

## Craig Manufacturing Ltd.

# Terms and Conditions for Supply of Products and Services

### 1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these conditions.
- (a) "Authorized Officer" means the President of Craig, a Vice-President of Craig or the Craig Warranty Administrator;
  - (b) "Contract" means the Customer's order and Craig's acceptance of it in accordance with conditions 3.2 and 3.3;
  - (c) "Craig" means Craig Manufacturing Ltd. whose registered office is at 96 McLean Avenue, Hartland, New Brunswick, Canada E7P 2K5;
  - (d) "Customer" means the person, firm or company who purchases Products or Services from Craig;
  - (e) "Equipment" means the equipment agreed in the Contract to be purchased by the Customer from Craig either separately or in conjunction with Parts or Services;
  - (f) "Parts" means the parts agreed in the Contract to be purchased by the Customer from Craig either separately or in conjunction with Equipment or Services;
  - (g) "Products" includes Equipment and Parts;
  - (h) "Services" means the services agreed in the Contract to be purchased by the Customer from Craig either separately or in conjunction with Products; and
  - (i) "Taxes" means the goods and services tax and harmonized sales tax under the Excise Tax Act (Canada) and any other value-added, sales or consumption tax or duty chargeable in connection with the sale of the Products or Services.

1.2 Section headings do not affect the interpretation of these conditions.

### 2. Application of Conditions

- 2.1 These conditions shall:
- (a) apply to and be incorporated in the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Craig unless in writing and signed by an Authorized Officer of Craig.

### 3. Basis of sale

- 3.1 Any quotation by Craig is valid for a period of 30 days only, and Craig may withdraw it at any time by notice to the Customer.
- 3.2 Each order or acceptance of a quotation for Products or Services by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate and contains the exact applicable model, linkage and serial number of the Products or subject-matter of the Services.
- 3.3 A binding contract shall not come into existence between Craig and the Customer unless and until the earlier of the following dates: (i) the date Craig issues to the Customer a written acceptance or acknowledgment of the Customer's order or (ii) the date Craig delivers the Products or Services to the Customer.
- 3.4 Craig may deliver the Products or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 3.5 No order may be cancelled by the Customer except with the agreement in writing of Craig and provided that the Customer indemnifies Craig in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Craig as a result of cancellation. In no event shall the amount payable by the Customer under this condition 3.5 exceed the Contract price. Craig will accept Product cancellation requests, if received in writing before the Product has been set aside by Craig for

shipment, subject to the Customer's paying to Craig the applicable re-stocking charge set out below:

- (a) for requests received before Craig has begun production of the Product, a charge of 10% of the price;
- (b) for requests received after production has begun but before assembly and welding of the Product, a charge of 30% of the price; and
- (c) for requests received after Craig has begun assembly or welding of the Product, a charge of 75% of the price.

3.6 The person signing the Customer's order or acceptance of quotation represents that such person has the requisite authority to enter into this Contract on behalf of the Customer and that the Contract is enforceable in accordance with its terms.

### 4. Quantity and description

- 4.1 The quantity and description of the Products and Services shall be as set out in the order or acceptance of quotation.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Craig and any descriptions or illustrations contained in Craig's catalogues, brochures or website are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Craig shall be subject to correction without any liability on the part of Craig.
- 4.4 Craig reserves the right (but does not assume the obligation) to make any change in the specification of the Products or Services that is required to conform with any applicable legislation or, where the Products or Services are to be supplied to the Customer's specification, that does not materially affect its quality or performance.
- 4.5 Craig's employees, contractors and agents are not authorized to make any contractually binding representations concerning the Products or Services. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that have not been confirmed in writing by an Authorized Officer of Craig. However, nothing in these conditions limits Craig's liability for fraudulent misrepresentation.
- 4.6 Any advice or recommendation given by Craig or its employees, contractors or agents to the Customer or its employees, contractors or agents about the storage, application or use of the Products that is not confirmed in writing by an Authorized Officer of Craig is followed or acted on entirely at the Customer's own risk.
- 4.7 All bucket style attachment Products are rated using SAE struck or heaped capacity where applicable. The purpose of this standard is to provide a uniform method for determining the SAE rated capacity. The volume calculations used result in a realistically conservative heaped volume. The calculations are based on the inside physical dimensions of the bucket only without regard to bucket action provided by any particular machine. This rating is for estimating bucket performance on specific applications and does not represent a performance or qualitative measure of the attachment's capacity in a specific application. For excavator attachments, Craig uses SAE Standard J296 – this does not include any extra yardage gained from GET IE: BOE, Sidecutters, etc. For wheel loader attachments, Craig uses SAE Standard J742 – this standard does include extra yardage gained from BOEs.

