



EMPIRE CRANE COMPANY, LLC
OTHER TERMS AND CONDITIONS

For purposes of this Agreement, the customer/purchaser listed above shall be referred to as “Buyer,” and Empire Crane Company, LLC shall be referred to as “Seller).

- 1. OFFER AND ACCEPTANCE:** By signing the Agreement Buyer offers to purchase the Equipment for the Purchase Price on the Payment Terms and as otherwise set forth herein. The offer may only be revoked or modified by Buyer after its execution of the Agreement. The offer may be only accepted by Seller’s executing the Agreement and thereafter, unless rejected by Seller within thirty (30) days of execution, this agreement shall be binding contract between Seller and Buyer for the sale and purchase of the Equipment, subject to the availability of the Equipment from the manufacturer.
- 2. EXECUTION OF OTHER DOCUMENTS:** The Buyer agrees to execute and deliver to Seller such security agreement (s), financing statements and other documents, instruments, and agreements as may be required by Seller to evidence this sales and to secure the payment of the Purchase Price on the Payment Terms. In the event that the Buyer fails to execute and deliver to Seller such documents, Seller, at its option, may terminate or rescind this Agreement, or may declare the entire balance of the Purchase Price, including accrued by unpaid interest, immediately due and payable.
- 3. RISK OF LOSS:** Seller’s sole responsibility for shipments of the Equipment, shall be to deliver the Equipment to a public carrier company. Any claim for shortages, delays or damages occurring shall be made by the Buyer to the carrier. Buyer assumes all risk of and shall be solely responsible for all damage and loss to the Equipment from any cause whatsoever, whether or not such loss or damage is or could have been covered by insurance. There shall be no abatement, reduction, suspension or deferment of amounts due to Seller for any reason, including damage to or loss of the Equipment.
- 4. TITLE:** Title to the Equipment shall pass to the Buyer only upon Seller’s receipt of collected funds in the amount of the Purchase Price or the Down Payment, with Seller’s retaining a security interest until paid in full.
- 5. ACCEPTANCE OR DELIVERY:** Buyer shall inspect the Equipment upon receipt, and shall be presumed to have accepted the Equipment unless the Buyer notifies Seller of any defects, within twenty-four (24) hours. The notice shall be provided telephonically and in writing to Seller, and shall set forth in complete detail the alleged defects in the Equipment. Seller shall have the right to repair or replace the Equipment within a reasonable time or to cancel or rescind this Agreement, without liability to the Buyer except for return of any amount paid.
- 6. EXCUSABLE DELIVERY DELAYS:** Delays in delivery shall be excused when caused by strikes, lockouts, delays of manufacturer or carriers, acts of God, embargos, governmental action or other cause beyond the reasonable control of Seller. If Seller in unable to make delivery within a reasonable time, Seller may cancel or rescind this Agreement without liability to the Buyer, except for return of any amounts paid.
- 7. PROPERTY TAKEN IN TRADE:** Buyer does hereby irrevocably sell, assign, transfer and convey unto Seller, its successors and assigns, the Trade-in Property described above. Buyer represents and warrants that it is the sole owner of the Trade-on Property, that it has full power and authority to sell the Trade-in Property, and that there is no lien, claim, debt, mortgage or encumbrance of any kinds, nature or description against the Trade-In Property, of record or others. Buyer agrees that, at the request of Seller, Buyer will execute and deliver to Seller such additional certificates of title, assignments or other documents, instruments and agreements as may be reasonable requested by Seller to transfer to Seller full and unencumbered title to the Trade-In Property.
- 8. TAXES:** Buyer shall pay all taxes, fees, assessments and other governmental charges of any kind or charter on or relating to the Equipment, including Dealer’s Heavy Equipment Tax, as well as the sale, purchase, ownership, use, value added, possession, shipment transportation, delivery or operation thereof, which may accrue or be levied assessed or imposed during the term of this Agreement, or which remain unpaid as of the date of surrender of the Equipment to Seller, along with any penalties, fines, or interest thereon. Buyer shall reimburse Seller for any payments made by Seller which are the obligation of Buyer under the Agreement. Buyer may, in good faith and by appropriate proceedings, contest the validity or the amount thereof with the authority levying such, unless such contest would

adversely affect the title of Seller to any Equipment to forfeiture or sale. Unless otherwise stated, the Purchase Price does not include sales, use or similar taxes. All taxes shall be paid by the Buyer or, in lieu thereof, the Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.

