

## AGREEMENT FOR PURCHASE AND SALE OF GOODS

**THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement")** is made this **20<sup>th</sup> day of September, 2006**, by and between **H and E Equipment Services**, whose address is **5960 Country Lakes Drive, Fort Myers, Florida 33905** ("Seller") and **THE CITY OF NAPLES**, a Florida municipal corporation, the address of which is 735 Eighth Street South, Naples, Florida 34102 ("Buyer"). In consideration of the mutual covenants and agreements hereinafter set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller agree as follows:

1. **Description of Goods; Sale and Delivery.** Seller shall sell, transfer, and deliver to Buyer the goods described on the Description/Proposal attached hereto and made a part of as Exhibit "A" subject to such terms as are set forth in the Description/Proposal and in this Agreement.
2. **Acceptance; Purchase.** Buyer shall accept the goods and **pay the total amount of: \$69,900.00** for the goods in accordance with the terms of this Agreement.
3. **Identification of Goods.** Identification of the goods shall not be deemed to have been made until both Buyer and Seller have agreed that the goods in question are to be appropriate to the performance of this Agreement.
4. **Rate and Time of Payment.** Unless otherwise specified, Buyer shall make payment to Seller for the goods within 30 days after the goods are received by Buyer.
5. **Receipt of Goods.** The goods shall be deemed received by Buyer when delivered to Buyer at **City of Naples, 370 Riverside Circle Naples, Florida 34102**. Delivery of the goods to Buyer shall occur on a business day and shall not occur after 3:15 p.m. on the delivery day.
6. **Risk of Loss.** The risk of loss from any casualty to the goods, regardless of the cause, shall be on Seller up to the time of receipt of the goods by Buyer at the place of delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk shall be on Buyer, including any goods thereafter returned to Seller until their receipt by Seller.
7. **Warranty Against Encumbrances.** Seller warrants that the goods are now free, and at the time of delivery shall be free, from any security interest or other lien or encumbrance.
8. **Warranty of Title.** Seller warrants that at the time of signing this Agreement, Seller neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Seller in the goods.
9. **Product Warranty.** Seller provides general warranties of fitness and general warranties that the goods are free from defects, for 1 year from acceptance of the goods, except as may otherwise be set forth in the Description/Proposal, or other attached warranty.
10. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery, and within 5 business days after delivery, Buyer must give notice to Seller of any claim for damages on account of the condition, quality, or grade of the goods, and Buyer must specify in detail the basis of such claim. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by Buyer.

11. **Procedure as to Rejected Goods.** On receipt of notification of rejection, Seller will immediately arrange to receive back the goods for shipment and return. However, within 5 days, Seller may have an agent inspect such goods for nonconformity; otherwise, such inspection will be made on return to Seller's storage facility. When such goods are confirmed or acquiesced in as nonconforming, Seller will ship conforming goods within 30 days of the notice of rejection unless Buyer earlier notifies Seller to forgo such shipment.

12. **Governing Law.** The parties acknowledge that the transaction that is the subject matter of this Agreement bears a reasonable relation to the State of Florida and agree that the law of the State of Florida will govern their rights and duties. The parties specifically intend that the provisions of Article 2 of the Florida Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, and that all the definitions contained therein will be applicable to this Agreement except where this Agreement may expressly provide otherwise.

13. **Notices and Address of Record.** All notices required or made pursuant to this Agreement to be given by Seller to Buyer shall be in writing and shall be delivered by overnight courier, by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Buyer:

City of Naples  
Attention: Dr. Robert E. Lee, City Manager  
735 Eighth Street South  
Naples, Florida 34102-3796

All notices required or made pursuant to this Agreement to be given by Buyer to Seller shall be made in writing and shall be delivered by overnight courier, by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Seller:

**H and E Equipment Services**  
**5960 Country Lakes Drive**  
**Fort Myers, Florida 33905**  
**Attention: Tim Kennedy**

Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument.

15. **Effective Date.** This Agreement shall take effect on the day of execution by the last party to execute this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above.