### 5. Price

- 5.1 The price of the Products and Services shall be Craig's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Craig's price list current at the date of Craig's acceptance of the order.
- 5.2 When quoted FOB the Customer's location, prices include delivery, packaging, packing, shipping, carriage, and insurance but exclude taxes and other charges unless otherwise stipulated in the quotation or agreed in writing between the Customer and Craig. For quotes

**Hartland Office**  
96 McLean Avenue  
Hartland, NB  
E7P 2K5

**Cambridge Office**  
315 Thompson Drive  
Cambridge, ON  
N1T 2B3

**Red Deer Office**  
#100-310 Burnt Park Way  
Red Deer County, AB  
T4S 2L4

Ph: (506) 375-4493  
Fx: (506) 375-4848

Ph: (519) 623-9500  
Fx: (519) 623-9511

Ph: (403) 356-0048  
Fx: (403) 356-0049



where shipping is quoted separately or quoted FOB a Craig location, the Customer assumes all responsibilities for shipping, carriage, and insurance from whatever branch Craig designates as the shipping location at the sole discretion of Craig.

**5.3** Craig reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Products or Services as have not been delivered to reflect any increase in the cost to Craig that is due to any factor beyond the control of Craig (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products or Services that is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Craig adequate information or instructions.

## 6. Payment

**6.1** Craig may invoice the Customer for the price of the Products or Services on, before or at any time after, delivery to or collection by the Customer of the Product or delivery to or performance for the Customer of the Services.

**6.2** All orders are subject to Customer credit approval by Craig. Craig reserves the right to refuse shipment of any and all Products or the performance of any Services in any order, to modify the payment terms identified therein or in condition 6.3 hereof or to cancel without penalty or charge any order if, in Craig's sole discretion and for any reason whatsoever, Craig requests and is unable to secure acceptable payment assurances from the Customer for the Products and Services.

**6.3** The Customer shall pay to Craig, upon receipt of Craig's invoice, without deduction or set-off, the full purchase price plus all Taxes. Any amounts due by the Customer to Craig that are unpaid on or after thirty (30) days from the date of Craig's invoice will bear interest at the rate of 2% per month (24% per annum), or the maximum rate permitted by law, whichever is lower.

**6.4** Time for payment of the price shall be of the essence of the Contract.

**6.5** If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Products and Services then outstanding shall become immediately due and payable and, without limiting any other right or remedy available to Craig, Craig may:

- (a) terminate the Contract or suspend any further deliveries of Products and performance of Services (whether ordered under the same contract or not) to the Customer;
- (b) appropriate any payment made by the Customer to such of the Products and Services (or the Products and Services supplied under any other contract between the Customer and Craig) as it thinks fit (despite any purported appropriation by the Customer);
- (c) charge interest on the amount outstanding from the due date to the date of receipt by Craig (whether or not after judgment), at the rate set forth in clause 6.3 until payment is made, whether before or after any judgment;
- (d) suspend all further manufacture, delivery, installation or warranty Service until payment has been made in full;
- (e) make a storage charge for any undelivered Products at its current rates from time to time;
- (f) stop any Products in transit; and
- (g) exercise a general lien on all equipment and other property belonging to the Customer, exercisable in respect of all sums due from the Customer to Craig. Craig shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such equipment or property in such manner (including public or private sale) and at such price as it thinks fit and to apply the proceeds towards any amount owing by the Customer to Craig, including Craig's collection costs.

**6.6** All sums payable to Craig under the Contract shall become due immediately on termination of the Contract, despite any other provision of the Contract. This condition 6.6 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

**6.7** Craig may, without limiting any other rights it may have, set off any liability of the Customer to Craig against any liability of Craig to the Customer.

