

EZ-RIG® CRANES
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EZ-RIG® CRANES
(a product of Performance Manufacturing)

STANDARD TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY:** The sale of any and all EZ-RIG® CRANES goods and/or services shall be conditioned upon, and subject to the following terms and conditions which shall form an integral part of any agreement therefor. Buyer's acceptance of any offer made by Performance manufacturing (sometimes referred to as EZ-RIG® CRANES or EZ-RIG®) for the sale of its goods and/or services is expressly made subject to the terms and conditions stated herein. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by EZ-RIG® and all orders received by EZ-RIG® shall be governed only by the terms and conditions contained herein, notwithstanding any terms and conditions which may be found in any purchase order, release order, or any other form issued by the Buyer. EZ-RIG® CRANES hereby objects to said terms and conditions and notifies Buyer that they are rejected.

2. **TERMS OF PAYMENT & LATE CHARGES :** A retainer of half the total purchase price shall be retained per EZ-RIG® unit at time of order, and processed prior to delivery of EZ-RIG® CRANES. The remainder purchase price of each EZ-RIG® CRANE, and additional shipping and handling fees, shall be paid to the Performance Manufacturing upon delivery of merchandise, unless specific payment terms have been outlined in the invoice. Seller shall invoice Buyer upon and for each shipment. Buyer shall pay all charges according to the terms of the invoice. Any late payment shall bear a late charge of 18%. Overdue invoices shall also bear interest at the rate of 15% per business week. If Seller undertakes collection or enforcement efforts, Buyer shall be liable for all costs thereof, including attorney fees. If Buyer is in arrears on any invoice, Seller may, on notice to Buyer, apply the deposit thereto and withhold further delivery until the deposit and all arrearages are brought current. The Buyer will be considered in breach of contract 30 days after the date of payment due according to the sellers invoice.

The risk of loss or damage shall be upon the SELLER until delivery of the Equipment to BUYER. Thereafter, the risk of loss shall be upon BUYER. Title to the Equipment shall remain with SELLER until the purchase price thereof is paid in full. (a) All Transportation, rigging and drayage charges will be paid by the BUYER, unless otherwise stated on the invoice. (b) All taxes, however designated, which are levied or based on this Agreement, the Equipment or the sale thereof, including state and local privilege or excise taxes based on gross revenue, and any taxes or amounts levied thereon paid or payable by SELLER in respect of the foregoing, exclusive, however, of taxes based on net income, shall be borne by the BUYER. (c) All charges for and incident to installation of the Equipment shall be borne by the BUYER, unless otherwise stated on the invoice.

All quoted prices shall remain firm for a period of thirty (30) days from the date of Quotation. The price for all goods and/or services released for delivery by Buyer after thirty (30) days from the date of quotation are subject to any increase in the published list price that may occur between thirty-one (31) days following the date of quotation and the date Buyer releases shipment. Quotations provided are priced based on Buyer's purchase of the entire scope of goods and/or services identified therein. If less than the entire scope of goods and/or services identified in the Quotation are ordered by Buyer, prices may vary. EZ-RIG® shall bill Buyer to the extent of services provided, or for the quantity of goods shipped should EZ-RIG® be unable for any reason to provide and/or ship the entire scope of goods and/or services quoted. Prices quoted by EZ-RIG® are exclusive of all taxes (except taxes levied on EZ-RIG®'s income) including federal, state and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse EZ-RIG® for any such taxes paid by EZ-RIG®.

3. MINIMUM CHARGE: All goods and/or services supplied by EZ-RIG® are subject to a minimum charge, to be determined by EZ-RIG® CRANES on a case by case basis.

4. PAYMENT TERMS: All EZ-RIG®(Performance Manufacturing) invoices shall be paid by Buyer within thirty (30) days of the date of invoice except for those invoices related to progress payments (applicable to orders in excess of twenty thousand (\$20,000) U.S. dollars). A late charge equivalent to the lesser of 1-1/2% per month (18% per annum) or the maximum rate allowed by law will be assessed on all unpaid invoices or invoices not paid in accordance herewith. Buyer shall reimburse EZ-RIG® any and all expenses, regardless of their nature or type (including attorneys fees), related in any way to EZ-RIG®'s collection of invoices not paid in accordance herewith or otherwise incurred by EZ-RIG® in the enforcement of any of the terms and conditions hereof.

5. CREDIT APPROVAL: All quotations are subject to Buyer credit approval by EZ-RIG®. EZ-RIG® reserves the right to refuse shipment of any and all goods and/or services identified in any quotation, to modify the Payment Terms identified therein or in paragraph 4 hereof or to cancel without penalty or charge any contract formed and concerning the goods and/or services identified in its quotation if, in its sole discretion and for any reason whatsoever, EZ-RIG® requests and is unable to secure acceptable payment assurances from Buyer for the goods and/or services identified in the quotation.

6. **DELIVERY TERMS AND DELAYS:** All shipments are EZ-RIG® plant or warehouse and title to and all risk of loss with respect to any goods shipped shall pass to Buyer when such goods are delivered to the carrier at such plant or warehouse.

