

TERMS & CONDITIONS



GENERAL CRANE SERVICES (WA) PTY LTD - TRADING CONDITIONS

1. INTERPRETATION SECTION

“**Agreement**” means the conditions set out in these General Conditions in conjunction with any Special Conditions, Quotation, and Purchase Order, Appendix, Annexure or other document agreed in writing between both parties.

“**Dry Hire**” means the hire of Plant and Equipment under the exclusive direction and control of the Hirer.

“**General Conditions**” means the conditions set out in this document, as amended from time to time.

“**General Crane Services**” is General Crane Services (WA) Pty Ltd ACN 149 892 342, its personnel, subsidiaries and permitted assigns.

“**General Crane Services Personnel**” means the person or persons employed or engaged by General Crane Services to drive, operate, use or transport the Plant and Equipment provided to the Hirer as specified under the Agreement and may include operators, riggers, dogmen, supervisors, drivers and any such other employee or agent of General Crane Services.

“**GST**” has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended from time to time.

“**Hirer**” is the person, firm, company, government instrumentality, entity or corporation (including any person representatives or permitted assigns of such) that engages General Crane Services for the purpose of hiring Plant and Equipment, with or without General Crane Services Personnel.

“**Malfunction**” includes breakdown, damage, full or partial loss, loss of use, seizure or impoundment by operation of law or otherwise.

“**Manufacturer**” means Original Equipment Manufacturer or its representative or equivalent.

“**Plant and Equipment**” is all plant and equipment described in the Agreement together with such accessories, machinery, tools and associated items, manuals, log books and General Crane Services vehicles as accompanies such plant and equipment when it is dispatched from the General Crane Services depot.

“**Parties**” means the Hirer and General Crane Services.

“**Purchase Order**” means any order in writing by or on behalf of the Hirer for the supply of Services by General Crane Services and each schedule or document accompanying such Purchase Order.

“**PPSA**” means the Personal Property Securities Act 2009 (Commonwealth) as amended from time to time.

“**Services**” means the works and or services which General Crane Services has agreed to provide under the Agreement using the Plant and Equipment and/or General Crane Services Personnel as detailed in each Purchase Order.

“**Term**” means the period of supplying the Services as detailed in the Purchase Order and which may include weekends and/or public holidays, and continues until the supply of the Services is completed or the Agreement is terminated in accordance with these Standard Conditions.

“**Wet Hire**” means the hire of fully maintained Plant and Equipment combined with stated General Crane Services Personnel to operate the Plant and Equipment.

In these General Conditions, unless the context otherwise states or requires:

1.1. any words importing the singular includes the plural and vice versa.

1.2. A reference to a “Party” or “Parties” shall mean a party or parties to this Agreement.

1.3 any reference to gender includes the other gender.

1.4. Any obligation of two (2) or more parties binds them jointly and severally.

1.5. A reference to a person includes the legal representatives, employees, successors and assignees of that person.

1.6. A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it, consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

To the extent of any inconsistency between documents forming the Agreement, precedence of contract shall be determined in the following order or priority: firstly the General Conditions, secondly the Purchase Order, thirdly the Quotation, fourthly any other document signed by both Parties and lastly all other documents.

2. HIRE AND TERM

2.1. General Crane Services agrees to provide the Services to the Hirer for the Term. The Hirer shall be obliged to return the Plant and Equipment on the completion or termination of the Agreement.

2.2. General Crane Services shall use reasonable efforts to make the Plant and Equipment available for the commencement of the Term but shall not be liable for any loss or damage due to delay.

2.3. Unless otherwise stated in the Agreement, the Hirer acknowledges and agrees that on each occasion that it issues a Purchase Order to General Crane Services for the supply of Services, a separate and binding contract is made in relation to the supply of those Services in accordance with the provisions of these General Conditions and the Agreement.

2.4 Where a minimum period of hire is specified in the Agreement, the Hirer agrees to pay for such period irrespective of its use or not of the Plant and Equipment, General Crane Services Personnel, completion of the Services or a Force Majeure Event.

3. CHARGES

3.1. The Hirer will pay General Crane Services for hire of the Plant and Equipment and General Crane Services Personnel at the charges agreed in the Agreement (“the Charges”). The Hirer shall pay for mobilization and demobilization when General Crane Services is required to transport the Plant and Equipment to and from the General Crane Services base.

