

HAWKES BAY CRANE & PLATFORM HIRE'S TERMS AND CONDITIONS OF TRADE – CRANES

1. DEFINITIONS

In these terms and conditions:

- 1.1 "Contract" means the contract between the Hirer and the Owner and incorporates these terms and conditions of hire.
- 1.2 "Crane" means the Crane hired by the Owner to the Hirer (whether the original crane or any substitute) and includes any accessories and other equipment of the Owner attached to the crane or to be used in connection with it.
- 1.3 "Day" means 24 hours (maximum usage time 10 hours).
- 1.4 "Hirer" means any party described on the Equipment Reservation and/or Check-out Agreement and includes the Hirer's employees, agents, subcontractors and invitees.
- 1.5 "Hourly" means every 60 minutes.
- 1.6 "Owner" means Hawkes Bay Crane Hire 2015 Ltd trading as Hawkes Bay Crane and Platform Hire.
- 1.7 "Site" means the place or area where the Crane is to be operated for the purposes of the Equipment Reservation and/or Check-out Agreement.
- 1.8 "Weekly" means 7 days (maximum usage time 60 hours).

2. WARRANTY & ACCEPTANCE

- 2.1 The Hirer acknowledges that the Owner has entered into this Contract on the basis of information supplied to the Owner by the Hirer and warrants that the information is accurate. Acceptance by the Hirer of the Crane shall be deemed to be acceptance of the terms of this Contract.
- 2.2 This Contract is a full-hire Contract. This means that the Owner provides the Crane operator/driver, fuel/oil and attends to everyday maintenance.

3. SLINGS

- 3.1 The Owner will supply its standard selection of slings and lifting equipment but accepts no responsibility for loss or delay if these are found to be unsuitable for the purpose required. All slings and ancillary equipment shall be used by the Hirer at the sole risk of the Hirer. The Owner does not accept responsibility for the incorrect use of slings or lifting equipment or for the method of slinging unless the Owner provides a dogman/rigger at the cost of the Hirer. If any slings or lifting equipment the property of the Owner shall be destroyed, the Hirer shall pay to the Owner the costs for replacement or repair (as the case may be) resulting from the destruction or damage.

4. SITE CONDITIONS & ACCESS

- 4.1 That the ground at the site is adequate to support the Crane under its wheels and/or outriggers.
- 4.2 That the ground giving access to the site is stable and firm and of a gradient no steeper than 1 in 10.
- 4.3 That clearance of 4 metres is afforded in respect of overhead wires and that footpaths, kerbs and channels are suitably planked.
- 4.4 Should the Crane need to be towed into or out of the site, the cost shall be additional to the rate quoted and will be to the Hirer's account.

5. USE & HANDLING OF CRANE

- 5.1 The Crane operator shall be under the direction and control of the Hirer and shall for all purposes of this Contract be regarded as the servant or agent of the Hirer. The Hirer shall be responsible for all claims arising in connection of the Crane by the operator.
- 5.2 The Hirer shall not require, permit or suffer the Crane operator to do anything contrary to any act, regulation, bylaw, requirement, code of practice or recognised convention.

- 5.3 Allow any other person to operate the Crane without first obtaining the written consent of the Owner.
- 5.4 Permit or suffer the operator or direction of the Crane by any person who by reason of intake of drink or drugs has his or her faculties impaired.
- 5.5 Use or permit the use of the Crane to lift any load which is beyond the rated lifting capacity of the Crane or for any purpose other than for which it is hired pursuant to the Contract.
- 5.6 The Owner reserves the right to provide a supervisor to the site if the Owner in its sole discretion considers it necessary. If the Owner does so the charges payable by the Hirer will be increased accordingly.
- 5.7 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 Crane) will not be exceeded at any time. Where the weight of the lift approximates the maximum lifting capacity of the Crane, the Owner reserves the right to have the weight of the proposed lift confirmed on a certified weighbridge with the associated cost being additional to the rate quoted and being to the Hirer's account.
- 5.8 Where the Hirer has understated the weight or dimensions of the goods to be lifted by the Crane and the Owner has relied on the weight, dimensions or working radius stated, the Hirer shall be responsible for all extra costs and risk incurred by the Owner by reason of the Owner's reliance upon such stated weight, dimensions or working radius.
- 5.9 The Hirer shall be responsible for all loss or damage whatsoever caused it while the crane is entering, leaving or on the site, including the cost of repairs suffered or incurred by the Owner in consequence of any breakdown or damage to the Crane where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the Crane on the part of the Hirer or Hirer's servants, agents, contractors or subcontractors and in particular shall be responsible for the payment or hire at the appropriate negotiated rate during the period that the crane is necessary idle as a result of any such negligent act or omission or misuse of the Crane.

6. DAMAGE TO GOODS

- 6.1 The Owner accepts no responsibility for loss or damage to goods being handled by the Crane or damaged by the Crane however caused during the period of hire, except for loss arising out of any negligent act or default of the Owner.

