

MINI CRANES NZ LTD GENERAL TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS

In these Terms and Conditions of Hire:

- (a) "Agreement" means the agreement between the Hirer and the Owner to hire the Equipment and Services and incorporates the General Terms and Conditions of Hire;
- (b) "Equipment and Services" means the crane, transport, accessories, or associated services hire (including provision of labour), by the Owner to the Hirer (whether the original Equipment or any substitute) and all other services, accessories and other equipment of the Owner attached to the Equipment or to be used in connection with it. For the purposes of this agreement the Equipment shall be deemed to be the property of the Owner whether such is the fact or not. The Owner will retain ownership of the Equipment and nothing in the Agreement will assign any form of ownership of the Equipment to the Hirer;
- (c) "Hirer" means the company, firm, person, corporation or public authority hiring the Equipment and Services and includes the Hirer's successors or personal representatives;
- (d) "Owner" means Mini Cranes NZ Ltd (GST No.119-586-437) and includes its successors and assigns. The Owner is not a common Carrier and may refuse to carry any goods at its discretion;
- (e) "Site" means the place or area where the Equipment is to be operated for the purposes of this Agreement; and
- (f) "Work" means all tasks and activities undertaken, whether specified in writing by the Hirer, verbally instructed by the Hirer's representatives or necessary to complete the Hirer's instructions;
- (g) The capitalized term "They" shall be the third-person gender-neutral singular subjective pronoun; the capitalized term "Them" shall be the third-person gender-neutral singular objective pronoun; the capitalized term "Their" shall be the third-person gender-neutral singular possessive pronoun; and the capitalized term "Themselves" shall be the third-person gender-neutral singular reflexive pronoun. The foregoing shall also encompass "she" and "he;" "her" and "him;" "her" and "his;" and "herself" and "himself".

2. ACCEPTANCE

Any instructions received by the Owner from the Hirer for the supply of Equipment and Services, including Equipment and Services that the Owner has ordered or is required to order from other parties, shall constitute a binding contract and acceptance of these Terms and Conditions. Hire quotations are valid for up to 30 days from the date of issue. However, all quotations are subject to availability as Equipment and Services may be offered to multiple potential hirers at any one time.

3. FULL HIRE

Subject to any provision to the contrary in this Agreement or in writing signed by both parties, the following table establishes the agreed responsibilities of the Owner and the Hirer:

ITEM	DESCRIPTION	WET HIRE		DRY HIRE	
		OWNER	HIRER	OWNER	HIRER
1	Equipment Insurance	X			X
2	Daily Inspection & Greasing	X			X
3	Fuel	X			X
4	Consumables	X			X
5	Routine Servicing & Maintenance	X		X	
6	On-Site Commissioning	X		X	
7	Crane to (Un)load / (Dis)Assemble		X		X
8	Labour to (Un)load / (Dis)Assemble		X		X
9	Annual Inspection / Compliance	X		X	
10	Ground Protection / Mats		X		X

4. SLINGS AND ANCILLARY EQUIPMENT

The Owner will supply its standard selection of slings and ancillary equipment with all wet hired 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 to the Hirer. The Owner does not accept responsibility for the correct use of slings or ancillary equipment or for the method of slinging.

Slings and ancillary equipment including, but not limited to, synthetic slings, FSWR slings, chains, spreader beams, blocks and tackle, man cages and concrete skips, may be supplied at charges quoted if requested. In any case if any slings or ancillary equipment belonging to or supplied by the Owner are lost, destroyed or damaged, the Hirer shall pay to the Owner the cost of replacement or repair (as the case may be) resulting from such loss, destruction or damage.

5. SITE CONDITIONS AND ACCESS

(a) The Hirer is responsible for ensuring:

- (i) that the access to the site is stable and firm and of a gradient no steeper than 1:10;
- (ii) that the ground at the site (and its access route) is adequate to support the Equipment under its wheels, tracks and/or outriggers;
- (iii) that a clearance of 4 metres from all overhead wires (including power lines) can be maintained throughout the duration of the Works; and
- (iv) that all footpaths, kerbs and channels providing access are suitably planked to prevent damage.

There will be no reductions to the hire period or charges as a result of lost time caused by the ground conditions.