3.2. The Charges are subject to change at General Crane Services’ discretion. The Hirer may terminate the Agreement without penalty by written notice to General Crane Services if the revised Charges are unacceptable. Subject to this clause, the revised charges apply from the date of advice to the Hirer.

3.3. Charges in respect of General Crane Services Personnel are subject to additional charges for loadings, penalties and allowances as applicable to General Crane Services Personnel pursuant to their terms of engagement including night shifts, weekend rates, overtime, meals, standby and public holidays. Charges quoted in the Agreement are exclusive of GST, government duties, taxes and charges.

3.4. Where the Plant and Equipment supplied by General Crane Services is used by the Hirer for more than 8 hours on any given day, General Crane Services reserves the right to impose additional hire charges as reasonable compensation to General Crane Services.

3.5. If a supply under the Agreement is subject to GST, the Hirer must pay to General Crane Services at the same time and in the same manner as the consideration is otherwise payable, an amount equal to the amount of consideration multiplied by the applicable GST rate, subject to the supply of a valid Tax Invoice by General Crane Services.

3.6. General Crane Services may invoice the Hirer on a Tax Invoice at the completion of the Term or at the end of every calendar week, whichever is the earlier. The Hirer agrees to pay each Tax Invoice in full within 7 days of the Tax Invoice date. No claims for credit will be recognized by General Crane Services after 14 days following the date of the Tax Invoice.

3.7 The Hirer shall not setoff any amounts under the Tax Invoice in respect of a request for credit or other dispute amount.

3.8 General Crane Services reserves the right to charge interest to the Hirer on amounts which remain unpaid after the due date for payment. Interest will be calculated at 15% per annum calculated on a daily basis on the unpaid amount. The Hirer in addition to all other indemnities, indemnifies General Crane Services for all costs and expenses whatsoever incurred by General Crane Services in recovering amounts which remain unpaid after the due date.

4. MALFUNCTION

4.1. In the event of a Malfunction to Plant and Equipment, the Hirer shall immediately notify General Crane Services. Under no circumstances shall the Hirer commence any works to repair the Plant and Equipment without the written consent of General Crane Services.

4.2. On notifying General Crane Services of a Malfunction, the Hirer must secure and safeguard the Plant and Equipment and take all reasonable steps to prevent injury to any persons or damage to any property as a result of the condition of the Plant and Equipment. General Crane Services does not accept liability for expenses incurred in such prevention or safeguarding activities. The Hirer remains responsible for the security of the Plant and Equipment until such time as the Plant and Equipment is returned to General Crane Services' physical possession or depot.

4.3. From the date on which the Hirer gives notice in 4.1 and subject to 4.4, the hire charge (including Plant and Equipment and General Crane Services Personnel) shall be suspended in full until the Plant and Equipment is replaced (at General Crane Services' election) or returned to operating condition.

4.4. If the Hirer, its employees or agents has materially contributed to or caused the Malfunction (including by directions given to General Crane Services Personnel) through its misuse, accident, negligence, fraud, misconduct, breach of the Agreement failure to comply with relevant laws, failure to observe warning signs or directions, failure to observe safety systems or Manufacturer operations procedures, then the Hirer will continue to pay the hire charges until the Plant and Equipment is fit for return to service and in addition shall pay the reasonable costs of repair incurred by General Crane Services or its appointed agent.

4.5. General Crane Services shall use its reasonable endeavours to replace the Plant and Equipment the subject of the Malfunction with Plant and Equipment of a similar type but is under no obligation to do so.

4.6. General Crane Services shall not be liable for any direct, indirect or consequential costs, losses or damages suffered by the Hirer or third parties in relation to a Malfunction.

5. INDEMNITY AND INSURANCE

5.1. The Hirer must effect and maintain at all times insurance covering statutory workers compensation, product and public liability, professional indemnity and motor vehicles in each instance for an amount not less than \$20,000,000 per occurrence or event. All Insurances must note General Crane Services as an insured party with the full right of entitlement to claim under the insurance and the insurer shall waive all rights of subrogation against General Crane Services and General Crane Services' insurers. The deductible or

excess payable in respect of a claim shall be at the Hirer's cost. On request, the Hirer shall provide General Crane Services with certificates of currency in respect of all required insurance.

