

Alvord Unified School District
Riverside, California

Date: August 17, 2017

To: Sid Salazar, Ed.D., Superintendent of Schools

From: Kevin Emenaker, Executive Director, Administrative Services

Subject: Item 7.x.: Approve Professional Services Agreement – Crown Lift Trucks
– District Yard on Keller Avenue

STAFF RECOMMENDATION: Approve Professional Service Agreement between Crown Lift Trucks and Alvord Unified School District, for inspections, maintenance and repairs of equipment (forklift, boom lift and scissor lift), effective August 18, 2017 through June 30, 2018.

BACKGROUND INFORMATION: For safety purposes all forklifts, boom lift and scissor lift at the District Yard need servicing on a regular basis. This contract will allow Crown Lift Trucks to perform inspections, maintenance and repairs to this equipment, as needed.

CURRENT CONSIDERATION: Board approval will allow Crown Lift Trucks to proceed with services.

REVIEW BY OTHERS: Cabinet, Director I, Administrative Support Services

ATTACHMENTS: Agreement, Proposal

FISCAL IMPACT: \$8,000.00 (General Fund/Restricted - Maintenance)

CONSENT ITEM

**AGREEMENT BETWEEN
ALVORD UNIFIED SCHOOL DISTRICT &
CROWN LIFT TRUCKS
FOR SERVICE, MAINTENANCE AND REPAIRS TO MAINTENANCE EQUIPMENT**

This Agreement is made and entered into this **18th** day of **August, 2017**, in the State of California, by and between the Alvord Unified School District, the "District", and **Crown Lift Trucks**, the "Consultant", collectively the "Parties".

RECITALS:

WHEREAS, the DISTRICT requires specialized services and/or advice in connection with certain instructional, financial, economic, accounting, administrative, entertainment, recreational or amusement matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies; and

WHEREAS, the Consultant is specially experienced and competent to provide to the District certain specialized services and/or advice in one or more of the foregoing areas; and

WHEREAS, District desires Consultant to provide these services, and Consultant is willing to provide these specialized services, in accordance with the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DESCRIPTION OF SERVICES ("Services")

Consultant shall provide to the District under the terms herein set forth for **service, maintenance and repairs to fork lifts, boom lift and scissor lift at Maintenance and Operations Yard** for Alvord Unified School District scheduled between **August 18, 2017** through **June 30, 2018**.

II. COMPENSATION

District agrees to compensate Consultant for services satisfactorily rendered pursuant to this Agreement in an amount not to exceed **eight thousand dollars (\$8,000.00)**. **Total payments under this contract not to exceed \$8,000.00** – which includes the cost of all services, meals, mileage, copying and materials to be provided pursuant to this Agreement. Invoices must reflect all costs incurred in sufficient detail, and Consultant shall submit to District any documentation necessary to substantiate the full and satisfactory performance of the services of which payment is requested. Such invoices shall reflect the Purchase Order Number provided by District and be submitted to **Accounts Payable, Alvord Unified School District 9 KPC Parkway Corona, CA 92879**. Payment is due to Consultant within thirty (30) days of receipt of Consultant's properly prepared invoice, but no sooner than the conclusion of satisfactory rendered services.

The District's standard payment terms are payment following provision of services and approval of a properly prepared invoice, which may not be fulfilled until after services are satisfactory rendered. If Consultant requires payment on the date of service, Consultant shall submit an invoice to the District pursuant to the requirements of this Article in sufficient time to ensure that District receives the invoice at least thirty (30) days prior to the date of service. Consultant's invoice shall state that payment at the date of service is requested.

III. TERM AND TERMINATION

A. The term of the Agreement is for the period from August 18, 2017 through and including June 30, 2018. All services shall be performed by Consultant in a manner consistent with the orderly progress and sequence of the work leading to satisfactory completion. All services and materials must be rendered and received by the District by the end of the term.

B. Time is of the essence with respect to all provisions of this Agreement.

C. This Agreement may be terminated by either party District without cause upon thirty (30) days' written notice. In the event of a termination without cause, the District shall pay Consultant for all Services performed and all expenses incurred under this Agreement supported by documentary evidence up until the date of the notice of termination.

D. This Agreement may be terminated by District immediately and without notice to Consultant in the event of a substantial failure of performance, including insolvency of Consultant, or upon District's discovery of a violation of any term, condition, or provision of this Agreement on the part of the Consultant. The District has the right, at its sole discretion, to define a substantial failure of performance.

E. This Agreement may be terminated by District upon thirty (30) days written notice to Consultant if the District should decide to abandon or indefinitely postpone the project which is the subject of the Scope of Services. In the event of a termination based upon abandonment or postponement by District, the District shall pay the Consultant for all Services performed and all expenses incurred under this Agreement supported by documentary evidence up until the date of the abandonment or postponement.

