

## 1. DEFINITIONS

- 1.1 "The Owner" shall mean Waikato Crane Services Ltd trading as Waikato Cranes or Auckland Cranes, or any agents or employees thereof.
- 1.2 "Hirer" shall mean any person or legal entity hiring a Crane and/or contracting services from the Owner.
- 1.3 "Crane" shall mean:
- 1.3.1 the crane or cranes hired by the Owner to the Hirer (whether or not the crane is owned by the Owner and whether the original crane or any substitute) and all accessories and other equipment of the Owner attached to the crane or to be used in connection with the crane; and
  - 1.3.2 shall also mean all services provided by the Owner to the Hirer, including the provision of an operator, salvage work, pre-cast concrete placement, plant installation, relocation, transport and cartage services and all advice provided by the Owner to the Hirer; and
  - 1.3.3 shall also mean all charges for time and attendances, hire charges, port fees, traffic management costs, statutory or regulatory authority fees, induction costs, or any fee or charge associated with the supply of a crane to the Hirer.
- 1.4 "Site" shall mean the place or location where the Crane is to be operated.

## 2. ACCEPTANCE BY THE HIRER

- 2.1 Any instructions received by the Owner from the Hirer for the hire of a Crane shall constitute a binding agreement and acceptance of the terms and conditions contained herein ("agreement"). Please read carefully.
- 2.2 The Hirer acknowledges that the Owner has entered into this agreement on the basis of the information supplied to the Owner by the Hirer and warrants that the information is accurate.
- 2.3 No oral agreement, promise, collateral stipulation, representation, condition or warranty given or entered into by the Owner or by any agent or employee of the Owner and not in conformity with this agreement shall be binding upon the Owner, unless confirmed in writing by the Owner.
- 2.4 Unless otherwise agreed this agreement is a full-hire contract. This means that the Owner provides the Crane operator, fuel and oil for the Crane and attends to every day running repairs.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Hirer authorises the Owner to collect, retain and use any information, including photos, about the Hirer, for the purpose of assessing the Hirer's credit worthiness, enforcing any rights under this agreement, or marketing the hire of a Crane by the Owner to any other party. Such information will be accessible to the Hirer and subject to correction.
- 3.2 The Hirer authorises the Owner to disclose any information obtained to any person, for the purposes set out in clause 3.1, although such authorisation may be withdrawn by the Hirer at any time.
- 3.3 Where the Hirer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. HIRE PERIOD

- 4.1 The hire period begins from the time the Crane leaves the Owner's depot and runs until the Crane returns or is returned to the Owner's depot or this agreement is terminated pursuant to clause 14.

## 5. HIRE COST

- 5.1 Where no hire cost is stated in writing or agreed to orally, the Crane shall be deemed to be hired at the current amount a Crane is hired by the Owner at the time of the contract ("the hire cost").
- 5.2 The hire cost will exclude goods and services tax, traffic management costs, port fees, statutory or regulatory authority fees, induction costs and other incidental costs or charges.
- 5.3 Additional charges will be payable by the Hirer for any work performed outside normal business hours (7am to 5pm Monday to Friday) and on a Saturday, Sunday or a Public holiday. A minimum charge of 4 hours will apply to any "call outs" (jobs booked out side of normal hours) or weekend work and a minimum charge of 8 hours plus a "day in lieu" surcharge will apply for any work done on Statutory Public holiday.

## 6. PAYMENT

- 6.1 Payment of the hire cost, including progress payments and progress claims made in accordance with the Construction Contracts Act 2002 ("payment claim") shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice or the payment claim ("the due date").
- 6.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 6.3 Any expenses, disbursements and costs, including any reasonable legal fees or debt collection agency costs, incurred by the Owner in the enforcement of any rights contained in this agreement shall be paid by the Hirer.

## 7. QUOTATION

- 7.1 Where a quotation is given by the Owner for the hire of a Crane:
- 7.1.1 unless otherwise agreed the quotation is valid for sixty (60) days from the date of issue; and

7.1.2 the quotation is exclusive of goods and services tax, traffic management costs, port fees, statutory or regulatory fees, induction costs or other incidental costs, unless specifically stated to the contrary; and

7.1.3 the Owner reserves the right to alter the quotation because of circumstances beyond its control.

## **8. LIABILITY AND RISK**

8.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Owner which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Owner, the Owner's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

8.2 Except as otherwise provided by clause 8.1 and together with the limitations of liability contained elsewhere in this agreement, the Owner shall not be liable for:

8.2.1 Any loss or damage of any kind whatsoever, including consequential loss, arising from the hire of the Crane by the Owner to the Hirer, including loss and damage to goods being lifted or carried by the Crane and/or to other property, including personal property and land and buildings (whether such property is owned by the Hirer, the Owner or a third party) and whether such loss or damage arises from breach of contract or tort (including negligence by the Owner and/or the Crane operator) or otherwise and irrespective of whether such loss or damage arises directly or indirectly (eg from delay in supplying the Crane, breakdown or stoppage of the Crane, weather conditions or circumstances of an unforeseen nature); and

8.2.2 The Hirer shall indemnify the Owner against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Owner, its operator or otherwise, brought by any person or legal entity in connection with any matter, act, omission, negligence or error by the Owner, its operator, agents or employees in connection with the hiring of the Crane to the Hirer.

