McDAL CORPORATION
TERMS AND CONDITIONS OF SALE AND PURCHASE

1. PRICING

a. Due to ongoing volatility in tariffs, import charges and supply chain costs, the pricing in this proposal is based on McDal Corporation's ("McDal") costs as of the date of the proposal. Should tariffs, import charges, duties or supplier costs change between the date of this proposal and the date the equipment is received at McDal's facility (or, for direct deliveries, Purchaser's facility), McDal reserves the right to pass through any such increases to Purchaser as a direct cost without markup. McDal will provide Purchaser with reasonable advance written notice of any such increase, together with reasonable supporting documentation. Only price increases will be passed through; price decreases that occur after acceptance shall not give rise to any reduction.

b. Proposals for goods that are not imported are valid for thirty (30) days from the date of the proposal, after which McDal reserves the right to offer revised pricing. Labor for new system installations is quoted on a firm-price basis unless installation requirements change. Rental, inspection and repair services are provided on a time-and-materials basis and labor figures shown for such services are estimates subject to actual time and materials.

2. CONFIDENTIALITY

The accompanying quotation is confidential and is provided solely for the use of the entity to whom it is addressed. The quotation may not be shared with any third party, used in connection with any request for proposal or request for quotation issued to other vendors or otherwise disclosed without McDal's prior written consent. If Purchaser requests McDal's assistance in developing materials for an RFP or RFQ, McDal will quote a separate fee for such assistance, which shall be waived only if the resulting RFP or RFQ is awarded to McDal. Purchaser's confidentiality obligations under this Section shall survive expiration or termination of this Agreement for a period of three (3) years.

3. ACCEPTANCE; ORDER OF PRECEDENCE

a. McDal's offer becomes a binding contract only when accepted by Purchaser, which acceptance may occur by (i) issuance of a purchase order incorporating McDal's offer by reference, (ii) acceptance of any goods or services described in the offer or (iii) execution of the signature page of this proposal.

b. Acceptance of McDal's offer is expressly conditioned on Purchaser's assent to these Terms and Conditions of Sale (v.A52026). Any terms proposed by Purchaser in its acceptance, purchase order or other document that add to, vary from or conflict with these Terms and Conditions are hereby rejected and shall be of no force or effect, regardless of whether McDal commences performance after receipt of such terms. McDal's commencement of performance shall not constitute acceptance of any such additional or conflicting terms.

c. In the event of any conflict among the documents constituting this Agreement, the order of precedence shall be: (i) any signed amendment executed by both parties after the date of this proposal; (ii) these Terms and Conditions of Sale (v.A52026); (iii) the technical scope and pricing set forth in the proposal; and (iv) Purchaser's purchase order, but only to the extent such purchase order is consistent with the foregoing.

4. NON-SOLICITATION OF McDAL EMPLOYEES

For a period of three (3) years following the later of (i) the completion of the Work or (ii) the termination of this Agreement, Purchaser shall not, directly or indirectly, solicit for employment, hire or engage as a contractor any employee of McDal who was involved in the Work, without McDal's prior written consent. General solicitations not specifically directed at McDal employees and the hiring of an employee who responds to such a general solicitation, shall not constitute a violation of this Section.

5. DELIVERY TERMS

a. **Shipment**. Unless otherwise specified in the proposal, equipment and parts shall be shipped F.O.B. McDal's shipping point. Title and risk of loss for equipment and parts in transit shall pass to Purchaser upon McDal's tender of the goods to the carrier at the F.O.B. point. Freight, unloading and handling costs shall be added to the final invoice and paid by Purchaser. Purchaser shall report any visible damage to McDal in writing, with photographic documentation, within three (3) business days of receipt; Purchaser shall report any concealed damage in writing within ten (10) business days of receipt.

b. **Delivery and Installation Schedule**. Delivery, installation, inspection and service dates set forth in the proposal are estimates based on McDal's reasonable judgment as of the date of the proposal. Delivery times are subject to availability of equipment and resources and may be revised by McDal upon reasonable notice to Purchaser.

c. **Risk of Loss for Installed Equipment**. For equipment installed by McDal at Purchaser's site, risk of loss shall pass to Purchaser upon the earlier of (i) Substantial Completion of the installation by McDal, (ii) energization or first operational use of the equipment by Purchaser or (iii) thirty (30) days after McDal's written notice of Substantial Completion. "Substantial Completion" means the point at which the installation is sufficiently complete to allow Purchaser to use the equipment for its intended purpose, subject only to punch-list items.