5.2. General Crane Services is not a common carrier and is not responsible for any loss or damage to the Hirer's property or good in transit. Responsibility for insurance of goods in transit rests with the Hirer.

5.3. General Crane Services makes no express warranty or condition and excludes all implied warranties and conditions of any type including as to the fitness of the Plant and Equipment for any use to which it is employed by the Hirer.

5.4. The Hirer releases, holds harmless and discharges General Crane Services, its agents and employees in respect of all claims and demands on General Crane Services and any loss or damage caused to the Hirer or its customers, agents, employees or other third parties, whether by death of or injury to any person, accident, loss or damage to property, delay, financial loss or otherwise.

5.5. The Hirer assumes liability for and indemnifies and holds harmless General Crane Services, its agents and employees from and against all claims, costs, damages, losses or expenses of any kind howsoever arising under contract, strict liability, statute or otherwise from the arrangements between the Hirer and General Crane Services and including, without limiting same, in relation to death of or injury to any person, loss, damage or destruction of any property including the Plant and Equipment and goods in transit.

5.6. The liabilities, indemnities, insurances and limitations of liability rights and obligations contained in this clause 5 remain in full force and effect notwithstanding termination of the Agreement.

5.7. In the event of the Hirer suffering any damage or loss arising from this Agreement including without limitation in respect of delay or inconvenience following a Malfunction, failure or defect in the Plant and Equipment, the liability of General Crane Services is limited to taking all reasonable steps to facilitate the repair or replacement of the Plant and Equipment and does not include any economic, indirect or consequential losses, damages or liabilities of any nature whatsoever.

5.8. Notwithstanding any other provision of the Agreement, neither General Crane Services nor the Hirer shall be liable for any indirect, economic or consequential losses.

6. HIRE OPERATIONS

Dry Hire

In relation to Dry Hire the Hirer warrants as follows:

6.1. Prior to first use, the commencement of each new activity and daily pre-starts thereafter, the Hirer must fully inspect and walk around the site and the Plant and Equipment, complete General Crane Services/Manufacturer pre-start checks, review Manufacturer operating manuals, review safety alerts and inspection reports to identify any foreseeable hazards, risk of harm and determine the suitability of the Plant and Equipment to undertake the proposed task. The Hirer must notify General Crane Services immediately if the Plant and Equipment supplied is damaged, inappropriate or not suited to the proposed task. General Crane Services provides no warranty that the Plant and Equipment is suitable for the task.

6.2. The Plant and Equipment will only be operated by qualified and trained personnel who possess current licences to operate the Plant and Equipment, vehicle orientation and familiarity.

6.3. The Hirer will ensure that all safety information supplied with the Plant and Equipment is conveyed to the operator of the Plant and Equipment and that any safety related signs, banners, flags or warnings supplied by General Crane Services in relation to the Plant and Equipment are predominantly displayed.

TERMS & CONDITIONS



Wet Hire

In relation to a Wet Hire, the Hirer agrees to the following:

6.4. General Crane Services Personnel shall work under the direction of the Hirer who shall fully brief the General Crane Services Personnel on the proposed task, the site, site conditions and other relevant matters including information requested by the General Crane Services Personnel. The Hirer accepts that General Crane Services Personnel may require further information or clarification to complete a task or a lift study prior to commencing the task and may refuse to operate the Plant and Equipment if they believe any directions or control requested by the Hirer may affect the safety of people, property, Plant or Equipment.

6.5. The Hirer will not allow any person other than General Crane Services Personnel to operate the Plant and Equipment without the prior written consent of General Crane Services.

Wet Hire or Dry Hire

In relation to a Wet Hire or Dry Hire, the Hirer agrees to the following:

6.6. The Hirer shall do all things reasonably practicable to ensure its employees, General Crane Services Personnel and other persons working under its direction or control shall:

6.6.1 Take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant and Equipment,

6.6.2 Be fit for duty and not under the influence of drugs or alcohol,

6.6.3 Be appropriately briefed by the Hirer as to the site, safe work systems; control/restricted zones and any applicable lift plans or studies,

6.6.4 Wear suitable protective and high visibility clothing when working with, on or around the Plant and Equipment, and

6.6.5 Operate the Plant and Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all relevant laws and regulations.

6.7 The Hirer must immediately notify General Crane Services of any incident, near miss, safety breach, fine, penalty or investigation by a regulator during the Term which involves the Hirer, its agents, General Crane Services Personnel or the Plant and Equipment.

