



## TERMS AND CONDITIONS

1. **BINDING TERMS.** All quotations, products and services provided by Flatiron Crane Operating Company, LLC, its subsidiaries, joint ventures, divisions, and/or any other affiliated entities or its representatives (collectively, “Seller”) to any customer, distributor, original equipment manufacturer, end-user or other purchaser (“Buyer”) are furnished only on the terms and conditions herein (the “Terms”). By ordering and accepting delivery of products and/or services (“Products”) from Seller, Buyer accepts these Terms and agrees that, unless modified by separate negotiated agreement as provided below, these Terms, together with the item, quantity, price, and similar terms as confirmed in Seller’s written quotation, order acknowledgement and/or invoice, constitute the parties’ entire agreement (each, a “Contract”), superseding all other communications and documentation. Seller expressly rejects any different or additional terms, preprinted or otherwise, contained or referenced in any purchase order or other documentation furnished by Buyer, whether before or after delivery of Products, even if receipt is acknowledged by signature or otherwise. No modification of these Terms shall be effective unless set out in a separate negotiated agreement signed by an authorized officer of Seller.

2. **PRICES; QUOTATIONS; TAXES.** All prices are in U.S. Dollars and, unless otherwise specified by Seller in a separate written agreement or quotation, are subject to change without notice. Quotations are valid only for thirty (30) days from the date of the quotation or the period stated therein and may be withdrawn at any time prior to acceptance. Clerical or typographical errors are subject to correction. Quoted prices and delivery dates are valid only for the quantities, terms and payment schedule specified. Prices do not include any applicable federal, state, local, or foreign sales, use, excise, value added, goods and services, property, customs, documentary, import/export, or similar taxes, tariffs, fees, duties, or charges pertaining to the Products which, if paid by Seller, will be invoiced and paid by Buyer in addition to the price of the Products unless Buyer provides an exemption certificate acceptable to the applicable taxing authority. Buyer acknowledges that Seller’s ability to provide the Products under the quoted prices and delivery dates is dependent upon the full and timely cooperation of Buyer (which Buyer agrees to provide), as well as the accuracy and completeness of any information Buyer provides to Seller. Should Buyer fail to comply with this clause, any date or price by which Seller stated it shall provide Buyer the Products may be modified in accordance with Buyer’s failure to comply, and unreasonable delay or failure to cooperate may result in the cancellation of a Quotation or Contract by Seller, without penalty to or any liability of Seller.

If any taxes, tariffs, fees, duties or charges imposed on materials, components, or services required for the project increase by more than 5% compared to the tariffs, duties, taxes or fees applicable as of the contract date, the contract price shall be amended to reflect increased costs. The adjustment shall be calculated based on the actual tariff increases, with supporting tariff documentation provided by the affected party. Upon Buyer’s written request, Seller may agree to document the purchase and invoice immediately to lock in material pricing, or to re-quote a non-tariff affected product.



3. **ACCEPTANCE OF ORDERS.** Orders must be presented in writing or via electronic means acceptable to Seller and will be binding on Seller only when accepted by written or electronic acknowledgment. Seller reserves the right, at its option and without liability, to refuse any order in whole or in part or to specify an alternate delivery schedule if orders from all sources exceed its inventory or ability to deliver in its normal course of business. Seller may allocate available inventory and production in its sole discretion. Where orders are placed, acknowledged, and/or invoiced by electronic transmission, the data transmitted will be deemed “in writing” and “signed;” and any printout of electronic transmissions maintained in the ordinary course will be considered an “original” and admissible as between the parties to the same extent as other business records maintained in documentary form. Seller shall be entitled to assume that all persons placing orders on behalf of Buyer are authorized to and do so and to accept these Terms. Notwithstanding anything to the contrary set forth herein, regardless of the acceptance or issuance of an Order, upon notice to Buyer prior to final billing, prices and timelines for delivery of Products may be adjusted by Seller to the extent pricing or delivery terms are impacted by any (i) increases in Seller’s cost of raw materials or components (e.g., steel, aluminum, electrical components, etc.), (ii) changes in law, (iii) labor availability, (iv) taxes, (v) acts of Government, (vi) or any similar changes arising from circumstances outside the reasonable control of Seller. Seller will endeavor to advise Buyer or its representatives throughout any pending project to the extent Seller is aware of any potential pricing or delivery modifications under the preceding sentence.

