

General Kinematics Corporation
Crystal Lake, IL
TERMS AND CONDITIONS – FIELD SERVICE

1. Contract Formation. Written acceptance or submission of a PO by Buyer for field services shall be deemed acceptance of the offer of General Kinematics Corporation (“Seller”) to provide the services as contained in this quotation. Any acceptance of this quotation is limited to acceptance of the expressed terms of the offer contained herein. A proposal for additional or different terms or attempt by Buyer to vary in any degree any of the terms of this offer in Buyer’s acceptance and/or acknowledgement copy of this quotation is hereby objected to and rejected. This quotation or any sale or agreement arising therefrom can only be modified or changed in writing executed by a duly authorized representative of Seller containing specific reference to the number and date of this quotation.

2. Terms. Payment is due upon receipt of invoice. All invoices shall be paid in U.S. funds within 10 days of the invoice date. Invoices not paid within terms may be assessed a service charge of 1.5% per month (or fraction thereof). In the event collection action becomes necessary, Buyer agrees to pay all costs of collection, including attorneys’ fees, incurred by Seller in collecting any amount which Buyer had not paid when due.

3. Warranty. The services provided are advisory only. GKC does not supervise customer contractors, employees, or other workers with respect to work being performed regarding the project. The presence of our representative shall in no way extend or modify GKC equipment warranty or contract obligations.

4. Intellectual Property. Seller owns all intellectual property rights in plans, specifications, drawings, schematics, working models and other documents (“Custom Material”) provided to Buyer by Seller, including but not limited to copyrights, patents, trademarks and trade secrets. All Custom Material prepared by Seller for Buyer pursuant to any agreement arising from this quotation belongs exclusively to Seller.

5. Confidentiality. Each party acknowledges that in the course of the performance by Buyer and Seller, either party may obtain the Confidential Information of the other party. “Confidential Information” includes, but is not limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, and other proprietary information that gives the party an advantage in the marketplace and that the party protects from dissemination to the general public by reasonable measures of secrecy. Each party will, at all times, keep in confidence and trust all of the other party’s Confidential Information. Each party will take reasonable steps to prevent unauthorized disclosure or use of the other party’s Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Each party will not disclose Confidential Information of the other party to any person or entity other than its officers, employees, contractors, and consultants who need access to such

Confidential Information in order to effectuate the intent of this Service order and any contract arising therefrom and who will be bound by this provision as the agents of the party. Each party will immediately give notice to the other party of any unauthorized use or disclosure of the party’s Confidential Information. Each party agrees to assist the other party to remedy such unauthorized use or disclosure of its Confidential Information.

6. Delay. Any delay or failure in performance hereunder by a party hereto shall be excused if and to the extent caused by occurrences beyond such party’s reasonable control, including but not limited to, decrees or restraints of government, force majeure, epidemic, pandemic, quarantine, strikes or other labor disturbance, war, riot, civil commotion, sabotage, floods, fires or natural catastrophes. If, as a result of legislation or governmental action, any party or parties are precluded from receiving any benefit to which they are entitled hereunder, the parties shall review the terms hereof and use their best efforts to restore the party or parties to the same relative positions as previously enjoyed hereunder. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party’s financial inability to perform its obligations hereunder.

7. Choice of Law. All agreements shall be governed by the laws of the State of Illinois without regard to conflicts of laws rules. In no event shall any sale or agreement arising from this quotation be subject to the United Nations Convention on Contracts for the International Sale of Goods or the Convention on the Limitation Period in the International Sale of Goods.

8. Dispute Resolution. (a) For all agreements for work to be performed by Seller anywhere in the United States, its commonwealths and territories arising from this quotation, all disputes concerning such agreements shall be litigated in a court of law. Venue for all such litigation shall be in a state or federal court for McHenry County, Illinois. (b) For agreements for work to be performed by Seller in a location other than in the United States, its commonwealths or territories, all disputes concerning such agreements shall be resolved by binding arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The arbitration hearings shall take place in Chicago, Illinois, USA, and the arbitration shall be in English. One arbitrator shall be appointed, except for disputes exceeding \$250,000.00 for which three arbitrators shall be appointed.

9. Consequential and Liquidated Damages. In no event shall either Buyer or Seller be liable to the other for incidental, liquidated or consequential damages, including, without limitation, lost revenue, lost profits, loss of use, or of any other loss of any nature, whether based in contract, tort, negligence, strict liability, economic loss or otherwise arising from performance, or failure to perform, under this agreement.

10. Limitation of Liability. (a) Seller’s liability for any claim arising from performance of, or failure to perform, any agreement, or any part thereof, arising from this quotation shall be limited to the price of the agreement, including, without limitation, any claim or suit based in contract, negligence, strict liability or otherwise related to design, manufacture, delivery, resale, inspection, repair, operation or use of any piece of equipment, or any component thereof, or any replacement part. (b) Seller shall not be liable to Buyer for any damage sustained by Buyer due to any verbal instructions or advice (“Advice”) given by Seller to assist Buyer in any manner whatsoever, including, without limitation, advice regarding installation or rigging of the products, materials or any equipment sold to Buyer pursuant to any agreement arising from this quotation. (c) To the fullest extent permitted by law, Buyer agrees to indemnify, defend and hold harmless Seller and each of its officers, employees, agents, shareholders, and each of their heirs, successors and assigns from any and all claims, demands, liabilities, judgments, costs and expenses, including payment of attorneys fees and other defense costs, arising, or alleged to arise from, any Advice, regardless of whether any negligence of Seller or any of other indemnitees contributed thereto.

11. Agreement. (a) The agreement arising from this quotation consists of this quotation, any written modifications to this agreement executed by Seller and Buyer, and any documents incorporated by reference in this quotation. The agreement constitutes the entire agreement between Seller and Buyer and shall supersede all prior agreements pertaining to the subject matter of the agreement, whether written or oral. (b) If any provision of the agreement shall be invalid or unenforceable under the laws of any state, country or jurisdiction where use or performance occurs or is to occur, the agreement shall be interpreted as not containing the particular provision(s) which is (are) invalid or unenforceable. (c) The failure of Buyer or Seller to enforce any provision of the agreement shall be limited to the one instance and shall not be construed as evidence of waiver of the right to enforce that provision in any other instance.