## 7. Delivery and Acceptance of Products and Services

**7.1** Craig shall use its reasonable efforts to deliver the Products and Services on the date or dates specified in the order or acceptance of quotation, but any such date is approximate only. If no date is so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Products and Services and Craig is not liable for any delay in delivery, however caused.

**7.2** The Products and Services may be delivered by Craig in advance of the quoted delivery date on giving reasonable notice to the Customer.

**7.3** Delivery shall be made during normal business hours (excluding Saturdays, Sundays and public holidays). Craig may levy additional charges for all deliveries of Products or Services that the Customer has requested be made or performed outside such hours.

**7.4** Unless the delivery location is a Craig branch, the Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Products or Services and for the provision of all necessary access and facilities reasonably required to deliver the Products and Services. If Craig is prevented from carrying out delivery on the specified date because no such preparation has been carried out, Craig may levy additional charges to recover its loss arising from this event.

**7.5** The Customer shall be deemed to have accepted the Products and Services when the Customer has had 3 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 10.

**7.6** When Products are shipped FOB the Customer's location, Craig shall be responsible for any damage, shortage or loss in transit, provided that the Customer gives written notice of such damage, shortage or loss to Craig (or its carrier, if applicable) within 3 days of delivery or the proposed delivery date of the Products and that the Products have been handled in accordance

with Craig's stipulations. Any remedy under this condition 7.6 shall be limited, at the option of Craig, to the replacement or repair of any Product that is proven to Craig's satisfaction to have been lost or damaged in transit.

## 8. Risk and ownership of Products

**8.1** The Products shall be at the risk of Craig until delivery to the Customer at the place of delivery specified in the order or acceptance of quotation or such other place as may have been agreed in writing between the Customer and Craig. Craig shall off-load the Products at the Customer's risk.

**8.2** Ownership of the Products shall pass to the Customer on the later of (i) completion of delivery (including off-loading), or (ii) when Craig has received in full in immediately available funds all sums due to it in respect of the Products and all other sums that are or that become due to Craig from the Customer on any account.

**8.3** Until ownership of the Products has passed to the Customer under condition 8.2, the Customer shall: (a) hold the Products for Craig as Craig's bailee; (b) properly store and maintain the Products (at no cost to Craig) in satisfactory conditions and separately from all the Customer's other equipment and parts or those of a third party so that the Products remain readily identifiable as Craig's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; (d) not remove any accessories, or components of or from the Products without the prior written consent of Craig, and (e) maintain appropriate liability insurance, physical damage and theft insurance, to the satisfaction of Craig, covering the Products, with loss payable to Craig, and submit proof of such insurance to Craig upon request. The Customer agrees to protect and indemnify Craig against any and all claims for injury to persons or for loss of or damage to property in connection with the use, operation or storage of the Products.

**8.4** The Customer's right to possession of the Products before ownership has passed to the Customer shall terminate immediately if any of the circumstances set out in condition 14 arises or if the Customer encumbers or in any way charges the Products, or if the Customer fails to make any payment to Craig on the due date or fails to comply with any of the requirements of condition 8.3.

**8.5** The Customer grants Craig, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to remove them. All costs incurred by Craig in repossessing the Products shall be borne by the Customer.

**8.6** On termination of the Contract for any reason, Craig's (but not the Customer's) rights in this condition 8 shall remain in effect.

**8.7** Craig may appropriate payments by the Customer to such Products or Services as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

**8.8** As security for payment of the amounts due by the Customer to Craig under this Contract, the Customer hereby assigns and grants to Craig a first and continuing security interest in the Products together with all accessories and all documents of title covering or relating to the Products, and all proceeds arising from the sale or other disposition thereof including a sale or disposition contemplated by condition 6.5(g).

**8.9** Where registration in any public office is provided for under applicable law to better protect Craig's title to the Products while the Customer is in possession before ownership has passed to the Customer under condition 8.2, the Customer irrevocably appoints Craig as its attorney in fact to sign all such documents, make such filings and do such other acts or things as in the reasonable opinion of Craig are necessary to establish, maintain and confirm for Craig its ownership interest in the Products. The Customer acknowledges receipt of a copy of this Contract and waives all rights to receive from Craig a copy of any financing statement, financing change statement or verification statement filed at any time in respect of this Contract.

