

## *Terms and Condition for Hire*

### **Definitions:**

Unless otherwise required by the context or subject matter:

“Agreement” means these terms and conditions, the Schedule and the execution pages;

“Dry Hire” means the hire of the Plant and Equipment to the Hirer without an operator provided by the Owner;

“Due Date for Payment” means, unless otherwise specified, thirty (30) days from: (a) the date of invoice; (b) the day of expiry of the Term; or (c) delivery or attempted delivery of the Plant and Equipment, as the case may be

“Fee” means the hire fees specified in the Schedule or such other rate specified and quoted by the Owner from time to time;

“Force Majeure” means: (a) act of God; (b) outbreak of hostilities, riot, civil disturbance, acts of terrorism; (c) the act of any government or authority (including refusal or revocation of any licence or consent) where the said act is not a result of some neglect or default on the part of the relevant party; (d) fire, explosion, flood, fog or bad weather; (e) power failure, failure of telecommunications lines, failure or breakdown of Plant and Equipment, machinery or vehicles; (f) default of suppliers or independent contractors; (g) theft or malicious damage; (h) strike, lockout or industrial action of any kind; and (i) any cause or circumstance whatsoever (except financial difficulties or lack of funds) beyond the reasonable control of the relevant party;

“Hire Site” means the premises from which the Owner trades from or such other premises as notified to the Hirer in writing from time to time;

“Hirer/you or your” means the party specified in the Schedule and includes any party claiming through, under or in trust for the Hirer including their contractors;

“Hirers Covenants” means the covenants, agreements and obligations contained or implied in this Agreement or imposed by law to be observed and performed by the Hirer;

“Site” means the site where the Hirer requires the Plant and Equipment to be used from time to time;

“Owner/we/us or our” means Empire Cranes Pty Ltd (ACN 627 087 772) of 20 Woodland Close, The Gurdies, Victoria 3984 and includes its employees, agents or any sub-contractors and their employees;

“Plant and Equipment” means the goods specified in the Schedule and includes but is not limited to any item of plant, machinery or vehicle, and any tools, accessories, parts, items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle let by the Owner to a Hirer;

“Term” means the term of this Agreement specified in the schedule or such further period as is agreed by the Owner in writing.

“PPSA” means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it, and the following words in clause 9.2, 10 and 31 have the respective meanings given to them in the PPS Act: financing change statement, financing statement, purchase money security interest (or “PMSI”), register, registration and security interest.

“Regulatory Authority” means any public authority or government agency responsible for regulating the performance of electrical works.

### **1. THE HIRE PERIOD**

1.1. The hire commences on the early of the following;

1.1.1. when You take possession of the Equipment; or

1.1.2. if you request delivery and collection of the Equipment, the time we deliver the Equipment to the address in the Hire Schedule.



- 1.2. The Hire Period is for an indefinite term and ends when the Equipment is back in Empire Cranes control or possession.
- 1.3. The Hire Period includes weekends and public holidays.
- 1.4. A minimum Hire Period may apply in respect of certain items of Equipment (“Minimum Hire Period”). We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to Us before the expiration of the Minimum Hire Period, you are required to pay all Hire Charges in respect of the Minimum Hire Period.

## 2. Delivery of Equipment

- 2.1. Where Empire Cranes is delivering Equipment to or collecting Equipment from the Customer’s Premises, access must be granted to enable timely delivery and collection. The Customer will be responsible for any demurrage, delay or futile deliveries or collection costs of Equipment if access is not granted.
- 2.2. Delivery times and dates are estimates only. Empire Cranes is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event.
- 2.3. Empire Cranes will notify the Customer of any delay in delivering, collecting or installing the Hire Equipment.

## 3. Payment

- 3.1. All Hire Charges are payable in full within 30 days of the invoice date.
- 3.2. If payment is not made in full by the due date, Empire Cranes may charge a late payment fee of 2% (cumulative) per month. In addition, the Customer must pay to Empire Cranes all expenses in recovering any Amounts Owing (on a full indemnity basis).
- 3.3. We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.
- 3.4. Hire rates are based on one shift for the following periods of hire and hours of usage, unless otherwise agreed and as nominated in schedule.
  - 3.4.1. A day of 10 consecutive hours use.
  - 3.4.2. A week of 60 hours use consisting of one shift 6 consecutive days
  - 3.4.3. A month of 224 hours use consisting of one shift 4 consecutive weeks.
- 3.5. Additional usage above the hours stated will attract increased hire rates on a pro-rata basis.
- 3.6. The period of hire will commence on the earlier of:
  - 3.6.1. The date (if any) shown in this agreement, and
  - 3.6.2. The date the machinery is loaded for transport at its current location.
- 3.7. The period of hire will conclude on the later of:
  - 3.7.1. The date (if any) specified in this agreement, and
  - 3.7.2. The date the machinery is returned to or at the direction of Empire Cranes.
- 3.8. No off-hire periods are permitted without prior written approval from Empire Cranes.