F. In ascertaining the Services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete documents whether delivered to the District or in the possession of the Consultant.

G. If, after the notice of termination for substantial failure of performance, it is determined that Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of District subject to Paragraph "C" of this Article.

H. Consultant shall not be entitled to anticipatory, lost profits or consequential damages as a result of any termination under this Article. Payment to the Consultant in accordance with this Article shall constitute the Consultant's exclusive remedy for any termination hereunder. The rights and remedies of District provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

I. In the event of a dispute between the Parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of the dispute, Consultant agrees to continue the work diligently to completion. If the dispute is not resolved,

Consultant agrees it will neither rescind the Agreement nor stop the progress of the work, but, Consultant's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the project which is the subject of the Consultant's Scope of Services has been completed, and not before. (Government Code Section 900, *et seq.*)

IV. OWNERSHIP

A. Nothing in this Agreement shall be construed as granting District any license, for any purpose, under any patent, copyright, or other intellectual property rights of Consultant.

B. District and Consultant will obtain prior written permission from each other before using the name, symbols, and/or marks of the other in any form of publicity in connection with the work performed under this Agreement. This shall not include legally required disclosure by the District that identifies the existence of the Agreement. Further, District's use of the name, symbols, and/or marks of Consultant or the names of Consultant's employees or independent contractors shall be limited to identification of Consultant as the purveyor of services under this Agreement.

C. This Agreement is for day-to-day operational support purposes and not for research purposes. The Consultant is prohibited from publishing any information, conclusions or developments resulting from its work under this Agreement.

V. CERTIFICATIONS, REPRESENTATIONS and WARRANTIES

Consultant makes the following certifications, representations, and warranties for the benefit of the District and Consultant acknowledges and agrees that the District, in deciding to engage Consultant pursuant to this Agreement is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Consultant's engagement hereunder:

A. Consultant is qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable laws, Consultant has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

B. Consultant, in providing the Services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state and local laws, rules, regulations, ordinances and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District.

C. Consultant shall abide by the District's tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the District.

D. Consultant, and Consultant's staff, shall at all times comply with the provisions and requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*).

E. Consultant shall at all times enforce appropriate discipline and good order itself and among its employees and shall not employ or work any unfit person or anyone not skilled in providing the Services required under this Agreement. Any person in

the employ of the Consultant, or an agent thereof, whom District, in its sole discretion, may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this Agreement.

F. Consultant, and Consultant's staff, shall at all times follow the instructions and directions of District staff during a school campus emergency or during a school campus emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the campus. At any time it becomes necessary for the Consultant to request emergency services while on District property, such services shall be requested by calling 911. Consultant shall immediately notify the site administrator that 911 emergency services have been requested.

VI. NOTICES

All notices, claims, correspondence, reports, and/or statements authorized or required by the Agreement shall be addressed as follows:

Consultant:

Crown Lift Trucks
4250 E. Greystone Drive
Ontario, CA 91761

District:

Kevin Emenaker, Executive Director, Administrative Services
Alvord Unified School District
9 KPC Parkway
Corona, CA 92879

All notices shall be deemed effective when they are made in writing, addressed as indicated above, and deposited in the United States mail. Any notices, correspondence, reports, and/or statements authorized or required by the Agreement addressed in any other fashion will not be acceptable, except invoices and other financial documents, which shall be addressed as indicated under the Section above entitled Compensation.

VII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed to by both Parties that the Consultant, in the performance of this Agreement, is an independent contractor and is not an officer, agent, or employee of the District. Consultant and all of Consultant's employees are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Insurance Compensation or Workers' Compensation.

VIII. FINGERPRINTING

For purposes of this Agreement and because the District will provide a qualified employee for the supervision of District's students at all times that Consultant is present and performing services at an active school site, Consultant shall be relieved of the requirements to provide a criminal background check pursuant to California Education Code 45125.1.

IX. INSURANCE

Consultant, at its sole cost and expense, shall secure and maintain in full force and effect throughout the term of this Agreement policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

A. Workers' Compensation. Workers' Compensation as required under California State law (if applicable).

B. Commercial General Liability, Employer's Liability, Auto Liability Insurance and Professional Liability Insurance. Consultant shall secure and maintain appropriate insurance coverage as may be needed to protect the District against any liability arising out of this Agreement.

