

RESOLUTION 2020-31

RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT  
WITH AN ESTIMATED COST BETWEEN \$6,000.00 AND \$40,000.00  
WITHOUT PUBLIC ADVERTISING FOR BIDS

WHEREAS, the "Local Public Contracts Law" provides that except for contracts which require the performance of professional services, all contracts or agreements which do not require public advertising for bids and the estimated cost or price is between \$6,000.00 and \$40,000.00, two (2) or more competitive quotations as to cost or price, whenever practicable, shall be solicited by the contracting agent, and the contract or agreement shall be made with and awarded to the lowest responsible bidder; and

WHEREAS, The Bordentown Sewerage Authority has solicited from the following bidders the respective quotations as to price:

<u>BIDDER</u>	<u>PRICE</u>
Shupper Brickle	\$16,076.00
Kone Cranes	\$30,253.67

for the following goods or services:

**Building B-4 – Monorail System. Service and replace existing worn parts, add a fourth rail to monorail system.**


WHEREAS, a Certificate of Availability of Funds has been provided by the designated certifying finance officer and is attached hereto.

NOW, THEREFORE, BE IT RESOLVED, this 16th day of March, 2020, that contracts, be and the same are hereby awarded to:

**Shupper Brickle**, in the amount of \$16,076.00 for the goods or services described above.

THE BORDENTOWN SEWERAGE AUTHORITY

Attest:

  
\_\_\_\_\_  
Joseph R. Malone, III, Secretary

By:

  
\_\_\_\_\_  
James E. Lynch, Jr., Chairman

I have reviewed this Resolution and the Certificate of Availability of Funds and am satisfied that an appropriate Certificate of Availability has been provided.

  
\_\_\_\_\_  
Thomas J. Coleman, III, Esquire  
General Counsel

**CERTIFICATE OF AVAILABILITY OF FUNDS**

I, Elizabeth J. Kwelty, Administrative Manager and Certifying Finance Officer of The Bordentown Sewerage Authority, do hereby certify, pursuant to the rules of the Department of Community Affairs, Division of Local Government Services (N.J.A.C. 5:34-5.1 et seq.), that there are available adequate funds for the following proposed contract:

CONTRACT: Building B-4 – Monorail System; service and replace existing worn parts, add a fourth rail to monorail system.

CONTRACTOR: Shupper Brickle

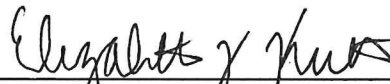
CONTRACT AMOUNT: \$16,076.00

BUDGETARY LINE ITEMS: 02-004-7610

I certify that the same funds have not been certified as available for more than one pending contract.

03/16/2020

Date



Elizabeth J. Kwelty  
Certifying Finance Officer

**THE BORDENTOWN SEWERAGE AUTHORITY  
QUOTATION RECORD FORM**

**PROJECT:** Building B-4 - Monorail System

**ITEM OR SERVICE:** Service / replace existing worn parts, add fourth rail to monorail system.

If not awarded to lowest price, explanation: \_\_\_\_\_

1. Vendor: Shupper Brickle Price: 16,076.00

Special Terms: Proposal # 193967

Solicited By:  Email  Fax  Phone  In Person  Internet

2. Vendor: Kone Cranes Price: 30,253.67

Special Terms: Offer # 1-165K96MR/1

Solicited By:  Email  Fax  Phone  In Person  Internet

3. Vendor: \_\_\_\_\_ Price: \_\_\_\_\_

Special Terms: \_\_\_\_\_

Solicited By:  Email  Fax  Phone  In Person  Internet

4. Vendor: \_\_\_\_\_ Price: \_\_\_\_\_

Special Terms: \_\_\_\_\_

Solicited By:  Email  Fax  Phone  In Person  Internet

**AWARDED TO:** Shupper Brickle PRICE: **16,076.00**

TERMS: As Per Proposal # 193967 SPECIAL COMMENTS: \_\_\_\_\_

PURCHASE ORDER # \_\_\_\_\_

SOLICITATION PERFORMED BY: Charles Bluhm Jr

 DATE: 02/27/2020

(SIGNATURE)



# Proposal

Number: 193967

## Shupper-Brickle Equipment Co

P.O. Box 728  
 Clarksburg, NJ 08510  
 Phone: (609) 259-1223  
 Fax: (609) 259-2377  
 Date: 2/12/2020  
 Valid Thru: 3/12/2020

Customer	BORDENTOWN SEWERAGE AUTHORITY
Contact	CHARLES BLUHM
Shipping Address	BORDENTOWN SEWERAGE AUTHORITY 954 FARNSWORTH AVE BORDENTOWN, NJ 08505, US
Sales Engineer	