## 4. Operation

- 4.1. The Hirer shall ensure the machinery is always operated by persons who hold appropriate qualifications and/or licenses required by any authority having jurisdiction in respect of the operation of the machinery.
- 4.2. Operate the machinery within its rated capacity in accordance with its manufacturer’s recommendation and for the purposes for which its manufacturer intended.
- 4.3. The Customer remains responsible and liable to Empire Cranes irrespective of any sub-hire agreement or arrangement entered by the Customer.

- 4.4. The Customer is liable to Empire Cranes for the acts and omissions of any Sub-Hirer and the employees, agents, contractors and officers of the Sub-Hirer as if they were acts or omissions of the Hirer.
- 4.5. The Hirer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hire Equipment at any time during the Hire Period without the prior written approval of Empire Cranes.

## 5. Maintenance and Breakdowns

- 5.1. Unless otherwise stated in this agreement, the hirer shall ensure that the machinery receives all maintenance and standard services (standard services occur after 250, 500 and 1,000 hours or at the manufacturer's specifications in manuals supplied) and will pay for all labour, punctures, tyre repairs and minor repairs. All maintenance will be conducted in accordance with manufacturer's recommendations.
- 5.2. Should a major repair be required, the hirer must inform Empire Cranes who will advise as to the way the repairs are to be undertaken.
- 5.3. The Hirer must clean, fuel, lubricate and maintain equipment in good condition and in accordance with the manufacturer's instructions at the hirer's cost;
  - 5.3.1. not in any way alter, modify (including removing any identifying mark or plate), tamper with, damage or repair the Equipment without written consent;
  - 5.3.2. provide access to Empire Cranes to maintain and service the Equipment and undertake statutory inspections when necessary during normal business hours, failing which additional charges for out of hours service and maintenance may apply;
  - 5.3.3. return the Equipment in the same good and clean condition it was in when the hirer received it, ordinary fair wear and tear excepted.
- 5.4. At the conclusion of the hire period, the hirer will thoroughly clean the machinery and, in default of this obligation pursuant to this clause, acknowledges and agrees that Empire Cranes will clean the machinery at the cost to the hirer.
- 5.5. In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
  - 5.5.1. immediately stop using the Equipment and notify us;
  - 5.5.2. take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - 5.5.3. take all steps necessary to prevent any further damage to the Equipment itself; and
  - 5.5.4. not repair or attempt to repair the Equipment without Empire Cranes written consent.
- 5.6. Upon receiving notice from you under clause 5.5.1, We will:
  - 5.6.1. take all reasonable steps to repair the equipment or provide suitable substitute equipment as soon as reasonably possible after being notified by you; and
  - 5.6.2. not impose a hire charge for that portion of the hire period for which the equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the equipment.
- 5.7. Empire Cranes shall not be responsible for any inconvenience, delay claims or loss of any kind whatsoever incurred by the hirer due to any accident, break-down or defect in the machinery or any part thereof or from any other cause whatsoever.

## 6. Insurance

- 6.1. The Hirer must take out and maintain a policy of insurance that covers loss or damage to the Hire Equipment during the Hire Period for not less than the full new replacement cost of the Equipment ("Hire Equipment Insurance").

- 6.2. Unless otherwise stated in this agreement, during the period of hire, the hirer will comprehensively insure and keep insured the machinery for an amount not less than the amount shown in this agreement, for the following risks:
  - 6.2.1. Damage to the machinery.
  - 6.2.2. Third party property damage \$5m.
  - 6.2.3. Public liability insurance for an amount of no less than \$20m.
- 6.3. The hirer shall produce to Empire Cranes prior to the commencement of the hire period, proof that the hirer has affected such insurances.