d. **Deemed Acceptance**. Purchaser shall be deemed to have accepted the equipment and the installation upon the earlier of (i) Purchaser's written acceptance, (ii) Purchaser's first operational use of the equipment or (iii) fifteen (15) business days after McDal's written notice of Substantial Completion, unless within such fifteen-business-day period Purchaser delivers to McDal a written notice specifying particular defects or non-conformities. McDal shall remedy any timely-asserted defects or non-conformities, after which Purchaser shall be deemed to have accepted.

e. ***Force Majeure***. Neither party shall be liable for any delay or failure to perform caused by circumstances beyond such party's reasonable control, including without limitation fires, strikes, lockouts, labor shortages, war, insurrection, riots, acts of God, accidents, delays of carriers or suppliers, governmental actions, tariffs and import controls imposed after the date of the proposal, public health emergencies and changes in law. The affected party shall provide reasonable notice and shall use commercially reasonable efforts to mitigate the impact of the event.

f. **Storage Charges**. If Purchaser is unable or unwilling to accept equipment on the scheduled delivery date, McDal may, at its option, store the equipment at Purchaser's expense at McDal's prevailing storage rates and risk of loss for stored equipment shall pass to Purchaser upon the originally scheduled delivery date. Equipment serviced or repaired at McDal's facility and not retrieved by Purchaser within fifteen (15) business days of McDal's notice of completion shall likewise be subject to storage charges.

g. **McDal Limitation of Liability for Delays**. McDal shall not be liable for any consequential, incidental, indirect, special or punitive damages arising from any delay in delivery, installation or service, regardless of cause. McDal's maximum liability for delay shall be limited to the amounts actually paid by Purchaser to McDal for the affected portion of the Work.

6. TERMS OF PAYMENT

a. Terms of payment are as set forth in the proposal and may include net 30 days with approved credit, payment in full upon receipt of purchase order or credit card. Credit card payments are subject to a 5% convenience fee. Payment terms set forth in McDal's invoice shall control over any conflicting payment terms in Purchaser's purchase order, regardless of any contrary statement in the purchase order.

b. Orders covering multiple items for separate shipment shall be invoiced separately upon shipment or upon McDal's notification of readiness to ship. Installation, inspection and service work shall be invoiced on a weekly, monthly or completion basis at McDal's option.

c. Purchaser shall pay all undisputed invoices within the time specified in the proposal. Purchaser shall not retain, withhold or set off any amounts owed to McDal except as expressly authorized in this Agreement. If Purchaser is reselling the equipment or parts, Purchaser shall not delay payment to McDal on the basis that Purchaser's customer has delayed payment to Purchaser.

d. Any disputed invoice shall be the subject of a written notice from Purchaser to McDal within fifteen (15) business days of the invoice date, specifying the disputed amount and the basis for the dispute. The undisputed portion of any invoice shall be paid in accordance with the original payment terms. Failure to deliver a timely written notice of dispute shall constitute Purchaser's acceptance of the invoice as correct.

e. Past-due amounts shall accrue a service charge of 1.5% per month or the maximum rate permitted by applicable law, whichever is lower, plus a late fee of $35 per past-due invoice. McDal shall be entitled to recover all costs of collection, including reasonable attorneys' fees, court costs and collection agency fees, incurred in collecting past-due amounts.

f. McDal reserves the right to suspend performance, withhold further deliveries or terminate this Agreement upon ten (10) business days' written notice if Purchaser fails to make any payment when due.

7. TAXES, LICENSES, BONDS and PERMITS

a. The purchase price does not include local, state or federal sales, use, excise or similar taxes; duties; license, permit or registration fees; or other charges levied or assessed in connection with the sale, use or delivery of the equipment, parts or services, unless expressly stated in the proposal. All such items paid by McDal shall be added to the purchase price.

b. Purchaser is solely responsible for determining the taxability of the goods and services provided by McDal. Purchaser shall provide McDal with valid resale, exemption or direct-pay certificates as applicable. Purchaser shall indemnify and hold McDal harmless from any tax, interest or penalty assessed against McDal by reason of Purchaser's representation regarding taxability or Purchaser's failure to provide a valid certificate.

c. Building permits, performance bonds and payment bonds, if required, shall be the responsibility of Purchaser unless expressly included in the proposal.