**Proposal Reference:** CONDUCTOR BAR REPLACEMENT FOR MONORAIL SYSTEM

**Shipping Method:** Included

**Payment Terms:** Split Payment Terms: 25%/65%/10% Net 30

Item Name	Description	Qty	Rate	Amount
EQUIPMENT	<p>(109) FT - 4-BAR, CHANNEL ELECTRIFICATION WITH HARDWARE FOR STRAIGHT RAIL, 105A 4-BAR CHANNEL BAR, SIDE CONTACT CONDUCTOR BAR WITH RED COVER. GREEN COVER FOR GROUND IS AVAILABLE UPON REQUEST.</p> <p>(1) 4-BAR KIT, 90 DEGREE, 4' RADIUS CURVE W/1' STRAIGHT 4-BAR CHANNEL BAR WITH BRACKETS FOR A 90 DEGREE CURVE. CONDUCTOR BAR IS RED IN COLOR AND GREEN COLOR FOR GROUND IS AVAILABLE UPON REQUEST. CONDUCTORS ARE BENT AS CLOSE TO THE RADIUS AS POSSIBLE AND ARE LEFT A LITTLE LONG FOR FIELD TRIMMING TO ASSURE A GOOD FIT.</p> <p>(2) 4-BAR KIT FOR SWITCH CURVES 4-BAR CHANNEL BAR WITH BRACKETS FOR SWITCH CURVES, CONDUCTOR BAR IS RED IN COLOR AND A GREEN COLOR FOR GROUND IS AVAILABLE UPON REQUEST. CONDUCTORS ARE BENT AS CLOSE TO THE RADIUS AS POSSIBLE AN ARE LEFT A LITTLE LONG FOR FIELD TRIMMING TO ASSURE A GOOD FIT.</p> <p>(2) 4-BAR ELETRIC KIT FOR RH SWITCH 4-BAR CHANNEL BAR WITH BRACKETS FOR INSIDE SWMTCHES. CONDUCTOR BAR IS RED IN COLOR AND A GREEN COLOR FOR GROUND IS AVAILABLE UPON REQUEST. CONDUCTORS ARE BENT AS CLOSE TO THE RADIUS AS POSSIBLE AND ARE LEFT A LITTLE LONG FOR FIELD TRIMMING TO ASSURE A GOOD FIT.</p> <p>(4) COLLECTORS</p> <p>NOTE:          DEPENDING ON COLLECTORS AND DIMENSIONS, IF WE HAVE TO DESIGN SOME SPECIAL BRACKETS, AN ENGINEERING FEE MAY BE REQUIRED.</p>	1	\$11,326.00	\$11,326.00

SERVICE	TURNKEY INSTALLATION PERFORMED BY FACTORY TRAINED, EXPERIENCED, INSURED TECHNICIANS.  PRICE INCLUDES MAN LIFT EQUIPMENT & TOOLS. WORK TO BE PERFORMED DURING NORMAL WORKING HOURS, MONDAY - FRIDAY, 7:00 AM - 3:30 PM. DISPOSAL OF EXISTING SYSTEM BY BORDENTOWN SEWERAGE AUTHORITY.	1	\$4,750.00	\$4,750.00
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**Subtotal:** \$16,076.00  
**Shipping & Handling:** \$0.00  
**Tax (NJ - 6.625%):** \$0.00  


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**Total:** \$16,076.00

Thank you for the opportunity to offer our proposal. Please do not hesitate to contact the Sales Engineer if you have any questions or require additional information. We look forward to your response.

Notes to Customer:  
 FOB: FACTORY - MINNESOTA  
 DELIVERY: 3 TO 5 WEEKS AFTER APPROVAL  
**FREIGHT: INCLUDED**  
 TERMS: 25% DOWN, 65% UPON READINESS TO SHIP,  
 10% NET 30

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Standard Terms & Conditions (unless specifically stated otherwise): For orders over \$10,000, 25% with order, 65% prior to shipment, 10% Net 30 days with approved credit. New customers must contact the Accounting Department to apply for credit. Visa, Mastercard, AMEX, or COD are also accepted. All orders are subject to a \$3.00 handling fee, added to the shipping total. Please see our website for a complete list of terms:  
[www.SBOMH.com/terms](http://www.SBOMH.com/terms)

# OFFER



1-165K96MR

Page 1

Offer number: 1-165K96MR/1

Configuration Id:

<b>Customer:</b>	Bordentown Sewage Authority	<b>Subject:</b>	Monorail Conductor Bar
<b>Address:</b>	954 Farnsworth Ave Bordentown, New Jersey 08505-2142	<b>Reference:</b>	
		<b>Konecranes Contact:</b>	Karl De Ciantis
<b>Contact:</b>	Chuck Bluhm Jr	<b>Inquiry Date:</b>	2/18/2020
<b>Phone:</b>	609-291-9105	<b>Offer Date:</b>	2/25/2020
<b>Email:</b>	<a href="mailto:chuck@bordentownsa.org">chuck@bordentownsa.org</a>	<b>Offer Valid Until:</b>	3/26/2020

Dear Chuck Bluhm Jr,

We appreciate your consideration of our products and the opportunity to be of service. Konecranes is the leading provider of comprehensive maintenance services for overhead cranes, port equipment and machine tools and a global manufacturer of material handling equipment.