## 7. Owner

- 7.1. The Customer acknowledges that Empire Cranes always retains title to the Hire Equipment (even if the Hirer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstance will the Hire Equipment be deemed to be a fixture. The Hirer has no interest in the Hire Equipment of any kind other than as a bailee.
- 7.2. Empire Cranes may hire or lease Equipment from third parties to supply to the Customer and if this occurs title in the Equipment remains with that sub-hirer.
- 7.3. Except with the prior written consent of Empire Cranes, the Hirer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hire Equipment in any way whatsoever.
- 7.4. PPSA: Empire Cranes may register its security interest that arises under this Hire Agreement and in the Equipment and the proceeds from any dealing in the Equipment. The Hirer:
  - 7.4.1. must do all things necessary to enable Empire Cranes to register and perfect its security interest in the Equipment under the PPSA including enabling it to register a financing statement;
  - 7.4.2. must take all steps to ensure any security interest arising under or in respect of sub-hire is enforceable, perfected and otherwise effective under PPSA;
  - 7.4.3. must not register a financing change statement in respect of a security interest arising out of this Hire Agreement without Empire Cranes consent;
  - 7.4.4. must not create a security interest in the Equipment in the Equipment, register or permit to be registered a financing statement in relation to the Equipment;
  - 7.4.5. must notify Empire Cranes of any change in writing of the Customer's details set out in the Credit Application;
  - 7.4.6. waives all rights under s157 of the PPSA to receive a copy of the verification statement relating to security interest created under this Hire Agreement;
  - 7.4.7. agrees to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: s95 (to the extent that it requires the secured party to give notices to the grantor); s96; s118 (to the extent that it allows a secured party to give notices to the grantor); s121(4), s125; s130; s132(3)(d); s132(4); s135; s142 an s143; and
  - 7.4.8. agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them; s127; s192(2) and (3); s130(1); s132; s134(2); s135; s136(3), (4) and (5) and s137.
- 7.5. Unless otherwise agreed, Empire Cranes and the Hirer will not disclose information referenced in s275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have had under s275(7)(c) of the PPSA to authorise disclosure of that information.
- 7.6. For the purposes of s20(2) of the PPSA, the collateral is the Equipment set out in any quote and/or Hire Agreement. The Quote and/or Hire Agreement is the security agreement for the purposes of the PPSA.

## 8. Indemnities and Exclusions of Liabilities

- 8.1. Subject to clause 7.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 8.2. Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- 8.3. Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
  - 8.3.1. in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - 8.3.2. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 8.4. Subject to our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.
- 8.5. Subject to clauses 7.3 and 7.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 8.6. You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
  - 8.6.1. personal injury;
  - 8.6.2. damage to property; or
  - 8.6.3. a claim by a third party,
- 8.7. in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.
- 8.8. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

- 8.9. We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

## 9. Force Majeure:

- 9.1. If a party becomes unable wholly or in part by Force Majeure to carry out any of its duties or obligations under this Agreement:
- 9.1.1. that party must give to the other party prompt written notice of: (i) detailed particulars of the Force Majeure; (ii) so far as is known, the probable extent to which the party will be unable to perform or will be delayed in performing the duty or obligation;
  - 9.1.2. the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
  - 9.1.3. the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible.

## 10. Disputes:

- 10.1. In the event there is a dispute between the parties to this Hire Agreement or the Customer wishes to make a Claim, the Customer must notify Empire Cranes in writing (to the Branch from which the Equipment was hired) of the reasons for the dispute or details of the Claim (including reference to any invoice) within 7 Business Days from the date the Claim or dispute arose (or date of invoice).
- 10.2. The Customer acknowledges and agrees that failure to comply with the time frame for notification of any Claim or dispute will mean the Customer is barred from raising any Claims or dispute with Empire Cranes after that time period has passed.
- 10.3. Within 14 Business Days of notification of any dispute or Claim, representatives of both parties shall meet to endeavour to resolve the Claim or dispute.
- 10.4. If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting to endeavour to resolve the Claim or dispute.
- 10.5. If the parties fail to resolve the Claim or dispute pursuant to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration to be conducted subject to the Resolution Institute's Arbitration Rules.

## 11. Termination of this agreement:

- 11.1. Either party may terminate this Hire Agreement and any Hire Period by giving notice to the other party, if:
  - 11.1.1. that other party breaches any term of the Hire Agreement including for breach of payment terms pursuant and fails to remedy the breach within 7 days of written notification of the breach; or
  - 11.1.2. that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights You may have under the Corporations Act 2001.
- 11.2. We may terminate the Hire Agreement and any Hire Period for any other reason on 48 hours' notice.
- 11.3. We may terminate the Hire Agreement immediately if you or any third party has made a false statement in or breached any provision of the Relevant Documents.