8.2.3 If contrary to the limitations or exclusions of liability contained in this agreement, the Owner is deemed liable to the Hirer, following and arising from the hire of a Crane by the Owner to the Hirer, then such liability is limited in its maximum aggregate to the hire cost.

## **9. USE AND HANDLING OF THE CRANE**

9.1 Where a Crane operator is provided by the Owner, the Crane operator shall be under the direction and control of the Hirer and shall for all purposes be regarded as the servant or agent of the Hirer. The Hirer alone shall be responsible for all claims arising in connection with the operation of the Crane by the operator.

9.2 The Hirer shall not:

9.2.1 require, permit or allow the Crane operator to do anything contrary to any statute, regulation, by-law requirement, code of practice or recognised convention;

9.2.2 allow any other person to operate the Crane without first obtaining the written consent of the Owner;

9.2.3 permit, facilitate or allow the operation or direction of the Crane by any person while under the influence of alcohol or drugs; or

9.2.4 use or permit the use of the Crane to lift any load which is beyond the rated lifting capacity of the Crane or for any purpose other than for which it is designed for.

9.3 The Owner reserves the right to provide a supervisor to the Site if the Owner in its sole discretion considers it necessary. If the Owner does so the charges payable by the Hirer shall be increased accordingly.

9.4 The Hirer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift (measured from the radial point of the Crane) will not at any time exceed the maximum lifting capacity or working radius of the Crane. Where the weight of the lift approximates the maximum lifting capacity of the Crane, the Owner reserves the right to have the weight of the proposed lift confirmed on a certified weighing device with the associated costs being additional to the hire cost.

9.5 Where the Hirer has understated the weight or dimensions or the working radius of the goods to be lifted by the Crane and the Owner has relied on the weight, dimensions or working radius stated, the Hirer shall be responsible for all the extra cost and risk incurred by the Owners by reason of the Owners reliance upon such stated weight, dimensions or working radius.

9.6 The Hirer shall take proper and reasonable care of the Crane and shall be responsible for any loss or damage whatsoever caused to the Crane including while the Crane is entering, leaving or on the Site, including the cost of repairs suffered or incurred by the Owner as a consequence of any breakdown or damage to the Crane where such breakdown or damage is caused by any act or omission or misdirection or misuse of the Crane on the part of the Hirer or the Hirer's servants (including the operator), agents, contractors or subcontractors. In particular the Hirer shall remain responsible for the hire cost during the period the Crane is idle and/or damaged as a result of any such negligent act or omission or misdirection or misuse of the Crane.

**10. SITE CONDITIONS AND ACCESS**

- 10.1 Crane work is precarious and subject to high risk, partly because of varying ground conditions.
- 10.2 While the Owner will do its best to identify site hazards, it is agreed between the Owner and the Hirer, that the Hirer is responsible for satisfying themselves that the Crane is suitable for the intended use.
- 10.3 As stated in clause 8.2.1 above the Hirer is also liable for any loss or damage to property (whether such property is owned by the Hirer, the Owner or a third party) and this includes damage to underground and overhead services, footpaths, driveways, grounds, lawns, structures, vehicles, machinery and loss or damage caused as a consequence of unforeseen circumstances arising from the hire of the Crane.
- 10.4 In particular it is the Hirer's responsibility to ensure:
- 10.4.1 that the ground at the Site is adequate to support the Crane under its wheels, and/or outriggers and has a surface bearing capacity of at least 150 KN per square metre and is of a gradient no steeper than 1 in 10, other than for crawler cranes where the Site must be level;
  - 10.4.2 there is legal, clear and unrestricted access to the Site;
  - 10.4.3 that the ground giving access to the Site is stable and firm and of a gradient no steeper than 1 in 10;
  - 10.4.4 that clearance of 4 metres is afforded in respect of all overhead wires;
  - 10.4.5 that footpaths, kerbs and channels are suitably planked; and
- 10.5 Should the Crane need to be towed into or out of the Site, the salvage and/or recovery cost will be the Hirer's responsibility and will be additional to the hire cost. The Crane will remain on hire until it has been salvaged and returned to the Owner's depot. Any repairs to the Crane, the Site, or other property caused by the Crane being salvaged, recovered, or arising from the events or circumstances which resulted in the recovery or salvage will be additional to the hire cost and paid for by the Hirer.

**11. LIFTING EQUIPMENT**

- 11.1 The Owner will supply its standard selection of chains, slings, shackles and ancillary equipment but accepts no responsibility for loss or delay if these are found to be unsuitable for the purpose required.
- 11.2 All chains, slings, shackles and ancillary equipment shall be used by the Hirer at the sole risk of the Hirer. The Owner does not accept liability for the incorrect use of chains, slings, shackles and ancillary equipment or for their misuse or method of use.
- 11.3 If any chains, slings shackles or ancillary equipment, which is the property of the Owner is destroyed or damaged, the Hirer will pay to the Owner the cost of replacement or repair resulting from that destruction or damage.