8. PURCHASER OBLIGATIONS

a. **Equipment Receipt**. For orders not delivered by McDal, Purchaser shall receive, unload and store the equipment and parts; deliver them to the appropriate site; check packing lists against materials received; and notify McDal of any shortage or damage within five (5) business days of receipt. Claims for shortages or carrier damage shall be filed by Purchaser directly with the common carrier, with copy to McDal.

b. **Site Conditions**. For installation work performed at Purchaser's site, Purchaser shall:

i. Furnish and install all wiring and disconnect switches between conductors and power lines and provide building power to the crane power-bar system through a wall-mounted electrical disconnect switch;

ii. Undertake any alterations to buildings and the removal of interfering items (lights, pipes, ducts and similar) required for installation;

iii. Furnish and install safety devices and guards required by applicable law or local custom (other than those expressly included in the proposal);

iv. Provide access to the work area free and clear of obstructions and other personnel during McDal's working hours;

v. Provide, at Purchaser's expense, any utilities (electric, water, lighting) reasonably required for installation;

vi. Warrant that the building structure (including floors, foundations and supporting members) is structurally adequate for the loads imposed by the equipment and indemnify McDal from any loss, damage or claim arising from Purchaser's breach of this warranty; and

vii. Comply with all applicable safety, environmental and operational regulations applicable to Purchaser's facility.

c. **Site Safety**. Purchaser shall maintain a safe working environment at the site. McDal's personnel shall comply with Purchaser's reasonable site safety rules, provided that such rules are communicated to McDal in advance and are consistent with applicable law. If McDal's personnel reasonably determine that site conditions are

unsafe, they may suspend work until safe conditions are restored and McDal shall continue to bill Purchaser for time spent during such suspension. If safe conditions are not restored within a reasonable period, McDal may withdraw and remobilize at Purchaser's expense.

d. **Operator Training**. Purchaser is solely responsible for training its personnel in the safe operation, use and maintenance of the equipment in accordance with OSHA, ANSI, the manufacturer's guidelines and applicable safety practices. Supplemental training by McDal is not included unless expressly stated in the proposal and is available at additional cost.

9. WARRANTY

a. **Workmanship Warranty**. McDal warrants that installation, inspection and service work performed by McDal shall be performed in a good and workmanlike manner consistent with industry standards, for a period of one (1) year from the date of Substantial Completion. McDal's exclusive obligation and Purchaser's exclusive remedy, for breach of this workmanship warranty shall be, at McDal's option, re-performance of the affected work or refund of the amounts paid for the affected work.

b. **Equipment Warranty**. McDal does not manufacture the hoists, motors, controls or other manufactured components incorporated into the equipment and does not warrant such components beyond the warranties offered by their respective manufacturers. McDal shall pass through to Purchaser all manufacturer warranties applicable to the equipment and shall reasonably cooperate with Purchaser in asserting warranty claims against the applicable manufacturer.

c. **Standard of Care**. The standard of care for engineering, design, consulting and related professional services performed by McDal shall be the care and skill ordinarily exercised by members of the relevant profession practicing under the same or similar circumstances. If McDal fails to meet this standard, McDal shall, at its option, correct the affected services at no additional cost or refund the amounts paid for the affected services.

d. **Warranty Exclusions**. McDal's warranties under this Section 9 shall not apply to (i) equipment that has been operated in excess of its rated capacity, altered, modified, repaired or maintained by any party other than McDal or a McDal-authorized service provider; (ii) equipment that has been misused, abused, neglected or operated in a manner inconsistent with the manufacturer's specifications; (iii) damage caused by environmental conditions outside the equipment's specified operating parameters; (iv) ordinary wear and tear; (v) Purchaser's failure to perform required maintenance; or (vi) Purchaser's breach of any obligation under this Agreement.

e. **Disclaimer**. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, McDAL DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE and NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY McDAL OR ITS REPRESENTATIVES SHALL CREATE ANY WARRANTY OR EXPAND THE SCOPE OF THE WARRANTIES SET FORTH HEREIN.

