

Ameracrane and Hoist, L.L.C.
Terms and Conditions: Preferred Accounts

This must be signed by Buyer and received by Ameracrane and Hoist, L.L.C. before we can produce the products ordered by the Buyer. Please return one signed copy of these *Terms and Conditions* to accompany your purchase order. Facsimile: 918/437-4778 or U.S. Mail to PO Box 1467, Owasso, OK 74055. These terms and conditions between the Buyer and the Ameracrane shall be held on file in the office of the Ameracrane and shall continue to apply to this and all future Purchase Orders and are incorporated by reference.

1. **GENERAL.** Acceptance by Ameracrane of the Buyer's Purchase Order is conditioned on Buyer's written acceptance and assent to the terms and conditions contained herein. Acceptance of Buyer's purchase order shall not be binding on Ameracrane unless accepted in writing by an authorized officer of Ameracrane. Any portion of these Terms and Conditions or any contract entered into between the Ameracrane and Buyer that is deemed invalid or unenforceable shall be struck and the remainder of these Terms and Conditions and any such contract shall continue to be effective and legally binding.
2. **PAYMENT TERMS.** Buyer agrees to pay in accordance with the terms set forth in the quotation provided to Buyer. Buyer, with approved credit, agrees to pay Ameracrane in full the total cost, or remaining unpaid cost, of the Purchase Order within 30 days upon delivery of the equipment. Interest shall accrue after 30 days at the Prime Rate (as set forth in *The Wall Street Journal*) plus 4% computed on an annual basis. In addition to any price specified herein, purchaser shall pay the gross amount of any present or future sales, use, excise or other similar tax applicable to the price, sales or delivery of any products or services furnished hereunder or purchaser shall furnish Ameracrane with evidence of exemption acceptable to the taxing authorities.
3. **TERMINATION FOR BANKRUPTCY.** In the event of the institution of any proceedings by or against Buyer under any provisions of the Bankruptcy Code, including proceedings under Chapter VII and XI thereof, or the appointment of a receiver or trustee or an assignment for the benefit of creditors of Buyer, Ameracrane may terminate Buyer's Purchase Order.
4. **TITLE:** Equipment sold herein shall remain the property of Ameracrane until entirely paid for. Buyer agrees to perform all acts necessary to protect and assure retention of title for Ameracrane.
5. **DELIVERY.** Unless otherwise agreed in writing, shipment and delivery of the products shall be FOB factory facility. For orders where the sell price includes freight, Ameracrane will pay surface transportation charges applicable on the date of Purchase order. Buyer shall pay any increase in applicable freight charges that become effective after the date of the Purchase Order. Unless otherwise specified by Ameracrane, the risk of loss or damage shall pass to the Buyer, F.O.B. point of shipment.
6. **BUYER'S INSPECTION OF THE PRODUCTS.** Buyer shall inspect the products immediately upon receipt. Any claims by the Buyer for shortages, errors or any other reason other than a claim for breach of limited warranty with respect to the products must be made to Ameracrane in writing within seven (7) days of Buyer's receipt of shipment.
7. **PRICING.** Prices as stated herein are subject to change without notice and expire thirty (30) days from the date hereon. Prices are subject to escalation should any excessive rise in either material or labor cost occur before shipment, which escalation is beyond the control of Ameracrane.
8. **LIMITED WARRANTY.** Ameracrane gives no warranty except the limited warranty expressly contained in this Section 8. Ameracrane warrants the equipment sold by it to be free from defects in material or workmanship for a period of one year from the date of delivery. Ameracrane's liability on this warranty shall be limited to the repair or replacement of any equipment which is returned to the Ameracrane, freight prepaid, within one year of the date of delivery and which is found by the Ameracrane to be defective in material or workmanship; provided, however, that no product shall be returned without Ameracrane's prior written authorization. The Buyer will be responsible for the cost of removing and reinstalling a defective part or its replacement and all labor and material and all other costs or expenses incurred in connection therewith. The warranties and remedies set forth herein are conditioned upon the following:
 - (a) Buyer shall notify Ameracrane promptly, in writing, of any defect and, if requested or required by Ameracrane, shall make the defective equipment available for inspection and/or repair by Ameracrane;
 - (b) The equipment must have been properly stored, installed, used and maintained in conformance with the applicable recommendations of Ameracrane; and
 - (c) Any parts replaced within or on the equipment must have been replaced with Ameracrane recommended parts.

