

TERMS & CONDITIONS OF HIRE

1. Interpretation

1.1 In these terms and conditions:

- (a) "The Company" means the entity stated in the Application for Credit and any related body corporate as defined in the *Corporations Act 2001* (Cth) and its successors and assigns.
- (b) "Client" means the entity stated in the Application for Credit, its successors and assigns and any other person offering to contract with the Company on these terms and conditions or, where such person is acting in the course of employment, such persons as employer.
- (c) Hire charges means Kelly's Crane Hire Pty Ltd standard charges including rates of hire together with all other charges payable by the Hirer under the Agreement.
- (d) Equipment means all Equipment which is provided by Kelly's Crane Hire Pty Ltd from time to time and includes the specified Equipment.
- (e) Kelly's Crane Hire Pty Ltd will be represented by "KCH" and means all associated companies and businesses.

2. Agents

2.1 The Company shall be at liberty to retain any of its authorised agents or any other entity it sees fit and at the sole discretion of the Company and the Client consents to disclosure of information about the Client or its contacts to these agents.

3. Risk

- 3.1 KCH will not be liable for any direct, indirect or consequential or other loss whether to property or person incurred or suffered by the Hirer or any other person on any basis whatsoever including liability arising from the provision or absence or delayed provision of the Equipment or any aspect of the operation thereof.
- 3.2 The Client is to ensure goods are insured and covered for their time in transit.
- 3.3 The Company will not be responsible for non-delivery or delay in delivery of any goods where such non-delivery or delay occurs, the Company may deliver the goods not delivered or delayed at any subsequent time and the Client must accept and pay for them.
- 3.4 KCH will not be liable for any direct, indirect or consequential loss as a result of breakdown of the Equipment

4. Hire

- 4.1 The hirer agrees to hire the Equipment on these terms and conditions including the Specified Equipment for the Minimum Hire Period.
- 4.2 No variation to these terms and conditions will apply unless in writing and signed by a representative of KCH not less than standing of a Director.
- 4.3 The parties will sign this Agreement or such other agreement as may be agreed to by the parties prior to the commencement of the hire period.
- 4.4 If this Agreement is not signed prior to the commencement of the hire period then this Agreement will constitute the entire Agreement between the parties and supersedes any other written or oral contract, Agreement or understanding between the parties.
- 4.5 Signature on the completion of the hire by the Hirer or their agents or servants accepts the charges for the Hire.
- 4.6 Should the Hirer issue a Purchase Order then said Purchase Order will be delivered to KCH prior to the commencement of the Hire.
- 4.7 Any request for credit is to be provided to KCH in writing within (7) seven days of the completion of the Hire.

5. Hire Charges

- 5.1 The Hirer will pay to KCH without deduction the Hire Charges within 30 days from the date of invoice for account customers or upon completion of hire for non account customers (i.e. cash).
- 5.2 If the period of Hire includes any period other than between the hours of 7.00am and 4.00pm Monday to Friday inclusive, then the hourly rate of hire shall be increased during such period by an overtime penalty loading.
- 5.3 The Hirer acknowledges that if the Equipment is booked and appropriate evidence exists in the form of signed dockets which corroborate that the work was completed then the Hirer will be fully responsible for the charge for Hire and any other charges payable by the Hirer under the Agreement.
- 5.4 The Hirer is responsible to reimburse KCH for the cost of any toll charges incurred during the operation of the Equipment under the Agreement.

6. Hirer's Obligation

- 6.1 The Hirer will:
 - (a) Provide at all times access by KCH to all sites on which the Equipment is being operated for any purpose which includes inspecting, testing, adjustment, repair, replacement or removal of the Equipment.
- 6.2 The hirer will not:
 - (a) Allow the Equipment to be operated by any person other than a driver or operator provided by KCH or a person approved by Kelly's Crane Hire Pty Ltd in writing.
 - (b) Move the equipment from the site to which it was delivered unless prior written consent is given by KCH.
 - (c) Repair or alter the equipment unless prior written consent is given by KCH.
- 6.3 Any driver or operator supplied by KCH will be under the direction and control of the Hirer and will be regarded as the Hirer's servant or agent, however, it will be at the discretion of the Operator to cease operations if he deems that safety is an issue. The Hirer will be responsible for all claims and demands arising out of or in connection with or related to the operation of the Equipment by the driver or operator
- 6.4 In addition to all other terms of this Wet Hire Agreement the following terms will apply for Dry Hire Agreements:
 - (a) The Hirer must at its own expense during the Hire period, effect and maintain an all risks insurance policy from an insurer on terms which are acceptable to KCH. It should cover any personal injury, public liability, property damage (including damage to the Equipment) and any other losses of whatsoever nature arising out of the use of the Equipment in circumstances out of KCH's control.

7. Title of Property

- 7.1 In relation to goods and services supplied to the Client, ownership and property in the goods vests absolutely with the Company and does not pass to the Client UNTIL the Client:
 - (a) Pays for the goods in full;
 - (b) Pays in full all other monies owing or unpaid by the Client to the Company including monies in respect of goods previously or subsequently supplied to the Client by the Company.

