify as genuine products of Seller Products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products of Seller as treated, modified or altered by Buyer or Buyer's representative, upon written prior approval of Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this Agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.

**15. Default and Seller's Remedies.** In the event of default by Buyer, all unpaid sums and instalments owed to Seller, shall, at the Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the PPS Act. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

**16. Indemnification by Buyer.** Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defence of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of Products or Services under this agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Products or Services furnished hereunder) of Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If Buyer fails to fulfil any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights under this paragraph or this agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

**17. Installation.** Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and commissioning of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Product when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller

harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defence of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.

**18. On-Site Services.** In the event that Seller is providing Services at Buyer's worksite (or at a location designated by Buyer), Buyer shall provide Seller free and clear access and an adequate power supply in order to perform the Services. Buyer shall maintain safe working conditions at the worksite, including, without limitation, implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems. Buyer shall immediately remedy any unsafe working condition at the worksite. Seller shall be entitled to suspend or terminate the Services in the event it determines that the worksite is unsafe. Seller shall have no responsibility or liability for any pre-existing condition of the worksite including, without limitation, violations of safety rules, building codes, zoning ordinances or other laws or regulations ("Regulations"). In the event that any unsafe working condition or failure of the worksite to comply with a Regulation results in an increase in the Seller's cost of, or the time required for, performance of the Services, Seller may make an equitable adjustment in price and schedule. Buyer authorizes Seller to perform the disassembly and inspection of any equipment necessary to provide the Services, including provision of all necessary Parts and labour, and agrees that Seller is not responsible for any damage or loss due to causes beyond Seller's control. Unless expressly agreed in writing, Services do not include architectural/engineering services or structural changes to Buyer's premises.

**19. Force Majeure.** The Seller shall not be liable to the Buyer or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products or Services if the delay or failure was due to any cause beyond the reasonable control of the Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.

**20. Anti-Corruption; Export Controls.** Buyer agrees that it shall, and that any party retained by the Buyer shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any party retained or paid by the Buyer shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, distribution and sale of the Products, including without limitation U.S. Export Control laws, regulations, policies and executive order as may be amended from time to time. Buyer further agrees that it shall not, and any party retained or paid by Buyer shall not, export or re-export the Products, directly, or with its knowledge, indirectly, into Sudan, Cuba or Iran or to any other country for which the United States government (or agency thereof) may require an export license or other approval or any country, person or entity to which such export or re-export may be prohibited by applicable United States law, regulation, policy or executive order. Failure to comply strictly with all applicable laws relating to embargoes, sanctions, export or re-export shall be grounds for immediate termination of this Agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between Seller and Buyer or in any other document (including purchase terms and conditions) or instrument relating to the Products, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

**21. Construction and Severability.** This terms of sale agreement constitutes the entire agreement between the parties regarding the subject matter hereto and shall be construed and enforced in accordance with the laws of the State of New South Wales, Australia. Seller shall not be bound by any agent's, employees or any other representation, promise or inducement not set forth herein. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**22. Jurisdiction.** The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this sales order agreement shall be in the State of New South Wales, Australia.

**23. No Assignment.** No rights arising under this agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.

**24. Miscellaneous.** Buyer represents that: (i) it is solvent and has the financial ability to pay for the Products or Services; and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.