9. EVENTS OF DEFAULT: Each of the following is an event of default under this agreement: (1) Buyer's failure to pay any installment or other sum payable to Seller or any affiliate of Seller when due, whether such indebtedness arises hereunder or otherwise; (2) Buyer's ceasing to do business as a going concern, becoming insolvent, taking advantage of any law for the relief of debtors, making an assignment for the benefit of creditors or filing under the U.S. Bankruptcy Code by or against Buyer's; (3) Seller deems the Equipment in jeopardy or feels insecure with respect to Buyer's continued ability to make payments or the value of the Equipment; or (4) Buyer fails to perform any other obligation imposed on Buyer's under this or any other of Seller's Agreements.

10. REMEDIES ON DEFAULT: In the event of any default by Buyer, Seller is entitled to any one or more of the following remedies:

(a) Seller may take possession of the Equipment and terminate the Agreement and Buyer's rights hereunder.

(b) Seller may proceed by court action to enforce performance of the terms of this Agreement and to recover damages for the breach hereof.

(c) Seller may withhold delivery of the Equipment, take possession of any equipment previously delivered, and/or stop delivery of the Equipment by any bailee.

(d) Seller may surrender any insurance policies covering the Equipment and receive the unearned premiums.

(e) Without terminating this Agreement, Seller may take possession of the Equipment and sell, relet or otherwise dispose of the Equipment as a secured party under the applicable provisions of the New York Business and Commerce Code, applying proceeds as provided in the same, deduct all expenses, costs, reasonable attorneys fees, and other charges insured by Seller. If the funds actually received by Seller are insufficient to pay all amounts due under this Agreement, Seller may thereafter pursue a deficiency against the Buyer.

In no event shall Seller be required to sell or relet the Equipment, nor required to rebate or pay back any gain or profit as a result of leasing the Equipment. Seller is not required to give Buyer any notice of default before exercising any of the above remedies. In taking possession, Seller may enter upon any premises where the Equipment may be located and remove the Equipment or store it on the premises without charge. Any claim for damages caused by taking possession, storage or removal is hereby waived by Buyer. The remedies provided herein shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity.

11. INDEMNITY: BUYER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER FROM ANY AND ALL CLAIM, EXPENSE, CAUSE OF ACTION, DAMAGE, LIABILITY, COST, PENALTY, TAX, ASSESSMENT, CHARGE, PUNITIVE DAMAGE OR EXPOSURE : (1) RELATING TO THE EQUIPMENT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION THE MANUFACTURE, CONSTRUCTION, PURCHASE, DELIVERY, ACCEPTANCE OR REJECTION, INSTALLATION, OWNERSHIP, SALES, LEASING, REMOVAL OR RETURN OF THE EQUIPMENT, OR RESULTING FROM THE USE MAINTENANCE, REPAIR, REPLACEMENT, OPERATION OR THE CONDITION THEREOF (WHETHER DEFECTS ARE LATENT OR DISCOVERABLE) OR (2) BY REASON OF OR AS A RESULT OF ANY ACT OR OMISSION OF BUYER OR SELLER (THE "INDEMNIFIED CLAIMS"). BUYER SHALL COOPERATE FULLY WITH SELLER AND ALL INSURERS IN THE INVESTIGATION AND DEFENSE OF ANY CLAIMS OR SUITS ARISING FROM THE OPERATION OF THE EQUIPMENT. BUYER WILL PROVIDE THIS INDEMNIFICATION, DEFENSE AND HOLD HARMLESS FROM THE DATE THE INDEMNIFIED CLAIMS ARE FIRST MADE UNTIL THERE IS A FINDING OF FACT BY AN ARBITRATOR, JURY OR INDEPENDENT TRIER OF FACT THAT SELLER WAS NEGLIGENT OR OTHERWISE AT FAULT, AND RESPONSIBLE FOR SOME PORTION OF THE DAMAGES, AFTER WHICH SELLER WILL ASSUME THE COST OF ITS OWN DEFENSE. SELLER MAY SELECT AND DIRECT THE COUNSEL WHO DEFENDS SELLER IN THE INDEMNIFIED CLAIMS. BUYER WILL HAVE NO RIGHT OF REIMBURSEMENT FROM SELLER FOR ANY DAMAGES PAID OR INCURRED PRIOR TO THE DATE OF SUCH FINDING OF FACT.