Based on our discussions and assessment of your equipment and operations, we recommend the following products. Please refer to the attached offer for details.

Best regards,

Karl De Ciantis

This cover page is not part of the offer and is not legally binding in any manner. The offer begins from the following page. No statement of this cover letter shall be construed as condition or warranty of the offer.

# OFFER



1-165K96MR

Page 2

Offer number: 1-165K96MR/1

Configuration Id:

<b>Customer:</b>	Bordentown Sewage Authority	<b>Subject:</b>	Monorail Conductor Bar
<b>Address:</b>	954 Farnsworth Ave Bordentown, New Jersey 08505-2142	<b>Reference:</b>	
		<b>Konecranes Contact:</b>	Karl De Ciantis
<b>Contact:</b>	Chuck Bluhm	<b>Inquiry Date:</b>	2/18/2020
<b>Phone:</b>	609-291-9105	<b>Offer Date:</b>	2/25/2020
<b>Email:</b>	<a href="mailto:chuck@bordentownsa.org">chuck@bordentownsa.org</a>	<b>Offer Valid Until:</b>	3/26/2020

Based on our discussion and your inputs, we are offering the following products.

**Scope of work: Removal of Monorail Conductor Bar and Installation of New Monorail Conductor Bar with Fourth Bar for Grounding**

1. Konecranes will perform jobsite safety audit
2. Konecranes will clean and prep area before beginning work
3. Konecranes will perform LOTO on crane
4. Konecranes will remove existing conductor bar, contacts and collectors (Customer to dispose of old components)
5. Konecranes will Insall new hangers and new conductor bar system that includes a fourth bar for grounding and attached to power feeds
6. Konecranes will remove LOTO
7. Konecranes will operationally test all functions and report findings
8. Konecranes will return crane back to Bordentown Sewage Authority for production

## Pricing Summary

Description	Customer Asset Name	Part #	Qty	Total Price
Conductor Bar			1	
Labor				
Total for all products:				\$30,253.67
<b>Total Price:</b>				<b>\$30,253.67</b>

\*\*\*Pricing above includes rental lift needed to perform scope of work\*\*\*

Prices quoted herein are exclusive of all taxes, charges and duties (including but not limited to value added tax and bank charges), and any such items shall be paid you or reimbursed by you in case paid by us.

# OFFER

1-165K96MR

Offer number: 1-165K96MR/1

Configuration Id:

Page 3

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## Delivery Time- 4 weeks

## Term of Payment

All payments in 15 Days net from date of invoice.

## Warranty Period

## Validity of offer

This offer is valid until 3/26/2020. Please accept this offer by placing your signature at the end of this document and returning it to us.

This quotation, proposal or offer is subject to and incorporates as if fully rewritten herein the Seller's Standard Terms and Conditions of Sale (Service) (Revision 08.01.2016), a copy of which is attached hereto or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer.

Any of the following actions will also constitute your unqualified acceptance of this offer: we receive a verbal or written purchase order, work order, or other similar order for the services contemplated herein from you; you remain silent and we perform the services under this offer and you are aware of such performance; we receive full or partial payment for the services contemplated herein; or any other conduct by you that recognizes the existence of a contract with respect to the subject matter of this offer.

We will confirm scheduling immediately upon receipt of your authorization. Should you have any questions, please contact us at any time. We sincerely appreciate the opportunity to be of service.

Yours truly

Konecranes, Inc.

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Karl De Ciantis

Tel: 610-321-2900

[karl.deciantis@konecranes.com](mailto:karl.deciantis@konecranes.com)



# OFFER

1-165K96MR

Offer number: 1-165K96MR/1

Configuration Id:

Page 4



## Accepted:

Bordentown Sewage Authority

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PO number:

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# OFFER

1-165K96MR

Page 1

Offer number: 1-165K96MR/1

Configuration Id:

## GENERAL TERMS AND CONDITIONS FOR SERVICE

**1. APPLICABILITY.** The sale of any and all Seller services and/or goods included in and/or provided in connection with such services ("Goods") shall be conditioned upon, and subject to the following terms and conditions ("Terms and Conditions") which shall form an integral part of any agreement between Buyer and Seller. Buyer's acceptance of any quotation, proposal or offer made by Seller for the sale of its services and/or Goods (collectively, "Quotation") is expressly made subject to these Terms and Conditions and none of the Terms and Conditions may be added to, modified, superseded or otherwise altered except as revised in writing by Seller. All orders for services and/or Goods received by Seller shall be governed only by these Terms and Conditions, notwithstanding any terms and conditions in any purchase order, release order, or any other form issued by Buyer. Seller hereby objects to any terms and conditions which may be found in any purchase order, release order, or any other form issued by Buyer and hereby notifies Buyer that they are rejected.