10. SECURITY INTEREST

a. Title to the equipment shall remain with McDal and McDal shall retain a purchase-money security interest in the equipment, until the full purchase price (including any storage, freight or related charges) has been paid. Purchaser hereby grants McDal such security interest and authorizes McDal to file all financing statements and similar documents necessary to perfect such interest. Upon receipt of full payment, McDal's security interest in the equipment shall terminate.

b. Notwithstanding McDal's retention of title and security interest, McDal shall have no responsibility or liability for the operation of the equipment by Purchaser or any third party prior to or after acceptance.

c. For service, repair and parts work, McDal reserves the right to assert a possessory or statutory lien on the parts or equipment serviced until full payment is received. Purchaser shall reimburse McDal for all costs (including reasonable attorneys' fees) incurred in perfecting or enforcing any such lien.

11. CANCELLATION; SUSPENSION

a. **By Purchaser**. Orders accepted by McDal are non-cancellable by Purchaser, except with McDal's prior written consent. If McDal consents to cancellation, Purchaser shall pay McDal for (i) all costs incurred by McDal through the date of cancellation, including non-recoverable supplier costs, materials, labor and overhead; (ii) any restocking, return or supplier cancellation fees incurred by McDal; and (iii) a cancellation fee of fifteen percent (15%) of the cancelled portion of the contract price.

b. **By McDal for Cause**. McDal may terminate this Agreement upon written notice if (i) Purchaser fails to make any payment when due and does not cure such failure within ten (10) business days after written notice; (ii) Purchaser becomes insolvent, files for bankruptcy, makes an assignment for the benefit of creditors or has a receiver or trustee appointed; or (iii) Purchaser materially breaches any provision of this Agreement and does not cure such breach within thirty (30) days after written notice (or such shorter period as may be appropriate for breaches that cannot reasonably be cured).

c. **By McDal for Convenience**. McDal may terminate this Agreement for convenience upon thirty (30) days' written notice. Upon such termination, Purchaser shall pay McDal for all work performed through the date of termination and McDal shall refund any prepaid amounts not earned through the date of termination.

d. **Suspension**. McDal may suspend performance for any cause described in Section 11(b) above and Purchaser shall reimburse McDal for all costs incurred in connection with the suspension and any subsequent remobilization.

12. INSTALLATION, INSPECTION and SERVICE

a. **Scope**. When installation, inspection or service is included in the proposal, McDal shall perform such work in accordance with the proposal and these Terms and Conditions.

b. **Schedule and Delays**. Time for completion shall be as stated in the proposal, subject to extension for (i) any cause described in Section 5(e) (Force Majeure), (ii) any delay caused by Purchaser or its other contractors, including delays in providing site access, utilities or required structural modifications and (iii) any change order or scope expansion. Additional costs caused by Purchaser-caused delays shall be paid by Purchaser as an addition to the purchase price.

c. **Labor and Overtime**. Labor and supervision are quoted on a straight-time basis (Monday through Friday, excluding holidays) using non-union (open-shop) labor. Overtime, holiday work or work performed in compliance with local trade union demands shall result in additional charges at McDal's then-prevailing rates.

d. **Rentals**. McDal shall provide all rental equipment necessary for installation, inspection or service, unless otherwise specified in the proposal.

e. **Site Safety**. The provisions of Section 8(c) (Site Safety) shall apply to all installation, inspection and service work.

f. **Cleanup**. McDal shall leave the work site in clean and orderly condition upon completion of the work, but shall not be responsible for cleanup of pre-existing conditions, materials brought to the site by other contractors or hazardous materials not introduced by McDal.

13. DRAWINGS, MANUALS and DOCUMENTATION

a. McDal shall provide drawings, catalog cuts, calculations, data sheets, wiring diagrams and similar documentation reasonably necessary for Purchaser to review the equipment for conformance with specifications. Purchaser shall use reasonable care in reviewing such documents.

b. McDal shall provide a maintenance and parts manual, if applicable. Manufacturer charges for additional or specialty manuals will be passed through to Purchaser at cost.

c. Professional engineer (P.E.) signed and sealed drawings and calculations are not included in the proposal unless expressly stated and shall be provided at additional cost upon Purchaser's written request.

d. All drawings, specifications, designs, calculations and other documentation prepared by McDal in connection with the Work shall remain the intellectual property of McDal. McDal grants Purchaser a non-exclusive, royalty-free license to use such documentation solely for the operation, maintenance and repair of the equipment at the original installation site. Any other use, reproduction or distribution of such documentation shall require McDal's prior written consent.

14. LOAD TESTS

McDal does not supply test weights or perform load testing unless functional and load testing is expressly included in the proposal. Power must be available and operational to perform any included testing. Delays caused by lack of power or other Purchaser-side conditions shall result in additional charges at McDal's then-prevailing rates.