X. HOLD HARMLESS

Consultant agrees to indemnify and hold District, its Officers, agents, and employees harmless from any and all claims, losses, actions, damages, expenses or liabilities arising out of the negligent acts or omissions of Consultant, its officers, agents, or employees by reason of the operation of this Agreement. Consultant shall assume full responsibility for payments of Federal, State, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation and/or income tax laws, or any disability or unemployment law, or retirement contributions of any sort whatsoever, concerning Consultant or any employee or agent thereof, and shall further indemnify and hold harmless District from any such payment or liability arising out of or in any manner connected with Consultant's performance under this Agreement.

XI. CONFLICT OF INTEREST

Consultant covenants that it presently has no interest, including but not limited to, other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which are, or which the Consultant believes to be, incompatible in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement. Consultant agrees to inform District of all of the Consultant's interests, if any, which are or which the Consultant believes to be, incompatible with any interests of District.

XII. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Consultant.

XIII. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction and venue shall be agreed upon in the appropriate courts in the County of Riverside, State of California.

XIV. NON-WAIVER

The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

XV. AUTHORITY

The individuals executing this Agreement on behalf of the parties each represent and warrant that they have the legal right and actual authority to bind the parties to the terms and conditions hereof.

XVI. ASSIGNMENT

The District and Consultant, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Consultant shall not assign the whole or any part of this Agreement without the written consent of the District.

XVII. ENTIRE AGREEMENT/MODIFICATIONS

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations and understandings, either written or oral. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof. This Agreement may only be modified by written agreement signed by both Parties. Any purchase order issued by District in connection with this Agreement is deemed to be issued for District's administrative or billing identification purposes only. The terms and conditions contained herein shall exclusively govern the Services to be provided hereunder.

XVIII. COUNTERPARTS

The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties further agree that signatures sent by electronic mail, in .pdf format, shall be treated as original signatures to this Agreement.

XIX. SURVIVAL

Articles III, V, VI, VII, XI, XIV and this Article XX shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties hereto on the day and year written below have executed this Agreement.

Signature _____
Crown Lift Trucks

Print Name/Title: _____

Date _____

Signature _____
Kevin Emenaker, Executive Director, Admin. Services
ALVORD UNIFIED SCHOOL DISTRICT

Date _____

Gen. Fund / Rest. - Maint. 06-631-8150-0-0000-8110-5630

Contract #: _____

Distribution: _____

Consultant: _____

Department Originator: _____

Fiscal: _____



lift trucks

4250 E. Greystone Dr.
Ontario, CA 91761
Tel 909-923-8357
Fax 909-947-7016
www.crown.com

crown.com

Quotation

Please refer to this proposal by number and date in all correspondence.

To Alvord Unified School District
7377 Jurupa Ave.
Riverside, CA 92504

Date April 4, 2017

Attn: Vickie Turner
Phone: 951-509-5025

Quotation No. PM Scissor Lift

Quote

Re: Quote on JLG Scissor Lift

Vickie,
Crown Lift Trucks is pleased to offer the following:

What's covered:

- Interview with the operator to gather information on the scissor lift performance.
- Visual, operational and safety inspections.
- Removal of body panels to blow off excessive dust and remove debris.
- Lubrication procedures recommended by the manufacturer.
- Inspection of all major systems including:

- Hydraulic System
- Electric System
- Steering System
- Drive unit/transmission
- Brakes
- Minor adjustments

What's not covered:

- PM follow up repairs.
- Breakdown repairs.
- Wheels, tires, batteries, attachments, light bulbs, etc.
- Cost of replacement parts.

PM FLAT RATE:

MAKE	MODEL NUMBER	SERIAL NUMBER	FREQUENCY	QUOTE PER PM	YEARLY TOTAL
JLG	TBD	TBD	90	\$100	\$400

Current labor rate per hour on approved repairs: \$139

We look forward to assisting with your service requirements.

Subject to acceptance by buyer and seller within 30 days from the date hereof and only in accordance with the terms and conditions printed on the reverse, which form a part of this quotation.

Prices quoted are based upon quantities specified above.
If above customer cannot accept merchandise at time of shipment from our supplier, above customer will be invoiced and normal terms will apply.

Above prices subject to all state and local taxes.

All orders are subject to acceptance by Crown.

F.O.B.: Factory Terms: NET 10 DAYS

Thank You. We hope we can be of service to you.

