

WAIKATO CRANE SERVICES LTD

TERMS AND CONDITIONS OF HIRE

1. Definitions

In these terms and conditions

- (a) "Agreement" means the agreement between the Hirer and the Owner to hire the crane and incorporates these Terms and Conditions of Hire.
- (b) "Crane" means the Crane hired by the Owner to the Hirer. (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 it. For the purposes of this agreement the crane shall be deemed to be the property of the Owner whether such is the fact or not.
- (c) "Hirer" includes the Hirer's successors or personal representatives
- (d) "Owner" means Waikato Crane Services Limited and includes its successors and assigns
- (e) "Site" means the place or area where the crane is to be operated for the purposes of this agreement.

2. Warranty and Acceptance

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. Acceptance by the Hirer of the crane shall be deemed to be acceptance of the terms of this Agreement.

3. Full Hire

Subject to any provision to the contrary in this Agreement or in writing signed by both parties, this agreement is a full-hire agreement. This means that the owner provides the Crane operator, fuel and oil for the crane and attends to everyday running repairs.

4. Slings

The Owner 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 Hirer at the sole risk of the Hirer. The Owner does not accept responsibility for the correct use of slings or lifting equipment or for the method of slinging

If any slinging or lifting equipment the property of the Owner shall be destroyed or damaged, the Hirer shall pay to the Owner the costs of replacement or repair (as the case may be) resulting from that destruction or damage.

5. Site conditions and access

- (a) The Hirer will ensure
 - (i) That the ground at the site is adequate to support the crane under its wheels tracks and or 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 planked.
- (b) Should the crane need to be towed into or out of the site, including the salvage or recovery, the cost shall be additional to the rate quoted and will be to the hirer's account.

6 Use and handling the crane

- (a) Notwithstanding clause 3 above, the crane operator shall be under the direction and control of the Hirer and shall for all purposes of this agreement 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.
- (b) The Hirer 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 the Owner
 - (iii) permit or suffer the operation or direction of the crane by any person while under the influence of drink or drugs.

- (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) 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.
- (d) 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 weighbridge with the associated costs being additional to the rate quoted overleaf and being to the Hirer's account.
- (e) Where the Hirer has understated the weight or dimensions 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
- (f) The Hirer shall be responsible for all loss or damage whatsoever caused while the cranes is entering, leaving or on the site, including the cost of repairs suffered or incurred by the Owner 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 or misuse of the crane on the part of the Hirer or the Hirer's servants (including the operator), agents, contractors or sub contractors 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.

7 Damage to Goods

The Owner 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 the Owner.

8 Damage to Services and Property

The Hirer is responsible for providing legal access that is clear and unrestricted access to the site and that the access and site is adequate to support the vehicles. The Hirer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, and lawns, fences, structures, vehicles or any other property caused by the vehicles whilst entering or leaving site, or manoeuvring whether on or off site or otherwise.

9 Risk

The Hirer shall not do or permit or suffer to be done anything in connection with the crane or its use whereby any policy or policies of insurance effected in connection with the crane or its use may become void or whereby the premiums thereon may be increased.

10 Responsibility for Loss

Under no circumstances shall the owner be liable for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage of the crane or out of the delayed arrival or non-arrival of the crane at the site or from any damage caused by the use of the Crane or otherwise arising out of or in connection with the hire of the crane to the Hirer. If notwithstanding the terms of this agreement the Owner is held liable for any damage, costs, loss or other expense incurred by the Hirer, the liability of the Owner shall, to the maximum extent permitted by law, be limited to a maximum of the charges paid by the Hirer to the Owner in relation to the hire of the Crane.

11 Stoppage

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

12 Notice of accident

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 or facsimile to the Owners principal office.

13 Subletting

The Hirer shall not assign its rights hereunder or sublet or otherwise part with possession of the crane or any part thereof to any third party without first obtaining the written consent of the Owner. The Hirer at the Hirer's own expense shall protect and defend the Owner from all claims, liens and legal processes of creditors of the Hirer and shall keep the Crane and any part thereof free and clear of any such claims.

14 Period of Hire

The period of hire shall be calculated on a depot basis and shall therefore be the elapsed time in any day from the time of the delivery of the Crane to the Hirer at the Owners depot to the time of return of the Crane by the Hirer to the Owners depot on that or any other day. Hire shall be charged accordingly.

15 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 Hire's account, together with the cost of rigging and de-rigging

16 Overtime

Additional charges will be payable by the Hirer in accordance with the Owner'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 call-back Saturdays, Sundays or public holidays.

17 Site Allowances

Where site allowances are payable there will be additional charges to the Hirer.

18 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 Hirer's account.

19 Payment

Payment shall be made not later than the end of the month following the date of the invoice. If payment is not made by that date, interest will accrue from the date of the invoice in any amount outstanding by the rate of 1.5% per month. Any amount becoming due and payable in terms of this paragraph shall be liquidated debt and the Owner shall be entitled at any time to commence proceedings against the Hirer for payment of the debit including legal costs incurred by the Owner.

20 Termination of Agreement

- (a) The Owner may immediately and without notice terminate the hire and retake possession of the Crane if
- (i) the Hirer makes default in the observance or performance of any of the terms and conditions of this Agreement.
 - (ii) The Owner believes on reasonable grounds that the Hirer is about to breach the terms of this Agreement and that such breach might endanger any person or property; or
 - (iii) the crane for any reason is damaged so as to be inoperable or unsafe for use.
- (b) any such determination shall be without prejudice to the rights of the Owner in respect of any breach of this agreement.

21 Indemnity

- (a) The Hirer shall indemnify and keep indemnified the Owner from and against all damage or loss suffered or incurred in consequence of
- (i) any breach of the terms of this agreement by, or
 - (ii) any negligent act or omission on the part of, or otherwise caused by the Hirer or the Hirer's servants (including the operator), agents, contractors or sub-contractors during the terms of this agreement.

22 Oral Agreements and Stipulations

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

23 Waiver

All the rights, powers and remedies of the Owner shall remain in full force notwithstanding any neglect, forbearance or delay by the Owner in the enforcement of them

24 Governing Law

This agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Hirer shall observe and comply with the provisions of all Acts, regulations, bylaws and codes of practice in force during the period of hire in relation to the work on which the Crane is to be employed and in the manner of performance of that work and relation to the site and with all orders and directions lawfully given by any competent authority.

25 Arbitration

If during the continuance to the hire or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the hire or the construction of this agreement or the rights or liabilities of the Owner or the Hirer, if they can agree upon one and otherwise to two arbitrators (or to their umpire in the case of disagreement) one to be appointed by each party and in either case in accordance with the provisions of the Arbitration Act 1996.