**2. PRICE.** Prices quoted by Seller shall remain firm for a period of thirty (30) days from the date of a Quotation; provided, however, Seller reserves the right, at any time prior to the acceptance of a Quotation by Buyer to adjust said prices by providing written notice to Buyer regarding any such adjustment. Quotations provided are priced based on Buyer's purchase of the entire scope of services and/or Goods identified in a Quotation. If less than the entire scope of services and/or Goods identified in a Quotation is ordered by Buyer, prices may vary. Unless otherwise stated in a Quotation, installation, commissioning, supervision and/or start-up services are not included in the price of services and/or Goods to be provided by Seller. Buyer shall pay Seller to the extent of services provided, or for the quantity of Goods shipped should Seller be unable for any reason to provide and/or ship the entire scope of services and/or Goods identified in a Quotation. Prices quoted by Seller are exclusive of all local permits and taxes (except taxes levied on Seller's income) including federal, state, provincial and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse Seller for any such taxes paid by Seller.

**3. SCOPE OF SERVICES AND GOODS.** The services and/or Goods provided by Seller pursuant to a Quotation are limited exclusively, at the express request of Buyer, to the services and/or Goods expressly identified in such Quotation. As a result, Seller does not assume responsibility and/or liability for the failure to provide any other services and/or Goods. Modifications, additions or deletions to or from the scope referenced in a Quotation shall only be effective if evidenced in writing signed by Seller and the sale of any and all services and/or Goods affected by such modification, addition or deletion shall be subject to these Terms and Conditions whether or not referenced therein.

**4. MINIMUM CHARGE.** All services and/or Goods supplied by Seller are subject to a one hundred dollar (USD \$100.00) (or the local currency equivalent) minimum charge. If the total quantity of services and/or Goods purchased by Buyer (excluding freight charges) results in a charge of less than one hundred dollars (USD \$100.00) (or the local currency equivalent) Seller reserves the right to charge Buyer the difference between the price of the services and/or Goods purchased and one hundred dollars (USD \$100.00) (or the local currency equivalent) as an additional charge for the services and/or Goods purchased.

**5. PAYMENT TERMS.** Unless otherwise provided in the Quotation, all Seller invoices shall be paid by Buyer within fifteen (15) days of the date of invoice. If Buyer fails to timely pay invoices, Seller shall be entitled to suspend all work and deliveries and issue a late charge equivalent to the lesser of one and one half percent (1 1/2%) per month (eighteen percent (18%) per annum) or the maximum rate allowed by law on all unpaid invoices or invoices not paid in accordance with these Terms and Conditions. Buyer shall reimburse Seller for all expenses, regardless of their nature or type (including attorneys fees), related in any way to Seller's collection of invoices not paid in accordance with these Terms and Conditions or otherwise incurred by Seller in the enforcement of these Terms and Conditions. Unless otherwise provided in a Quotation, for all services and/or Goods with a Quotation or purchase order price in excess of thirty thousand dollars (USD \$30,000.00) (or the local currency equivalent), Buyer shall pay a deposit in the amount of forty percent (40%) of the price (due upon Seller's receipt of Buyer's purchase order). Buyer shall make progress payments as stated in the applicable Quotation or otherwise agreed to in a writing signed by Buyer and Seller. Buyer shall have no right to offset any amounts due Seller by any payment or other obligation which Seller or any of its affiliates may owe to Buyer.

**6. CANCELLATION.** A purchase order may be cancelled by Seller (in whole or in part) at any time if (a) Buyer fails to strictly comply with the terms governing the order, (b) Buyer becomes insolvent, appoints or has appointed a receiver, or makes an assignment for the benefit of creditors, (c) a petition in bankruptcy or insolvency is filed by or against Buyer, (d) Seller requests and is unable to secure acceptable payment assurances from Buyer for the services and/or Goods identified in a Quotation or purchase order, or (e) amounts due Seller by Buyer are unpaid. Upon cancellation of a purchase order, Buyer shall be obligated to pay to Seller the price for all services performed to date and all Goods that can be completed and shipped within thirty (30) days of the date of cancellation, all special tooling for which commitments have been made by Seller, and all of Seller's costs, expenses and reasonable profit for work in process as of the date of cancellation.

**7. CREDIT APPROVAL.** All orders are subject to Buyer credit approval by Seller. Seller reserves the right to refuse shipment or provision of any and all services and/or Goods identified in any Quotation or purchase order and/or modify the payment terms identified therein or in Section 5 hereof.