Crown Lift Trucks
Charles "Chet" Trupp

[company name]
Crown Lift Trucks

By: _____

Rep
Title

Title:

CSS

Date: April 4, 2017

TERMS AND CONDITIONS OF SALE

1. **OSHA Regulations.** Employers of operators of lift trucks are required to follow applicable OSHA regulations (see Section 1910.178). Crown will provide a copy of the OSHA regulations upon request.
2. **Operator Training.** Buyer understands that OSHA requires that operators of its lift trucks be trained, evaluated and certified as competent to safely operate the particular model truck used in the performance of the job. Buyer understands this obligation and will only permit properly trained and certified operators to use lift trucks. At Buyer's request, Crown will provide information on the training material and resources available through its Training Department.
3. **General.** The terms and conditions on both sides of this form shall be the complete and exclusive terms and conditions applicable to the agreement between Crown and Buyer. Crown shall not be bound by Buyer's Terms and Conditions unless expressly agreed to in writing. In the absence of written acceptance of these Terms and Conditions by Buyer, either acceptance of or payment for the equipment shall constitute Buyer's acceptance of these Terms and Conditions. Any different or additional terms or conditions in any order, proposal, acknowledgment form, or any other document of Buyer are hereby deemed material alterations and are null and void and superseded by these Terms and Conditions.
4. **Price.** Prices as quoted are in U.S. dollars and are firm for thirty (30) days from the date of Crown's Quotation. Thereafter, they are subject to change without notice to the prices prevailing at time of acceptance. Prices are F.O.B. Carrier's equipment at our factory and are exclusive of all taxes-federal, state or local. If Crown is required to pay or collect any tax or duty owed by Buyer, such payment or collection shall be added to the price. If there is a delay in completion or shipment of order, due to any change requested by Buyer, or as a result of any delay on Buyer's part in furnishing information necessary for completion of the order, the price initially agreed upon at time of acceptance is subject to change.
5. **Delivery Date.** The promised delivery date is the best estimate possible, based upon current and anticipated factory loads, of when the equipment will be shipped. Crown shall have no liability for lost profits or incidental or consequential damage due to delays. If any contingency beyond the control of Crown occurs that prevents Crown from shipping the equipment on time, Crown may allocate production and delivery among Crown's customers without liability.
6. **Payment.** Payment shall be net 10 days date of shipment unless otherwise agreed to in writing. Production, shipment, and delivery shall at all times be subject to the approval of Crown's credit department. Crown reserves the right at any time to modify or withdraw credit terms without notice and to require guarantees, security, or payment in advance of the amount of the credit involved. If Crown at any time doubts Buyer's financial responsibility, Crown may decline to make shipments hereunder except upon cash payment in advance or receipt of security or other proof of responsibility satisfactory to Crown.
7. **Title.** Title to all equipment shall remain in Crown until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer. Crown shall retain a security interest in, and right to repossess, any such equipment until it is paid in full. Risk of loss shall pass to Buyer upon delivery to carrier.
8. **Changes.** Any change order by Buyer will not be considered effective until mutual agreement has been reached between the Buyer and Crown as to the effect of any changes in prices, delivery, and other conditions of the order.
9. **Inspection and Notice of Defect.** Unless otherwise specified, the equipment to be furnished hereunder shall be subject to Crown's standard inspection at the place of manufacture. If inspection by the Buyer at the place of manufacture is provided for, Buyer's inspectors shall be deemed agents of Buyer to accept the equipment on Buyer's behalf regardless of deviation from formal specifications. Notice of any defects or claims of any nature (except warranty) must be made within 30 days of delivery. Returns will not be accepted for any reason without Crown's prior written authorization.
10. **Warranty by Crown.** Crown's standard published warranties in effect at the time of shipment for the particular equipment shall apply. THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
11. **Limitation of Liability.** In the event Buyer claims that Crown has breached any of its obligations under this agreement, whether in warranty or otherwise, Crown may request and require return of the equipment and refund the Buyer's purchase price upon Crown's receipt of the returned equipment. If Crown so requests the return of the equipment, the equipment shall be redelivered per Crown's instructions at Crown's expense. In such event, Crown shall absolutely have no further obligation to Buyer except to refund the purchase price. THE REMEDY PROVIDED FOR IN THIS PARAGRAPH SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST CROWN FOR BREACH OF ANY OF CROWN'S OBLIGATIONS UNDER THE AGREEMENT, WHETHER THE CLAIM IS MADE IN TORT, CONTRACT, OR IN ADMIRALTY, INCLUDING CLAIMS BASED ON WARRANTY, NEGLIGENCE OR OTHERWISE. Any cause of action against Crown arising out of this agreement must be brought within one year after the cause of action has accrued.
12. **Patent, Trademark or Copyright Infringement.** Crown warrants that the equipment purchased hereunder shall be delivered free of rightful claims for infringement of any United States patent or trademark, provided, however, that where equipment is manufactured from patterns, plans, drawings, or specifications furnished by Buyer, Buyer shall indemnify Crown against and save harmless Crown from all loss, damage, and expense arising out of any suit or claim against Crown for infringement of any patent, trademark, or copyright because of Crown's manufacture of such equipment or because of the use or sale of such equipment by any person. At Crown's option, upon receipt from Crown of written notice of any such suit or claim, Buyer shall appear in and assume the defense of the litigation.
13. **Proprietary Information-Confidentiality.** Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Crown furnished to Buyer shall be deemed to be incorporated herein by reference the same as if fully set forth.