**12. SITE SECURITY**

- 12.1 It is the Hirer's responsibility to ensure that the security of the Crane whilst the Crane is on Site. The Hirer shall be responsible for all losses or damage whatsoever caused to the Crane while the Crane is left on the Site, including the cost of repairing damage suffered or incurred by the Owner as a consequence of any damage caused by any act or omission on the part of the Hirer or the Hirer's servants, agents, contractors, sub-contractors, the operator or members of the public and in particular shall remain responsible for the hire cost during the period the Crane is idle as a result of any such act or omission.

**13. NOTICE OF ACCIDENT**

- 13.1 If the Crane is involved in any accident resulting in injury to any person or property, immediate notice must be given by the Hirer to the Owner by telephone and confirmed by letter, facsimile or email to the Owners principal office.

**14. SECURITY INTEREST (PERSONAL PROPERTY SECURITY ACT 1999) & TERMINATION OF AGREEMENT**

- 14.1 Until the hire cost and any additional charges due to the Owner by the Hirer have been paid in full, the Owner has a security interest in any Crane hired for a term of more than one year, including the hire of a Crane for an indefinite term, a hire agreement that is automatically renewable where the total terms are greater than one year and a hire agreement where the Hirer retains uninterrupted possession of a Crane for a period of more than one year.
- 14.2 The Hirer agrees to waive its right to receive a verification statement in accordance with section 148 of the Personal Property Security Act 1999 ("the Act").
- 14.3 The Owner may also immediately and without notice to the Hirer terminate the hire of the Crane after default by the Hirer and any such termination shall be without prejudice to the rights of the Owner in respect of any breach of the terms and conditions contained herein or the Hirer's obligations to the Owner under this hire agreement.
- 14.4 As a consequence of any termination of this agreement or default by the Hirer the Hirer gives irrevocable authority to the Owner to enter any Site on which a Crane is situated at any reasonable time after default by the Hirer or before default if the Owner believes a default is likely and to remove and repossess any Crane. The Owner shall not be liable for any costs, damages, expenses or losses incurred by the Hirer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever, unless by statute such liability cannot be excluded.

- 14.5 Where a Crane is repossessed by the Owner the Hirer agrees to waive the right to receive the specified notices under sections 114(1) (a), 116 and 120(1) of the Act and agrees to waive the right to object under s.121 of the Act.
- 14.6 The following shall constitute defaults by the Hirer:
- 14.6.1 Non-payment of any sum by the due date.
  - 14.6.2 The Hirer intimates that it will not pay any sum by the due date.
  - 14.6.3 Any breach of the terms and conditions contained herein or any anticipated breach.
  - 14.6.4 The Crane for any reason is damaged so as to be inoperable or unsafe for use or might endanger any person or property.
  - 14.6.5 Property belonging to the Hirer is seized by a creditor of the Hirer or any other creditor intimates that it intends to seize such property.
  - 14.6.6 The Hirer is bankrupted or put into liquidation or a receiver is appointed to any of the Hirer's assets or a landlord distrains against any of the Hirer's assets.
  - 14.6.7 A Court judgment is entered against the Hirer and remains unsatisfied for seven (7) days.
  - 14.6.8 Any material adverse change in the financial position of the Hirer.

#### **15. CONSUMER GUARANTEES ACT 1993**

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Hirer hires a Crane from the Owner for the purposes of a business in terms of section 2 and 43 of that Act.

#### **16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

- 16.1 If the Hirer is a company or trust, the director(s) or trustee(s) signing this agreement, in consideration for the Owner agreeing to hire the Crane and grant credit to the Hirer at their request, also sign this agreement in their personal capacity and jointly and severally personally undertake as principal debtors to the Owner the payment of any and all monies now or hereafter owed by the Hirer to the Owner and indemnify the Owner against non-payment by the Hirer. Any personal liability of a signatory hereto shall not exclude the Hirer in any way whatsoever from the liabilities and obligations contained in this agreement. The signatories and the Hirer shall be jointly and severally liable under the terms and conditions of this agreement and for the payment of all sums due hereunder.

#### **17. MISCELLANEOUS**

- 17.1 The Owner shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by the Owner to enforce any of the terms and conditions contained in this agreement shall not be deemed to be a waiver of any of the rights or obligations the Owner has under this agreement.
- 17.3 If any term or condition of this agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.
- 17.4 The Hirer at its own expense shall make its best effort to protect and defend the Owner from all claims, liens and legal processes of creditors of the Hirer and shall not assign all or any of its rights or obligations under this agreement or part with possession of the Crane without the written consent of the Owner.
- 17.5 Where these terms and conditions are at variance with the order or instructions from the Hirer these terms and conditions shall prevail.
- 17.6 These terms and conditions can be unilaterally changed by the Owner giving the Hirer notice in writing (including email) or by mutual agreement, also recorded in writing.
- 17.7 Where applicable the Construction Contracts Act 2002 applies.
- 17.8 Any contract between the Owner and the Hirer is governed by the laws of New Zealand.