

TRACHTE, INC. TERMS AND CONDITIONS (“TERMS”)

A. SCOPE OF WORK

1. Contractor shall furnish all goods, products, supplies, parts or materials (“Goods”) or labor, supervision, training, materials, equipment, and tools required to carry out work (“Work”) as agreed upon and authorized by Trachte, Inc.’s (“Trachte”) purchase order or other writing (“P.O”) and in accordance with the pricing, wage, salary, and fee schedules therein and these Terms.
2. No Goods shall be delivered or Work performed until Contractor has received Trachte’s authorizing P.O. Contractor shall not provide any Goods or Work not specified by the P.O., unless authorized in writing by Trachte.
3. If the PO pertains to crane or rigging services, then the same shall be subject to the terms and conditions of that certain Disclaimer for Crane Rigging and Operations.
4. These Terms shall supersede and prevail over all other terms and conditions unless otherwise agreed by the parties.

B. DEADLINES AND ACCEPTANCE

1. In the event Contractor does not comply with the completion deadline or delivery dates or location specified in the P.O., then Trachte may at its option allow Contractor to deliver the Goods or complete the Work, declare the P.O. breached and either retain any funds then due to Contractor as liquidated damages, or use any legal remedy to recover its damages. Trachte may cancel or alter any portion of the Goods or Work to be provided under the P.O. by paying to Contractor the appropriate and necessary expenses incurred by Contractor and agreed to by Trachte. Any costs resulting from delays in delivery or completion, except where caused by Trachte, shall be at Contractor’s expense. These remedies are non-exclusive.
2. Upon delivery of Goods or written notice from Contractor that the Work is ready for final inspection or review, Trachte shall have its designated representative inspect the same. At Trachte’s request, Contractor shall submit evidence satisfactory to Trachte that all payrolls, materials, bills, sales taxes and other indebtedness connected with the Goods or Work have been paid and the final payment by Trachte shall not be due until such evidence is provided. If the designated representative finds that the Goods or Work are satisfactory and that all obligations of Contractor have been paid, said representative shall direct that all Trachte’s obligations be paid, subject to setoffs for amounts due Trachte. Trachte may, at its discretion, accept in writing portions of the Goods or Work without the release or waiver of any of its rights under these Terms & Conditions (“Terms”) or at law and Contractor’s obligation to submit supporting documentation for remainder.

C. METHOD OF PAYMENT

Contractor shall submit invoices itemizing Goods actually delivered or materials, labor and supplies used on the project to verify the costs of the Work actually completed. Invoices shall itemize all applicable Wisconsin sales and/or use taxes. Any additional costs and expenses shall require the prior written approval of Trachte. If approved, Trachte shall pay ___% of the amount invoiced (less setoffs) by the 45th day following receipt of Contractor’s invoice. Final payments, less setoffs, shall be due 45 days after Contractor delivers the Goods or completes the Work; submits the final invoice; and the Work is finally accepted by Trachte in accordance with these Terms.

D. INDEPENDENT CONTRACTOR AND SUBCONTRACTING

1. Contractor is an independent contractor and shall at all times be solely responsible for itself, its employees, agents and Subcontractors as to workmanship, accidents, injuries, wages, supervision and control. Contractor shall obtain Trachte’s written permission before subcontracting any portion of the Work. If such permission is given, Contractor shall remain solely responsible for the Goods or Work and compliance with the Terms and the P.O.
2. Contractor shall procure all permits and licenses necessary or required for providing the Goods or carrying out the Work provided for in the P.O. Contractor will notify Trachte immediately if Contractor becomes aware of revocation, threatened revocation, facts giving rise to possible revocation of such permits or licenses or that any equipment or facility relating to the Goods or Work is not in compliance with applicable laws and regulations.

E. DELIVERY

Delivery of Goods or materials and equipment for Work including replacement or corrective deliveries shall be F.O.B. destination. Title to and risk of loss of Goods, materials and equipment shall remain with Contractor until final acceptance. Payment for the Goods, materials and equipment shall not constitute acceptance. Trachte shall have the right to inspect, test and reject such Goods, material and equipment.

