

## Phil's Crane Hire Pty Ltd– Terms & Conditions of Hire

### 1. Definitions

- 1.1 "Hirer" shall mean Phil's Crane Hire Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Phil's Crane Hire Pty Ltd.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Equipment" shall mean Equipment supplied on hire by the Hirer to the Customer (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Hirer to the Customer.
- 1.5 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Hirer to the Customer.
- 1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between the Hirer and the Customer subject to clause 3 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by the Hirer from the Customer for the hire of Equipment and/or the Customer's acceptance of Equipment supplied on hire by the Hirer shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Hirer.
- 2.4 The Customer undertakes to give the Hirer at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

### 3. Price And Payment

- 3.1 At the Hirer's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Hirer to the Customer in respect of Equipment supplied on hire; or
- (b) the Hirer's current Price, at the date of delivery of the Equipment, according to the Hirer's current Price list; or
- (c) the Hirer's quoted Price (subject to clause 3.2) which shall be binding upon the Hirer provided that the Customer shall accept in writing the Hirer's quotation within thirty (30) days.
- 3.2 The Hirer reserves the right to change the Price in the event of a variation to the Hirer's quotation.
- 3.3 At the Hirer's sole discretion a deposit may be required.
- 3.4 At the Hirer's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Hirer.
- 3.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 At the Hirer's sole discretion;
- (a) payment shall be due on delivery of the Equipment, or
- (b) payment for approved Customers shall be made by instalments in accordance with the Hirer's payment schedule.
- 3.7 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Hirer.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 4. Hire Period

- 4.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 4.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by the Customer from the Hirer's premises and will continue until the return of the Equipment to the Hirer's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.3 If the Hirer agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Hirer's premises and continue until the Customer notifies the Hirer that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Hirer confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Hirer immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

### 5. Delivery Of Equipment

- 5.1 Delivery of the Equipment shall take place when the Customer takes possession of the Equipment at the Customer's address.
- 5.2 At the Hirer's sole discretion the costs of Delivery are;
- (a) included in the Price, or
- (b) are in addition to the Price, or
- (c) are for the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer

is unable to take delivery of the Equipment as arranged then the Hirer shall be entitled to charge a reasonable fee for redelivery.

- 5.4 The Hirer may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.5 The Customer shall be responsible for free access by the Hirer to the site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse the Hirer for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by the Hirer due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Hirer or returned to the Hirer's premises.
- 5.6 The failure of the Hirer to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Hirer shall not be liable for any loss or damage whatever due to failure by the Hirer to deliver the Equipment (or any of them) promptly or at all.

### 6. Risk

- 6.1 The Hirer retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- 6.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Hirer for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Customer.
- 6.3 The Customer accepts full responsibility for and shall keep the Hirer indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

### 7. Title

- 7.1 The Equipment is and will at all time remain the absolute property of the Hirer.
- 7.2 If the Customer fails to return the Equipment to the Hirer then the Hirer or the Hirer's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated as the invitee of the Customer and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 The Customer is not authorised to pledge the Hirer's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

### 8. Defects

- 8.1 The Customer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify the Hirer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Hirer an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Hirer has agreed in writing that the Customer is entitled to reject, the Hirer's liability is limited to either repairing or replacing the Equipment, except where the Customer has hired Equipment as a consumer within the meaning of the Trade Practices Act 1974 (CWth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

### 9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 10. Warranty

- 10.1 No Warranty is provided by the Hirer in respect of the condition of the Equipment or its fitness for any particular purpose. The Customer shall indemnify and hold harmless the Hirer in respect of all claims arising out of use of the Equipment.

### 11. Customer's Disclaimer

- 11.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Hirer and the Customer acknowledges that the Equipment is hired relying solely upon the Customer's skill and judgement.

### 12. Customer's Responsibilities

- 12.1 The Customer shall:
- (a) notify the Hirer immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification.
- (b) satisfy itself at Commencement that the Equipment is suitable for its purposes;
- (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Hirer or posted on the Equipment;
- (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the

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- Equipment and shall provide evidence of the same to the Hirer upon request;
- (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (f) on termination of the hire, the Customer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Hirer;
  - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment ;
  - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 12.2 Immediately on request by the Hirer the Customer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Hirer;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
  - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Hirer's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
  - (f) the cost of fuels and consumables provided by Hirer and used by the Customer.
- 13. Wet Hire**
- 13.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Hirer and operates the Equipment in accordance with the Customer's instructions. As such the Hirer shall not be liable for any actions of the operator in following the Customer's instructions.
- 14. Cancellation**
- 14.1 The Hirer may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Hirer shall repay to the Customer any sums paid in respect of the Price. The Hirer shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of the Equipment the Customer shall be liable for any loss incurred by the Hirer (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15. Default & Consequences Of Default**
- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 15.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Hirer from and against all costs and disbursements incurred by the Hirer in pursuing the debt including legal costs on a solicitor and own client basis and the Hirer's collection agency costs.
- 15.3 Without prejudice to any other remedies the Hirer may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Hirer may suspend or terminate the supply of Equipment to the Customer and any of its other obligations under the terms and conditions. The Hirer will not be liable to the Customer for any loss or damage the Customer suffers because the Hirer has exercised its rights under this clause.
- 15.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.5 Without prejudice to the Hirer's other remedies at law the Hirer shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies the Hirer may have and all amounts owing to the Hirer shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Hirer becomes overdue, or in the Hirer's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 16. Security And Charge**
- 16.1 Despite anything to the contrary contained herein or any other rights which the Hirer may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the Hirer of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Hirer or the Hirer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or
- the Guarantor acknowledge and agree that the Hirer (or the Hirer's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Hirer elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Hirer from and against all the Hirer's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Hirer or the Hirer's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.
- 17. Privacy Act 1988**
- 17.1 The Customer and/or the Guarantor/s agree for the Hirer to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Hirer.
- 17.2 The Customer and/or the Guarantor/s agree that the Hirer may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of the Customer and/or Guarantor/s.
- 17.3 The Customer consents to the Hirer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 17.4 The Customer agrees that personal credit information provided may be used and retained by the Hirer for the following purposes and for other purposes as shall be agreed between the Customer and Hirer or required by law from time to time:
- (a) the provision of Equipment on hire; and/or
  - (b) marketing of services by the Hirer, its agents or distributors in relation to the Equipment; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Equipment on hire; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the hire of the Equipment.
- 17.5 The Hirer may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 18. Building and Construction Industry Payments Act 2004**
- 18.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 18.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 19. General**
- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 19.3 The Hirer shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Hirer of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Hirer the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Hirer exceed the Price.
- 19.5 The Hirer may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Hirer reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Hirer notifies the Customer of such change.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.