All dates of shipment and delivery identified by EZ-RIG® are approximate. EZ-RIG® shall not be liable for delay in or failure to make shipment by any identified date for any reason whatsoever including, but not limited to, causes beyond its reasonable control such as strikes, fires, floods, epidemics, quarantine restrictions, severe weather, freight embargoes, allocation orders issued by or to the account of the government, acts of God, or public enemy, war, riot, delays in transportation or the inability to obtain necessary labor, materials or manufacturing facilities.

Any reference to freight charges contained in the quotation are estimates. EZ-RIG® is not responsible for any differences that may occur between freight estimates contained in the quotation and actual freight charges applicable at the time of shipment.

7. **WARRANTIES:** The sale of any and all EZ-RIG® CRANE goods and/or services are conditioned upon, and subject to the EZ-RIG® Product Warranty, copies of which are available at www.ezrigcranes.com or upon request from your EZ-RIG® Materials customer service/sales representatives and are expressly incorporated by reference hereto. Any purchase order, release order, other form issued by the Buyer to confirm any order issued pursuant to this quotation or receipt of any of the goods and/or services identified in the quotation shall serve as conclusive proof that Buyer has reviewed and agrees to be bound by the terms of the EZ-RIG® Product Warranty.

THE EZ-RIG® PRODUCT WARRANTY REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY EZ-RIG® TO BUYER WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED UNDER THE QUOTATION AND IS IN LIEU OF AND EXCLUDES 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.

8. **LIMITATION OF DAMAGES:** EZ-RIG® CRANES SHALL HAVE NO LIABILITY TO BUYER OR ANY THIRD PARTY WITH RESPECT TO THE SALE OF PRODUCTS OR PROVISION OF SERVICES UNDER THE QUOTATION FOR LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF EZ-RIG® CRANES WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES.

9. **CONFIDENTIALITY:** Without limitation, Buyer shall not, at any time disclose to any other person or entity any information relating to the business of EZ-RIG® CRANES, including without limitation, plans and specifications and any other inventions, devices, formulas, processes, programs, software, listings, print-outs, documentation, notes, charts, manuals, programming aids, source codes, object codes, compilations, technology, know-how, price lists, costs, policies, techniques, trade practices, accounting methods, methods of operation or other data that EZ-RIG® CRANES considers confidential, and trade secrets of every kind relating to EZ-RIG®'s business, whether or not patentable or copyrightable.

10. INDEMNIFICATION: EZ-RIG® CRANES SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, INDEMNIFY AND HOLD EZ-RIG® CRANES, OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH, HARMLESS FROM ANY CLAIMS, DEMANDS, DAMAGES REGARDLESS OF THEIR TYPE INCLUDING, BUT NOT LIMITED TO, DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL, ACCOUNTS, GRIEVANCES, LOSSES AND EXPENSES, WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE, ANY AND ALL LIABILITY, OF AND FROM ANY AND ALL MANNER OF ACTIONS, CAUSE[S] OF ACTIONS, ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, STATE OR FEDERAL, OF WHATEVER KIND OR NATURE, THIRD PARTY ACTIONS, INCLUDING SUITS FOR CONTRIBUTION AND/OR INDEMNITY ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF THE BUYER, ITS AGENTS OR EMPLOYEES AND RELATING IN ANY WAY TO THE GOODS/AND OR SERVICES PROVIDED UNDER THE QUOTATION OR THE EQUIPMENT RELATED THERETO, INCLUDING, BUT NOT LIMITED TO BUYER'S USE THEREOF OR ANY OTHER CAUSE IDENTIFIED HEREIN OR THAT MAY BE REASONABLY INFERRED HEREFROM EXCEPT TO THE EXTENT CAUSED BY THE SOLE NEGLIGENCE OF R&M.

11. MANUALS: An EZ-RIG® Maintenance and Operating Manual is shipped with each unit (applicable exclusively to those units wherein such a manual is produced) identified in the quotation and purchased by Buyer. EZ-RIG® CRANES reserves the right to assess a charge, per manual, for each additional manual requested by Buyer.

13. SURVIVAL: Each of the paragraphs hereof intended for the benefit of EZ-RIG® CRANES shall survive expiration or termination of the services or delivery of the goods outlined in the quotation.

14. ENTIRE AGREEMENT: These Standard Terms and Conditions of Sale together with the quotation represent the entire agreement between EZ-RIG® CRANES and Buyer. THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN THE QUOTATION SPECIFICALLY RECOGNIZE THE ALLOCATION OF THE RISKS OF PERFORMANCE OF THE PARTIES AS WELL AS THE LIMITATION OF LIABILITY AND DAMAGES AND THE RECOVERY OF COLLECTION COSTS, AND THE PARTIES EXPRESSLY AGREE THAT THESE LIMITATIONS ON REMEDIES, RESPONSIBILITY FOR COLLECTION COSTS, AND OBLIGATIONS TO INDEMNIFY ARE ESSENTIAL PARTS OF THE AGREEMENT BETWEEN THEM AND ARE SPECIFICALLY BARGAINED FOR. Any purchase order or other document issued by Buyer shall be deemed to be solely for the record keeping convenience of the Buyer and may not add to, delete from, or otherwise modify these terms and conditions or those contained in the quotation.

15. SEVERABILITY: The partial or complete invalidity of any one or more provisions hereof shall not affect the validity or continuing force and effect of any other provision.

16. GOVERNING LAW. These terms and conditions shall be governed by and interpreted in accordance with the laws of the State of California.