



Doc ID: MXFC002	APPLICATION FOR CREDIT ACCOUNT	V:7	DOI: 10/08/2016
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To Be Completed By Applicants - Please complete all sections and read the Terms & Conditions of Trade overleaf or attached

Type of Business:	Sole Trader	Trust	Partnership	Company
Company Name:				ABN No:
Trading Name:				ACN No:
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:				Phone No:
Alternative Email Address:				Fax No:
Directors / Owners / Trustee (if more than two, please attach a separate sheet)				
Full Name:				D.O.B.
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:	Mobile No:	
Full Name:				D.O.B.
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:	Mobile No:	
Date Business / Company Established: (Current Owners)				Credit Limit Required: \$
Nature of Business:		Paid Up Capital:	Estimated Monthly Purchases: \$	
Principal Place of Business is:	Rented	Owned	Mortgaged (to whom):	
Purchase Order Required:	YES	NO	Accounts to be emailed?	YES NO
Accounts Email Address:				
Accounts Contact:		Phone No:	Mobile No:	
Bank and Branch:				Account No:
Account Terms:	30 Day	COD	Other:	
Trade References: (Please provide companies that are willing to do trade references)				
Name	Address		Phone / Fax / Email:	
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Max Crane & Equipment Hire (SA) Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT):
 Name: _____
 Position: _____

SIGNED (MAX):
 Name: _____
 Position: _____

WITNESS TO CLIENTS SIGNATURE:
 Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
ACC / REF No	CRDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Max Crane & Equipment Hire (SA) Pty Ltd - Terms and Conditions

1. Definitions
- 1.1 "Max" means Max Crane & Equipment Hire (SA) Pty Ltd (as trustee for Max Crane & Equipment Hire Trust) T/A Max Crane & Equipment Hire (SA) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Max Crane & Equipment Hire (SA) Pty Ltd (as trustee for Max Crane & Equipment Hire Trust) T/A Max Crane & Equipment Hire (SA) Pty Ltd.
- 1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by Max to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Max to the Client.
- 1.4 "Charges" means the cost of the hire of the Equipment as agreed between Max and the Client subject to clause 4 of this contract.
- 1.5 "Dry Hire" means that the Equipment is supplied by Max without an operator.
- 1.6 "Wet Hire" means that the Equipment is supplied by Max with an operator, who shall at all times remain an employee or representative of Max.
- 1.7 "Site" means the location/s at which the Equipment is to be operated.
- 1.8 "Hire Period" means the term of the hire of the Equipment as specified in this agreement, or such further period as agreed by the parties in writing.
- 1.9 "Minimum Hire Period" means the minimum Hire Period, as specified in this agreement, and calculated at the appropriate hourly rate plus travel unless otherwise specified by Max prior to commencement of the Hire Period.
- 1.10 "Goods" means any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by Max for the Client.
2. Acceptance
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this agreement if the Client places an order for Equipment, or accepts Delivery.
- 2.2 This agreement is binding on each party who executes it notwithstanding the failure of any other person named as a party to execute it, and the avoidance or unenforceability of any part of this agreement.
- 2.3 Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this agreement.
- 2.4 This agreement constitutes the entire agreement between the parties and contains all the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this agreement.
- 2.5 The special conditions (if any) set out by Max in any quotation, order or other document shall form part of this agreement, unless otherwise stated. In the event of any inconsistency between the special conditions and any other term of this agreement, the special conditions shall prevail to the extent of the inconsistency.
- 2.6 A waiver of the Client's obligations hereunder is ineffective unless it is in writing and is verified and signed by a duly appointed officer of Max.
- 2.7 Time shall be of the essence in relation to this agreement.
- 2.8 The Client warrants and represents to Max that:
 - (a) the Client, being a body corporate, is duly incorporated and validly existing under the Corporations Act, and has full power and authority to enter into and observe and perform the terms of this agreement, or the Client, being an individual has the full power and capacity to enter into and observe and perform the terms of this agreement;
 - (b) this agreement constitutes legal, valid and binding obligations enforceable against the Client in accordance with its terms;
 - (c) all consents and approvals, whether governmental or otherwise, required in order for the Client to observe and perform the Client's covenants have been obtained and are in full force and effect;
 - (d) no Default Event exists and no event has occurred or is continuing to occur which constitutes or might, with the passing of time or giving of notice (or both), constitute Default Event;
 - (e) to the best of the Client's knowledge, information and belief, no information supplied by the Client to Max in relation to this agreement contained any materials misstatement of fact or omitted to state a material fact.