12. ASSIGNMENT: Seller may assign any of its rights and obligations hereunder without notice, including, but not limited to, assignment of the Seller's Equipment sale and/or trade-in purchase rights under this Agreement, if converted to a sale or trade-in purchase, to Empire Crane Company. No assignee of Seller as qualified intermediary of the assignee's officers, directors, agents, or employees, shall be obligated to perform any covenant, condition, or obligation required to be performed by Seller hereunder. However, in the event that the assignee agrees to assume the obligations of Seller, Buyer agrees that Seller shall be released from all further liability hereunder. Neither this Agreement nor any of Buyer's rights hereunder shall be assignable by Buyer, either by its own act or by operation of law without the prior written consent of Seller. A Buyer purchasing under deferred Payment Terms further agrees it will not, without the prior written consent of Seller, allow the Equipment to be used by persons other than employees of Buyer or rent or sublease any Equipment to others.

13. BUYER'S WARRANTIES AND USE: In addition to the other warranties contained herein, Buyer warrants to Seller that (i) if Buyer is a corporation, limited liability company or limited partnership, Buyer is duly organized and validly existing in good standing under the laws of the state in which it is organized and has duly authorized the execution, delivery and performance of this Agreement; and, (ii) the Agreement has been duly and validly executed and delivered by Buyer and constitutes a valid contract which is fully enforceable against

Buyer according to its terms. Buyer warrants that: (1) the Equipment will at all times be used and operated solely in the conduct of Buyer's business and not for personal, family, or household use, and in accordance with the operation, use, and/or instructional materials supplied to Buyer; (2) Buyer will comply with all applicable laws, acts, rules, regulations and orders affecting the Equipment or use thereof and shall be responsible for obtaining all authorizations, licenses and certifications to operate the Equipment; (3) the Equipment will be used solely for the purpose for which it was designed and intended, and will not be abused or used beyond its rated capacity; and, (4) Buyer will only allow skilled operators trained and certified in the use of the Equipment to operate the Equipment. Buyer shall operate the Equipment with reasonable care and diligence and use reasonable precautions to prevent loss, damage, or injury.

14. REPAIRS AND MAINTENANCE: Buyer, at its expense, at all times shall; (1) keep the Equipment in good and efficient working order and condition, and (2) pay, when invoiced, all costs, expenses, fees and charges incurred in connection with the use or operation of the Equipment including, but not limited to, maintenance, storage, servicing and Seller's regular charges for parts and labor furnished in making such repairs. Buyer's maintenance obligations shall include, but not be limited to, the performance of all daily maintenance recommended in applicable manufacturer operation, lubrication and/or maintenance guides ("Daily Maintenance"). In connection with the performance of Daily Maintenance, Buyer shall (i) utilize fluids, lubricants, and filters which meet current manufacturer specifications, and at all times maintain levels as recommended by the manufacturer, (ii) utilize scheduled oil sampling from Seller; (iii) be responsible for all cleaning of the Equipment as required for maintenance, including but not limited to removal of brush or debris from undercarriage, belly pans, radiator and engine compartment; (iv) be responsible for boom and rope damage, tire and tube replacement, fuel and fuel quality, ground engaging tools (buckets, ripper shanks, etc.), glass breakage, make-up fluids, cleaning and painting; (v) be responsible for notifying Seller of any unusual noises or problems with respect to the Equipment; and, (vi) be responsible for making the Equipment available for maintenance and inspection by Seller.

15. NOTICES: All notices hereunder shall be in writing and shall be deemed duly given as of the date of written proof of receipt if delivered personally or mailed, by first class or certificated mail, return receipt requested, to the respective addresses if the parties set forth above or any other address designated by notice.

16. ARBITRATION: The parties hereto shall submit to binding arbitration any disputed question or controversy arising under this Agreement or arising out of or relation to the transaction contemplated by the Agreement. Any such arbitration shall be conducted at Syracuse, New York. Any party may initiate the arbitration, by notice in writing to the other party, setting forth the nature of the dispute, the amount involved, if any, and the remedy sought. Any party desiring to initiate arbitration shall serve a written notice of intention to arbitrate to the other party and to the American Arbitration Association office in or closest to Syracuse, New York. Such notice of intention to arbitrate may be informal and need not comply with Rule 6 of the American Arbitration Association. Legal action regarding this Agreement and any liabilities hereunder shall either be brought by arbitration, as described herein, or by judicial proceedings and then referred to arbitration, but shall not be pursued in different or alternatives forums. The issue of waiver pursuant to this paragraph is an arbitrate issue.

