

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "New Zealand Crane Hire" shall mean New Zealand Crane Hire Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing equipment and services from New Zealand Crane Hire.
- 1.3 "Equipment and Services" shall mean all equipment and services, materials or advice provided by New Zealand Crane Hire to the customer including without limitation the hireage of cranes (with or without operators), transport, precast building, labour hire, other equipment hire and associated services and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of equipment and services by New Zealand Crane Hire to the customer.
- 1.4 "Price" shall mean the cost of the equipment and services as agreed between New Zealand Crane Hire and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by New Zealand Crane Hire from the customer for the supply of equipment and services including equipment and services that New Zealand Crane Hire have ordered or are required to order from overseas shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises New Zealand Crane Hire to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any equipment and services provided by New Zealand Crane Hire to any other party.
- 3.2 The customer authorises New Zealand Crane Hire to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer 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. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the equipment and services shall be deemed to be sold at the current amount as such equipment and services are sold by New Zealand Crane Hire at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the equipment and services that is beyond the control of New Zealand Crane Hire between the date of the contract and delivery of the equipment and services.
- 4.3 New Zealand Crane Hire may require the payment of a deposit, the sum of which will be determined by New Zealand Crane Hire in its sole discretion.
- 4.4 New Zealand Crane Hire reserves the right to revise its rates of hire and related charges without notice.

5. PAYMENT

- 5.1 Unless otherwise agreed all equipment and services must be paid in full on or before seven (7) days following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by New Zealand Crane Hire in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required before the provision of equipment and services.

6. QUOTATION

- 6.1 Where a written quotation is given by New Zealand Crane Hire for equipment and services:
- 6.1.1 The quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where equipment and services are required in addition to the quotation the customer agrees to pay for the additional cost of such equipment and services.
- 6.3 Any quoted prices may be subject to certain requirements provided by New Zealand Crane Hire to the customer which are to be read in addition to these terms and conditions of trade. Only written quotations are binding on New Zealand Crane Hire.

7. DISPUTES

- 7.1 No claim relating to equipment and services will be considered unless made within seven (7) days of delivery or where appropriate supply and erection.

8. LIABILITY

- 8.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon New Zealand Crane Hire 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 New Zealand Crane Hire, New Zealand Crane Hire'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 New Zealand Crane Hire shall not be liable for:
- 8.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from equipment and services provided by New Zealand Crane Hire to the customer; and
- 8.2.2 The customer shall indemnify New Zealand Crane Hire 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 New Zealand Crane Hire or otherwise), brought by any person in connection with any matter, act, omission, or error by New Zealand Crane Hire its agents or employees in connection with the equipment and services.
- 8.3 New Zealand Crane Hire will not be liable for any loss or damage of any kind whatsoever arising from equipment hired not arriving on time or from deficiencies in the performance or reliability of equipment hired.

9. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

- 9.1 The New Zealand Crane Hire staff, customer and sub-contractor hand book sets out certain responsibilities relating to the health and safety responsibilities of the customer.
- 9.2 These responsibilities are to be read together with and form part of this contract.

10. HIRE OF EQUIPMENT

- 10.1 Where equipment is hired from New Zealand Crane Hire:
- 10.1.1 The customer shall not part with the possession of the equipment **AND** shall not sublet, or sell, or attempt to alienate the equipment in any way, or deal with the equipment in any way that may be prejudicial to New Zealand Crane Hire; and
- 10.1.2 Except where waived in this contract the customer shall be liable for any damage to or loss of the equipment however caused **AND** in the event of any equipment being damaged or lost the customer shall pay to New Zealand Crane Hire the cost of making good the repair to the equipment or the cost of replacing the equipment whichever is the lesser; and
- 10.1.3 Slings:
New Zealand Crane Hire will supply its standard selection of slings and lifting equipment but accepts no responsibility for loss or delay if these are found to be unsuitable for the purpose required. All slings and ancillary equipment shall be used by the customer at the sole risk of the customer. New Zealand Crane Hire does not accept responsibility for the correct use of slings

or lifting equipment or for the method of slinging. If any slings or lifting equipment belonging to New Zealand Crane Hire is destroyed or damaged, the customer shall pay to New Zealand Crane Hire the cost of replacement or repair (as the case may be) resulting from that destruction or damage.

(a) The customer will ensure:

10.1.4 Site Conditions and Access:

- (i) that the ground at the site is adequate to support the crane under its wheels, tracks and outriggers;
- (ii) that the ground giving access to the site is stable and firm and of a gradient no steeper than 1 in 10;
- (iii) that clearance of 4 metres is afforded in respect of all overhead wires and that footpaths, kerbs and channels are suitably planned.
- (b) Should the crane need to be towed into or out of the site, the cost shall be additional to the rate quoted and will be to the customer's account.