7. DAMAGE TO SERVICES & PROPERTY

- 7.1 The Hirer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, vehicles or any other property whatsoever caused by the Hirer or the Crane during the period of hire.

8. RISK

- 8.1 The Hirer shall not do or permit or suffer to be done anything in connection with the Crane or its use whereby any policy or policies of insurance affected in connection with the Crane and its use may become void or whereby the premiums thereon may be increased.

9. RESPONSIBILITY FOR LOSS

- 9.1 Under no circumstances shall the Owner be liable for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage of the Crane or out of the delayed arrival or non-arrival of the Crane at the site or

otherwise arising out of or in connection with the hire of the Crane to the Hirer.

10. STOPPAGES

10.1 The Owner shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by any cause beyond the Owner's control including but not being limited to weather conditions, ground conditions, strikes and industrial disputes.

11. NOTICE OF ACCIDENT

11.1 If the Crane is involved in any accident resulting in injury to any person or damage to any property, immediate notice must be given by the Hirer to the Owner by telephone and confirmed by letter or email to the Owner's principal office.

12. SUBLETTING

12.1 The Hirer shall not sublet or otherwise part with possession of the Crane or any other part thereof to any third party without first obtaining the written consent of the Owner. 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 Crane and any part thereof free and clear of any such claims.

13. PERIOD OF HIRE

13.1 The period of hire shall be calculated from the departure from the Owner's yard to arrival back at the Owner's yard basis and shall therefore be the elapsed time in any day from the time of the departure of the Crane from the Owner's yard until the arrival of the Crane back to the Owner's yard. Hire shall be charged accordingly with a minimum of one hour hire and then quarter hour increments thereon.

14. ADDITIONAL JIB SECTIONS & CRANE EQUIPMENT

14.1 Where transport of additional jib sections and Crane equipment is required, the cost of it will be additional the hire rates quoted and will be to the Hirer's account, together with the cost of rigging and de-rigging.

15. SURCHARGE

15.1 Additional charges will be payable to the Hirer in accordance with the Owner's current hire price list for all work performed outside normal working hours and on Saturday, Sunday or public holidays.

16. SITE ALLOWANCES

16.1 Where site allowances are payable, there will be an additional charge to the Hirer.

17. CRANE OPERATOR'S ACCOMMODATION

17.1 Where the site is at a distance from the depot so that overnight accommodation for the Crane operator and any other accompanying personnel is necessary, the cost of the accommodation and meals will be to the Hirer's account.

18. PAYMENT

18.1 Payment shall be due not later than the 20th day of the month following the date of invoice. If payment is not made by that date, interest will accrue from the date of the invoice on any amount outstanding at the rate of 2.5% per month. Any amount becoming due and payable in terms of this paragraph shall be liquidated debt and the Owner shall be entitled at any time to commence proceedings against the Hirer for payment of the debt including legal costs incurred by the Owner.

19. TERMINATION OF AGREEMENT

19.1 The Owner may immediately and without notice terminate the hire and retake possession of the Crane if:

19.2 The Hirer makes default in the observance or performance of any of the terms and conditions of this Contract.

19.3 The Owner believes on reasonable grounds that the Hirer is about to breach the terms of this Contract and that such breach might endanger any person or property; or the Crane for any reason is damaged so as to be inoperable or unsafe for use.

19.4 Any such determination shall be without prejudice to the rights of the Owner in respect of any breach of this Contract.

20. INDEMNITY

20.1 The Hirer shall indemnify and keep indemnified the Owner from and against all damage or loss suffered or incurred in consequence of:

20.2 Any breach of the terms of this Contract by, or

20.3 Any negligent act or omission on the part of; or

20.4 Otherwise caused by the Hirer or the Hirer's servants, agents, contractors, or subcontractors during the term of this Agreement.

21. ORAL AGREEMENTS & STIPULATIONS

21.1 No oral agreement, promise, collateral stipulation, representation, condition or warranty given or entered into by the Owner or by any agent or employee of the Owner and not in conformity with this Contract shall be binding upon the Owner unless confirmed in writing by the Owner.

22. WAIVER

22.1 All the rights, powers and remedies of the Owner shall remain in full force notwithstanding any neglect, forbearance or delay by the Owner or the enforcement of them.

23. GOVERNING LAW

23.1 This Contract shall be governed and interpreted in accordance with the laws of New Zealand. The Hirer shall observe and comply with the provisions of all Acts, regulations, bylaws and codes of practice in force during the period of hire in relation to the work on which the Crane is to be employed and the manner of performance of that work and in relation to the site and with all orders and directions lawfully given by any competent authority.

24. ARBITRATION

24.1 If during the continuance of the hire or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the hire or to the construction of this Agreement or the rights or liabilities of the Owner or the Hirer, that dispute, difference or question shall be referred to a sole arbitrator to be agreed upon by the Owner and the Hirer if they can agree upon one and otherwise to two arbitrators (or to their umpire in the case of disagreement) one to be appointed by each party and in either case in accordance with the provisions of the Arbitration Act 1908.