**8. DELIVERY TERMS AND DELAYS.** Unless otherwise identified in a Quotation, all shipments of Goods are F.C.A. Seller's plant, warehouse or dock, as defined by Incoterms® 2010, 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, warehouse or dock. Title to Goods shall transfer to Buyer upon Seller's receipt of payment in full for all services and Goods provided pursuant to a Quotation and/or purchase order.

a. **Delivery.** All dates for the shipment and/or delivery of Goods and/or for the provision of services are approximate. Seller shall not be liable for delay in or failure to make shipment and/or delivery of Goods or commencement, performance or completion of services by any identified date for any reason whatsoever. In the event of any delay, regardless of the cause, the parties shall agree upon a new date for the shipment and/or delivery of Goods and/or commencement, performance or completion of services. In the event of any delay caused by Buyer, Buyer shall pay Seller for all costs and expenses incurred by Seller related to such delay.

b. **Freight Charges.** Any reference to freight charges contained in a Quotation is an estimate. Seller is not responsible for any differences that may occur between freight estimates contained in a Quotation and actual freight charges applicable at the time of shipment, and Buyer shall incur and be responsible for all costs associated therewith.

c. **Packaging.** Unless otherwise identified in a Quotation, quoted prices do not include the cost for export or special packaging of Goods and Buyer shall assume and be responsible for those extra costs associated with such export and packaging.

# OFFER

1-165K96MR

Page 2

Offer number: 1-165K96MR/1

Configuration Id:

d. **Cost of Goods.** Unless otherwise stated in a Quotation, Buyer shall pay all cost increases Seller is assessed for materials incorporated into services and/or Goods, including but not limited to steel, copper, and fuel surcharges, to the extent such increases exceed any estimated costs used by Seller to develop a Quotation by ten percent (10%) and which occurs after the issuance of a Quotation, but prior to the provision of the services and/or delivery of the Goods.

e. **Site Condition.** Buyer warrants that the site where Goods are to be delivered and/or installed and/or where services are to be performed shall be ready and adequate for Seller's delivery and/or installation of the Goods and/or performance of services. Buyer's obligations in this regard include but are not limited to the removal of all obstructions and institution of adequate safety measures to protect Seller's property, employees, agents and contractors. Buyer shall be responsible for all costs and expenses associated with Seller's delay and/or inability to deliver and/or install any Goods and/or perform any services related to Buyer's failure to comply with this provision. Seller in no way warrants the sufficiency of the site where the services are performed and/or Goods are delivered and/or installed.

9. **SECURITY INTEREST.** Buyer hereby grants Seller a security interest in the Goods to secure the unpaid balance of the price and all other obligations of Buyer to Seller however arising. Buyer authorizes Seller to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably grants Seller a power of attorney to execute any documents on behalf of Buyer relating thereto.

## 10. WARRANTIES.

a. **Products manufactured by Seller ("Seller Products").** To the extent that Seller Products are incorporated into the scope of services and/or Goods stated in a Quotation, such Seller Products shall be warranted in accordance with Seller's Standard Warranty for such Seller Products in effect on the date of sale (incorporated by reference as if fully rewritten herein and a copy of which is attached to the Quotation or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer). Repair and replacements provided pursuant to the Standard Warranty do not extend the original warranty provided with the Goods at the time of sale.

b. **Services.** Seller warrants that all services performed by Seller will conform in all material respects to the description of services identified in a Quotation and will be performed in a good, workmanlike manner. All claims for breach of this warranty for services performed by Seller must be brought by Buyer within six (6) months of the date of Seller's performance of such services; provided, however, Buyer shall notify Seller of any alleged warranty claims within seventy two (72) hours of Buyer's discovery thereof. Buyer's failure to comply with the terms of this procedure shall void the warranty in this Section 10.b. Seller does not warrant services provided by any third party. Buyer's sole and exclusive remedy for Seller's breach of this warranty for services performed by Seller shall be the reperformance of such services by Seller. Buyer acknowledges and agrees that Seller shall have no liability for loss of use, downtime or any indirect or consequential damage arising from Seller's breach of this warranty for services.

c. **Products manufactured by parties other than Seller and/or its affiliates ("Third Party Products").** Third Party Products supplied by Seller to Buyer are not warranted by Seller. Third Party Products may be warranted separately by their respective manufacturers or such other parties from whom Seller purchases such Third Party Products and Seller shall, to the extent possible, assign to Buyer whatever rights Seller may obtain under any such warranties.

d. **Inherent Defects.** To the extent remanufacturing, refurbishment, modernization and/or modification services are included within the scope of services identified in a Quotation, any defect in Buyer's equipment to which Seller performs such remanufacturing, refurbishment, modernization and/or modification services that is attributable in whole or in part to engineering, design specifications, latent defects, corrosion or fatigue that are inherent to and/or present in or on the equipment is not covered by any warranty of Seller and Seller shall not be liable for any costs, expenses, losses or damages that are caused in whole or in part by any such defect.

e. **Non-Transferable.** Any warranty of Seller is limited to and only for the benefit of Buyer and is not transferable or assignable by Buyer without the prior written consent of Seller.

THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED UNDER A 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.

BUYER HEREBY WAIVES ANY CLAIM THAT ANY EXCLUSIONS OR LIMITATIONS OF ANY WARRANTY PROVIDED BY SELLER DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ITS AGREEMENT WITH SELLER TO FAIL OF ITS ESSENTIAL PURPOSE. BUYER 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.