4. **ORDER CHANGES; CANCELLATION.** Any changes requested by Buyer must be submitted in writing and are subject to written acceptance by an authorized representative of Seller. Costs and/or delays resulting from such changes will be solely determined by Seller and binding on Buyer. Notwithstanding the foregoing, the parties may mutually agree upon changes in scope or concept and in such event the parties shall execute a change order to reflect such agreement. In the event of a request to stop work or to cancel the whole or any party of a Contract, Buyer shall make payments as follows: (a) any and all work that can be completed within five (5) days from the date of notification to stop work on account of cancellation shall be completed, shipped, and paid in full; and (b) for any work-in-process and any materials and supplies procured or for which definite commitments have been made by us in connection with the Contract, Buyer shall pay the actual costs and overhead expenses determined in accordance with good accounting practices plus up to twenty percent (20%). Seller, with reasonable cause, may cancel or suspend performance of any order if Buyer fails to meet any of its obligations in the Contract.

5. **SHIPMENT.** Seller will endeavor to deliver accepted orders promptly; it is understood, however, that projected delivery dates represent best current estimates only and Seller will have no liability for failure to perform within such dates. Unless otherwise agreed in Seller’s written order acknowledgement, all shipments are EXW (Incoterms® 2020) point of manufacture or as otherwise noted in the Contract. Title will pass upon issuance of the carrier’s bill of lading (subject to Seller’s rights as an unpaid creditor) and, if not previously accepted, receipt of delivery by or on behalf of Buyer will constitute acceptance of these Terms. Buyer bears all risk



and expense for delivery of goods, including without limitation shipping, loading, unloading, storage, freight, duties, tariffs, and other customs charges, and insurance. The parties agree that Buyer shall be the “importer of record” for all purposes under all applicable laws and this Agreement with respect to all trade, customs, tariff, or similar matters. Any shipping contracts made by Seller are for Buyer’s account and, if paid for by Seller, will be invoiced to Buyer in addition to the product price. Products will be packaged for shipment in accordance with Seller’s standard commercial practices, but Seller will not be responsible for loss or damage in transit. In the cases of delay in shipment at Buyer’s request, Buyer agrees to place the Products and pay costs and expenses resulting from the delay, including but not limited to all handling, insurance and storage charges. Payments due for such charges shall be in accordance with these Terms substituting date of storage for date of Bill of Lading.

6. **INSPECTION.** Buyer must inspect all Products upon arrival and provide written notice to Seller, within five (5) business days of any claim for shortage or other nonconformance. If Buyer fails to give timely notice, all products will be deemed to conform to the order and, unless installation is required as provided below, will be deemed accepted. Use or resale of products in any manner after delivery will also constitute acceptance, regardless of whether installation has occurred. Claims for loss or damage in transit should be made directly to the delivering carrier and will not affect Buyer’s payment obligations to Seller. Buyer’s acceptance of items tendered as provided in the Contract shall be final and irrevocable.

7. **INSTALLATION.** Where installation and acceptance are specified in the Contract, Seller will coordinate with Buyer regarding delivery and installation schedule and requirements. Buyer is responsible for providing a safe and suitable site with all required equipment and service ready to receive the Products not later than the scheduled delivery date. Unless otherwise specified in the Contract, (a) Buyer will be responsible for transporting the Products to the installation location, (b) installation will be performed under the supervision of Seller’s installation personnel, (c) Buyer will have a representative present at all times during the installation and capable of assisting as necessary, (d) Buyer will provide and pay for all necessary public inspections, licenses and building permits; (e) Buyer will provide immediately proximate and direct access from the area where the Products are unloaded to the installation area; (f) Buyer shall clear the installation area for the Products, cut and repair any floor, wall or roof opening, all in accordance with Seller’s clearance diagrams, requirements, and/or drawings; (g) Buyer shall keep the installation area free from water, debris and other obstructions; and (h) Buyer shall provide proper lighting, piping and wiring as necessary for the installation and operation of the Products. Additional charges may apply for: installation changes made within seven (7) days of the scheduled start date, delays which are not due to Seller’s actions, or obstruction of the installation site or crew. Buyer is responsible for taking all necessary precautions to prevent injury to Seller’s employees, agents, or contractors at Buyer’s premises. Upon completion of installation, Seller will demonstrate that the Product performs according to published specifications. Upon completion of such demonstration, the Product shall be deemed accepted and Buyer shall execute Seller’s acceptance letter evidencing such acceptance. Buyer shall reimburse Seller at its standard rates for any extra time, travel, or expense resulting from



inadequacy of rescheduling arrangements or other delay or prolongation of installation caused by Buyer or its representatives. The Contract price is based on labor to paid on a ONE shift straight time basis, unless otherwise stated in the Contract, and does not include premium or overtime labor. If for any reason, Buyer requests overtime, second, or third shift work, Buyer agrees to compensate Seller for the additional cost of the premium wage, plus applicable taxes and insurance. **BUYER AGREES TO HOLD SELLER HARMLESS AGAINST ANY LOSS OR DAMAGE CAUSED BY ACCIDENT, FIRE, THEFT OR NEGLIGENCE OCCURRING UPON THE PREMISES OF BUYER UNLESS SOLELY CAUSED BY THE GROSS NEGLIGENCE OF SELLER.**

