

TERMS AND CONDITIONS OF CARTAGE AND HIRE FROM BELLS CARRYING AND CRANE HIRE SERVICE PTY LTD (ABN 53 068 048 546)

1. Definitions:

1.1 In these conditions the following words shall have the following meanings:

- (a) **"ACL"** means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (b) **"Agreement"** means this document.
- (c) **"Company"** means Bells Carrying and Crane Hire Service Pty Ltd (ABN 53 068 048 546) and any associated company and their employees, servants, agents and sub-contractors (as applicable).
- (d) **"Carriage Services"** means the whole of any operations and services undertaken by the Company in respect of any goods, including, the loading, unloading, handling, unpacking, storage and transportation of goods.
- (e) **"Consequential Loss"** means any indirect or consequential loss such as the loss of use, loss of product or production or deferred production or any loss of profit, revenue or anticipated revenue, loss of bargain expectation or opportunity in each case arising from or in connection with the performance of the carriage of goods whether or not foreseeable at the time of entering into this agreement.
- (f) **"Consumer"** has the meaning given by the ACL.
- (g) **"Customer"** means the person or corporation who engages the company to provide any services.
- (h) **"Goods"** means anything directly or indirectly from the Customer concerning which the Company provides services.
- (i) **"Wet Hire Services"** means the hire of equipment combined with the Company's personnel to operate the equipment.

2. Carriage:

- 2.1 The Company will provide Carriage Services to the Customer pursuant to the terms and conditions in this Agreement.
- 2.2 The Company is not a common carrier. The Company may refuse any Carriage Services at its discretion.
- 2.3 The Customer warrants that:
 - (a) The Goods are fit for Carriage Services and have been suitably packaged;
 - (b) It is the owner of the Goods carried by the Company under this Agreement, or it has the authority of all persons or corporations having any interest in the Goods to accept the conditions of this Agreement on their behalf;

- (c) The details of the Goods, including the handling qualities and methods, quantity, weight, volume and measurements (as applicable) supplied to the Company are correct;
- (d) Any place from which any Goods are to be collected or to which any Goods are to be delivered will have safe and adequate loading facilities and equipment available;
- (e) It has complied with all laws and regulations in relation to the carriage of Goods; and
- (f) Unless specifically declared in writing prior to carriage, the Goods are not dangerous goods.

2.4 Delivery:

- (a) The Company is presumed to have delivered the Goods in accordance with this agreement at the address nominated by the Customer if at that address it obtains from any person a receipt or signed delivery docket for the Goods;
- (b) If the Goods cannot be delivered for any reason, including due to the nominated address for delivery being unattended or the Customer or consignee failing to take delivery of the Goods, the Company may at its option store the Goods and the Customer will pay or indemnify the Company for all costs and expenses incurred for such storage or any re-delivery.
- (c) Nothing in this clause 2.4 obliges the Company to take any particular steps concerning delivery and in particular (but without limitation) this clause does not oblige the Company to obtain a receipt or delivery docket or acceptance of delivery, or prevent the Company from delivering the Goods to unattended premises.

2.5 Any freight charges are payable whether the Goods are delivered or not, and whether damaged or otherwise. Under no circumstances will any payment of the freight be refunded to the Customer.

3. Hire:

- 3.1 The Company will provide Wet Hire Services to the Customer pursuant to the terms and conditions this Agreement.
- 3.2 The Company will supply personnel to operate all equipment the subject of the Wet Hire Services for the duration of the hire period. The Customer, or its employees, servants or agents must not operate under any circumstance, any equipment hired to it by the Company.
- 3.3 The Company has the exclusive right to determine the distance the equipment to be hired may reasonably travel and the suitability of the equipment for the work required or proposed to be carried out by the Customer, and to terminate this Agreement without any liability to the Customer whatsoever, if the Company considers the equipment unfit for purpose.
- 3.4 The Company may refuse to operate the equipment if it reasonably believes any directions of the Customer may affect the safety of people, property or the equipment.
- 3.5 The Customer is responsible for ensuring compliance with any legislation, ordinances or regulations for the duration of the provision of the Wet Hire Services by the Company.
- 3.6 If the hire period is for:
 - (a) A period that is outside of the hours of 7.30am – 4pm Monday to Friday; or

(b) Any Saturday, Sunday or Public Holiday;

The hourly rate or the hire rate to be charged by the Company will be increased during any such period by an overtime penalty loading during Wet Hire period. The Company will notify the Customer of any overtime penalty loading that will apply to the Wet Hire Services at the time of entering into this Agreement.

- 3.7 The Company does not provide a warranty to the Customer that any Wet Hire Services rendered under this Agreement will be reasonably fit for any particular purpose (whether made known or otherwise) or that the Wet Hire Services are of such nature and quality that they might reasonably be expected to achieve a particular purpose or a particular result, whether that purpose or result is made known to the Company or not.