**8.10** In addition to any insurance required to be maintained by the Customer in respect of Products under condition 8.3, the Customer shall maintain appropriate liability insurance, physical damage and theft insurance, including replacement cost insurance, in respect of any machine or equipment not owned by Craig that is delivered to or left with a Craig branch by or on behalf of a Customer in connection with installing, designing, or testing a Product or for any other reason. In such a case, the insurance shall cover loss caused in any manner whether or not caused by acts or omissions of Craig. The Customer shall submit proof of such insurance to Craig upon request. The Customer agrees to protect and indemnify Craig against any and all claims for injury to persons or for loss of or damage to property in connection with the use, operation or storage of such non-Craig machine or equipment.

## 9. Export terms

**9.1** Where the Products are supplied for export from Canada, the provisions of this condition 9 shall (subject to any contrary terms agreed in writing between the Customer and Craig) override any inconsistent provision of these conditions

**9.2** The Customer shall be responsible for complying with any legislation governing:

- (a) the importation of the Products into the country of destination; and
- (b) the export and re-export of the Products, and shall be responsible for the payment of any duties on it.

**9.3** Craig will have no responsibility for fines associated with Product seizure nor for legal ramifications of using the Products in countries where it is prohibited. Customers are advised to contact the embassy or trade office of the destination country prior to entry into that country. The Customer agrees to comply with relevant export and import laws of the destination country and other countries to ensure that the Products are not exported or otherwise transferred in violation of such laws and to obtain any required export or import licences or authorizations.

**9.4** Unless otherwise agreed in writing between the Customer and Craig, the Products shall be delivered FOB the Customer's address given in the order or acceptance of quotation sent by the

Customer.

**9.5** Subject to any special terms agreed in writing between the Customer and Craig, the Customer shall pay the whole of the price of the Products to Craig as Craig may reasonably direct at the time of order or acceptance of quotation.

**9.6** The Customer shall pay the price for the Products in the currency stipulated in Craig's acknowledgment of the order.

## 10. Warranty

**10.1** The sale of the Products and Services is conditioned upon, and subject to the applicable Craig Limited Warranty Policy in effect on the date of the Contract. The Limited Warranty Policies are the following:

- (a) Craig Equipment Limited Warranty;
- (b) Craig Parts Limited Warranty; and
- (c) Craig Service Limited Warranty.

Such Warranty Policies are incorporated by reference as if fully rewritten herein and a copy of each is attached to the quotation and is available at Craig's website and upon request of the Customer. Any oral or written purchase order, release order or other form issued by the Customer to confirm any order issued pursuant to a quotation or receipt of any of the Products or Services shall serve as conclusive proof that the Customer has received and agrees to be bound by the terms of the applicable Craig Limited Warranty Policies.

## 11. Remedies of Customer

**11.1** Craig shall not be liable for any non-delivery of Products or Services (even if caused by Craig's negligence) unless the Customer notifies Craig in writing of the failure to deliver within 3 days after the scheduled delivery date.

**11.2** Any liability of Craig for non-delivery of Products or Services shall be limited to replacing the Products or, if applicable, performing the Services, within a reasonable time or issuing a credit note at the Contract rate for such Products or Services.

**11.3** If Craig's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 15), the Customer shall be liable to pay to Craig all reasonable costs, charges or losses sustained by it as a result, subject to Craig's notifying the Customer in writing of any such claim it might have against the Customer in this respect.

## 12. Limitation of liability

**12.1** Craig's Limited Warranty Policies referred to in condition 10.1 are the sole and exclusive warranties given by Craig to the Customer with respect to the Products and Services and are in lieu of and exclude all other warranties, express or implied arising by operation of law or otherwise, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. The Customer hereby waives any claim that any exclusions or limitations of any warranty provided by Craig deprive it of an adequate remedy or cause the Contract to fail of its essential purpose. The Customer shall be entitled to no other remedy regardless of the form of claim or cause of action, whether based in agreement, negligence, strict liability or otherwise.