8. **PAYMENT TERMS.** Unless otherwise specified in the Contract, payment terms are: (a) thirty-five percent (35%) with the order (net 0); (b) twenty-five percent (25%) upon drawing approval (net 0), (c) thirty percent (30%) due prior to shipment (notification of ready to ship), and (d) the balance paid in full net thirty (30) days of acceptance/completion. Deposits or stage payments, if any, are non-refundable; no discount for early payment is authorized without Seller's written consent. Visa, MasterCard, Discover and American Express are accepted. No transaction fee applies for payments made by credit card at the time of order placement; however, a \_\_\_\_\_ percent (\_\_\_%) transaction fee will be charged for credit card payments requested on open invoices. Payment terms will not be affected by any delay in delivery, installation or acceptance. Partial shipments are billed as made and payable as set out above. Notwithstanding any prior credit approval, Seller reserves the right to modify payment terms or require advance payment, letter of credit, or COD when, in the opinion of Seller, Buyer's financial condition or previous payment record so warrants. If Buyer is delinquent in any payment due, Seller in its discretion may exercise any and all remedies permitted by law, including set off, and may suspend production and/or institute credit hold procedures on all open orders. Future orders will not be confirmed until Buyer's account is brought current. A service charge not to exceed two and 00/100 percent (2%) per month may be charged on all past due balances, and if referred to an agent or attorney for collection, all costs and expenses of collection (including, without limitation, reasonable attorneys' fees) will be charged to Buyer's account, up to the maximum allowed by law.

9. **SPECIFICATIONS.** All Products, when delivered by Seller, will conform to specifications as set out in the Contract; however, Buyer is responsible for validation of each specific Product application and any use of Products in conjunction with, physically installed on, or as a component of any hardware, software, services, components, accessories, attachments, interfaces, or consumables not supplied or specified by Seller for such purpose, including all necessary testing and qualification, and will put in place all necessary protections to ensure that any failure or defect relating to Products will not result in any other or further liability, damage, or safety issues. Any description, sample, or model is for identification or illustrative purposes only and should not be construed as a warranty that the Products will conform to the description, sample, or model. Seller's responsibility shall in all events be limited to repair or replacement of the failed or defective Product and excludes any further liability for or arising out of any non-Seller products in which or with which the Products may be installed, combined, or used. Seller



reserves the right to discontinue or change the design or specifications of its Products at any time and will use commercially reasonable efforts to notify Buyer of any discontinuation or any material change in specifications affecting form, fit or function. Buyer shall make all alterations to existing building and equipment as may be required for installation and operation of the Products. Outline dimensions are shown on approved drawings. Should any deviations be required from what was originally quoted, Buyer shall be responsible for any resulting additional costs.

10. **SOFTWARE.** Any software provided by Seller, including without limitation internal system code, firmware, and/or operating system software (collectively, “Software”) is licensed, not sold, and is provided upon the terms and subject to the conditions in the applicable license agreement, the terms of which will prevail over any contrary terms herein. Buyer will be deemed to have agreed to the terms of any applicable license(s) by opening the media envelope or installing or using the Software or the Product in which it is installed. Unless otherwise provided in the applicable license agreement, Seller grants Buyer, only for so long as Buyer owns the Product, a limited, personal, non-transferable, nonexclusive license to use the Software only in machine readable form and only as part of the normal operation and maintenance of the Product(s) with which it is provided. All rights in and to such Software not expressly granted to Buyer are expressly reserved. Buyer may not copy or duplicate Software, in whole or in part (other than one back-up copy, bearing all original copyright notices, for archival purposes), or transfer, sublicense, distribute, sell, lease, rent, or otherwise provide or disclose any Software, or portion thereof, to any third party, including without limitation any use over the Internet or through an application service provider model. Buyer may not circumvent any usage or other restrictions imposed by any license manager or use Software for application development purposes. The license granted to Buyer will terminate when Buyer discontinues use of the Products with which the Software is provided.