ATTEST:

"SELLER":  
**H and E Equipment Services**

(Corporate Seal)

\_\_\_\_\_  
(Print Name: \_\_\_\_\_)

By: \_\_\_\_\_  
Authorized Representative

ATTEST:

"BUYER"

City of Naples, Florida

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

By: \_\_\_\_\_  
Dr. Robert E. Lee, City Manager

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

Agreement for Purchase and Sale of Goods  
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City of Naples



**INVITATION TO BID**

CITY OF NAPLES  
PURCHASING DIVISION  
270 RIVERSIDE CIRCLE  
NAPLES, FL 34102

PH: 239-213-7100

FX: 239-213-7105

MAILING DATE 06/29/06	TITLE PURCHASE OF TELESCOPIC LOADER	NUMBER: 053-06R	CLOSING DATE & TIME 2:00PM; 07/17/06
PRE-BID DATE, TIME AND LOCATION: N/A			

NAME OF PARTNERSHIP, CORPORATION OR INDIVIDUAL <i>HE Equipment SERVICES</i>	IF SUBMITTING "NO BID", STATE REASON IN THIS SPACE
MAILING ADDRESS <i>5960 COUNTRY LAKES DR</i>	
CITY-STATE-ZIP <i>FT MYERS FL 33905</i>	
PH: <i>239 693 0003</i>	EMAIL: <i>TKennedy @ HE-Equipment.com</i>
FX: <i>239 693-0433</i>	WEB ADDRESS:

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder. In submitting a bid to the City of Naples the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Naples all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of FL for price fixing relating to the particular commodities or services purchased or acquired by the City of Naples. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

AUTHORIZED SIGNATURE <i>Tim Kennedy</i>	DATE <i>7-17-06</i>	PRINTED NAME/TITLE <i>Tim KENNEDY</i>
Please initial by all that apply I acknowledge receipt of the following addendum		
Addendum #1	Addendum #2	Addendum #3
		Addendum #4

BID SCHEDULE

Furnish and deliver to the City of Naples, Florida  
one (1) telescopic loader, as specified:

\$ 69,900.00

Make & Model Offered: TEREX 644C

Time of Delivery: 45 calendar days ARO.

Length of warranty: 5 year Structural, 3 year Hydraulic, 1 year Electrical  
PLEASE INCLUDE ALL WARRANTY INFORMATION WITH BID PACKET

Location of nearest branch where parts and warranty service is  
available: H&E EQUIPMENT SERVICES  
5960 COUNTRY LAKES DR  
FT MYERS FL 33905

OPTIONS

The following options are to be priced separately over and above the  
base price. Purchaser may or may not opt to add these items on  
individually.

Extended warranty: \_\_\_ Months/\_\_\_ Hours  
(beyond standard manufacturer's warranty) \$ \_\_\_\_\_

**PAY THE TOTAL SUM OF: \$69,000.00**

# TEREX LIFTING

## Warranty Guide

### 1. WARRANTY

**Terex Lifting**, hereafter referred to as **Terex**, warrants its new products, manufactured and sold worldwide, to be free of defects in material or workmanship for a period of one (1) year, or 2000 hours of use, whichever comes first, after the date of initial delivery to the first user. The Registration Certificate that accompanies every new machine contains specific terms and conditions that apply to the machine and is included by reference in this statement.

Terex's obligation and liability under this warranty is expressly limited to, at Terex's sole option, repairing or replacing, with new or remanufactured parts or components, any part which appear to Terex upon inspection to have been defective in material or workmanship. Such parts shall be provided at no cost to the user, FOB a Terex parts facility.

Terex shall pay, to the extent established by its current Warranty Guide, the cost of labor to install any repaired or replaced part provided under this warranty.

This warranty may not apply to component parts or accessories not manufactured by Terex and which carry the warranty of the manufacturer thereof. Furthermore, normal maintenance, adjustments, or maintenance parts are not covered by this warranty.

**Terex makes no other warranty, express or implied, and makes no warranty of merchantability or fitness for any particular purpose.**

**No employee or representative is authorized to change this warranty in any way or grant any other warranty unless such change is made in writing and signed by an officer of Terex Lifting**

Terex's obligation under this warranty shall not include duty, taxes, or any other charges whatsoever, or any liability for direct, indirect, incidental, or consequential damage or delay.

If requested by Terex components or parts for which a warranty claim is made are to be returned to the location designated by Terex.

Any improper use, including operation after discovery of defective or worn parts shall void this warranty. Improper use also includes operation beyond rated capacity, substitution of parts not approved by Terex, or any alteration, modification or repair by others in such a manner as in Terex's sole judgment affects the product materially and adversely, shall void this warranty.

### 2. EXTENDED WARRANTY

**Terex Lifting**, at its sole option, may provide the following extended warranties to selected customers without incurring any obligation whatsoever to provide like or similar warranties to other customers.

#### a. Rental and Large Fleet Users

New products will be warranted to be free of defects in material or workmanship for varying periods dependent on the unit and / or dollar volume of the user. The user must also have the ability to be self sufficient in product support matters.