- 2.9 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer their interest in this agreement or part with possession of all or any portion of the Equipment without the prior written consent of Max, which consent may be arbitrarily withheld.
- 2.10 The Client irrevocably authorises Max, and each of the authorised officers of Max, to do on behalf of the Client all such things as the Client shall at any time be obliged to do under or by virtue of this agreement, and which the Client has neglected or refused to do, and the Client agrees to ratify all acts and things done by Max pursuant to this clause, and the Client indemnifies Max against all losses arising from any act done under or by virtue of this clause.
3. Change in Control
- 3.1 The Client shall give Max not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Max as a result of the Client's failure to comply with this clause.
4. Charges and Payment
- 4.1 The Client shall pay the Charges to Max for the duration of the Hire Period, which (at Max's sole discretion) shall be either:
 - (a) as indicated on invoices provided by Max to the Client in respect of Equipment supplied on hire;
 - (b) Max's current Charges as at the date of Delivery, according to Max's current price list; or
 - (c) calculated on a working day of eight (8) hours per day (from 7.00am to 3.30pm, allowing a thirty (30) minute lunch break); or
 - (d) Max's quoted Charges (subject to clauses 4.2), which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Max reserves the right to change the Charges at any time in the event of a variation to Max's quotation or where Equipment is used outside of Max's standard working hours (as specified in clause 4.1(c) above) or on a weekend or public holiday. Max shall advise the Client in writing of any change to the Charges and the effective date of the change. A fuel levy shall be payable where the price of diesel fuel exceeds the fuel price specified in Max's price list.
- 4.3 Max may, in its sole discretion, require the Client to pay a non-refundable deposit.
- 4.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by Max, which may be:
 - (a) on, or before Delivery;
 - (b) by way of instalments/progress payments in accordance with Max's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Max.
- 4.5 The Client will make payment to Max on/ly by each due date by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and Max.
- 4.6 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to Max an amount equal to any GST Max must pay for any supply of Equipment by Max under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties (including stamp duty, import duties, bonds or any other charges which may be levied upon this agreement and/or the use of the Equipment or Delivery) that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 4.7 Receipt by Max of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Max's rights and ownership in relation to the Equipment, and this agreement, shall continue.
- 4.8 Charges shall not be subject to any set-off or deduction for any reason whatsoever (including for any sums owed or claimed to be owed to the Client by Max) and, without limiting the generality of the foregoing:
 - (a) by reason of non-working time howsoever caused, downtime due to normal wear and tear (excepting if the Equipment is maintained as per manufacturer's specification) during the Hire Period or any extension thereof, nor shall the Client be relieved from their responsibility to pay the Charges for the entire Hire Period by reason of the fact that the Equipment is returned prior to the Minimum Hire Period;
 - (b) the Client shall not be entitled to withhold payment of any invoice because part of that invoice is in dispute. In the event the Client disputes any part (or all) of any invoice, such dispute must be detailed in writing and given to Max within seven (7) days of the date of the invoice. If the Client shall fail to comply with this provision, any non-payment of an invoice (in whole or in part) shall entitle Max to (at its sole discretion) place the Client's account into default.
5. Hire Period
- 5.1 The Hire Period shall commence, and Charges shall be paid by the Client to Max, from the time the Equipment departs from Max's premises and will continue until (whichever last occurs):
 - (a) the termination of the Hire Period; or
 - (b) the return of the Equipment to Max's premises in good operating condition, reasonable wear and tear excepted; or
 - (c) the date which the Equipment is available for Recovery by Max, as notified by the Client (if such Recovery is agreed to by Max), provided the Equipment is recovered in good operating condition, reasonable wear and tear excepted; or
 - (d) the expiry of the Minimum Hire Period.
- 5.2 Notwithstanding clause 5.1, the Client shall provide a minimum of one (1) weeks' notice to Max of their intention to return the Equipment, and the date of expiry or cessation of this agreement shall in all cases be treated as a full day's hire.