The arbitrators shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Depositions may be taken and other discovery obtained in any arbitration under this Agreement. The arbitrators, or a majority of them, are specifically empowered to decide (by documents only, or with a hearing, at the arbitrators' sole discretion) pre-hearing motions which are substantially similar to prehearing motions to dismiss and motions for summary adjudications. The award of the arbitrators, or a majority of them, shall be final and binding upon the parties hereto and judgment thereon may be entered in any court having jurisdiction. All statutes of limitations, which would otherwise be applicable, shall apply to any arbitration proceeding hereunder.

The provisions of this section shall survive any termination, amendment, or expiration of this Agreement unless all the parties hereto otherwise expressly agree in writing.

The parties hereto acknowledge that this Agreement evidences a transaction involving interstate commerce in that the funds, which may be advanced or committed under this Agreement, are derived from Interstate financial markets. The Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Agreement.

The arbitrators, or a majority of them, may award attorney's fees and costs in their discretion. Otherwise, each party shall bear its own expenses in connection with preparation for the presentation of its case at the arbitration proceedings and the fees and expenses of the arbitrators and all other expenses of the arbitration shall be borne equally by the parties to such arbitration.

17. MISCELLANEOUS: Time is of the essence of this Agreement. This Agreement represents the entire agreement between Buyer and Seller, and all other representations or agreements, whether oral or in writing, are superseded by this Agreement. This Agreement may be modified by a written agreement signed by Buyer and Seller. If any provision of this Agreement or the application thereof is hereafter held invalid or unenforceable, the remainder of the agreement shall not be affected and the provisions are declared severable. If there is more than one Buyer, the obligations of Buyer hereunder are joint and several. Subject to the terms hereof, this Agreement shall be binding upon and inure to the benefit of Seller, and Buyer and their respective personal representatives, successors and assign. This Agreement shall be governed and constructed according to the laws of the state of New York. Each party hereby irrevocably and unconditionally

consents to submit to the exclusive jurisdiction of the courts of the state of New York and the United States of American located in Syracuse, NY, for an actions, suits arbitrations, or proceedings arising out of or relating to this Agreement.

FOR AS LONG AS BUYER STILL OWES ANY AMOUNT TO SELLER UNDER THIS AGREEMENT, THE FOLLOWING AGREEMENTS ALSO APPLY:

18. INSURANCE: Equipment shall be insured with insurance in a form acceptable to Seller, in its sole discretion. Buyer agrees to provide Seller with a certificate of Insurance providing evidence of coverages in accordance with Seller's specific requirements. Buyer shall name Seller as an additional insured on all liability insurance policies. The payment of any applicable deductibles shall be the sole responsibility of Buyer. Buyer shall promptly notify all insurers and Seller of each and every occurrence with may become the basis of a claim or cause of action and provide Seller with all information requested by Seller about each occurrence. Buyer shall furnish Seller with the required Certificate of Insurance prior to the release of the Equipment to Buyer. Any insurance obtained by Buyer under this Agreement or otherwise maintained by Buyer shall be primary to any policies held by or providing coverage to Seller, and the coverage afforded Seller under such policies shall delete any excess clause or coinsurance clause that requires sharing or renders primary any other insurance covering Seller. Proceeds of all insurance shall be payable first to Seller, and after Seller has been paid all sums due to it, any remainder shall be delivered to Seller.

19. SECURITY AGREEMENT: Buyer hereby grants to Seller a security interest in the Equipment and any and all additions or substitutions thereto or there for and all proceeds thereof or other benefits or products attributable thereto to secure the payment of all liabilities and obligations of Buyer incurred in connection with the Equipment and any other liability of Buyer to Seller whether now existing or hereafter arising and all renewals, extensions and rearrangement of such liabilities. Seller is authorized and is appointed by Buyer as its irrevocable attorney-in-fact to file such financing statements and any amendments thereto as Seller may deem necessary, advisable or protective in connection with the lease and possible sale of the Equipment. Buyer expressly authorizes Seller to file a financing statement on the Equipment after the execution of this Agreement as a protective measure. Buyer agrees to pay the cost of filing or recording the same in all public offices at any time and from time to time whenever filing or recording is deemed by Seller to be necessary or desirable. If the Buyer shall default in the payment or performance of any obligation or liability secured hereby, Seller may exercise any rights or remedies granted by the New York version of the Uniform Commercial Code or by this Agreement. Buyer authorizes Seller to file such financing statements covering the Equipment as Seller deems necessary: (i) to perfect a security interest in the Equipment or (ii) to release, terminate and void Buyer's interest in the Equipment.