15. TRAINING

The provisions of Section 8(d) (Operator Training) govern the allocation of training responsibility between McDal and Purchaser.

16. INSURANCE

a. **McDal Insurance**. McDal maintains and shall continue to maintain during the performance of the Work, the following insurance coverages with insurers rated A- VII or better by A.M. Best: (i) commercial general liability with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate; (ii) commercial automobile liability with a limit of not less than $1,000,000 combined single limit; (iii) workers' compensation in accordance with applicable law and employers' liability with a limit of not less than $1,000,000; and (iv) excess or umbrella liability with a limit of not less than $3,000,000 in the aggregate. Certificates of insurance evidencing the foregoing coverages shall be provided to Purchaser upon request.

b. **Additional Insured Status**. Upon Purchaser's written request and subject to McDal's underwriter's approval, McDal shall name Purchaser (and only Purchaser, excluding parents, subsidiaries, affiliates and agents unless specifically agreed in writing) as an additional insured on McDal's commercial general liability policy on a primary, but not non-contributory, basis with respect to liability arising out of McDal's operations under this Agreement. Such additional insured status shall apply only to ongoing operations and completed operations during the warranty period set forth in Section 9 and shall not extend beyond the limits or exclusions of the underlying policy.

c. **Underwriter Constraints**. Notwithstanding any other provision of this Agreement, McDal's insurance obligations are subject to the actual terms, limits and exclusions of McDal's policies in force from time to time and McDal shall have no obligation to procure coverage that its underwriter is unwilling to provide. If Purchaser requires coverage beyond McDal's standard program, the additional cost of such coverage (including any endorsement fees) shall be added to the purchase price.

d. **Purchaser Insurance**. Purchaser shall maintain commercial general liability and property insurance adequate to cover its operations and the equipment installed at its premises. Purchaser's insurance shall be primary with respect to claims arising from Purchaser's operations, premises or use of the equipment.

e. **Waiver of Subrogation**. Each party waives subrogation rights against the other party with respect to losses covered by the waiving party's property or workers' compensation insurance, but only to the extent such waiver does not invalidate the underlying insurance coverage.

17. INDEMNIFICATION

a. **McDal Indemnification**. Subject to the limitations set forth in this Section 17 and in Section 18 (Limitation of Liability), McDal shall indemnify, defend and hold harmless Purchaser and its officers, directors, employees and agents (the "Purchaser Indemnitees") from and against any third-party claims, suits, proceedings and resulting liabilities, damages, losses and reasonable out-of-pocket expenses (including reasonable attorneys' fees) (collectively, "Losses"), but solely to the extent such Losses arise out of (i) the negligent acts or omissions or willful misconduct of McDal or its employees in connection with the Work, (ii) bodily injury to or death of any person caused by McDal's negligence in the performance of the Work or (iii) damage to tangible property

(excluding the equipment itself, which is governed by Section 9) caused by McDal's negligence in the performance of the Work.

b. **Carve-Outs**. Notwithstanding subsection (a), McDal shall have no obligation to indemnify any Purchaser Indemnitee to the extent any Loss arises out of or relates to:

i. Any defect in the design, manufacture or warnings/labeling of equipment manufactured by a third party and supplied by McDal (for which McDal's sole obligation shall be to assign to Purchaser McDal's rights against the manufacturer);

ii. Any claim that equipment manufactured by a third party infringes the intellectual property rights of any person;

iii. The negligence, gross negligence, willful misconduct or breach of this Agreement by any Purchaser Indemnitee or any party other than McDal;

iv. Purchaser's failure to train its operators or to operate the equipment in accordance with applicable manufacturer guidelines, OSHA, ANSI or other applicable standards;

v. Purchaser's modification, alteration, repair or maintenance of the equipment by any party other than McDal or a McDal-authorized service provider;

vi. Purchaser's breach of the structural-adequacy warranty set forth in Section 8(b)(vi);

vii. Conditions at Purchaser's site that were not disclosed to McDal or that differ from the conditions reasonably anticipated based on information provided by Purchaser;

viii. Pre-existing conditions, hazardous materials or contamination at Purchaser's site not introduced by McDal; or

ix. Any subcontractor of Purchaser or any party engaged by Purchaser other than McDal.

c. **Standard of Care for Indemnification**. References in this Section to "negligence" of McDal shall mean conduct falling below the standard of care set forth in Section 9 (Warranty) and shall be construed accordingly.

