

AGREEMENT FOR HIRE OF EQUIPMENT ("Hire Agreement")

1. Definitions

- 1.1 "Equipment" means the equipment to be hired by the Hirer as listed in the Schedule of Rates.
- 1.2 "Equipment Schedule" means the Equipment as set out in the Schedule of Rates.
- 1.3 "Hirer" means and includes the person shown on the Credit Application and Invoice as the hirer of the Equipment and includes such person, contractors, servants, agents, and/or other person claiming through, under or in trust for such person.
- 1.4 "Invoice" means the invoice issued by the Owner for the hire of the Equipment.
- 1.5 "Location" means the site where the Equipment will be used by the Hirer .
- 1.6 "Owner" means Premier Cranes & Rigging Pty Ltd ABN 35 162 530 467.
- 1.7 "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended.
- 1.8 "Quotation" means the written quotation provided by the Owner to the Hirer (if any).
- 1.9 "Schedule of Rates" means the schedule detailing the Equipment and hire fees as issued by the Owner to the Hirer.
- 1.10 "Security Interest" has the meaning as defined under the PPSA.

2. Hire

- 2.1 The Owner agrees to hire to the Hirer the Equipment on the terms of this Hire Agreement and the Hirer agrees to take the Equipment on the terms of this Hire Agreement
- 2.2 The Hirer is responsible for the selection of the Equipment, its size and suitability for the Location and the use of the Equipment.

3. Payment

- 3.1 The daily rate and/or hourly rate of hire for the Equipment to be paid by the Hirer to the Owner is set out in the Schedule of Rates. The rate or rates of hire per day are from 7.00am until 3.30pm Monday to Friday. Works outside these hours will be charged out an additional overtime rate per hour per employee.
- 3.2 Where work is to be performed outside the span of hours set out in clause 3.1 above or on a weekend or public holiday the rate of Hire shall be as set out in the Schedule of Rates. Payment shall be made by the Hirer no later than 30 days following the date of the Invoice. Interest will accrue on any Invoice sum or part thereof not paid within 30 days at the rate of 2% per month or part thereof until payment in full (including accrued interest) is received by the Owner
- 3.3 Where the Hirer disputes any Invoice, the Hirer shall notify the Owner within 5 days of the date of the Invoice, otherwise it will be decided that the Hirer has accepted the charge in the Invoice.
- 3.4 Where transport on additional job sectors are required by Hirer, the cost of such will be in addition to the rates of hire in this clause.
- 3.5 Where the Owner agrees to the Hirer request to pay the Owner's employees additional remuneration during the hire of the Equipment, the cost to the Owner of such additional remuneration (including on costs) shall be charged to the Hirer in addition to the rates of hire in this clause 3.

4. Period of Hire

- 4.1 The Hirer shall be charged on a depot-to-depot basis. The period of hire shall be the elapsed time from Owners depot to the time of the return of the Equipment to the Owner's depot ("Term").
- 4.2 The Term may be extended by agreement between the Owner and the Hirer.
- 4.3 During the Term of the hire of the Equipment, the Owner will:
 - 4.3.1 provide one operator for the Equipment, who will be the only person permitted to drive or operate the Equipment; and
 - 4.3.2 keep the Equipment in such good order and condition as the Owner in its absolute discretion considers sufficient to enable the Equipment to operate efficiently.

5. Full Hire

- 5.1 Subject to this Hire Agreement, this agreement is a full hire agreement which means that the Owner provides a driver for the Equipment and dogman and any other employees required by law with the Equipment and that the Owner also provides fuel oil for the Equipment and attends to everyday running repairs.
- 5.2 The Owner will supply with the Equipment a standard selection of slings and no responsibility is accepted by the Owner for loss or delay if these are found to be unsuitable for the purpose required.
- 5.3 Lifting lugs shall be provided by the Hirer for the purposes of lifting loads or otherwise an appropriate engineering diagram incorporating load hirer instructions shall be made available. Any additional costs for the lifting of loads will be met by the Hirer.
- 5.4 The Owner will be responsible for the payment of all wages, allowances, statutory, on costs, superannuation and Workers Compensation insurance premiums and any other insurances necessary in relation to all personnel provided by the Owner to use the Equipment under this Hire Agreement.