(b) Should the Equipment need to be assisted into or out of the Site (e.g. towed), the cost shall be additional to the rate quoted and will be to the Hirer's account or payable directly by the Hirer.

(c) Where access is required through private property all arrangements and associated costs are the sole responsibility of the Hirer.

(d) The Hirer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, kerbs, channels, driveways, grounds, lawns, fences, structures, vehicles or any other property (public or private) whatsoever caused by the Hirer or the Equipment during the period of hire. All matters and any associated costs are to be dealt with directly by the Hirer without involvement by the Owner.

6. USE AND HANDLING OF THE EQUIPMENT

(a) Notwithstanding Clause 3 above, the Owner's Equipment 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 Equipment by the operator.

(b) The Hirer shall not:

- (i) require, permit or suffer the Equipment Operator to do anything contrary to any relevant acts, regulations, by-laws, requirements, codes of practice or recognised conventions;

- (ii) allow any other person to operate the Equipment without first obtaining the written consent of the Owner. Hirer supplied operators must hold the appropriate NZQA qualification, a copy of which must shall be provided upon request;
- (iii) permit or suffer the operation or direction of the Equipment by any person who has Their faculties impaired by drugs and/or alcohol;
- (iv) use or permit the use of the Equipment to lift any load which is beyond the rated lifting capacity of the Equipment or for any other purpose other than that 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 will not be exceeded at any time. Where the weight of the lift approximates to the maximum lifting capacity of the Equipment, the Owner reserves the right to have the weight of the proposed lift confirmed on a certified weighbridge or certified load cell with the associated costs being additional to any rates quoted 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 Equipment and the Owner has relied on the weight, dimensions or working radius stated, the Hirer shall be responsible for all extra cost and risk incurred by the Owner by reason of the Owner's reliance upon such stated weight, dimensions and/or working radius.
- (f) The Hirer shall be responsible for all loss or damage whatsoever caused while the Equipment 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 Equipment where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the Equipment on the part of the Hirer or the Hirer'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 Equipment is necessarily idle as a result of any such negligent act or omission or misdirection or misuse of the Equipment.
- (g) The Hirer is entitled to the unencumbered use of the Equipment for the term of the hire, unless the Owner becomes entitled under the Agreement to inspect or repossess the Equipment (for example, where the Hirer breaches the terms of the Agreement). The Hirer must not sell, lend, lease, transfer, grant any security interest in, modify or otherwise deal with the Equipment (or even attempt to do so) without first obtaining the Owner's written consent.

7. DAMAGE TO GOODS

The Owner accepts no responsibility for loss or damage to goods being handled by the Equipment or damaged by the Equipment.

8. RISK

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

9. RESPONSIBILITY FOR LOSS

Under no circumstances whatsoever shall the Owner be liable whether in contract, tort or otherwise for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage of the Equipment or out of the delayed arrival or non-arrival of the Equipment at the Site or otherwise arising out of or in connection with the hire of the Equipment to the Hirer.

10. SEVERABILITY

If a provision of this Agreement is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this Agreement.

11. STOPPAGES

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

12. GST

All quoted rates and charges are exclusive of GST unless specifically stated otherwise.

13. NOTICE OF ACCIDENT

If the Equipment is involved in any accident resulting in injury to any person or damage to any property (including, but not limited to, the Equipment), immediate notice must be given by the Hirer to the Owner by telephone and confirmed by letter or email to the Owner's principal office within 24 hours.

14. SUBLETTING

The Hirer shall not sublet or otherwise part with possession of the Equipment and Services 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 Equipment and Services and any part thereof free and clear of any such claims.

15. 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 departure of the Equipment from the Owner's depot to the time of return of the Equipment to the Owner's depot on that or any other day. Hire shall be charged accordingly. A minimum charge of four hours applies to all Work performed.

16. ADDITIONAL EQUIPMENT

Where transport of additional equipment/accessories is required, the cost of this will be extra to the hire rates quoted and will be to the Hirer's account, together with the cost of rigging and de-rigging (if applicable).

17. OVERTIME

Additional charges will be payable by the Hirer in accordance with the Owner's current hire price list, including a minimum charge of 4 hours, for all work performed outside of the hours of 0600-1800 and on Saturdays, Sundays or public holidays, unless agreed otherwise in writing. Quotation is based upon Single Shift – additional rates may apply for a second shift.