- 11.4. These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.
- 11.5. Where Empire Cranes has terminated the Hire Agreement with the Hirer, Empire Cranes may take all steps necessary (including legal action) to recover the Equipment, including entering any site occupied by the Hirer. The Hirer expressly provides Empire Cranes consent to enter any site or premises of the Hirer to recover Equipment.

## 12. Miscellaneous

- 12.1. Time is to be of the essence of all obligations of the Hirer in the Hire Agreement.
- 12.2. The Hirer acknowledges that Empire Cranes or any person acting on behalf of Empire Cranes has not made any representation or inducement to the Hirer to enter into the Hire Agreement and the Hirer has not relied on any representations or inducements except for those representations or inducements contained in this Hire Agreement.
- 12.3. Empire Cranes may collect personal information about a customer and Empire Cranes will treat this information in accordance with Australian Privacy Principles.
- 12.4. All dual lifting or multi crane lift activities are to be engineered, planned and executed as the sole responsibility of the Hirer. Empire Cranes does not conduct, verify or approve any procedures or engineering report/s associated with dual lifting or multi crane lifting activities.
- 12.5. Suitable ground conditions for safe setup and operation of the equipment shall remain the responsibility of the Hirer.
- 12.6. Air conditioners to be maintained and repaired by the hirer.
- 12.7. Site Specific Compliance requirements, above and beyond standard configuration shall remain the responsibility of the Hirer. Modifications or additions to machine, components or accessories must be approved by Empire Cranes.
- 12.8. Company Signage shall not be modified and / or installed on the machine without prior approval by Empire Cranes.
- 12.9. Unless otherwise stated in this agreement, all mobilization and demobilization costs including demurrage will be paid by the hirer.
- 12.10. Hire rates and terms are agreed for the hire period signed for Empire Cranes reserves the right to review these hire rates and terms should the hire period be terminated and/or extended from the original hire period agreed to.
- 12.11. The machinery is offered for hire, subject to being available to the owner when the hirer's acceptance of the contract is received by Empire Cranes.
- 12.12. The period of hire is the period shown in this agreement. If no period is shown, this agreement shall be deemed to be an agreement for hire from week to week, determinable by either party by one week notice in writing given to the other.
- 12.13. Equipment quoted subject to availability within the Empire Cranes fleet at time of placing order.
- 12.14. Stand downs may apply to Equipment where agreed by Empire Cranes as follows:
  - 12.14.1. Any stand down request must be made in writing 7 days period to the requested start date. Stand downs cannot be applied retrospectively;
- 12.15. The customer remains responsible for the security of the Equipment and all loss or damage to equipment while it is stood down;
- 12.16. Stand downs of sub-hired equipment are subject to the term of that supplier;
- 12.17. Unless otherwise agreed in writing, stand downs will only apply to:
  - 12.17.1. Equipment breakdown up to 100% for duration of breakdown;
  - 12.17.2. Christmas/Easter period up to 50% of hire charge;



- 12.18. If the Equipment is used during a stand down (determined for instance by remote monitoring), full hire charges for that period will be applied; and
- 12.19. If a stand down request exceeds 7 calendar days (except for Christmas and Easter) Empire Cranes retains the right to have the equipment off-hire and returned at the hirers cost.
- 12.20. The Customer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws, industry guidelines and manufacturer's guidelines. The Customer must, and must ensure that any transporting contractor will, observe any safety directions advised by Empire Cranes and/or manufacturer of the Equipment for its loading and safe handling.

### 13. Special Conditions

- 13.1. The special conditions (if any) set out in the Schedule shall form part of this Agreement.
- 13.2. In the event of any inconsistency between the special conditions and any other term of this Agreement, the special conditions shall prevail to the extent of the inconsistency.

### 14. Signing and Agreement

- 14.1. The Hire Agreement is governed by the laws of the state or territory in which the equipment is located, and each party submits to the non-exclusive jurisdiction of the courts of that State or territory in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 14.2. The person signing or accepting the terms of any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on your behalf and grant the security interests in connection with it and is empowered to bind you to the Hire Agreement and each security interest granted in connection with it.
- 14.3. The person signing or accepting the terms of this Hire Agreement indemnifies Empire Cranes against all losses, costs and claims incurred by us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

Signed for and on behalf of hirer as acceptance of these conditions. In the case of a partnership all partners must sign this agreement.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_