
TERMS AND CONDITIONS OF CRANE HIRE

1. In these terms and conditions:
 - (a) "the Owner" means MULHERIN CRANES & EQUIPMENT HIRE PTY LTD ABN 52 123 780 138 and includes its successors and permitted assigns.
 - (b) "the Hirer" means the person, firm, partnership, company or body which is hiring the equipment designated overleaf.
 - (c) "Hire Charge" means the specific amount set out overleaf. (clause 1)
 - (d) "Equipment" means any equipment specified overleaf including any equipment provided by an assignee or contractor of the owner used in performance of the terms and conditions of this agreement. (clause 2)
2. The Hirer acknowledges that:
 - (a) this agreement constitutes the entire agreement upon which the Equipment is hired;
 - (b) no representations save for those set out in this agreement have been made inducing the Hirer to enter into the agreement.
3.
 - (a) The Owner agrees to hire to the Hirer and the Hirer agrees to hire from the Owner the Equipment for the Period of Hire specified overleaf. (clause 3);
 - (b) The Owner agrees to supply an operator who, during the term of this agreement, shall be under the direction of the Hirer and shall follow the Hirer's lawful directions;
 - (c) Whilst the operator is acting under the directions of the Hirer, the Hirer shall be liable for all acts, omissions or defaults of the operator arising out of the use of the specified equipment and shall indemnify the Owner against all actions, suits, proceedings, claims, demands, losses, damages, compensation, sums of money, costs (including solicitor and own client costs), charges and expenses arising out of the hiring.
4. Unless otherwise agreed the Owner will use its best endeavours to deliver the Equipment to the Hirer at the time requested by the Hirer but no liability will accrue to the Owner, and this agreement will be of no further effect, if the owner cannot deliver the Equipment by reason of:
 - (a) an accident;
 - (b) any act or omission by the Hirer, its servants or agents;
 - (c) any mechanical failure which is beyond the reasonable control of the Owner;
 - (d) any other act or omission which is reasonably beyond the control of the Owner.
5. The Hirer agrees to pay the Hire Charge to the Owner as specified overleaf. (clause 4)
6.
 - (a) The Owner may at any time immediately terminate this agreement upon the happening of any of the following events:
 - (i) if any order is made or a resolution is passed for the winding up of or the dissolution without winding up of the hirer, PROVIDED ALWAYS default shall not be deemed to have occurred where the winding up is for the purpose of reconstruction or amalgamation;
 - (ii) If without the Owner's prior written consent the Hirer enters into an arrangement, reconstruction or composition with its creditors or any of them;
 - (iii) If a "controller" as that term is defined in the Corporations Act 2001 is appointed in relation to the property of the Hirer;
 - (iv) If pursuant to the provisions of the Corporations Act 2001 the affairs of the Hirer are placed under administration with a view to executing a Deed of Company Arrangement;
 - (v) If without the Owner's prior written consent the Hirer assigns, transfers or parts with possession of any material undertaking or asset otherwise than in the ordinary course of business of the Hirer;
 - (vi) If default is made by the Hirer in the payment of the Hire Charge in the performance or observance of any provision of this agreement;
 - (viii) If a sequestration order is made in respect to the estate of the Hirer;
 - (ix) Or if the Hirer enters into a composition with creditors, a Deed of Arrangement or Deed of Assignment or convenes or causes to be convened a meeting of creditors for the purposes of entering into any composition with them, or entering into a Deed of Arrangement or Deed of Assignment.
 - (b) Upon termination of the agreement under this clause the Owner may take immediate possession of the specified equipment, and all outstanding hiring charges immediately become payable.
7. If the Equipment becomes inoperable then the cost of recovering and/or restoring the Equipment to operation shall:
 - (a) be the responsibility of the Owner where the cause of the Equipment becoming inoperable is as a result of any act, default or omission on the part of the owner, its servants, agents or employees;
 - (b) be the responsibility of the Hirer where the cause of the said Equipment becoming inoperable is as a result of any act, default or omission on the part of the Hirer, its servants, agents or employees.
8. The Hirer shall be liable for all acts, omissions or defaults of itself, its servants, agents or employees arising out of the use of the specified equipment by any one of them, and shall indemnify the owner against all actions, suits, proceedings, claims, demands, losses, damages, compensation, sums of money, costs (including solicitor and own client costs), charges and expenses arising out of the hiring.
9. The Owner shall at all times have access to the Equipment on hire for the purpose of inspecting and testing the same, and such right of access will be at such time or times as determined by the owner in its absolute discretion.
10. The Hirer may return the specified equipment to the Owner before the date or time specified overleaf as the period of the hire, but such early return will not relieve the Hirer of the obligation to pay the hiring charge as set out overleaf or entitle the Hirer to any rebate of the specified hiring charge if the owner is unable to re-hire the specified equipment during the balance of the period of hire.
11.
 - (a) Whilst the specified equipment is in the possession and use of the Hirer, the Hirer shall be responsible for ensuring its safekeeping and proper maintenance; and
 - (b)
 - (i) At the termination of this agreement the specified equipment will be returned to the owner in the same condition as at the time of its hiring; and
 - (ii) All costs and expenses necessary to ensure compliance with this sub-clause will be borne by the Hirer, and
 - (iii) The owner may recover all such costs and expenses as a debt owing and payable by the Hirer; and
 - (iv) The Hirer agrees that a certificate issued by the owner as to the costs and expenses incurred or to be incurred to restore the equipment to its pre-hiring state shall be conclusive evidence as to those costs and expenses, and the Hirer HEREBY CONSENTS to judgment being entered against it, she or him in any Court of competent jurisdiction for the certified amount plus costs.
12.
 - (a) Except as provided by clause 12(b):-
 - (i) all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the hire of the equipment or this agreement, which are not expressly stated herein are expressly excluded;
 - (ii) the owner shall not be liable to the Hirer for any breach of this agreement, or in connection with this agreement. The owner shall not be under any liability to the Hirer in respect of any loss or damage (including consequential loss or damage howsoever caused (whether by the owner's negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the hiring of the equipment or this agreement;
 - (b) Where any act of parliament implies into this agreement any term, condition or warranty, and that Act voids or prohibits provisions in any contract excluding or modifying the application of or exercise of or liability under, such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this agreement.