

KUNDEL INDUSTRIES, INC
ADDITIONAL TERMS AND CONDITIONS

ACCEPTANCE OF ORDERS: Prices quoted in proposals submitted by Kundel Industries, Inc. (the "Company") expire thirty (30) days after submittal. Upon written or verbal acceptance by the Purchaser, the Company will prepare an "Order Acknowledgement" form signed by an officer of the Company, and mail or fax the same to the Purchaser. The Company reserves the right to accept Orders on the basis of prices in effect at the time the Order is received. The Order Acknowledgement may not be varied, modified, changed, or supplemented in any way, unless the change is approved by the Company in writing. All contracts shall be construed in accordance with the laws of the State of Ohio.

PAYMENTS: Payments on account are due and payable in full thirty (30) days after the shipment date. Past due accounts shall bear interest at the rate of 1.5% per month until paid in full. If Purchaser fails to perform as required herein, then the Company may terminate this Agreement and be relieved of all obligations hereunder. The Company reserves the right to place customers with past due accounts on a C.O.D. basis for new orders. Purchaser agrees to reimburse the Company all of its attorneys' fees and expenses incurred in collecting outstanding account balances. All orders for non-credit approved customers must be prepaid.

CANCELLATIONS: Cancellation of Orders may be made only with the Company's consent in writing. In the event of cancellation, Purchaser shall be liable for all material, labor, engineering, manufacturing and administrative overhead incurred previously or thereafter by the Company. Minimum cancellation charge is \$350.00, which charge shall be paid in full within ten (10) days after receipt by the Company of notice of cancellation.

QUOTING POLICIES: All prices quoted are subject to change without notice after thirty (30) days.

EQUIPMENT: Non-standard equipment may require field adjustments. The Company is not responsible for any costs associated with any field adjustments. Standard equipment is made from pre-engineered components that are assembled and built in a consistent manner for different crane kits. Only the Company shall determine if a crane system is non-standard.

EQUIPMENT CHANGES: The Purchaser shall be responsible for 10% of the structural subtotal that appears on the Quotation plus additional material costs and engineering costs if changes are not submitted by Purchaser and accepted by Company within three (3) days of Company's receipt of the order.

DELIVERY: Unless otherwise specified, all shipments made by the Company are F.O.B. the Company's factory, and the Company does not make any guarantee as to delivery at destination; all shipping dates are approximate only. Delivery dates are estimated from the date of Purchaser's order, with complete drawings, specifications,

designs and other information required by the Company. Any shipment information given verbally to Purchaser during process of said order is only approximate and shall not be used to govern actions by Company in any manner whatsoever. The Company shall not be liable for delay in or failure to make delivery due to causes beyond its reasonable control, such as strikes, fires, epidemics, acts of God, war, riot, unavoidable delays such as back orders from suppliers and the like or for any reason beyond Company's control. The Company is not responsible for costs incurred by the Purchaser for incomplete or inaccurate shipments from the Company. Any and all whole and/or partial shipments are the sole responsibility of the Purchaser.

DEMURRAGE: If the Purchaser requests a delay in delivery and the Company agrees to such a delay, Purchaser is subject to any demurrage and storage charges involved. Purchaser agrees that payment of these charges does not relieve Purchaser from fulfillment of any other obligations by Purchaser specified by the contract. Purchaser is subject to any demurrage and storage charges involved, which shall be paid within ten (10) days of the invoice date.

DAMAGED GOODS POLICY: The following is the adopted practice for damaged goods.

- a. In order to receive any compensation for receipt of damaged goods whether due to shipping or a factory defect, Purchaser must sign the Bill of Lading as usual, but also must note on it that the equipment was received damaged. If, in the case that the equipment is damaged in shipping, Purchaser must pay Purchaser's shipping bill prior to compensation and for the insurance estimator to investigate any claim.
- b. Purchaser should contact the freight carrier immediately and have an estimator come out to inspect the load. This is Purchaser's responsibility since Company's product is shipped F.O.B. Company's factory.
- c. Next, Purchaser can place Purchaser's new order with the Company for the replacement components required. Purchaser will then receive an invoice on the new equipment purchased. Purchaser must then pay the new invoice amount in full.
- d. The Company is not responsible for any costs incurred by the Purchaser resulting from damage to goods due to shipping and transportation.
- e. If goods are damaged during shipping, the Bill of Lading must be signed and labeled "Damaged Goods" as stated above in this Paragraph, subparagraph (a). Any damages must be reported to the Company in writing within ten (10) days of the date of delivery. The Company shall then have a reasonable opportunity to remedy or repair said defects. Purchaser shall return all parts and components claimed to be defective to the Company. If such parts and components are not returned to the Company within 30 days after a claim is made, then Purchaser will be charged for the costs of the replacement parts and components. Purchaser is responsible for any expedited shipping costs, if expedited shipping is requested by Purchaser.