## TEREX LIFTING

## Warranty Guide

- **Platinum** - Twenty-four (24) months, or 4,000 hours of use, whichever comes first, after the date of initial delivery to the first user.
- **Gold** - Eighteen (18) months, or 3,000 hours of use, whichever comes first, after the date of initial delivery to the first user.

Rental and Large Fleet Users may only transfer the balance of the initial twelve (12) months, or 2,000 hours of use, warranty.

There are no provisions for warranty start – stop – restart with the **Platinum** or **Gold** extended warranties.

### b. Structural Components

Extended warranty of major welded structural components such as carrier frame, superstructure, boom sections, deck, carbody, side frames, inner and outer mast sections, and jibs, for a total of ebdy (60) months, or 10,000 hours of use, whichever comes first, after the date of initial delivery to the first user.

### c. Original Equipment Manufacturer (OEM) Components

Major components purchased by **Terex Lifting** from OEM, such as engines, transmissions, or axles, may be warranted for extended periods.

OEM component extended warranties will only be available when the new machine information packet contains a special certificate identifying the manufacturer, component, and the specified extended warranty.

### d. Other Extended Warranties

**Terex Lifting**, at its sole option, may from time to time provide extended warranties of varying period and terms to facilitate specific sales. In such circumstances additional charges will be assessed for the extension.

## 3. REPAIR PARTS WARRANTY

Genuine Terex new or remanufactured repair parts or components, purchased directly from Terex, will be warranted as follows.

### a. Machine still in warranty

Twelve (12) months, or 2,000 hours of use, or the balance of remaining machine warranty, whichever is greater.

### b. Machine beyond warranty

Twelve (12) months, or 2,000 hours of use, whichever comes first, repair parts or components only, all other charges are excluded.

#### 4. WARRANTY REPAIRS & ADMINISTRATION

##### a. Repairs & Administration

The selling Distributor, or Rental and Large Fleet User, is ultimately responsible for warranty repairs and administration to the user.

Any Terex Distributor can however provide warranty repairs and administration, for any machine, for any user, and submit claims to the appropriate Terex manufacturing location.

Terex will not however be responsible for expenses incurred that are normally provided free of charge by a selling Distributor or Rental and Large Fleet User.

##### b. Service Fee and / or Contingencies

Terex will not withhold service fees, contingencies, or other monies to ensure that selling Distributors, or Rental and Large Fleet Users, perform the warranty and product support services that are normal expected by the user.

Terex does reserve the right, at its sole discretion, to contract the necessary services from another Terex Distributor, or Rental and Large Fleet User, and invoice the selling Distributor or Rental and Large Fleet User the full costs incurred.

#### 5. REGISTRATION & INSPECTION

##### a. Registration Certificates

Distributors and Rental and Large Fleet Users are to ensure that a new machine Registration Certificate is completed and signed by each user when the machine is delivered.

The balance, if any, of the basic twelve (12) months, 2000 hours of use, warranty is transferable to second and subsequent users. A new machine Registration Certificate must be submitted to transfer the balance of warranty. Current completed Registration Certificate must be on-hand to permit claims processing.

Registration Certificates will be included with the new machine information packet shipped from Terex factories with all new machines. Additional supplies will be available from Terex locations.

There is no provision for warranty start – stop – restart.

##### b. Inspection Certificates

Distributors and Rental and Large Fleet Users will be required to submit a Receiving Inspection Certificate covering the inspection of the machine at the time it is received from the Terex factory.

Distributors and Rental and Large Fleet Users will be required to submit a Delivery Inspection Certificate covering inspection of the machine at the time it is delivered to the user. The user must sign the completed Inspection Certificate.



## TEREX LIFTING

## Warranty Guide

Distributors and Rental and Large Fleet Users will be required to submit an In-Service Inspection Certificate during the first 120 days of use. The user must sign the completed In-Service Inspection Certificate.

All required Inspection Certificates must be on-hand to permit claims processing.

### 6. REPAIR PARTS REIMBURSEMENT

#### a. Major Components

Specified major components will be replaced no charge directly from the original Terex manufacturing location via same day prepaid freight. Air courier or freight will be used where feasible.

*Failed component must not have been disassembled, or disturbed in any manner, to be eligible for no charge same day prepaid shipment replacement.*

Prompt return of failed component will be mandatory via collect freight to the original Terex manufacturing location.

If failed component is not returned promptly Distributor, or Rental and Large Fleet User, will be invoiced at current list price less standard discount.