F. LIENS

Contractor, for itself, all employees, its Subcontractors, and all other persons performing any labor or furnishing any materials for any of the Goods or Work covered by the P.O., hereby waives, to the fullest extent permitted by

law, all liens for or on account of the Goods provided or Work performed and agrees that all Goods or Work, furnished by Contractor or its Subcontractors, the improvements or structures incorporating the same, and the land to which it is appurtenant shall at all times be free and clear of all such liens.

G. INSURANCE

Contractor shall provide and maintain Public Liability and Property Damage Insurance so as to provide protection and indemnification against any and all such claims or suits in connection with the Goods or Work which are the subject of the P.O. Contractor shall furnish to Trachte, upon request, certificates issued by insurance companies acceptable to Trachte, showing policies carried and the limits of coverage as follows unless otherwise agreed by the parties: 1) Workers’ Compensation Insurance for Contractor’s employees to the extent of statutory limits and Occupational Disease and Employer’s Liability Insurance for not less than \$100,000; 2) Commercial General Liability Insurance, including but not limited to, Products and Completed Operations and Contractual Liability, as applicable to Contractor’s obligations under these Terms and the P.O. with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; 3) Auto Liability Insurance for not less than \$1,000,000 CSL; and 4) Umbrella Liability Insurance for not less than \$1,000,000. Failure of Trachte to enforce the minimum insurance requirements listed above shall not relieve Contractor of responsibility for maintaining these coverages.

H. REMEDIES

1. Upon discovering any breach of these Terms or the P.O. by Contractor, Trachte may pursue any and all remedies available at law, including but not limited to requiring Contractor, at its expense, to replace defective Goods, materials or equipment, to correct defects or re-perform the Work, and to replace or repair (at Trachte’s option) any Goods or Trachte property damaged due to defective Goods or faulty Work or to terminate the P.O. If, in the judgment of Trachte, delay could cause serious loss or damage, repairs or adjustments may be made by Trachte or a third party of Trachte’s choosing with notice to Contractor, and the cost of the Goods or Work shall be paid by Contractor.
2. Trachte may pursue the remedies provided herein, including termination of the P.O., at any time following the discovery of a breach of the P.O. or Terms. No agreement varying or extending any warranties or remedies will be binding unless in writing and agreed to by Contractor and Trachte.
3. Trachte shall have the right to delay or cancel for its convenience further performance of all or any separable part of the P.O. at any time by written notice to Contractor.

I. NONWAIVER

Failure by Trachte to strictly enforce the P.O., the Terms, or rights shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such terms or rights in the future.

J. LIMITED WARRANTY

Contractor warrants that the Goods provided or the Work performed shall be in accordance with industry standards of care, quality and practice appropriate to the nature of the Goods or Work and free from defects. Contractor further warrants that the Goods provided or Work performed shall conform in all respects to any specifications provided to Trachte and are fit for the particular purpose intended by Trachte. Contractor shall be responsible for enforcement of any applicable manufacturers’ warranties. These warranties shall be in addition to all warranties provided for in the Uniform Commercial Code as adopted by the State of Wisconsin.

K. FORCE MAJEURE

Unavoidable delays may result from causes which may reasonably be presumed beyond the control of Contractor or Trachte, such as: acts of providence, floods, fortuitous events, unavoidable (from the standpoint of Trachte) accidents, riots, strikes and lock outs. Should the progress of the Work (including delivery of equipment, goods and materials) be or seem to be delayed at any time for such causes, Contractor shall immediately notify Trachte in writing of the occurrence, in order that a record of the same may be made. Trachte may, at its option, provide a corresponding extension of time for the completion of Work or delivery of Goods not to exceed the actual number of days such unavoidable delays accrued, but it is distinctly understood that should Contractor fail to notify Trachte as provided herein, such omission shall be construed as a waiver of all claims and rights to extension of time.

L. DISPUTES AND GOVERNING LAW

Any dispute not settled by the management of the parties shall be referred to the American Arbitration Association for resolution. The laws of the State of Wisconsin shall govern this Agreement and venue shall be in Dane County, Wisconsin. Contractor’s obligation to perform under the P.O. shall remain in effect during the resolution of disputes.