

# SIMMERS ENGINEERING AND CRANE COMPANY

DIVISION OF POLLOCK RESEARCH AND DESIGN INC.

## Conditions of Sale

**DEFINITIONS:** Throughout this document Simmers Engineering and Crane Company and Pollock Research and Design, Inc. shall be referred to as "We", "Us", "Engineer" and "Our" and this purchaser shall be referred to as "Purchaser".

**QUOTATIONS:** Are for prompt acceptance, and are subject to change without notice. Quotations are valid for a period of 30 days from the date shown on the face thereof, subject to confirmation after this period. All stenographic and clerical errors are subject to correction.

**PRICES ARE:** (a) F.O.B. Point of manufacture, or as otherwise noted in the quotation. (b) Subject to change without notice until confirmed by us. (c) After our formal acceptance, prices are firm unless Purchaser requests changes which would affect cost of items ordered. (d) SALES AND OTHER TAXES: Purchaser shall pay, in addition to the contract price, any sales, use, excise, retailer's occupation and/or other taxes payable by reason of this transaction, together with any interest and penalties thereon. In lieu thereof, Purchaser shall provide us with a tax-exemption certificate acceptable to the taxing authorities.

Purchaser shall also reimburse us for any such taxes, including interest and penalties thereon, as may be paid by us together with any expense connected therewith.

**SHIPPING DATES:** We will endeavor to ship all orders on the nearest date possible to that specified in our acceptance of order. The shipping dates named, however, shall be considered approximate only, since our ability to complete and ship equipment ordered within the period may be dependent upon conditions over which we have no control. We shall not be liable for damages resulting from delays in shipments caused by fires, strikes, war, civil riot, Acts of Providence, or for consequential damages, or for other cause over which we have no reasonable control. (a) The shipping date quoted is subject to prior sale and is to be confirmed by our office at the time of placing order. (b) The Shipping date shall be computed from the date of formal acceptance of the order or receipt of complete information necessary to design and manufacture, whichever shall be later.

**CANCELLATIONS:** In the event of a request to stop work or to cancel the whole or any part of an order, Purchaser shall make payments to us as follows: (a) Any and all work that can be completed within 5 days from the date of notification to stop work on account of cancellation shall be completed, shipped, paid in full. (b) For work in process and any materials and supplies procured or for which definite commitments have been made by us in connection with the order, Purchaser shall pay to us the actual costs and overhead expenses determined in accordance with good accounting practices plus 15%.

**TERMS OF PAYMENT:** Unless otherwise specified, terms are: 25% with the order, 65% upon delivery and 10% - net 30 days after delivery. We reserve the right to refuse acceptance of any order on the basis of unsatisfactory credit. Past due accounts shall accrue interest until payment at a rate of 1.5% per month. When an account is past due and referred to collection, we are entitled to add to the amount of the account an attorney's fee of ten percent (10%) of the amount of the unpaid portion of the account and any collection fee.

**STORAGE:** In the cases of delay in shipment at Purchaser's request, Purchaser agrees to place equipment into storage and pay all handling, insurance and storage charges. Payments due hereunder shall be made in accordance with the terms hereof, substituting date of storage for date of Bill of Lading.

**RISK OF LOSS:** Delivery to a common carrier or licensed trucker shall constitute delivery to Purchaser, and all risk of loss or damage in transit shall be borne by Purchaser.

**PROVISIONS FOR ERECTION:** If erection or installation labor is included in this contract, the erection price is subject to the following conditions: (a) Purchaser shall provide and pay for all necessary public inspections, licenses, and building permits. (b) The erection price is based on labor to be paid on a ONE shift straight time basis, unless otherwise stated, and does not include premium or overtime labor.

If for any reason, Purchaser requests overtime, second or third shift work, Purchaser agrees that it will compensate us for the additional cost of the premium wage, plus applicable taxes and insurance. (c) The erection price is also based on the availability of immediately proximate and direct access from the area in which our equipment is unloaded to the erection area. (d) Purchaser shall clear the site selected for installing the equipment, cut and repair any floor, wall or roof opening, in accordance with our clearance diagrams, requirements, or drawings and keep the site free from water, debris and other obstructions. (e) Purchaser shall provide proper lighting, piping and wiring necessary for processing lighting and power, incident to the erection and operation of the equipment. (f) Purchaser agrees to hold us harmless against any loss or damage caused by accident, fires, theft, or negligence occurring upon the premises of Purchaser, unless caused solely by our negligence. (g) The erection price is based on the use of equipment as specified on the face hereof, (i.e. mobile crane, etc.).