- If any equipment manufactured by Ameracrane fails to meet the foregoing warranties, Ameracrane shall thereupon correct any such failure at its option by either, (a) making necessary repairs or replacement parts available F.O.B. Ameracrane Plant or other points of shipment or (b) repairing any defective or damaged parts or parts of equipment. For equipment furnished by Ameracrane, but not of its manufacture, Ameracrane's responsibility is limited to such warranties extended by the manufacturer of that equipment.
9. **DISCLAIMER OF IMPLIED WARRANTIES.** Ameracrane **DISCLAIMS** all warranties implied by law, usage of the trade, course of dealing or course of performance including, but not limited to, **THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
 10. **LIMITATIONS OF LIABILITY.** The following limitations of Ameracrane's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission hereunder and to any breach of this contract of which these terms and conditions form a part:
 - a. **Limited Warranty.** Ameracrane's sole liability to the Buyer for any claim arising from Buyer's Purchase Order shall be limited to the obligations set forth in the limited warranty provisions in Section 8 herein.
 - b. **Disclaimer of Damages.** **IN NO EVENT SHALL AMERACRANE BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY.**
 - c. **Suitability.** Buyer acknowledges that it alone has determined the intended purpose and suitability of the products sold hereunder.
 - d. **Breach of Contract.** The Buyer expressly agrees that any legal proceeding by Buyer for any breach of contract shall be waived unless filed within one year of the date of Buyer's Purchase Order.
 11. **CANCELLATION.** After acceptance of any order by Ameracrane, cancellation or suspension of that order by Buyer can be made only if Ameracrane consents in writing and Buyer agrees to reimburse Ameracrane for a proportionate share of work done including, but not limited to, materials, labor and overhead costs and expenses, and profit on all materials, labor, and overhead costs.
 12. **INDEMNIFICATION.** Buyer shall indemnify Ameracrane, its officers, directors and employees against all liabilities, claims, losses, damages, and expenses, including attorney fees, sustained or incurred by Ameracrane, its officers, directors and employees in connection with any injury or wrongful death claim, claim for property damage, product liability claim or other claim arising or alleged to have arisen from or related to the use, installation, removal, performance, non-performance, sale or resale of such goods, including but not limited to damages incurred in connection with the investigation, settlement, attempted settlement, or defense of any claim, due to any negligence of Buyer or failure of the Buyer to comply with applicable Federal and State safety and health laws, and all orders, regulations and standards issued there under, in effect on the date of Buyer's Purchase Order.
 13. **FORCE MAJEURE.** Delivery dates are approximate and are based upon prompt receipt of all necessary information. Ameracrane shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond Ameracrane's control, including but not limited to fires, floods, or other weather related conditions; strikes, or other labor disputes; accidents to machinery, acts of sabotage, terrorism, riots, precedence or priorities granted at the request or for the benefit, directly or indirectly, of the Federal or any State government or any subdivision or agency thereof; delay in transportation or lack of transportation facilities, restrictions imposed by Federal, State or other governmental legislation or rules or regulations thereof; or substantial increases in Ameracrane's cost. For purposes of Buyer's Purchase Order, a substantial increase in Ameracrane's cost shall occur if Ameracrane's performance hereunder would result in a loss to Ameracrane on this sale as computed under Ameracrane's normal accounting procedures, in which case Ameracrane may terminate Buyer's Purchase Order in whole or in part without liability for any delay in the delivery of, or failure to deliver, the products sold hereunder.
 14. **APPLICABLE LAW.** All questions arising hereunder or in connection with these Terms and Conditions and any contract entered into between the parties shall be interpreted and resolved in accordance with the Uniform Commercial Code as in effect in Oklahoma and the laws of the State of Oklahoma without regard to its conflict of law provisions.

- 15. **ARBITRATION.** The parties agree that any dispute or controversy in connection with this contract shall be resolved pursuant to arbitration conducted by one arbitrator in accordance with the provisions of this Section 15. The parties shall have 20 days from the date any arbitration claim is filed to agree upon an arbitrator to hear their dispute. If the parties cannot agree within that time, then the American Arbitration Association shall appoint one for them. Unless otherwise agreed by the parties, such arbitration shall be held in Tulsa, Oklahoma under the auspices and then-prevailing rules of the American Arbitration Association. Each party shall pay the cost and expenses of their own counsel and witnesses. Any other costs and expenses shall be borne ultimately as the arbitrators direct. The parties acknowledge and agree that the decision of the arbiter will be final and non-appeal able.
- 16. **SEVERABILITY.** A holding that any term or condition hereof is void and unenforceable shall not render void or unenforceable any other term or condition.
- 17. **ASSIGNMENT.** Buyer cannot assign its rights and obligations under this proposal or any contract entered into pursuant to this proposal to any other party unless prior written consent is given by an authorized officer of Ameracrane.
- 18. **AMENDMENTS.** The parties agree that these Terms and Conditions, together with any documents attached hereto or incorporated herein by reference, contains the complete and final contract between Buyer and Ameracrane, and that no modification, amendment, rescission, waiver or other change to this contract shall be binding upon Ameracrane unless in writing and signed by an officer of Ameracrane. Any representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Ameracrane.
- 19. **NOTICES.** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally or sent by United States certified or registered mail addressed to Ameracrane or Buyer, as the case may be, at the addresses set forth on the face of this order, with postage thereon fully prepaid. The effective time of notice shall be when personally delivered or on the date of receipt.
- 20. **NOTICE OF LIEN:** THIS NOTICE IS A PRELIEN NOTICE. AMERACRANE AND HOIST, LLC, WHOSE ADDRESS IS SET FORTH ON PAGE 1 OF THIS PROPOSAL, WILL BE PROVIDING EQUIPMENT AND/OR SERVICES CONSISTING OF THE FABRICATION, SALE, INSTALLATION, AND/OR SERVICE OF INDUSTRIAL CRANE EQUIPMENT TO THE BUYER (WHOSE NAME AND ADDRESS ARE PROVIDED ON PAGE 1 OF THIS PROPOSAL) FOR INSTALLATION, DELIVERY OR SERVICE AT THE DELIVERY ADDRESS SET FORTH IN THIS PROPOSAL. THE DOLLAR AMOUNT OF THE EQUIPMENT AND/OR SERVICES EXCEEDS \$2,500.00. AS REQUIRED BY THE OKLAHOMA CONSTRUCTION LIEN LAW, AMERACRANE HEREBY NOTIFIES THE CUSTOMER/OWNER THAT PERSONS OR COMPANIES FURNISHING LABOR OR MATERIALS FOR THE CONSTRUCTION AND/OR SERVICE ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON CUSTOMER'S/OWNER'S LAND AND BUILDINGS IF NOT PAID.

BUYER: _____

Accepted By: _____ Date: _____

Print Name: _____ Title: _____

AMERACRANE AND HOIST, LLC

By _____
Member/Manager