11. **LIMITED WARRANTY.** Products are warranted in accordance with the applicable limited warranty set out below (the “Warranty”). The Warranty is effective only upon payment in full for the Product(s) to be warranted, extends only to the original Buyer, and may not be transferred to third parties by operation of law or otherwise. The Warranty may be altered or terminated by Seller in whole or in part for future sales at any time, without prior notice. No employee, agent, dealer, reseller, or other person is authorized to modify, vary, or extend the Warranty or to assume for Seller any other liability in connection with its Products.

(a) All Products manufactured by Seller against defects in materials and workmanship under normal use for a period of twelve (12) months from date of invoice.

(b) Items not manufactured by Seller are warranted only by the original manufacturer and only if and to the extent set forth in the original manufacturer’s warranty. Seller will not be liable for any damage or loss of any nature with respect to third party products or failure of any such supplier to perform under its warranty.



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(c) In performing any professional services, Seller will use the degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing in the same locality at the time the services are actually rendered.

Any breach of the foregoing Warranties must be reported prior to expiration of the warranty period, and Buyer's exclusive remedy and Seller's entire liability for such breach will be repair or replacement, at Seller's option, of the non-conforming Product or part or, if neither is in Seller's opinion commercially feasible, refund of an amortized portion of the purchase price paid for the Product. Such obligation will be subject to Seller being granted the reasonable opportunity to inspect, at Seller's expense, the non-conforming Product at the location of its use or storage or, at Seller's request, return of the Product to Seller. On-site repairs for installed equipment will be performed Monday-Friday, between the hours of 9:00 am to 5:00 pm local time, excluding holidays. Replacement of Products may be made by substitution of similar or upgraded Products having the same or similar functionality. Service required beyond the normal scope of the Warranties or after expiration of the Warranty period will be billable repairs, and Seller will charge its then-current rates and prices for parts, labor and transportation. Work performed under this Warranty may only be done by Seller or its authorized agents specifically assigned and directed by Seller to perform such work.

Seller's Warranty does not cover normal wear and tear (scratches, fading, etc.) or any defects or problems caused by the acts or omissions of Buyer or third parties or other events beyond Seller's reasonable control. Without limiting the foregoing, any warranty claim, support claim, or liability is excluded for any problem, failure, malfunction, defect, claim, damage, liability, or safety issue arising out of (a) inadequate or faulty installation (unless performed by Seller) or failure to provide a suitable installation environment; (b) alteration, disassembly, modification, repair, or maintenance by persons other than Seller or its authorized personnel; (c) accident, abuse, damage, or neglect, including without limitation improper or inadequate handling, storage, care or maintenance; (d) improper use, misuse, misapplication, or other failure to follow Seller's product instructions and safety precautions, including without limitation any use outside of normal or specified operating conditions or in a manner not authorized in the product documentation; (e) operation or use of products in combination or conjunction with, physically installed on, or incorporated in or as a component of non-Seller hardware, software, services, components, accessories, attachments, interfaces, consumables, or other items not furnished by Seller or specified for such purpose in Seller's product documentation; and/or (f) acts of God, flood, fire, explosion, failure or surge of electrical power, computer viruses, and other causes external to the products. Modification, disassembly, rewiring, re-engineering, recalibration, reverse engineering, and/or reprogramming of products (unless specifically authorized by Seller in writing) is prohibited and will void all Warranties.

**TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS, OR CONDITIONS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT**



**NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY**

**DISCLAIMED.** When, under applicable law, implied warranties are not allowed to be excluded in their entirety, such warranties will be limited to the duration of the applicable written warranty.

12. **COMPLIANCE WITH LAWS.** Buyer is responsible for compliance with all applicable laws, regulations, codes, recommendations, and requirements of government authorities and for obtaining all licenses and permits pertaining to the purchase, installation, operation, and/or use of the Products or their subsequent sale, shipment, or disposition, including any use or sale with or as a component of non-Seller products, it being understood that Seller makes no warranty of any kind regarding compliance with such requirements.

13. **RESTRICTIONS ON USE.** Buyer may not (a) modify, alter, disassemble, or make changes to any Products, documentation, or other items provided by Seller, including but not limited to Product packaging, labels, and instructions, or permit any other person to do so, without Seller's prior written consent; or (b) import, export, sell, transfer, service, store, handle, distribute, or use the same in any manner prohibited by applicable law, including applicable export control laws, restrictions and regulations, or contrary to any written warning or instruction given by Seller in the Contract, the Product documentation, on Seller's website, or otherwise. Unless prohibited by applicable law, Buyer agrees to hold Seller harmless from all liabilities, claims, losses, damages, and expenses (including without limitation reasonable attorneys' fees and expenses) arising out of Buyer's breach of these terms and conditions.