11. **LIMITATION OF DAMAGES.** SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION WITH RESPECT TO THE SALE OF GOODS OR PROVISION OF SERVICES UNDER A QUOTATION FOR LOST PROFITS OR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. SELLER'S LIABILITY IS LIMITED TO THE AMOUNT OF BUYER'S DIRECT DAMAGES UP TO THE AMOUNT OF THE CONTRACT PRICE AND IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY BUYER FOR GOODS AND/OR SERVICES REFERENCED IN A QUOTATION.

12. **DISCLAIMER (Inspection Services and/or Preventative Maintenance Programs).** Notwithstanding any representation made by any party to the contrary in any other verbal or written communication, the performance of any equipment (or component) inspection as all or part of the services under a Quotation by Seller and the preparation of the report derived therefrom are conditioned upon and evidence of Buyer's acknowledgment and acceptance of the following additional terms, conditions and disclaimers:

a. At the request of Buyer, the scope of any equipment (or component) inspection performed by Seller is limited exclusively to a search for readily observable defects apparent on the equipment and on those equipment component parts identified in the inspection scope accompanying a Quotation that are safely and conveniently accessible to the inspecting personnel. Seller shall not dismantle the equipment or the equipment components to be inspected, nor shall it use any ultrasonic or other technical means to inspect and detect latent or non-observable defective conditions in the equipment or its components. Notwithstanding the

# OFFER

1-165K96MR

Offer number: 1-165K96MR/1

Configuration Id:

Page 3

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performance of this inspection and regardless of any representation made in any report to the contrary, including the inspection report prepared by Seller, latent or non-observable defects may exist or develop on or in the subject equipment or its components on or following the moment of inspection and Buyer is hereby notified of the potential existence thereof. The use of equipment possessing any defect, including latent or non-observable defects, may result in catastrophic equipment failure potentially causing damage to property or injury or death to persons in, on or around the subject equipment.

b. The conditions identified during the equipment (or component) inspection and reported by Seller orally or in writing are representative of the conditions of the subject equipment and its components as they appeared during the inspection. These conditions can and will change immediately following inspection due to the use or non-use of the subject equipment (and its components). The information provided to Buyer as a result of and following the inspection does not reflect any changes in the condition of the subject equipment and/or its components following inspection by Seller and Buyer retains and/or assumes all risk for such changes in condition.

c. The decision concerning whether or not to repair, or replace the equipment or any deficient component of the subject equipment lies exclusively with Buyer. By completing the inspection and preparing the inspection report Seller expressly recommends that Buyer authorize the repair and/or replacement of the equipment or any component identified during the inspection or listed in the report derived therefrom as deficient in any manner or degree prior to operating the subject equipment. Seller hereby notifies Buyer that failure to do so may result in catastrophic equipment failure causing damage to property or injury or death to persons in, on or around the subject equipment.

d. To the extent applicable, the scope and performance of any inspection by Seller as all or part of the services utilizing Magnetic Particle Testing (MT), Magnetic Rubber Testing (MRI) and/or Liquid Penetrant Testing (PT), and the preparation of the report derived therefrom, are limited to the detection of exposed surface flaws no less than 150 nanometers in diameter. MT, MRI and PT are highly sensitive to external conditions and to the characteristics of the inspected material, component, or assembly. Further, contaminations on the inspected surface may mask actual defects. As such, notwithstanding the performance of any such inspection by Seller and regardless of any representation made to the contrary, including the inspection report prepared by Seller, latent, sub-surface, and/or covered surface flaws may exist on the subject material on the date of inspection and Buyer is hereby notified of the potential existence thereof.

e. SELLER IS NOT LIABLE FOR CLAIMS, DEMANDS, DAMAGES OR LIABILITY ARISING FROM (I) CAUSES OUTSIDE THE SCOPE OF THE INSPECTION AS IDENTIFIED IN SECTION 12.A., (II) ANY CONDITION THAT OCCURS FOLLOWING THE INSPECTION AS IDENTIFIED IN SECTION 12.B., (III) FAILURE OF BUYER TO REPAIR OR REPLACE ANY EQUIPMENT OR COMPONENT AS IDENTIFIED IN SECTION 12.C., OR (IV) FLAWS THAT ARE NOT DETECTABLE BY OR WHOSE DETECTION IS LIMITED WHEN UTILIZING THE INSPECTION METHODS DESCRIBED IN SECTION 12.D.

**13. NON-SOLICITATION.** Buyer agrees, on behalf of itself and its parents, subsidiaries, affiliates, successors and assigns, that during Seller's performance of the work referenced in a Quotation and for a period of one (1) year thereafter, Buyer shall not directly or indirectly solicit, entice, approach, offer employment to, or employ in any capacity any employee of Seller. For purposes of this section the term "employee" means any individual actively employed by Seller at the time a Quotation is accepted and associated in any way with Seller's performance of the work referenced therein.