Terex will specify type of transportation and carrier for both the shipment of the replacement and return of the failed component.

#### b. Repair Parts or Components

Items taken from Distributor or Rental and Large Fleet Users inventory, or ordered new from Terex, will be reimbursed at current Terex List Price less standard order discount.

Only genuine Terex new or remanufactured repair parts or components, purchased directly from Terex, will be used in warranty repairs and thus eligible for reimbursement.

No freight allowance will be paid on repair parts taken from inventory, or ordered new, for use in warranty repairs.

### 7. LABOR & SUBLET REIMBURSEMENT

#### a. Labor Reimbursement

Labor expenses, exclusive of travel time and mileage, will be paid at 105% of the Distributor, or Rental and Large Fleet User, approved retail shop rate and factory hours for the specific replacement or repair.

New rates will only be audited and approved annually.

Factory hours will be determined from accumulated approved claims of like replacements or repairs and extracted from completed claims data at periodic intervals.

## TEREX LIFTING

## Warranty Guide

Travel time and mileage will not be reimbursed -- both are covered by the enhanced 105% labor reimbursement rate.

### b. Sublet Repairs Reimbursement

Sublet repairs will be reimbursed, not to exceed approved factory labor hours and Distributor or Rental or Large Fleet Users approved retail shop rate.

Only genuine Terex new or remanufactured repair parts or components, purchased directly from Terex, will be used in warranty repairs and thus eligible for reimbursement.

## 8. CLAIMS SUBMISSION

Claims must be received at the Terex manufacturing location no later than 30 days after the discovery of the defect.

Only Distributors and Rental and Large Fleet Users can submit claims.

All Claims, Registration Certificates, and Inspections Certificates are subject to on-site audit by Terex personnel at Distributor or Rental and Large Fleet User locations. Submitter is responsible for retention and availability of all documentation.

## 9. RETURN GOODS AUTHORIZATIONS

Failed major components replaced no charge, freight prepaid, by the original Terex manufacturing location, must be returned to that location via collect freight. Terex will specify type of transportation and carrier for all returns.

If failed component is not returned promptly Distributor, or Rental and Large Fleet User, will be invoiced at current list price less standard discount.

Terex may from time to time specify other parts, or components, to be returned for analysis, problem solving, and cost recovery from suppliers.

All Return Goods must show a Return Goods Authorization (RGA) number on all packaging and documents.

*All Return Goods must be fully protected from damage and deterioration when removed from the machine, while being held for recall, and during return to Terex. Return Goods received in unacceptable condition will be refused by Terex.*

All warranty replaced parts, or components, must be held for possible recall to the original manufacturing location until final claim disposition. No parts or components are to be returned without prior authorization of Terex.

All returns must be received at Terex original manufacturing location within 30 days of recall.

All components and parts replaced under warranty become the property of Terex Lifting

## TEREX LIFTING

## Warranty Guide

**10. ITEMS NOT WARRANTED**

**Components** affected by wear, exposure, accident, neglect, etc. such as glass, brake and clutch linings, filters, friction plates, wire rope, and paint will not be covered by warranty. Clear proof of a defect in material or workmanship must be shown to obtain warranty coverage.

**Service supplies** such as hand cleaner, shop towels, multi-use sealing compounds and lubricants, etc. are not reimbursable either individually or as a percentage add-on fee.

**Environmental fees** such as disposal or handling of tires, batteries, petrochemical items, etc. are not reimbursable either individually or as a percentage add-on fee.

**Second repairs** of work performed by Distributors or Rental or Large Fleets Users or sublet repair providers.

**Normal maintenance** services such as lubrication, filter replacements, inspections, adjustments, tightening of fittings or hardware, or replacement of normal wear items.

**Transportation damage** caused by carrier handling must be claimed on the delivering carrier.

**Towing or hauling** of machines.

**Secondary failures** caused by continued operation of a machine after a primary failure has occurred.

**Replacement or rental** machine charges.

**Replacement parts or labor** which did not correct the problem.

**Repair costs** resulting from improper diagnosis or service work previously performed.

**Any failure** that in Terex's sole judgment, is the result of misuse, negligence, loading beyond rated capacity, alteration, accident or lack of regular maintenance.

**Labor expenses** by other than authorized Terex distributors or Rental or Large Fleet Users.

**Lost time** or other expenses associated with lost time.

**Inspections** - new product receipt, pre-delivery, delivery, and follow-up inspection requirements.

**Any expense** that in the sole judgment of Terex is beyond the scope, intent, or purpose of this warranty.