6. Use and Handling

- 6.1 All personnel of the Owner shall comply with all reasonable lawful directions given by the Hirer as being necessary for the hire unless such a direction is in breach of this Hire Agreement or is unlawful.
- 6.2 The Hirer must, without exception, comply with all applicable statutory laws and regulations.
- 6.3 The Hirer shall not direct or permit any other person to operate the Equipment or use associated equipment without the permission of the Owner.
- 6.4 The Hirer shall not use the Equipment or permit the Equipment to be used to lift any load which is beyond the rated hirer capacity of the Equipment or for any purpose other than that for which it is expressly hired.
- 6.5 The Hirer warrants that the weight of the object (or objects) to be lifted in any one lift and the radius of the proposed lift (measured from the radial point of the Equipment) will not exceed the limits stated in the attached Schedule of Rates. Where the weight of the lift approximates 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 with the associated costs being met by the Hirer.

7. Location Conditions and Access

- 7.1 The Hirer shall be responsible for ensuring that the ground at the Location is adequate to support the Equipment under its wheels and outriggers.
- 7.2 The Hirer shall ensure that the ground giving access to the Location is stable and firm and of a gradient no steeper than 1 in 10. The Hirer shall ensure that clearance of 3.5m is afforded in respect of all overhead wires and that footpaths, kerbs and channels are suitably planked. Should the Equipment require to be towed into or out of a Location the cost shall be additional to the rate quoted in items 4 and 5 of the quote and shall be met by the Hirer.
- 7.3 All road surfaces access and egress to the Hirer's Location shall be clear of obstacles at all times to allow safe movement of the Equipment. Damage or salvage costs involving the Equipment shall be the responsibility of the Hirer.

8. Delays

- 8.1 The Owner will not be responsible for any delays, inconvenience or loss of any kind whatsoever incurred by the Hirer due to any accident, breakdown or defect in the Equipment or from any other cause whatsoever.
- 8.2 The Hirer will be responsible to pay for all delays caused by the Owner obeying any instructions given by the Hirer including delays caused by any bogging or breaking down of the Equipment resulting from such instructions. Any such delays will be charged for by the Owner as a hiring charge at the rates set out in the Schedule of Rates.

9. Property

- 9.1 The Owner will have the right to refuse the handling, lifting and/or carriage of any property of the Hirer without being bound to give any reason for such refusal.
- 9.2 The Hirer will not request the Owner to handle, lift and/or carry any property of the Hirer which is noxious, inflammable, hazardous, dangerous or explosive without having first disclosed to the Owner the nature of such property. Such property will not be handled, lifted or carried by the Owner without consent in writing from the Owner.
- 9.3 The Owner will not be liable for any loss, damage or injury which is sustained by the Hirer in relation to handling, lifting, carrying or moving any property of the Hirer and the Hirer will hold harmless and indemnify the Owner from such loss, damage or injury.
- 9.4 The Owner has the right to request at any time that the Hirer declare the weight of the property to be handled, carried or lifted and, where the Hirer has declared the weight of such property as a result of such request or otherwise, then the Owner will be entitled to rely upon such declared weight being correct and the Hirer will be responsible for all extra costs, risks, loss or damage suffered or incurred by the Owner occasioned either directly or indirectly by reason of the Owner having relied upon such declared weight in the event of it being shown that the declared weight of the property was incorrect.

10. Liability for Damages

- 10.1 The Hirer shall be responsible for and will hold harmless and indemnify the Owner in respect of all loss or damage whatsoever, including the cost of repairs suffered or incurred by the Owner arising out of or in respect of any breakdown or damage to the Equipment where such breakdown or damage is caused by any negligent act, omission, misdirection or misuse of the Equipment on the part of the Hirer or the Hirer's servants, agents, contractors or subcontractors.
- 10.2 The Hirer shall be responsible for the payment of hire at the appropriate standby rate during the Term for any period the Equipment is necessarily idle as a result of any damage or breakdown of the Equipment
- 10.3 The Hirer shall be solely responsible for and will hold harmless and indemnify the Owner in respect of all damage which may be caused to any underground or overhead services, footpaths, driveways, grounds, lawns, fences, structures or any other property whatsoever by the use of the Equipment during the Term, including any damage caused by the Equipment whilst entering or leaving the Location or maneuvering, whether on or off the Location or otherwise.