- 5.3 Notwithstanding anything contained in this agreement to the contrary, Max reserves the right to take possession of the Equipment at any time and without notice to the Client when, in Max's opinion, the Equipment is endangered or imperilled by any reason or cause whatsoever. The Client indemnifies Max in respect of any loss arising from any act done under or by virtue of this clause 5.3. Any action taken by either Max or the Client as set forth herein shall be without prejudice to any other rights or remedies that Max or Client may have respectively.
6. Extension of the Hire Period
- 6.1 If, and only if not later than one (1) month before the expiry of the Hire Period, the Client gives notice to Max requesting an extension of the Hire Period, such extension is, if any, subject to Max's agreement, the availability of the Equipment and the following conditions:
 - (a) the Charges and all other payments due under this agreement having been received by Max in full as at the expiry of the Hire Period;
 - (b) there is no breach of the Client's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Charges, as varied, on the same terms and conditions of this agreement, except for the insertion of the extended term.
7. Delivery and Recovery
- 7.1 As agreed by Max and at Max's sole discretion:
 - (a) delivery of the Equipment ("Delivery") shall take place when the Client takes possession of the Equipment at either Max's premises or the Site;
 - (b) recovery of the Equipment ("Recovery") will be completed when the Equipment has been either collected from the Site and/or returned to Max's premises.
- 7.2 Unless otherwise specified:
 - (a) the costs of Delivery and Recovery, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are in addition to the Charges;
 - (b) Client is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Site.
- 7.3 In the event the Client is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the Site not being available, Max shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at Recovery, as applicable, and all Charges lost as a direct result of the Equipment being unavailable.
- 7.4 Any time or date given by Max to the Client is an estimate only. The Client must still accept Delivery even if late and Max will not be liable for any loss or damage incurred by the Client as a result of any delay in Delivery and/or Recovery of the Equipment, commencement of work or interruption to the continuity of work due to reasons beyond the practical control of Max (including, but not limited to, any event outlined in clause 23.1, breakdown of plant, transport delays, accidents, or other labour difficulties, etc.).
8. Insurance
- 8.1 The Client accepts full responsibility for the safekeeping of the Equipment and must effect insurance (and maintain any such insurance) with an insurer acceptable to Max in the name of Max and the Client for their respective rights and interests whilst the Equipment is at the Site, or in transit between the Site and Max's premises in respect of the following:
 - (a) the full replacement value of the Equipment against such risk as Max may nominate, or in the absence of such nomination, against loss or damage by theft, fire, accident and such other risks as are insured against by prudent persons engaged in a similar business to that of the Client, excluding liability for claims being the subject of compulsory third party injury insurance on vehicles registered by Max;
 - (b) a policy of employer's indemnity insurance and works compensation insurance in respect of all employees of the Client in respect of damage or loss caused by the use, maintenance, repair and storage of the Equipment;
 - (c) public risk liability and product defect liability, and any other such insurance in support of the indemnities contained in this agreement, and must in respect of any policy of insurance, deliver to Max a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.
- 8.2 Each of Max and the Client is entitled to receive payments of money under that insurance policy effected pursuant to clause 8.1 according to its interest in the policy. Each party agrees to assist and cooperate with the other in making, pursuing and settling any claim made under the policy.
- 8.3 Without limiting the generality of sub-clause 15.2(f), and if Max requests, the Client will expend all money received by it under the policy in respect to damage to the Equipment in restoring or replacing the Equipment in its condition prior to the commencement of this agreement, subject to reasonable wear and tear, and if such money is insufficient, the Client will make good the deficiency at their own cost.
9. Risk
- 9.1 The Client shall assume all risks and liabilities for and in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession, use, maintenance, repair or storage of the Equipment.
- 9.2 The Client shall be solely responsible for any loss or damage to the Equipment, including (without limiting the generality of the foregoing) damage done by corrosion, rust, oxidation, and chemical reactions of every nature and kind whatsoever.
- 9.3 The Client acknowledges and agrees that:
 - (a) the Client has satisfied themselves as to the condition and suitability of the Equipment, and its fitness for the Client's purposes;
 - (b) the Client has, prior to signing this agreement, examined the Equipment and satisfied themselves as to its compliance with the specifications and validity of the warranties of the manufacturer or supplier;
 - (c) once satisfied with the condition and suitability of the Equipment, the Client must sign Max's pre-hire check sheet.