- f. No service, repairs, parts or back charges from Purchaser to the Company will be accepted unless the following protocol is strictly followed: Details of the occurrence must be documented along with clear photos, signed, dated and faxed over to the Company for review. The Company, at that time, will inform Purchaser what work is authorized to be performed and the time allocated to rectify the situation if deemed necessary by the Company. The Company reserves the right to deny any and all charges from the Purchaser and/or firm(s) representing the Purchaser if such charges are determined by the Company to be unreasonable or not necessary. A requisition or work order will be given by the Company before any work is performed by the Purchaser or any other firm(s) representing the Purchaser on the equipment purchased.

ERECTION: Unless otherwise stated by the Company in writing, the equipment shall be installed and erected at the sole expense of the Purchaser. If the Company agrees to provide supervisory service, it is agreed that such services are advisory in nature and the Company will be held harmless from claims of any person or entity of any nature whatsoever. The supervisory person(s) will be paid an hourly rate per person per eight (8) hour day with time and one-half for Saturday work and time and one-half for all hours in excess of an eight (8) hour day and triple time for Sunday or holiday work. Purchaser will also be billed for all expenses incurred from the time the person leaves the Company facility until return, such as transportation, meals and lodging. All such charges will be paid by the Purchaser to the Company within thirty (30) days after the invoice date.

CREDIT: All orders are subject to credit approval. The Company may refuse shipment or cancel unfilled orders if the Purchaser is delinquent in any payment or the status of the account warrants it or if the Company deems itself to be insecure.

TAXES: The amount of any Federal, State or Municipal taxes applicable to the equipment covered by this order, shall be the responsibility of the Purchaser.

RESPONSIBILITY: No responsibility will be assumed by the Company for any changes or alterations made by the Purchaser nor for work done or expenses incurred by the Purchaser in connection with repairs or replacements, except as authorized in writing by an officer of the Company, namely the President, Vice-President and/or Head of Operations of the division responsible for such order.

WARRANTY: The Company warrants that new equipment will be free from defects in materials and workmanship for a period of one year from date of shipment and used or "refurbished" equipment will be free from defects in material and workmanship for a period of six months from the date of shipment, unless otherwise stated in writing. This warranty is made in lieu of all other warranties, express or implied, oral or written. The use of any sample or model during negotiations prior to the formation of any contract serves merely to indicate the type of goods tendered to the Purchaser. **THE COMPANY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE.** This warranty shall extend only to the original Purchaser and not to any party which may acquire the

equipment from the Purchaser, by any means whatsoever. This warranty is further limited to the following defects:

- a. Parts that were incorrectly machined by the Company.
- b. Parts that were manufactured with discrepant material which caused premature wear or breakage.
- c. Parts that were incorrectly assembled by the Company.
- d. Equipment that was not furnished in accordance with the written sales order received from the Purchaser.

THIS WARRANTY BECOMES NULL AND VOID UNDER THE FOLLOWING CONDITIONS:

- a. Equipment overload or abuse.
- b. Equipment alteration and/or use of non-Company replacement parts by Purchaser or its agent.
- c. Use of any equipment in any manner or for any purpose not considered normal intended use.

Further, Company accepts no liability whatsoever for special or consequential damages caused to Purchaser or others.

WARNING: The Company's material handling equipment is intended for industrial and other material handling applications. It is expected that the equipment is properly used and maintained by the Purchaser in accordance with all design specifications and/or limitations, and all applicable federal, state and local statutes, laws, orders, rules and regulations. The equipment is not to be used as a source of transportation or entertainment.

SECURITY INTEREST: The Company retains a security interest in all equipment and goods sold pursuant to this Agreement until payment in full is received by the Company. Purchaser hereby authorizes the Company to file financing statements to evidence the security interest reserved by the Company hereunder. If the Purchaser fails to pay its account in full when due, then the Company may obtain immediate possession of the equipment and goods by all legal means. The Company also has the right to terminate outstanding contracts in the event of a default by the Purchaser.

GOVERNING LAW: This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio and the parties hereby consent to the exclusive jurisdiction and venue for the determination of any dispute arising hereunder or to Purchaser's account to be in the Mahoning County Court of Common Pleas in Youngstown, Ohio, or the Federal District Court for the Northern District of Ohio, Eastern Division.