6.8. The Hirer must obtain and furnish any necessary permits, consents, approvals or notices required of the use or transport of the Plant and Equipment during the Term and comply with any applicable laws regulations and industry standards or protocols whilst in possession of the Plant and Equipment. The Hirer shall pay all fines and penalties incurred while the Plant and Equipment is in the possession of the Hirer.

7. MAINTENANCE

Dry Hire

In relation to Dry Hire, the Hirer agrees to the following:

7.1. The Hirer is responsible for and must complete daily maintenance and servicing of the Plant and Equipment in accordance with Manufacturer maintenance manuals including to clean, maintain, lubricate and fuel the Plant and Equipment to the standard and level specified in the manual or as otherwise specified by General Crane Services and record such checks in the log book provided.

7.2. Plant and Equipment must be returned to General Crane Services in the same condition, fair wear and tear excepted, as it was provided by General Crane Services at the start of the Term including a full tank of fuel, washed and clean. The Hirer shall pay the cost of replacing damaged tyres and rims, cleaning and any

repainting which General Crane Services reasonably requires to return Plant and Equipment to pre-hire condition.

Wet Hire

7.3. In relation to Wet Hire, General Crane Services is responsible for and must complete daily maintenance and servicing of the Plant and Equipment in accordance with Manufacturer maintenance manuals including to clean, maintain, lubricate and fuel the Plant and Equipment to the standard and level specified in the manual or as otherwise specified by General Crane Services and record such checks in the log book provided.

Wet Hire or Dry Hire

In relation to Wet Hire or Dry Hire, the Hirer agrees to the following:

7.4. The Hirer shall secure and protect the Plant and Equipment throughout the Term. The Hirer will not part with possession, remove or allow the Plant and Equipment to be removed from the location stated in the Agreement without General Crane Services' written approval.

7.5. The Hirer shall indemnify and hold harmless General Crane Services against all costs, losses or liabilities due to damage, loss or incident relating to the Plant and Equipment during the Term including the Hirer's breach of Agreement, loss of possession, theft, vandalism, negligence, legal process or otherwise.

7.6. The Hirer will permit and grant access to General Crane Services to any location or premises where the Plant and Equipment is located for the purposes of any inspection of the Plant and Equipment by General Crane Services and the Hirer will indemnify General Crane Services in respect of any claims, damages or expenses arising out of any action taken pursuant to this clause.

8. RIGHT TO ASSIGNMENT AND TO SUBCONTRACT

8.1 General Crane Services may assign or subcontract the performance of all or any of General Crane Services' rights and obligations under the Agreement with any other person or company and such person or company and its servants and agents shall be the beneficiary of these General Conditions to the same extent as General Crane Services. The Hirer shall not assign, subcontract, sub-lease or sub-hire the performance of all or any of the Hirer's rights and obligations under the Agreement unless it has obtained the prior written consent of General Crane Services to do so.

9. GENERAL CRANE SERVICES OBLIGATIONS

9.1. General Crane Services will use its reasonable endeavours that the Plant and Equipment is in good working order at the commencement of the Term, as set out in the specifications supplied by the Manufacturer.

9.2. General Crane Services will perform the Services where specified in the Agreement to the standard of skill and care of an experienced operator complying with applicable laws.

10. TERMINATION

10.1 General Crane Services may terminate the Agreement without reason or for its convenience upon 24 hours advance notice to the Hirer.

10.2. General Crane Services may terminate the Agreement without notice if the Hirer:

10.2.1 commits a breach of the Agreement,

10.2.2 permits any act or thing to be done which may prejudice, reduce or alienate General Crane Services' rights to or in the Plant and Equipment,

10.2.3 commits an act of bankruptcy,

10.2.4 becomes insolvent or is unable to pay its debts when they fall due,

10.2.5 enters into voluntary liquidation, provisional liquidation, administration or receivership,
10.2.6 has a winding up petition presented against it,
10.2.7 ceases to be carrying on business or substantially changes its business activities, or
10.3. On termination of the Agreement, General Crane Services is entitled to immediate possession of the Plant and Equipment and where such possession is not obtained, the Hirer irrevocably appoints General Crane Services as its agent and authorized attorney to enter upon any land or premises on behalf of the Hirer to recover the Plant and Equipment and agrees to indemnify General Crane Services in respect of any claims, damages or expenses arising out of any action taken under this condition.