**12.2** Craig shall have no liability to the Customer or any end user of the Products or Services for lost profits, economic loss, or for special, indirect, consequential, exemplary or incidental damages of any kind whether arising in contract, tort, product liability, misrepresentation, restitution or otherwise, even if Craig was advised of the possibility of such lost profits or damages. Craig's direct damages are limited to the Contract price and in no event shall Craig be liable to the Customer for any damages whatsoever in excess of the total price paid by the Customer for the Products and Services under the Contract.

**12.3** The Customer alone shall be responsible for all claims, actions, losses, costs, expenses and damages arising out of or relating to the acts or omissions of the Customer in connection with the Products and Services sold by Craig. The Customer shall indemnify and hold harmless Craig and its officers, employees and agents from and against all such actions, losses, costs, expenses and damages.

**12.4** The Customer agrees that if any Product is resold by the Customer, the Customer will include in the agreement for resale provisions which limit recoveries in accordance with this Contract. If the Customer fails to include in any such agreement for resale the terms providing for such limitations, the Customer will indemnify and hold Craig harmless against any liability, loss, cost, damage, or expense (including reasonable attorney's fees) arising out of or resulting from such failure.

## 13. Confidentiality and Craig's property

**13.1** The Customer shall keep in strict confidence all technical or commercial know-how, quotations, specifications, inventions, processes or initiatives that are of a confidential nature and have been disclosed to the Customer by Craig or its agents, and any other confidential information concerning Craig's business or its Products or Services that the Customer may obtain.

**13.2** This condition 13 shall survive termination of the Contract, however arising.

## 14. Termination

**14.1** Without limiting any other right or remedy available to Craig, Craig may terminate the Contract or suspend any further deliveries under the Contract, without liability, if:

- (a) the ability of the Customer to accept delivery of the Products or Services is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or
- (b) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise that entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or

(c) a receiver or receiver-manager is appointed of any of the Customer's assets or undertaking, or if circumstances arise that entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or

(d) the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

(e) the Customer ceases, or threatens to cease, to carry on business; or

(f) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt, and, if in any of the above cases the Products or Services have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14.2** Without limiting any other right or remedy available to Craig, Craig may terminate the Contract or suspend further deliveries under the Contract, without liability, if the Customer in any way breaches any of its obligations under the Contract or breaches any of the representations or warranties the Customer makes thereunder.

**14.3** Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## 15. Force majeure

**15.1** Craig reserves the right to defer the date of delivery, or to cancel the Contract or reduce the quantity of Products or scope of Services ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of Craig or any other party), failure of a utility service or transportation network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("Force Majeure Event").

## 16. Waiver

**16.1** A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**16.2** Unless specifically provided otherwise, Craig's rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 17. Severance

**17.1** If any provision of this agreement (or part of a provision) is found by any court or tribunal of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

## 18. Status of pre-contractual statements

**18.1** Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

## 19. Assignment

**19.1** The Customer shall not, without the prior written consent of Craig, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**19.2** Craig may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 20. Third party rights

**20.1** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## 21. Notices

**21.1** Any notice required to be given pursuant to this Contract shall be in writing and may be given to the Customer at its address shown on the invoice or acceptance of quote, or in the case of Craig, to its address shown in this Contract. Any notice sent by first class prepaid mail shall be deemed to have been validly given on the third day following mailing, a notice sent by courier shall be deemed to have been given on the date of delivery, and a notice sent by fax or e-mail shall be deemed to have been given on the first business day following transmission; provided that, in the case of a notice transmitted electronically, a copy of the fax or e-mail shall have been sent by mail to the addressee on or before the business day following the electronic transmission.

## 22. Governing law and jurisdiction

**22.1** The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and shall be construed in accordance with the law of New Brunswick,

Canada, except for New Brunswick's choice of law provisions.

**22.2** The parties irrevocably agree that the courts of New Brunswick, Canada, have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract and irrevocably attorn to the jurisdiction of such courts.

**23. Language**

**23.1** Les parties acceptent que ce contrat et tous les documents s'y rattachant soient rédigés en langue anglaise seulement.