- 10.4 The Owner shall not be liable for any loss or damage of any kind whatsoever caused to the Hirer or the property of the Hirer, whether such loss or damage was caused by any act, default or negligence on the part of the Owner or otherwise and the Hirer will hold harmless and indemnify the Owner from such loss and damage.
11. **Notice of Accident**
- If the Equipment is involved in injury to any person or damage to property, the Hirer must give immediate notice to the Owner in writing in accordance with clause 21.
12. **Indemnity**
- The Hirer will indemnify and keep indemnified the Owner from and against all or any liability which the Owner may incur or become liable for, or in respect of loss, damage or injury to any person or property arising out of or in connection with the use of the Equipment, whether for negligence, breach of statutory duty, nuisance or otherwise.
13. **Insurance**
- 13.1 It shall be the Hirer's responsibility to insure any property to be lifted by the Equipment within the confines of the Hirer's parameters of the Location.
- 13.2 It shall be the Hirer's responsibility to insure any of the Owner's Equipment left at the Location overnight or other extended period and to ensure that Owner's interest is noted on the relevant insurance policy.
- 13.3 The Owner may require the Hirer to provide copies of the insurance policy set out in clause 13.2 above and, where such a request is made, the Hirer will provide a copy of the insurance policy within 24 hours of such a request.
- 13.4 The Owner is not required to effect any insurance on any property of the Hirer which is being handled by the Equipment, except upon the written instructions of the Hirer to do so, and then only upon such written instructions being received by the Owner within a reasonable time prior to such handling of the Hirer's property. Such insurance will be at the sole expense of the Hirer.
- 13.5 All property of the Hirer which is handled by the Owner whilst using the Equipment is entirely at the Hirer's risk.
14. **Not to Part With Possession or grant a Security Interest**
- 14.1 The Hirer shall not sublet or otherwise part with possession of the Equipment or any part thereof to any third party without first obtaining the written consent of the Owner.
- 14.2 The Hirer, at the Hirer's own expense, shall protect and defend the Owner from all claims and legal processes of creditors of the Hirer and shall keep the Equipment and any part thereof free and clear of any such claims.
- 14.3 The Hirer acknowledges that it has not acquired any right in the Equipment and will not hold itself out or permit itself to be held out as having the Equipment in its apparent ownership or disposition.
- 14.4 The Hirer will not sell or offer for sale, assign, mortgage, pledge, underlet, grant or register a security interest over, lend or otherwise deal with the Equipment.
15. **Owner Not To Be Liable**
- 15.1 Under no circumstances whatsoever shall the Owner be liable, whether in contract or tort or otherwise at law or equity, for any direct, indirect or consequential loss or damage whatsoever.
- 15.2 The Owner shall not be responsible, whether in contract or tort or otherwise at law or equity, for any loss or damage arising out of any stoppages or delays occasioned by any cause including but not limited to weather conditions, ground condition, strikes and industrial disputes.
16. **Location Amenities**
- The Hirer shall be responsible for the provision of amenities and first aid services to the Owner's employees in compliance with the relevant awards, certified agreements, Australian Workplace Agreements or health and safety legislation in operation in the State where the work is undertaken.
17. **Award Responsency**
- The Owner, being a respondent to the *Mobile Crane Hiring Award 2010* (as amended) and/or certified/workplace agreements, will not accept any other terms and conditions of employment for its employees arising out of any other award or agreement (certified or not) to which it is not a party.
18. **Safety Education**
- If the Hirer requires an employee of the Owner to undertake a safety course in working time, this period will be included in the calculation of hire of the Equipment in clause 2.
19. **Hirer Acquires No Property**
- The Hirer acknowledges that it has not acquired any right of property in the Equipment and its ancillary machinery and equipment and will not hold itself out or permit itself to be held out as having the Equipment in its apparent ownership or disposition.
20. **PPSA**
- 20.1 The Hirer acknowledges and agrees that if the Term is a period of 90 days or longer for serial numbered Equipment, or a year or more for Equipment which cannot be described by a serial number, this Hire Agreement constitutes a PPS Lease for the purposes of the PPSA.