- 9.4 The Client shall disclose to Max the nature of the Goods to be handled, lifted and/or carried. If Max deems the Goods are, or may become dangerous or offensive, Max may do anything it believes to be appropriate to avoid or minimise any loss, damage or offence.
- 9.5 Max is not a Common Carrier, and will accept no liability as such. Accordingly, Max reserves the right to refuse to lift or move any particular item(s) at its sole discretion.
- 9.6 Unless otherwise agreed to in writing between the parties, Max shall not be deemed the principle contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliance under any relevant legislation or policy, etc.).
10. Title
- 10.1 The Equipment is and will at all times remain the absolute property of Max, and the Client must return the Equipment to Max upon request to do so.
- 10.2 The Client must not, and must not attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, license or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the Equipment or any part thereof, or any of the rights of the Client to the Equipment, or any of the rights of the Client under this agreement, and must keep the Equipment free from any distress, execution or other legal process.
- 10.3 Nothing contained in this agreement renders on the Client any right or property or interest in the Equipment other than as a hirer.
- 10.4 The Client must notify all persons who come in contact with the Equipment, including those who have an interest in the works being undertaken, of the existence on the restriction on the creation of liens, or similar interests, whether by way of pledge or otherwise, in or over the Equipment, and will notify any persons seizing the Equipment or any part thereof of the restrictions contained in this clause 10.
11. Condition of Equipment and Inspections
- 11.1 The Equipment will be inspected by a representative of each party to establish the general condition thereof and a statement of condition of the Equipment will be prepared:
 - (a) immediately prior to the commencement of this agreement; and
 - (b) as soon as practicable following termination of this agreement.
- 11.2 The Client acknowledges and agrees that they will, at their own cost, reinstate the Equipment to its condition as specified in the pre-hire inspection, normal wear and tear excepted.
12. Personal Property Securities Act 2009 ("PPSA")
- 12.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Client to Max for services – that has previously been supplied and that will be supplied in the future by Max to the Client.
- 12.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Max may reasonably require to:
 - (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Max for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing charge statement in respect of a security interest without the prior written consent of Max;
 - (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Max.
- 12.4 Max and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Max, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by Max under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall this clause 12 apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular Section 20.
13. Security and Charge
- 13.1 In consideration of Max agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies Max from and against all Max's costs and disbursements including legal costs as a solicitor and own client basis incurred in exercising Max's rights under this clause.
- 13.3 The Client irrevocably appoints Max and each director of Max as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
14. Wet Hire
- 14.1 The Client shall:
 - (a) be responsible for:
 - (i) ensuring Max has clear and free access and egress to the Site;
 - (ii) ensuring that the ground (and access) at the Site is firm and stable, with adequate compaction to support the Equipment under its wheels, tracks or outriggers, including ensuring any footpaths, curbs and channels are suitably planned;
 - (iii) ensuring that the Site (or access thereto) does not have excessive slope;
 - (iv) ensuring that adequate lighting is provided during the provision of services;
 - (v) making all necessary arrangements where any access is required through private property;
 - (vi) ensuring that a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, trees or power lines;
 - (vii) notifying Max of the location of any underground services on Site.
 - (b) provide amenities and first aid services to Max's employees in compliance with all applicable health and safety legislation in operation in the state where the services are undertaken;
 - (c) should it be necessary for the Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Charges and either:
 - (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
 - (d) declare the weight of the Goods, and:
 - (i) Max shall be entitled to rely on such declared weight when arranging for the handling thereof;
 - (ii) the Client shall be responsible for all extra cost and risk incurred by Max, and for any and all damage sustained, by reliance on the declared weight if the weight declared is found to be incorrect.
 - (e) provide adequate security for any Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that Max arrange such security on the Client's behalf.
- 14.2 Max reserves the right not to enter the Site if Max believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 14.3 Notwithstanding that the operator of the Equipment is an employee or representative of Max, the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 14.4 In the event the Client requires an employee of Max to undertake a recognised safety course or medical examination during working hours, the Client will be liable to pay the hourly hire Charges for that period, notwithstanding that the Equipment is not being operated during such time. If any course is undertaken outside of the Hire Period then the Client shall be liable to pay Max's standard (and/or overtime, if applicable) hourly labour rate.