10.1.5 Use and Handling of Crane:

- (a) The crane operator shall be under the direction and control of New Zealand Crane Hire. The customer alone shall be responsible for all claims arising in connection with the operation of the crane by the operator.
- (b) The customer shall not:
- (i) require, permit or suffer the crane operator to do anything contrary to any act, regulation, by-law, requirement, code of practice or recognised convention;
- (ii) allow any other person to operate the crane without first obtaining the written consent of New Zealand Crane Hire;
- (iii) permit or suffer the operation or direction of the crane by any person who by reason of intake of drink or drugs has his or her faculties impaired;
- (iv) 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 hired pursuant to this agreement;
- (c) New Zealand Crane Hire reserves the right to provide a supervisor to the site if New Zealand Crane Hire in its sole discretion considers it necessary. If New Zealand Crane Hire does so the charges payable by the customer shall be increased accordingly.
- (d) The customer 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 be exceeded at any time. Where the weight is getting close to the maximum lifting capacity of the crane, as stated by the Crane's safe load indicator, the New Zealand Crane Hire operator or supervisor has absolute discretion whether to complete the lift as planned or use a safer alternative. A larger capacity machine may be required and that will be at a cost agreed before completion of the lift.
- (e) Where the customer has understated the weight or dimensions of the goods to be lifted by the crane and New Zealand Crane Hire has relied on the weight, dimensions or working radius stated, the customer shall be responsible for all extra cost and risk incurred by New Zealand Crane Hire by reason of New Zealand Crane Hire's reliance upon such stated weight, dimensions or working radius.
- (f) The customer shall be responsible for all loss or damage whatsoever caused while the crane is entering, leaving or on the site, including the cost of repairs suffered or incurred by New Zealand Crane Hire in consequence of any breakdown or damage to the crane where such breakdown or damage is caused by any negligent act or omission or misdirection of misuse of the crane on the part of the customer or the customer's servants, agents, contractors or subcontractors and in particular shall be responsible for the payment of hire at the appropriate negotiated rate during the period the crane is necessarily idle as a result of any such negligent act or omission or misdirection or misuse of the crane.

10.1.6 Damage to Goods:

New Zealand Crane Hire accepts no responsibility for loss or damage to goods being handled by the crane or damaged by the crane however caused during the period of the hire except for loss or damage arising out of any negligent act or default of New Zealand Crane Hire.

10.1.7 Damage to Services and Property:

The customer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, vehicles or any other property whatsoever caused by the customer during the period of hire.

10.1.8 Stoppages:

New Zealand Crane Hire shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond New Zealand Crane Hire's control including but not limited to weather conditions, ground conditions, strikes and industrial disputes.

10.1.9 Period of Hire:

The period of hire shall be calculated on a depot to depot basis and shall therefore be the elapsed time in any day from the time of the delivery of the Crane to the customer at New Zealand Crane Hire's depot to the time of re-delivery of the Crane by the customer to New Zealand Crane Hire's depot on that or any other day. Hire shall be charged accordingly.

10.1.10 Additional Jib Sections and Crane Equipment:

Where transport of additional jib sections and Crane equipment is required, the cost of it will be additional to the hire rates quoted and will be to the customer's account, together with the cost of rigging and de-rigging.

10.1.11 Overtime:

Additional charges will be payable by the customer in accordance with New Zealand Crane Hire's current hire price list for all work performed outside normal working hours and on Saturdays, Sundays or public holidays. A minimum charge of four hours for the operator applies to work carried out on Saturdays, Sundays or callback on Saturdays/Sundays. A minimum charge of eight hours for the operator applies to work carried out on public holidays or callback on public holidays.

10.1.12 Site Allowance:

Where site allowances are payable, there will be an additional charge to the customer.

10.1.13 Crane Operator's Accommodation:

Where the site is at a distance from the depot so that overnight accommodation for the Crane operator and any other accompanying personnel is necessary, the cost of the accommodation and meals will be to the customer's account.

11. CONSUMER GUARANTEES ACT

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires equipment and services from New Zealand Crane Hire for the purposes of a business in terms of section 2 and 43 of that Act.

12. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 12.1 If the customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for New Zealand Crane Hire agreeing to supply equipment and services and grant credit to the customer, also sign this contract in their personal capacity and jointly and severally personally guarantee and undertake to New Zealand Crane Hire the payment of any and all other monies now or hereafter owed by the customer to New Zealand Crane Hire. Any personal guarantee made by any party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.

13. MISCELLANEOUS

- 13.1 New Zealand Crane Hire shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 13.2 Failure by New Zealand Crane Hire to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations New Zealand Crane Hire has under this contract.
- 13.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.