18. SITE ALLOWANCES

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

19. OPERATOR'S ACCOMMODATION

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

20. PAYMENT

Payment is due on or before the 20th calendar day of the month, following the date of the invoice, unless otherwise agreed in writing by the Owner.

If payment is not made by that date, interest will accrue from the date of the invoice on any amount outstanding at the rate of 2.5% per month.

Any costs incurred by the Owner in the recovery of overdue accounts (including legal costs and/or debt collection fees) will be paid by the Hirer.

Rates and conditions may be subject to change without notice.

21. TERMINATION OF AGREEMENT

(a) The Owner may immediately and without notice terminate the hire and, without prejudice to the Owner's other rights, enter any premises and repossess the Equipment if:

- (i) The Hirer defaults 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;
- (iii) The Equipment for any reason is damaged so as to be inoperable or unsafe for use;

(iv) A receiver is appointed, the Hirer goes into liquidation or a petition to liquidate or a notice of intention to propose a resolution to liquidate is presented to the Hirer; or

(v) (if the Hirer is a natural person) the Hirer commits an act of bankruptcy or the Hirer becomes bankrupt or dies; or

(b) Any such determination shall be without prejudice to the rights of the Owner in respect of any breach of this Agreement.

Unless previously terminated, the hire of the Equipment and Services shall expire upon completion of the Work or the period covered by the Client's Work order or agreed other similar document, whichever occurs first. Renewal or extension of the hire will require conformation from both parties or the issue of a new or supplementary order which is accepted by the Owner.

22. INSURANCE AND INDEMNITY

The Hirer shall indemnify and keep indemnified the Owner from and against all actions, claims, demands, proceedings, costs, charges, expenses, etc. In respect of damage or loss to any property of the Hirer or third party:

(a) 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

(b) Otherwise caused by Hirer of the Hirer's servants, agents, contractors or subcontractors during the term of the Agreement.

The Hirer shall effect and maintain during the period of the hire an insurance against any liability, loss, claim or proceedings, in respect of which They are required to indemnify the Owner and shall on request produce to the Owner the relevant policy of insurance any receipt for the renewal of during the period of hire. The Hirer should also note that the Owner does not hold insurance cover for the items being lifted, and will not accept any responsibility for any damage to them caused by any incident including Equipment breakdown or operator error.

For transport, all goods are carried at the Hirer's Risk pursuant to the Carriage of Goods Act 1979 unless otherwise stated or arranged in writing. This means that the Owner will pay no compensation if the goods are lost or damaged, unless intentionally lost or damaged by the Owner.

23. 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.

24. 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.

25. 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, by-laws and codes of practice in force during the period of hire in relation to the Work on which the Equipment is to be employed and in the manner of performance of that Work and in relation to the site and with all orders and directions lawfully given by any competent authority.

26. CONSUMER GUARANTEES ACT

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer hires Equipment or otherwise acquires supporting Equipment and Services from the Owner for the purposes of a business in terms of Sections 2 and 43 of the Act.

27. 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 the Agreement or the rights or liabilities of the Owner or the Hirer, that dispute, difference or question; to resolve any issues and at the Owners discretion it shall be referred to either the disputes tribunal, district court or an arbitration panel consisting of one arbitrator appointed by each party and in accordance with the provisions of the Arbitration Act 1996.

28. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

(a) The Hirer acknowledges that title to hired Equipment remains with the Owner at all times.

(b) Hire or acquisition of the equipment may create a security interest in the equipment. If so, this document constitutes a security agreement for the purposes of the PPSA and the provisions of this clause 28 apply. All terms in this clause 28 have the meaning given in the PPSA and section references are references to sections of the PPSA.

(c) On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary complete, accurate and up-to-date information and do anything else reasonably required by the Owner to ensure that the security interest created under the Agreement constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment. The Hirer shall immediately notify the Owner in writing of any change in the Hirer's name and shall also provide all information required in order to complete a financing change statement.

(d) The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement or a financing change statement in connection with the Agreement.

(e) The Hirer undertakes to not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Owner.

(f) The Owner and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

(g) The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

(h) Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.