15. Dry Hire
- 15.1 If the Client requires the Equipment to be delivered, installed and/or recovered from the Site, then the Client shall notify Max in writing, and pay in addition to the Charges all freight, transportation and other charges and/or costs incurred, including loading and unloading at the Site, if applicable.
- 15.2 The Client shall:
 - (a) at their own expense, keep and maintain the Equipment in proper working order and good and substantial repair (including, but not limited to, lubricating, refuelling, daily servicing, servicing as required by Max, running repairs, marking mechanical, structural and electrical repairs, and where necessary replacing tyres and other wearing parts);
 - (b) use qualified mechanics and crane technicians to undertake any servicing of the Equipment;
 - (c) maintain all records of servicing and inspections and provide copies of this documentation to Max via electronic transfer each month;
 - (d) in operating the Equipment, employ only persons who are properly trained and competent, and certified by Safe Work SA or relevant state authority, or any

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- successor organisation if applicable, and holders of an appropriate driver's license and use recognised standards efficiently for the purpose for which the Equipment was intended at the date of acquisition by Max;
- (e) complete and provide documentary evidence of lift studies and job safety analysis and any other such safety and operating documentation in relation to the work being undertaken with the Equipment;
- (f) operate, maintain and store the Equipment with due care and diligence, and in compliance with the instructions and recommendations of the supplier and manufacturer of the Equipment as to their operation, maintenance and storage, or in accordance with any specific instructions of Max;
- (g) comply with all relevant laws, regulations, rules and by-laws governing or relating to the registration or licensing of the Equipment, and to its use and operation;
- (h) inspect the Equipment on Delivery, to satisfy itself as to the condition, specifications, quality and fitness of the Equipment for its intended purpose;
- (i) notify Max of any accident resulting in the injury to persons or damage to property (including damage to the Equipment) involving the Equipment within twenty-four (24) hours of the date of the accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (j) secure the Equipment when not in use and to ensure that all reasonable measures are taken to protect the Equipment;
- (k) provide Max free access at all times to the Equipment to examine and/or test the same (at the discretion of Max), following reasonable notice to the Client.
- 15.3 The Client shall not:
- (a) without the prior consent of Max, make any alterations, additions or replacements to the Equipment. Anything the Client wants to undertake to the Equipment that falls outside the scope of work as detailed in this agreement, the Client must seek approval in writing from Max;
- (b) do or cause or carry out any act, matter or thing which is likely to endanger the safety or condition of the Equipment;
- (c) remove the Equipment from the State of South Australia (or approved Site) without the prior written consent of Max;
- (d) exceed the recommended or legal load and capacity limits of the Equipment;
- (e) use or carry any illegal, prohibited or dangerous substance in, or on, the Equipment;
- (f) fix any of the Equipment in such a manner as to make it a permanent fixture;
- 15.4 The Client indemnifies Max against, and shall pay Max immediately on demand, all costs relating to:
- (a) the servicing and/or repair of the Equipment, if found to be required by Max on Recovery (including where it is found that scheduled servicing has not been performed or there is no evidence of completion of such), and the Client shall:
- (i) be charged (in addition to the Charges) for each and every service not completed, and any repairs deemed necessary as a consequence, at Max's current technician charge out rate (available upon request) and the cost of parts/lubricants, freight, plus twenty percent (20%);
- (ii) continue to pay the Charges at the specified rate until the Equipment is returned to good operating condition as determined by Max;
- (b) cleaning the Equipment should it be returned in an un-cleaned state; and/or
- (c) fuel and consumables provided by Max and used by the Client.
- 15.5 Notwithstanding Max's retention of title in the Equipment, all risk for the Equipment passes to the Client on Delivery.
- 15.6 The Client is not authorised to pledge Max's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs.
- 15.7 In the event of damage to the Equipment, the Client shall be responsible to pay on demand all costs involved in repairing such damage, including but not limited to:
- (a) damage caused by the negligence of the Client, or its agent(s);
- (b) damage caused by vandalism;
- (c) damage caused to the Equipment by operator misuse thereof;
- (d) damage to the tracks and/or tyres of the Equipment, other than damage caused by fair wear and tear; and/or
- (e) damage caused by the ordinary use of the Equipment.
16. Carriage of Goods
- 16.1 The Client warrants that when Goods are given to Max for carriage, the Client is acting as an agent for each person who has an interest in the Goods, and each of them is a party to this agreement and is bound by these terms and conditions.