**14. CONFIDENTIALITY; LICENSE.** Without limitation, Buyer shall not at any time disclose to any other person or entity any information relating to the business of Seller, 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 Seller considers confidential, and trade secrets of every kind relating to Seller's business, whether or not patentable or copyrightable. Such information shall remain the exclusive property of Seller and shall be returned to Seller upon request at any time. Further, these Terms and Conditions do not constitute a license or authorization of any kind for Buyer to use any of the trademarks or trade names owned or licensed by Seller. Buyer hereby grants to Seller a worldwide, irrevocable, royalty-free, non-exclusive license to collect, store and use any data collected by Seller during the performance of any inspection and/or services for any internal purposes of Seller, including but not limited to research and development.

**15. INDEMNIFICATION; WAIVER OF IMMUNITY.** SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ANY ENTITY AFFILIATED IN ANY WAY THEREWITH FROM ANY CLAIMS, DEMANDS, DAMAGES (REGARDLESS OF THEIR TYPE, INCLUDING, BUT NOT LIMITED TO DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL), LIABILITIES, LOSSES AND EXPENSES (WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE), ANY AND ALL LIABILITY, OF AND FROM ANY AND ALL MANNER OF SUITS, ACTIONS OR CAUSE(S) OF ACTION (INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE) ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF BUYER, ITS AGENTS, CONTRACTORS, EMPLOYEES OR ANY PERSON UNDER THEIR CONTROL AND RELATING IN ANY WAY TO THE GOODS AND/OR SERVICES PROVIDED UNDER A QUOTATION OR THE EQUIPMENT RELATED THERETO, INCLUDING BUT NOT LIMITED TO BUYER'S USE, INSTALLATION, INCORPORATION OR SELECTION THEREOF. BUYER HEREBY WAIVES ANY IMMUNITY OR DEFENSE UNDER APPLICABLE WORKERS' COMPENSATION LAWS OR OTHER LAWS THAT WOULD OTHERWISE LIMIT BUYER'S OBLIGATIONS HEREUNDER.

**16. MANUALS.** To the extent an equipment manual is delivered to Buyer with Goods (applicable exclusively to those Goods where such a manual is produced), Seller reserves the right to assess a charge, per manual, for each additional manual requested by Buyer. Each manual produced by Seller is a confidential, proprietary and copyrighted document and may not be copied, published or reproduced in any manner or form without prior written agreement of Seller. Such agreement is at the sole discretion of Seller and Seller may revoke the same at its discretion at any time.

**17. APPROVAL DRAWINGS.** Approval drawings, if provided to Buyer by Seller and either signed by a representative of Buyer with apparent authority to do so or not objected to by Buyer in writing within a reasonable time or, if required, the time required by Seller, shall constitute exclusive proof regarding Buyer's verification and acceptance of the dimensions and other information relating to the Goods described therein and Buyer shall be entitled to rely on such approval drawings to develop a Quotation and provide the services and/or Goods referenced therein. Buyer hereby assumes any and all responsibility for any inaccurate or incomplete information contained therein. TO THE EXTENT THAT BUYER PROVIDES THE DESIGN AND/OR SPECIFICATIONS FOR ANY GOODS OR SERVICES TO BE PERFORMED BY SELLER, BUYER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTION AND FROM ALL COSTS, EXPENSES, DAMAGES AND LIABILITIES (INCLUDING BUT NOT LIMITED TO ATTORNEYS AND CONSULTANTS FEES) FOR ACTUAL OR ALLEGED INFRINGEMENT OF ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADEMARK, INTELLECTUAL PROPERTY RIGHTS, OR PROPRIETARY RIGHTS OF THIRD PARTIES BY REASON OF THE USE, SALE, MANUFACTURE, OR DESIGN OF SUCH GOODS AND/OR SERVICES.

# OFFER

1-165K96MR

Offer number: 1-165K96MR/1

Configuration Id:

Page 4

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**18. DATA COLLECTION.** The Goods purchased by Buyer may have functionality through an included data connection ("Data Connection") that monitors, transmits and records data related to certain aspects of equipment usage. Buyer acknowledges and agrees that Seller may activate the Data Connection immediately upon or at any time following installation of Goods or equipment and the data collected will be transmitted to and collected by Seller or its affiliates through the Data Connection. Buyer, on behalf of itself, any end user of equipment ("End User") and any individual identified or identifiable by equipment usage data, hereby consents to the collection, storage and use by Seller of such information and agrees that Seller's collection of such information may continue until such time that Buyer or End User terminate its agreement to receive and/or purchase remote monitoring services from Seller or its affiliates (if applicable) or otherwise directs Seller in writing to deactivate the Data Connection (provided, however, Buyer hereby acknowledges and agrees that deactivation of the Data Connection may not be immediate and Seller will use its commercially reasonable best efforts to deactivate the Data Connection as promptly as possible). Buyer further accepts and agrees that Seller shall not actively monitor or inspect any equipment or equipment usage data or other information that is generated by using a condition monitoring unit incorporated into any equipment and/or transmitted and collected through the Data Connection. Regardless of the nature of information collected by Seller, Buyer acknowledges and agrees that Seller shall have no obligation to alert or notify Buyer of any information collected by Seller except as specifically set forth in a separate agreement between Seller and Buyer and, unless and until Buyer has agreed to purchase or receive remote monitoring services offered by Seller, Seller shall be under no obligation to provide any equipment usage data to Buyer.