Crown shall at all times retain title to all such documents, and Buyer shall not disclose such to any third party without Crown's prior written consent. Upon Crown's request, Buyer shall promptly return to Crown all such documents and copies thereof.
14. **Termination.** Crown may terminate this agreement upon immediate written notice to Buyer on the happening of any of the following events: (a) Failure of Buyer to accept delivery of equipment or to pay any indebtedness to Crown when due, accompanied by a failure within ten (10) days after demand therefor, to fully pay the same or provide assurance of payment satisfactory to Crown; (b) Failure by Buyer to honor any promise on Buyer's part contained in this agreement or to perform any of its obligations under this agreement, other than the payment of any indebtedness to Crown, after Buyer shall have been notified by Crown of such failure and in Crown's opinion shall have failed to correct the same within thirty (30) days after receipt of such notice; (c) Repetition by Buyer of a failure which is the same or substantially the same as the one previously corrected by Buyer after notice as provided in subparagraph (a) above; (d) The material inaccuracy of any information set forth in any application, claim, schedule, certificate, or other document heretofore or hereafter furnished by Buyer to Crown; and (e) If Buyer shall cease to function as a going concern, or makes an assignment for the benefit of creditors, or any proceeding under any federal or state bankruptcy, receivership, or insolvency laws is instituted by or against Buyer, or the liquidation, dissolution, merger, or consolidation of Buyer occurs, or a receiver or trustee for Buyer or any of its assets or property is appointed or applied for. Termination shall not release or affect, and this agreement shall remain fully operative as to, any obligations or liabilities incurred by Buyer prior to the effective date of such termination; provided, that all indebtedness of Buyer to Crown shall become immediately due and payable on the effective date of termination without demand, and Crown may deduct from any sums it owes to Buyer sums owed by Buyer to Crown. Any orders received from Buyer, whether or not accepted by Crown, which have not been shipped prior to Buyer's receipt of notice of termination or the effective date of termination or expiration, whichever shall occur first, shall only be shipped C.O.D. or cash in advance.
15. **Tooling.** Unless otherwise agreed to in writing, all tooling shall remain the property of Crown.
16. **Government Contract Conditions.** If Buyer's purchase order contains a U.S. government contract number and orders products to be used in the performance of the contract, those clauses of applicable U.S. government procurement regulations mandatorily required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.
17. **Modification.** In the event Buyer modifies the equipment sold hereunder without the express written consent of Crown, or Buyer fails to implement any changes in the equipment directed by Crown, Buyer agrees to indemnify, defend, and hold Crown harmless from any and all claims, demands, suits, costs, and expenses incurred thereby, whether in contract, tort, or otherwise resulting from such failure.
18. **Miscellaneous.** Buyer's rights and obligations hereunder may not be assigned or delegated without the prior written consent of Crown. Crown may freely assign its rights and obligations. This agreement shall be governed by and construed in accordance with the Uniform Commercial Code as adopted by Ohio under which jurisdiction Buyer consents. This agreement supersedes all prior written or oral agreements with respect to the subject matter hereof. The invalidity of any part of these Terms and Conditions shall not affect the validity of the remaining provisions. All claims or suits against Crown must be made within one (1) year of the date the cause of actions occurred (regardless of when they were discovered) or be forever barred. No waiver shall be effective against Buyer unless Buyer agrees to same in writing. Paragraph headings found herein are for convenience only and are not to be considered in interpreting any of the provisions hereof.
19. **Contingencies.** Crown shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material, or equipment used in the manufacture of the equipment; failure of any party to perform any contract with Crown relative to the production of the equipment; or from any cause whatsoever beyond Crown's control, whether or not such cause be similar or dissimilar to those enumerated. Crown shall promptly notify Buyer of the happening of any such contingency and the contemplated effect thereof on the manufacture and delivery of the equipment.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CROWN BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR SHALL CROWN'S LIABILITY FOR ANY CLAIMS OR DAMAGE ARISING OUT OF OR CONNECTED WITH THE SALES AGREEMENT WITH BUYER, OR THE MANUFACTURE, SALE, DELIVERY, OR USE OF THE EQUIPMENT EXCEED THE PURCHASE PRICE THEREOF.