- 7.2 In relation to goods and services supplied to the Client for which payment in full has not been received:
- (a) The relationship between the Client and the Company shall be fiduciary;
 - (b) The Client will hold those goods as bailee for the Company;
 - (c) Where the Client sells those goods, the Client does so as fiduciary agent of the Company;
 - (d) When new goods or objects are formed with the Company's goods into other products or the goods are affixed to other objects, the Company will be given full ownership of such new goods or objects;
 - (e) Where the goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the goods, including insurance proceeds will be kept separately in trust for the Company;
 - (f) Where the goods are disposed of, the Client may only dispose of the goods in the ordinary course of its business on commercially reasonable terms;
 - (g) The Client undertakes that until it delivers the goods to a third party, it will store the goods on its premises separately from its own goods, or those of any other person, and in a manner which makes the goods readily identifiable as the Company's goods.
- 8. Access**
- 8.1 The Client irrevocably permits the Company or any person authorised by the Company in writing, upon giving reasonable notice to enter the Client's premises or at premises where the goods are reasonably believed by the Company to be held on the Client's behalf for the purpose of examining or recovering the goods. The Client also agrees to indemnify and hold the Company harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any goods, the subject of this Agreement.
- 9. Transactions contemplated by this Agreement**
- 9.1 The Company's tender of delivery of goods and services under this Agreement is a condition of the Client's duty to accept the goods or services provided and, unless otherwise agreed, the Client's duty to pay for them.
- 9.2 This Agreement will be governed by the provisions of the Building & Construction Industry Payments Act.
- 10. Disputes**
- 10.1 If the Client disputes any goods sold or services supplied by the Company are faulty or defective or disputes the Invoices the Company has issued, the Client must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.
- 11. Whole Agreement**
- 11.1 These terms and conditions together with the Application for credit agreement embody the whole agreement between the parties and, subject to the express terms contained in any written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and cancelled.
- 12. Payment**
- 12.1 The Client agrees to pay all amounts due in clear funds within the Company's agreed timeframe but no later than 30 days from the date of invoice. The Client agrees that if it fails to pay in accordance with this clause, the Company may:
- (a) Charge a late payment fee of 5% on all amounts paid after the due date;
 - (b) Charge interest on debts at 20% per annum from time to time;
 - (c) Charge a dishonour handling fee in the amount of \$95.00;
 - (d) Recover all collections costs and expenses incurred in collecting overdue accounts on an indemnity basis;
 - (e) Withhold supply;
 - (f) Sue for the money owing on the goods or services provided.
- 12.2 In the event where this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amounts overdue.
- 13. Default**
- 13.1 If the Client:
- (a) Fails to pay for any goods or services on the due date; or
 - (b) Otherwise breached this agreement and failed to rectify such breach within seven days notice; or
 - (c) Cancel delivery of goods or services; or
 - (d) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
 - (e) Allow a judgment or order to be enforced or become enforceable against the Client's property; or
 - (f) Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;
- then the Company may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re-take possession of any or all of the goods the Company has supplied to the Client and:
- (a) Resell the goods concerned;
 - (b) Terminate the agreement; and
 - (c) Sue for any monies owing.
- 13.2 The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Client or the Guarantor or both.
- 13.3 The Client and the Guarantor jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.
- 13.4 The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.
- 14. Charge**
- 14.1 The Client charges in favour of the Company any land that it owns (or acquires after the date of this agreement) as security for any and all monies owed to the Company and hereby authorises and consents to the Company registering a caveat over the land if the Client defaults in making payment of any amounts owing to the Company.
- 15. Right to amend terms and conditions**
- 15.1 The Company reserves the right to amend terms and conditions of this agreement by giving the Client notice in writing of the amended terms and conditions to the Client's address as specified on the face of this agreement or as notified by the Client from time to time. The Client is deemed to accept any amended Terms and Condition unless it notifies the Company in writing within seven days of its objection to the proposed amendment to the Terms and Conditions.

16. Set-off

16.1 The Client agrees that:

- (a) The Company may set-off any credit amount that the Company owes to the Client against any debt due by the Client to the Company at the Company's sole discretion;
- (b) The Client is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Client might have against the Company.

17. Severance and Wavier

17.1 If any part of this agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed from the agreement and the severed part will not affect the validity and enforceability of any remaining provisions. Any waiver of the Company's right under this agreement must be in writing and signed by an authorised representative of the Company.

18. Jurisdiction

18.1 The agreement shall be deemed to have been made in Mossman, Queensland and shall be interpreted in accordance with the Laws of Mossman, Queensland, Australia, and the parties submit to the exclusive jurisdiction of the Mossman, Queensland Courts.

Important points to note are:

- 1. We do not insure your goods.
- 2. Your goods are only handled subject to your acceptance of our Terms and Conditions of Hire
- 3. We do not accept any liability.
- 4. Our trading terms for account holders is thirty (30) days net or COD for non-account holders.

Please acknowledge your acceptance of the conditions by signing the work docket.