4. Liability:

- 4.1 The Company is not a common carrier and does not accept any liability as such.
- 4.2 Unless this Agreement is subject to the ACL, in which event the provisions of the ACL will apply, the Carriage Services or Wet Hire Services shall be at the sole risk of the Customer. The Company, its employees, servants, agents or subcontractors shall not be liable for any loss or damage to any Goods, or in the case of Wet Hire Services to property (including the Customer's property or any property owned by a third party), wrongful delivery, late delivery, miss-delivery or non-delivery of the Goods howsoever occurring including the negligence or wilful misconduct of the Company, its employees, servants, agents or subcontractors.
- 4.3 The Company is not liable for any Consequential Loss whether incurred by the Customer or by any third party, howsoever occurring including the negligence or wilful misconduct of the Company, its employees, servants, agents or subcontractors, except to the extent of any liability imposed by the ACL.
- 4.4 Nothing in this Agreement, is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the Carriage Services or the Wet Hire Services, which cannot be excluded, restricted or modified.
- 4.5 If this Agreement, the Carriage Services or the Wet Hire Services are of the type to which section 64A(1) or (2) refers, the Company limits its liability to the Customer or any third party to one or more of the following at the Company's discretion:
- (a) The replacement or repair of the goods or the supply of equivalent goods;
 - (b) The payment of the cost of replacing or repairing the goods or of acquiring equivalent goods;
 - (c) The supplying of the services again; or
 - (d) the payment of the cost of having the services supplied again.
- 4.6 Any claim to be made against the Company arising out of the Carriage Services or Wet Hire Services, must be made by the Customer in writing to the Company within forty-eight (48) hours of the occurrence of the events giving rise to the claim.

5. Insurance & Indemnity:

- 5.1 The Company will not effect insurance of any kind over any goods or property of the Customer (including the Goods) or any third party unless:

- (a) the Customer provides express instructions in writing that the Customer requests the Company to effect insurance, and particularises the goods or property to be insured, and declares the value of the goods or property;
- (b) The Company agrees to provide such insurance, and
- (c) The Customer pays, or agrees in writing to pay, for such insurance

before the Company provides any services concerning the goods or property.

5.2 The Customer agrees to indemnify the Company in respect of any liability whatsoever arising out of the provision of services under this Agreement to any person or corporation (other than the Customer), who claims to have any interest in property concerning which such services are provided, against all losses, damages, claims, fines, expenses, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, the Company.

5.3 For Wet Hire Services, the Customer agrees to assume all liability for and indemnifies and holds harmless the Company, its employees, agents or subcontractors from and against all claims, costs, damages, losses or expenses of any kind howsoever arising in relation to the Wet Hire Services provided for in this Agreement including in relation to the death, or injury to any person, and loss, damage or destruction of property (including the equipment hired) and any claims, costs, damages, losses or expenses arising from any act or omission in the performance of the Wet Hire Services.

6. Payment & Lien:

6.1 Unless otherwise agreed in writing, the Customer:

- (a) Must make full payment for the Carriage Services or Wet Hire Services within thirty (30) days of any invoice issued by the Company to it; and
- (b) Is liable to pay interest on respect of any overdue invoice at a monthly rate of 2% per month calculated on a monthly basis.

6.2 The Company may recover monies or charges owing to it as a liquidated amount from either the Customer or from any of the Customer's representatives who requested the Carriage Services or the Wet Hire Services.

6.3 The Customer agrees that a lien attaches to any property concerning which the Company provides any services for all amounts outstanding from the Customer to the Company (including amounts outstanding that do not arise from services provided concerning that property).

6.4 Subject to the law including the provisions of the *Personal Property Securities Act 2009* (Cth), the Company shall have a lien on the Goods in the possession of the Company received pursuant to this Agreement including costs incurred in exercising the lien and right of sale such as storage and selling costs, and for that purpose the Company shall have the right to sell the Customer's Goods by public auction or private treaty after a period of thirty (30) days' notice to the Customer.

7. Force Majeure

7.1 The Company is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from providing the Carriage Services or the Wet Hire Services by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accidents, breakdowns, acts of god, acts

or threats of terrorism or war. If such an event occurs the Company may suspend or terminate the Agreement.

8. General:

- 8.1 Neither the Company or the Customer or any employee, servant, agent or subcontractor nor any other person has the power to waive or vary any of the terms in this Agreement, unless such waiver or variation is in writing and signed by a director of the Company.
- 8.2 This Agreement is governed by and construed under the laws of the State of Queensland. The Customer and Company submits to the non-exclusive jurisdiction of the Courts in Queensland.
- 8.3 If any term, condition, restriction or stipulation of this Agreement of the applicability thereof to the Customer, any person or circumstance shall be or become invalid or unenforceable, the remaining terms, conditions, restrictions or stipulation of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.4 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the agreement or any of the conditions in the agreement by the Company or any other person entitled to the benefit of such provisions.