14. **PROPRIETARY INFORMATION.** Buyer acknowledges that the Products are based upon and embody various confidential and/or proprietary technology, processes, methods, information, and trade secrets of Seller and its suppliers and licensors. Seller and its suppliers or licensors (as applicable) shall exclusively own all inventions, technology, know-how, trade secrets, and other proprietary information of any kind used or embodied in the Products, documentation, drawings, designs, specifications, Software, and other items furnished by Seller, all intellectual property rights with respect thereto and all reproductions or derivatives thereof in any form (collectively, "Proprietary Information"). Buyer shall neither acquire nor claim any right, title, or interest in, and shall exercise reasonable care to maintain the confidentiality of, Seller's Proprietary Information and shall use the same solely as required for its authorized use of the Products supplied hereunder. Buyer may not directly or indirectly (a) copy, adapt, develop, disassemble, reverse engineer, recast, compile, decompile, translate, or create derivative works from any Proprietary Information, or permit any other person to do so, (b) remove, alter, or obscure any copyright, trademark, patent, logo, government restricted rights, or other notices or legends from items provided by Seller, or (c) disclose or use Seller's Proprietary Information for commercial purposes or in a manner detrimental to Seller. Disclosures of Proprietary Information may be made only to Buyer's personnel having a specific need to know and a written obligation to protect such information no less restrictive than the restrictions herein, and Buyer will be responsible for any breach by its personnel. It is agreed that any breach of this



Section may cause Seller irreparable harm for which recovery of damages would be inadequate, and that immediate injunctive or other equitable relief is appropriate and available to Seller to prevent any violation, threatened or actual, in addition to other remedies and without proof of actual damage.

15. **LIMITATION OF LIABILITY.** Neither party will be liable for non-performance or delay in performance of any obligation (other than payment of monetary sums due) to the extent caused by events or circumstances beyond its reasonable control and without negligence or willful misconduct on its part. For delays resulting from such causes, performance will be correspondingly extended. Any action against Seller arising from or relating to the Products or transactions to which these Terms apply must be brought within two (2) years after the cause of action arises or performance under the Contract is completed or terminated, whichever first occurs. With respect to bodily injury liability to third parties, each party will be responsible in such proportion as reflects its relative fault for damages arising from or related to the use or operation of the Products; provided, that Seller will have no responsibility whatsoever and, unless prohibited by applicable law, Buyer will defend and hold harmless Seller from and against, all losses, liabilities, damages or injuries directly or indirectly arising out of (a) handling, storage, installation, operation, service, or use of any Product in violation of these Terms or the Contract, or (b) any non-Seller or custom design, manufacture, or installation of Products pursuant to Buyer's requirements, specifications or designs. Seller will not be liable for any loss, cost, damage or liability arising from the negligent acts or omission of Buyer, its agents, staff, and/or other consultants retained by Buyer ("Buyer's Representatives"). Buyer agrees to hold harmless, indemnify and defend Seller, its agents, staff, and consultants retained by Seller, from and against any and all claims, losses, damages, liability, and costs, including but not limited to the cost of defense and reasonable attorneys' fees, directly or indirectly arising out of or in any way connected with Buyer's negligent, reckless, or willful acts, errors and/or omissions, or those of Buyer's Representatives.

**IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER INDIRECT LOSSES OR DAMAGES, HOWEVER CAUSED, WHETHER OR NOT FORESEEABLE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF. SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ANY AND ALL CAUSES SHALL NOT EXCEED THE PURCHASE PRICE PAID OR PAYABLE FOR THE APPLICABLE PRODUCT. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE FORM OF ACTION AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.** Buyer acknowledges that these limitations of liability are a material part of the bargain between the parties and are reflected in Product pricing, which would be higher without these limitations.

16. **WAIVER OF CLAIMS.** Buyer and Seller each hereby release and relieve the other and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party,



whether due to the negligence of Buyer or Seller or their respective agents, employees, contractors, or invitees. Each party shall cause its insurers to waive all rights of subrogation against the other.

17. **GOVERNING LAW.** These Terms, the Contract, all transactions to which they apply, and any disputes arising out of Products supplied hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Delaware excluding its conflict of law provisions.