- 20.2 If this Hire Agreement is considered to be a PPS Lease, the Hirer acknowledges and agrees that:
- 20.2.1 this Hire Agreement grants the Owner a purchase money security interest (“PMSI”) in the Equipment and their proceeds to secure all amounts owed by the Hirer to the Owner;
 - 20.2.2 the Owner may register its PMSI over the Equipment on the Personal Properties Securities Register (“PPSR”);
 - 20.2.3 it will do all things necessary and provide the Owner on request all information that the Owner requires to register a financing statement or financing charge statement on the PPSR;
 - 20.2.4 it will not change its name in any form or other details on the PPSR without first notifying the Owner; and
 - 20.2.5 it will, if requested by the Owner, pay to the Owner the cost of registering and maintaining registration of the Owner’s security interest on the PPSR, within 14 days of the request.
- 20.3 Without affecting any other indemnity or rights under this Hire Agreement, if the Hirer is in breach of any of its obligations under clause 20.2, the Hirer must indemnify the Owner against all loss or expense suffered by Owner as a consequence of that breach.
- 20.4 The Owner need not give any notice under the PPSA (including a verification statement or a financing charge statement) unless the notice is required by the PPSA and cannot be excluded.
- 20.5 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so where required due to the operation of section 275(7) of the PPSA) and the Hirer must not authorise the disclosure of such information.
- 20.6 The Hirer appoints the Owner as its attorney to sign in the Hirer’s name all documents which the Owner considers necessary to enforce or protect its rights and powers under this Hire Agreement and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to this Hire Agreement and the PMSI created by this Hire Agreement.
- 20.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the PMSI under this Hire Agreement, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires:
- 20.7.1 section 95 (notice of removal of accession);
 - 20.7.2 section 118 (enforcement of security interest in accordance with land law decisions);
 - 20.7.3 section 123 (secured party may seize collateral);
 - 20.7.4 section 125 (obligation to dispose or retain collateral);
 - 20.7.5 section 128 (secured party may dispose of collateral);
 - 20.7.6 section 129 (notice of purchase);
 - 20.7.7 section 130 (notice of disposal);
 - 20.7.8 sections 132(1) and (4) (right to receive a statement of account);
 - 20.7.9 section 135 (notice of retention);
 - 20.7.10 section 142 (redemption of collateral); and
 - 20.7.11 section 143 (reinstatement of security agreement).
- 20.8 The Hirer agrees that, in addition to the above rights of the Owner under the PPSA, the Owner shall, if there is a default by the Hirer, have the right to seize, purchase, take possession, retain, deal with or dispose of any Equipment, not only under the PPSA but independently, pursuant to this Hire Agreement.
- 20.9 The Hirer must not dispose or purport to dispose of, or create or permit to be created any security interest in the Equipment other than with the written consent of the Owner.
- 20.10 The Hirer must not lease, hire, bail or give possession of the Equipment to anyone else without the written consent of the Owner.
- 20.11 Unless otherwise defined in this Hire Agreement, the terms and expressions used in this clause 20 have the meanings given to them in, or by virtue of, the PPSA.

21. **Termination**

- 21.1 This Hire Agreement may be terminated at any time by mutual agreement by either party on giving the other party 14 days notice in writing of termination.
- 21.2 The Owner may immediately terminate this Hire Agreement if:
- 21.2.1 the Hirer is in breach of this Agreement and does not fail to remedy the breach within 7 days of being given written notice of the breach by the Owner; or
 - 21.2.2 or the Hirer becomes insolvent or otherwise unable to pay its debts as and when they fall due.
- 21.3 The Hirer irrevocably appoints the Owner as its agent and authorises the Owner to enter the Location and retrieve the Equipment upon termination of the Hire Agreement.

22. **Notice**

Any notice to be given or served by the Owner or Hirer on the other shall be in writing signed by an authorised officer of the party giving the notice and may be served by certified mail to the stated address.

23. **Entire Agreement**

This Hire Agreement shall constitute the whole of the contract between the Owner and the Hirer and supersedes previous agreements and arrangements whether written, oral or implied between the Owner and the Hirer relating to the hire of Equipment by the Hirer. All such agreements and arrangements shall be deemed to have been terminated by mutual consent and effect from the date of this Hire Agreement.

24. **Disputes**

Any dispute that may arise between the Owner and the Hirer touching the construction of this Hire Agreement or as to any matter or thing arising hereunder shall be decided according to the decision of two arbitrators, one to be appointed by the Owner and the other by the Hirer with an umpire to be selected by the two arbitrators before entering on the reference. All costs of any arbitration shall be paid as directed by the arbitrator or umpire as the case may be.

25. **Governing Law**

These Terms are to be governed and interpreted in accordance with the laws of the State of Victoria. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of Victoria and any competent appellate courts.

26. **Amendments**

In the event of the Owner or the Hirer agreeing at any time to amend either this Hire Agreement or any terms attached to the Schedule of Rates, any such amendment shall be recorded by means of a memorandum executed by the Owner and the Hirer.

27. **Headings**

Any headings, title pages and indexes are used only for convenience and do not form part of this Hire Agreement.