11. FORCE MAJEURE

11.1. A Force Majeure Event ("Force Majeure Event") is an event which is beyond the reasonable control of the Hirer or General Crane Services and includes but is not limited to the following types of events:

- 11.1.1 an Act of God,
 - 11.1.2 war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or martial law,
 - 11.1.3 weather conditions of a severity that could not reasonably be expected and causing inundation or flood that prevents access to the Plant and Equipment, or
 - 11.1.4 action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal, including denial, refusal or failure to grant any permit, authorization, licence, approval or acknowledgement despite timely endeavours to obtain same.
- 11.2. Where either the Hirer or General Crane Services can no longer perform their obligations under the hire Agreement by virtue of a Force Majeure Event, they shall immediately notify the other Party of the Force Majeure Event and shall be temporarily relieved of their respective obligations under the Agreement whilst the Force Majeure Event continues. Regardless of such relief, the Party making the notification of the Force Majeure Event shall do everything within its power to minimize the duration of the Force Majeure Event and shall notify the other Party immediately upon cessation of the circumstances relating to the Force Majeure Event.
- 11.3. If the Force Majeure Event continues for a period in excess of 5 days, General Crane Services may terminate the Agreement at its absolute discretion without any penalty.
- 11.4. Notwithstanding any Force Majeure Event, no Party

12. PPSA

- 12.1. The rights of the Hirer to use and take possession of the Plant and Equipment are as a bailee only.
- 12.2. The Hirer shall not offer, sell, assign, sub-let, pledge, mortgage or otherwise deal with or part with possession of the Plant and Equipment in any way which is inconsistent with the rights of General Crane Services as owner of the Plant and Equipment, whether or not General Crane Services is owner, lessee, hirer or otherwise of the Plant and Equipment. The Hirer shall not deface or cover any name or registration plate on the Plant and Equipment.
- 12.3. The Agreement may create a registerable security interest under the PPSA in the Plant and Equipment and its proceeds owned by General Crane Services. Neither Party has agreed to postpone the time for attachment of that security interest. Where General Crane Services has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other

enforcement rights will continue to apply. At General Crane Services' request, the Hirer must promptly execute any documents and do anything reasonably required to ensure that any security interest created here is enforceable, that General Crane Services' priority is preserved and any defect in the security interest, including its registration, is overcome. The Hirer must not without General Crane Services' written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Plant and Equipment or any interest in it (or purport or attempt to purport to do such thing) or permit any lien over it. The Hirer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if General Crane Services has given its prior written consent. To the extent that the PPSA permits, the Hirer waives its rights to receive a copy of any verification statement or financing change statement and its rights under sections 95, 96, 177, 188, 120, 121(4), 123, 125, 126, 128, 129, 130, 135, 142 and 143 of the PPSA.

13. GOVERNING LAW

13.1 The Agreement is governed and construed by the laws of the State of Western Australia and all disputes shall be subject to the non-exclusive jurisdiction of the courts of State of Western Australia.

14. WAIVER AND SEVERABILITY

- 14.1. If any provision of the Agreement is invalid or unenforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without effecting the remaining provisions of the Agreement or effecting the validity or enforceability of that provision in any other jurisdiction.
- 14.2. If General Crane Services fails to or delays in exercising any right, power or remedy which it is entitled to under the Agreement, such failure does not amount to a waiver of that right, power or remedy nor does it preclude any further exercise of such rights, power or remedies as may be provided under the Agreement.
- 14.3. Any waiver by General Crane Services must be in writing signed by General Crane Services and is only effective in relation to the particular obligation or breach in which it is given.

15. VARIOUS

- 15.1 The Parties to the Agreement are independent contractors and nothing shall imply that they are in partnership, agency or legal representatives of the other except where expressly stated to the contrary.
- 15.2 All notices shall be served on a Party to the address first set out in the Agreement or as subsequently notified in writing to the other Party. Notices in writing shall be deemed to be received when they are personally received at the address first set out or the registered office of a Party unless sent by post in which receipt is three days after posting.
- 15.3. The terms of this Agreement are confidential and shall not be disclosed to any third party except where required by law.