- 16.2 The Client hereby authorises any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Max be deemed reasonable or necessary in the circumstances.
- 16.3 The Goods shall be deemed delivered when they are left at the place nominated by the Client. If the nominated place of delivery is unattended, Max may choose whether to leave the Goods there, or return them to the Client. If the Goods are stored or returned to the Client, all reasonable costs and charges must be paid by the Client.
- 16.4 Max holds a lien over the Goods, and any related documents in Max's possession, as security for all sums payable to Max by the Client. Max may sell the Goods without giving the Client notice where any event as per clause 20.2(d) arises. In this instance Max shall be entitled to offset against the money received any money owed to it by the Client.
- 16.5 The Client must comply with all legal requirements (and any requirements of the person(s) to whom Max delivers the Goods) in relation to the Goods, including requirements relating to their shape, packaging, labelling and transportation.
- 16.6 On the completion of the carriage of the Goods, the Client must ensure (if required to do so) that any containers, pallets or packaging that are delivered to the Client with the Goods are returned to their respective legal owner.
- 16.7 The Charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the consignor's premises and shall be payable and non-refundable in any event.
17. Load Measuring Devices
- 17.1 If any crane has been fitted with a load measuring device, the Client hereby acknowledges and agrees that Max has made no warranties or representations whatsoever with respect to the ability of said load measuring device to accurately or consistently measure the weight of the load being lifted by such crane. The Client further acknowledges and agrees that it is the responsibility of the Client to independently determine the weight of every load to be lifted by any crane comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such crane's capacity chart and that the load measuring device shall be used as an operator-aid only.
- 17.2 The Client will be liable for, and shall indemnify and hold harmless Max of and from, any and all liabilities, costs, damages, charges, legal fees and disbursements (including those on a solicitor and own client basis with right of full indemnity) fines, penalties, expenses, actions, suits, proceedings and demands, all of whatever kind or nature which Max may suffer or incur or be liable for, either directly or indirectly, by reason of failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of Max directly or indirectly related thereto. The Client hereby releases Max of and from any and all liabilities, losses, costs, damages, claims and demands which it may have against Max, either directly or indirectly, arising by reason of the failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of Max. Without restricting the generality of the foregoing, the Client covenants and agrees that they shall not sue Max for any such losses, or costs, damages, claims or demands. Furthermore, the Client acknowledges and agrees that if they rely in any way whatsoever on any such load measuring device that they do so completely at their own risk.
18. Defects, Warranties and Returns. Competition and Consumer Act 2010 (CCA)
- 18.1 All conditions and warranties, express or implied whether arising by statute or otherwise, as to the condition, suitability, quality, fitness for any purpose or safety of or title to the Equipment are hereby negative and excluded to the full extent permitted by the law, and Max gives no such warranty or condition, and the Client acknowledges that Max has not given any such warranty or condition.
- 18.2 The terms of this agreement that exclude or limit Max's liability shall apply only to the extent permitted by law, and subject to the provisions of the Competition and Consumer Act 2010 and other statutes from time to time in force which cannot be excluded, restricted or modified, or which can only be excluded, restricted or modified to a limited extent, and if any such statutes apply to this agreement, then to the extent to which Max is entitled to do so, Max's liability under such statutes shall be limited at Max's absolute option to:
- (a) the replacement of the Equipment or the supply of plant similar to the Equipment; or
- (b) the payment of the cost of having the Equipment repaired; or
- (c) the repair of the Equipment.
- 18.3 Notwithstanding clauses 18.1 and 18.2, but subject to the CCA, Max shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client failing to properly maintain or store the Equipment;
- (b) the Client interfering with the Equipment in any way without Max's written approval to do so;
- (c) the Client using the Equipment for any purpose other than that for which it was designed;
- (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Client failing to follow any instructions or guidelines provided by Max;
- (f) fair wear and tear, any accident, or act of God.