d. **Purchaser Indemnification**. Purchaser shall indemnify, defend and hold harmless McDal and its officers, directors, employees and agents (the "McDal Indemnitees") from and against any Losses arising out of (i) Purchaser's breach of any provision of this Agreement, (ii) Purchaser's operation, use, modification or maintenance of the equipment after acceptance, (iii) any condition at Purchaser's site, including the structural adequacy of the building, (iv) the conduct of Purchaser's employees, agents or contractors (other than McDal), (v) any tax, duty or governmental charge for which Purchaser is responsible under Section 7 or (vi) Purchaser's failure to train operators as required by Section 8(d).

e. **Indemnification Procedures**. The party seeking indemnification (the "Indemnified Party") shall provide the indemnifying party (the "Indemnifying Party") with prompt written notice of any claim for which indemnification is sought, provided that failure to provide prompt notice shall not relieve the Indemnifying Party of its obligations except to the extent it is materially prejudiced. The Indemnifying Party shall have the right to control the defense and settlement of the claim, provided that any settlement that imposes a liability or obligation on the Indemnified Party shall require the Indemnified Party's prior written consent (not to be unreasonably withheld). The Indemnified Party shall reasonably cooperate in the defense at the Indemnifying Party's expense.

f. **Survival; Time Limitation**. The indemnification obligations under this Section 17 shall survive expiration or termination of this Agreement. Notwithstanding the foregoing, no claim for indemnification under subsection (a) (McDal Indemnification) may be asserted more than (i) two (2) years after Substantial Completion, in the case of property damage or economic loss or (ii) the longer of three (3) years after Substantial Completion or the applicable statute of limitations, in the case of bodily injury. The time limitations in this subsection shall not apply to claims arising from gross negligence, willful misconduct or fraud.

g. **Subcontractor Conduct**. McDal's indemnification obligation under subsection (a) extends only to subcontractors directly engaged by McDal for the specific Work and acting within the scope of their engagement. McDal shall have no indemnification obligation for the conduct of subcontractors of subcontractors or for parties not in privity with McDal.

18. LIMITATION OF LIABILITY

a. **Exclusion of Consequential Damages**. EXCEPT FOR LIABILITY ARISING UNDER SECTION 17 (INDEMNIFICATION) OR FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD or BREACH OF SECTION 2 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL or PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES or DOWNTIME COSTS, REGARDLESS OF THE THEORY OF LIABILITY AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. **Cap on McDal Liability**. EXCEPT FOR LIABILITY ARISING FROM (i) McDAL'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT or FRAUD; (ii) BODILY INJURY OR DEATH CAUSED BY McDAL'S NEGLIGENCE; (iii) BREACH OF CONFIDENTIALITY; OR (iv) AMOUNTS COVERED BY McDAL'S APPLICABLE INSURANCE PROCEEDS, McDAL'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, SHALL NOT EXCEED THE GREATER OF (A) THE TOTAL AMOUNTS PAID BY PURCHASER TO McDAL UNDER THE APPLICABLE PROPOSAL or (B) THE PROCEEDS ACTUALLY AVAILABLE UNDER McDAL'S APPLICABLE INSURANCE POLICIES.

c. **Acknowledgment**. PURCHASER ACKNOWLEDGES THAT THE PRICING OF THE WORK REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT and THAT McDAL WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ON THE STATED PRICING WITHOUT THE LIMITATIONS SET FORTH IN THIS SECTION 18.

19. INTELLECTUAL PROPERTY INFRINGEMENT

a. McDal shall defend and indemnify Purchaser against any third-party claim that the Work performed by McDal (excluding equipment manufactured by third parties) infringes any United States patent, copyright, trademark or trade secret and McDal shall pay any damages and costs awarded against Purchaser in any such claim, subject to the procedural and limitation provisions of Section 17 (Indemnification) and Section 18 (Limitation of Liability).

b. If any portion of the Work is enjoined or, in McDal's reasonable judgment, is likely to be enjoined, McDal shall, at its option, (i) procure for Purchaser the right to continue using the affected portion, (ii) modify the affected portion to avoid infringement while preserving its functionality or (iii) refund the amounts paid for the affected portion (less reasonable depreciation) and accept return of the affected portion.

c. McDal shall have no obligation under this Section to the extent the alleged infringement arises from (i) equipment manufactured by a third party, (ii) modifications to the Work made by any party other than McDal, (iii) the combination of the Work with products or services not provided by McDal or (iv) Purchaser's specifications or designs.