**19. COMPLIANCE WITH LAWS; EMBARGOES AND ECONOMIC SANCTIONS COMPLIANCE.** Buyer shall at all times comply with all federal, state, local and provincial laws, ordinances, regulations, and orders that are applicable to the services and/or Goods provided by Seller and its performance hereunder, except to the extent that failure to comply therewith could/would not, in the aggregate, reasonably be expected to have a material adverse effect on its business or on its ability to comply with its obligations under these Terms and Conditions.

Buyer represents and warrants that Buyer: (i) is and shall remain in compliance with all laws administered by the United States Office of Foreign Assets Control or any other applicable governmental entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries, entities and persons (collectively, "Embargoed Targets"); (ii) is not an Embargoed Target or otherwise subject to any Economic Sanctions Law; and (iii) shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Buyer shall not (a) directly or indirectly export, re-export, transship or otherwise deliver any Goods and/or services provided by Seller or any portion of such Goods and/or services to an Embargoed Target, or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

**BUYER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH FROM ANY CLAIMS, DEMANDS, DAMAGES LIABILITIES, FINES, PENALTIES, LOSSES AND EXPENSES OF AND FROM ANY AND ALL MANNER OF SUITS, ACTIONS OR CAUSE(S) OF ACTION (INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL GOVERNMENTAL ACTIONS AND/OR SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE) ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF BUYER'S BREACH OF THIS SECTION 19.**

**20. SURVIVAL.** Each of the sections herein intended for the benefit of Seller shall survive expiration or termination of the services or delivery of the Goods outlined in a Quotation.

**21. ENTIRE AGREEMENT.** These Terms and Conditions and the applicable Quotation, together with Seller's Standard Warranty incorporated herein by reference, represent the entire agreement between Seller and Buyer. THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN A 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 (i) be solely for the record keeping convenience of Buyer, and (ii) confirm these Terms and Conditions and not add to, delete from, or otherwise change or modify these Terms and Conditions or those contained in a Quotation.

**22. SEVERABILITY.** The partial or complete invalidity of any one or more provisions of these Terms and Conditions shall not affect the validity or continuing force and effect of any other provision. If any portion of these Terms and Conditions shall be determined to be invalid or unenforceable, that portion shall automatically be modified to the extent necessary to make it valid. Notwithstanding the foregoing, such determination of invalidity or unenforceability shall not affect any other portion of these Terms and Conditions and such other portions shall remain in full force and effect.

**23. GOVERNING LAW; JURISDICTION.** Any controversy arising out of or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be construed and governed by the laws of the State of Ohio, including Article 2 of the Uniform Commercial Code as codified in Ohio Revised Code Chapter 1302, notwithstanding conflicts of law principles. Any action arising from or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be instituted and litigated in any state court located in Clark County, Ohio, or in any federal court with jurisdiction over Clark County, Ohio. Seller and Buyer hereby irrevocably consent to the jurisdiction of the courts of Clark County, Ohio. The rights and obligations of Seller and Buyer will not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods; rather these rights and obligations will be governed by the laws of the State of Ohio.

**24. WAIVER.** No waiver by Seller of any breach of any term or condition of these Terms and Conditions shall be deemed a waiver of any other breach. No delay in enforcement of rights by Seller will be deemed a waiver, and Seller's failure to object to any provision contained in any communication from Buyer shall not be deemed an acceptance thereof or a waiver of any of these terms and conditions.

**25. NUCLEAR LIABILITY.** In the event that the services and/or Goods provided by Seller and/or otherwise identified in these Terms and Conditions or in a Quotation are provided, used, or otherwise employed in, on or around a facility generating and/or otherwise employing in any manner nuclear, radioactive or ionizing radiation whether as a fuel, product or any other substance, the terms and conditions of the Seller Nuclear Liability Addendum (Revision 12.31.2012) incorporated by reference as if fully rewritten herein and a copy of which is attached to the Quotation or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer.

**26. ENGLISH LANGUAGE.** Buyer and Seller confirm that it is their wish that these Terms and Conditions and each Quotation as well as all other documents relating to these Terms and Conditions and each Quotation, including notices, be drawn up in English only.

# OFFER

1-165K96MR

**Offer number:** 1-165K96MR/1

**Configuration Id:**

Page 5

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