20. USURY: It being the intention of the parties to strictly conform to the applicable usury laws, all agreements between the Buyer and Seller, whether now existing or hereafter arising and whether written or oral are hereby expressly limited so that in no event whether by reason of acceleration of the maturity of the obligation secured hereby or otherwise, shall the amount paid or agreed to be paid to Seller for the use, forbearance, or detention of money hereunder or otherwise, exceed the maximum amount permissible under applicable law. If fulfillment of any provision or of any document evidencing or securing the obligations secured hereby shall involve exceeding the limits prescribed by law, then the obligation to be fulfilled shall be reduced to the legal limit; and if Seller shall ever receive anything of value deemed interest under applicable law which would exceed interest at the highest lawful rate, and amount equal to any excessive interest shall be applied to the reduction of the principal amount owing hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to the Buyer. All sums paid or agreed to be paid to Seller for the use, forbearance or detention of the indebtedness of the Buyer to Seller hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of such indebtedness so that the rate of interest on account of such indebtedness is uniform through the term thereof.

21. LOSS AND DAMAGE: Buyer assumes all risk of and shall be solely responsible for all damage and loss to the Equipment from any cause whatsoever, whether or not such loss or damage is or could have been covered by insurance. The Agreement shall not terminate and there shall be no abatement, reduction, suspensions or deferment of amounts owed to Seller for any reason, including damage to or loss of the Equipment. Buyer shall promptly give Seller written notice of any loss or damage, describing in detail the cause and the extent of such loss or damage. Buyer shall notify appropriate law enforcement authorities within two (2) hours of discovery of the theft or vandalism. Buyer shall at its expense, and to Seller's satisfaction, promptly repair any damage or loss to the Equipment, or reimburse Seller for the value of the Equipment, including partial or complete destruction, including intentionally caused damage or theft. Seller shall not be liable and Buyer waives any claim it might have (i) for injury to Buyer's business or any loss of income there from; (ii) for damage to property of Buyer, or (iii) for injury to the person of Buyer or Buyer's agents, representatives and employees resulting from this Agreement or caused in any way by the Equipment.

22. INSURANCE COVERAGES: For as long as Buyer still owes any amount to Seller under this agreement, Buyer agrees to provide Seller with a Certificate of Insurance providing evidence of coverage in accordance with Seller's specific requirements as follows: **SEE FIGURE 1.1**

23. MAXIMUM RATE: "Maximum Rate" shall mean the lesser of: (1) 1.55 per month (18% per annum); or (2) the highest non- usurious rate allowed by New York State.

FIGURE 1.1

<u>Coverage</u>	<u>Equipment Minimum Limit</u>	<u>Additional Insured</u>	<u>Loss Payee</u>	<u>Waivers of Subordination</u>
Equipment	1.) Equipment Value, including all attachments and 2.) including Boom Collapse Coverage with No Overload Exclusion	Empire Crane Company LLC.	Empire Crane Company LLC.	N/A
General Liability	\$1,000,000/Occurance	Empire Crane Company LLC. <i>(On a primary non-contributory basis)</i>	N/A	YES
Auto Liability	\$1,000,000/Occurance	Empire Crane Company LLC. <i>(On a primary non-contributory basis)</i>	N/A	YES
Worker's Compensation and Employer's Liability	\$1,000,000/Occurance	N/A	N/A	YES
Umbrella Liability Coverage Required	\$5,000,000/Occurance	Empire Crane Company LLC. <i>(On a primary non-contributory basis)</i>	N/A	YES
Include in Description	1. All Rented Equipment, including all attachments OR 2. Make, Model, Serial Number and Value of Equipment, including all attachments			
Certificate Holder	Empire Crane Company LLC. 7021 Performance Drive North Syracuse, NY 13212 Phone: (315) 458-4101 Fax: (315) 458-3169			