**EQUIPMENT ALTERATIONS:** Purchaser will make all alterations to existing building and equipment as may be required for installation and operation with the equipment specified herein. Outline dimensions are shown on approved drawings. Should any deviations be required from what was originally quoted, Purchaser shall be responsible for any resulting additional costs.

**WARRANTY:** We warrant to the original Purchaser only that this product shall be free from defects in materials and workmanship for a period of one year, if properly installed, serviced and operated under normal conditions. Our sole obligation under this warranty and our sole legal obligation under this contract is expressly limited to repair or replacement without charge. F.O.B. nearest stocking warehouse, of any part or parts of the product within one year from the date the equipment is shipped (unless otherwise stated on face of quotation) to the original Purchaser which, upon examination, are determined to our satisfaction to have been originally defective, provided that notice in writing of any such purported defect is delivered to us within ten days after the original Purchaser shall have discovered such purported defect. Additionally, this warranty shall not apply to any component of the product or complete product which has been manufactured or processed by a third party. As to any such product or component, we assign to Purchaser any warranty claims which we may have had against the third party manufacturer. Purchaser agrees that its sole resource in the aforementioned situation is against the third party manufacturer. This warranty shall not apply to parts which have been altered or repaired outside our premises. Our warranty as set forth in this paragraph is in lieu of all other warranties, expressed or implied and without limiting the generality of the foregoing phrase, excludes any implied warranty and clearly indicates that we are not liable for any contingent damages or down time or back charges for or resulting from defects.

There are no warranties which extend beyond the description on the face hereof. Work performed under this warranty may only be done by us or an authorized agent specifically assigned or directed by us to perform such work under our direction.

**LIMITATION OF LIABILITY:** In performing professional services, Engineer 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. Should the Engineer or any of its professional employees be found to have been negligent in the performance of professional services or to have been negligent in any non-professional capacity, purchaser agrees that the maximum aggregate amount of Engineer's Liability and/or that of said professional employee, shall be limited to the fee paid to Engineer for professional services on the project described in the attached Proposal. NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY ENGINEER IN CONNECTION WITH THE PROPOSAL FOR CONSULTING SERVICES, THE FURNISHING OF ORAL OR WRITTEN REPORTS, OR OBSERVATION OF WORK TO BE PERFORMED BY ENGINEER AND/OR OTHERS, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED ENTIRELY.

**LIMITATION OF ASSERTATION OF CLAIMS:** No claim or cause of action shall be asserted, nor suit brought on any claim or cause of action, by purchaser on or arising out of this Agreement or the performance of service by Engineer hereunder after twelve (12) months from the date of the Engineer's performance of the services giving rise to such claim or cause of action.

**PURCHASER'S NEGLIGENCE; INDEMNITY:** Engineer shall not be responsible of any loss, cost, damage, or liability arising from any negligent acts or omissions by purchaser, Its agents and staff, and/or other consultants retained by purchaser. Purchaser agrees to hold harmless, indemnify, and defend Engineer, Its agents and staff, and consultants retained by Engineer, from and against any and all claims, losses, damages, liability, and costs, including but not limited to the cost of defense and reasonable attorney's fees, directly or indirectly arising out of or in any way connected with purchaser's negligent, reckless, or willful acts, errors, and/or omission, or those of purchaser's agents and staff, and/or other consultants retained by purchaser.

**GENERAL:** We shall not in any event be liable for indirect, special, consequential, or liquidated damages or penalties. The conditions herein stated together with Purchaser's written order or contract accepted by us and any attachments made a part thereof shall constitute the entire contract of sale. The contract shall not be modified except by mutual agreements in writing signed by Purchaser and approved in writing by us. The contract is assignable only with our written consent.