20. COMPLIANCE WITH LAW

a. McDal shall perform the Work in compliance with all federal, state and local laws, regulations and codes applicable to McDal as a vendor of crane and hoisting equipment, including but not limited to OSHA and ANSI standards applicable to McDal's installation activities.

b. Purchaser shall comply with all federal, state and local laws, regulations and codes applicable to Purchaser as the owner and operator of the equipment, including but not limited to OSHA, ANSI, manufacturer guidelines, periodic inspection requirements and operator training and certification requirements.

c. Each party shall be responsible for its own compliance obligations and shall indemnify the other from any liability arising from the indemnifying party's failure to comply.

21. CONFIDENTIALITY OF WORK PRODUCT

Purchaser acknowledges that McDal's drawings, specifications, designs, calculations, manuals, pricing and other technical and business information disclosed in connection with the Work are McDal's confidential information. Purchaser shall not disclose such information to any third party (other than its employees, contractors and advisors with a need to know and bound by confidentiality obligations no less protective than those in this Section) without McDal's prior written consent. This Section shall survive expiration or termination of this Agreement for a period of five (5) years.

22. NOTICES

All notices under this Agreement shall be in writing and shall be deemed given upon (i) personal delivery, (ii) the next business day after deposit with a nationally recognized overnight courier, (iii) three (3) business days after deposit in the United States mail, certified or registered, return receipt requested or (iv) confirmed delivery by electronic mail to the email address designated by the receiving party. Notices shall be sent to the addresses set forth on the proposal or to such other

23. GOVERNING LAW; FORUM; DISPUTE RESOLUTION

a. **Governing Law**. This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to its conflict-of-laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

b. **Forum**. Any action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the state courts of Montgomery County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. Each party irrevocably submits to the exclusive jurisdiction of such courts and waives any objection to venue in such courts on the grounds of inconvenient forum or otherwise.

c. **Waiver of Jury Trial**. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

d. **Informal Dispute Resolution**. Before commencing any litigation, the parties shall attempt in good faith to resolve any dispute through informal negotiation between senior representatives of the parties for a period of at least thirty (30) days, except that this Section shall not apply to applications for preliminary or injunctive relief or to actions to collect undisputed amounts.

e. **Attorneys' Fees**. In any action or proceeding to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

24. INDEPENDENT CONTRACTOR

McDal is an independent contractor. Nothing in this Agreement creates any employment, agency, partnership, joint venture or fiduciary relationship between the parties. Neither party has the authority to bind or obligate the other. Each party shall be solely responsible for its own employees, including all wages, benefits, taxes, workers' compensation and similar obligations.

25. ASSIGNMENT

Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, except that McDal may assign this Agreement (i) to any successor by merger, consolidation or sale of substantially all of its assets or (ii) to any affiliate, in each case without Purchaser's consent. Any purported assignment in violation of this Section shall be void.

26. GENERAL PROVISIONS

a. **Entire Agreement**. This Agreement (consisting of these Terms and Conditions, the proposal and any signed amendments) constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior or contemporaneous oral or written agreements, representations or understandings.

b. **Amendments**. This Agreement may be amended only by a writing signed by both parties.

c. **Waiver**. No waiver of any breach or default shall be effective unless in writing signed by the waiving party. No waiver of any breach shall constitute a waiver of any subsequent breach.

d. **Severability**. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue in effect and the invalid or unenforceable provision shall be reformed to the minimum extent necessary to render it valid and enforceable.

e. **Headings**. Section headings are for convenience only and shall not affect interpretation.

f. **Counterparts; Electronic Signatures**. This Agreement may be executed in counterparts, each of which shall be deemed an original. Electronic signatures and signatures transmitted by facsimile or email shall be deemed original signatures.

g. **Survival**. The provisions of Sections 2 (Confidentiality), 9 (Warranty, to the extent of warranty period), 10 (Security Interest, until paid), 13(d) (IP retention), 17 (Indemnification, subject to time limitations therein), 18 (Limitation of Liability), 19 (IP Infringement), 21 (Confidentiality of Work Product), 23 (Governing Law and Forum) and any other provisions which by their nature are intended to survive, shall survive expiration or termination of this Agreement.

[remainder of page left intentionally blank]