19. Limitation of Liability
- 19.1 Subject to clause 18:
- (a) Max shall be under no liability whatsoever to the Client for any indirect and/or consequential loss or expense (including loss of profit or any rectification costs), or any third party claims, suffered by the Client in connection with the use of the Equipment and/or the provision of services by Max, or arising out of a breach by Max of these terms and conditions. Alternatively, Max's liability shall be limited to damages which under no circumstances shall exceed the Charges;
- (b) the Client acknowledges and agrees that Max is not liable:
- (i) to the Client for any loss, cost (whether indirect or consequential) or damage or delay through breakdown, mechanical defect or accident to or of the Equipment;
- (ii) to any person for any loss or damage to any property stolen from the Equipment or damaged or otherwise lost during the Hire Period or left in the Equipment after return of the Equipment to Max's depot;
- (iii) to the Client for any form of breakdown, whether mechanical electrical or structural to the Equipment whilst on hire to the Client.
- 19.2 The Client covenants and agrees that:
- (a) the Client must not do or omit to do, any act or thing which might in any way invalidate or prejudice any insurance effected by Max or Client in respect of the Equipment;
- (b) notwithstanding whether Max or Client has effected insurance in respect of the risks, the Client indemnifies and will keep indemnified Max against:
- (i) the loss or damage to the Equipment whether by fire, theft, accident, seizure, confiscation or otherwise;
- (ii) the appraisal of such loss or damage shall be based upon the replacement value of new plant;
- (iii) all other losses, damages, claims, penalties, liabilities and expenses, including legal costs, however arising including as a result of or in connection with the Equipment or the seizure or the taking of possession of the Equipment by Max.
20. Default and Consequences of Default
- 20.1 An event of default ("Default Event") occurs if:
- (a) any money payable under this agreement is not paid before or on the due date for payment;
- (b) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than three (3) days after Max had given the Client notice requiring the Client to remedy the breach;
- (c) Max ascertains that any warranty, representation or statement made by the Client under or in connection with this agreement has been false in any material respect;
- (d) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
- (e) a receiver, or an agent in possession for a mortgagee is appointed in respect of any property of the Client;
- (f) a mortgagee takes possession of any property of the Client;
- (g) any execution or similar process is made against the property of the Client;
- (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
- (i) a compromise or arrangement is made between the Client and its creditors;
- (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
- (k) the Client admits in writing its inability to pay its debts;
- (l) an application is made to a court for an ordering summoning a meeting of any class or creditors of the Client;
- (m) an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Client under the Corporations Act or any similar process; or
- (n) an investigation is commenced under Section 13 of the Australian Securities Commission Act to investigate the affairs of the Client.
- 20.2 On the occurrence of a Default Event:
- (a) Max may:
- (i) take possession of the Equipment with or without notice to the Client, and the Client must (at the Client's expense) immediately on demand, deliver up the Equipment in good order and repair in accordance with the directions of Max, and in default the Client irrevocably authorises Max to enter any premises occupied or controlled or believed by Max to be occupied or controlled by the Client and repossess the Equipment, and for such purposes break open any gate or lock and dismantle the Equipment from any part of the premises to which they may be affixed, and the Client indemnifies Max in respect of any loss arising from any act done under or by virtue of this clause;
- (ii) charge interest on overdue invoices, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Max's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
- (b) if the Client owes Max any money, the Client shall indemnify Max from and against all costs and disbursements incurred by Max in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Max's contract default fee, and bank dishonour fees); if the Client has any other rights or remedies Max may have under this agreement, if the Client has made payment to Max by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Max under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement;
- (d) without prejudice to Max's other remedies at law, Max shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies Max may have and all amounts owing to Max shall, whether or not due for payment, become immediately payable.
- 20.3 The Client must pay to Max on demand all money which Max pays or is liable to pay to make good any failure by the Client to comply with any obligation under this agreement and all other costs and expenses including legal costs and expenses that Max may incur in the enforcement or protection or attempted enforcement of protection of Max's rights under this agreement, or in the Equipment, including money paid by Max in releasing any lien or other encumbrance claimed on the Equipment, and in dismantling and removing the Equipment from any premises.
21. Cancellation/Termination
- 21.1 Max may terminate this agreement, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice Max shall repay to the Client any sums paid in respect of the Charges. Max shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client terminates this agreement, or otherwise cancels Delivery, the Client:
- (a) must provide notice of such to Max at least forty-eight (48) hours prior to the specified date of Delivery; and
- (b) the Client shall be liable for any and all loss incurred (whether direct or indirect) by Max as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Except so far as clause 21.1 applies, on termination Max shall be entitled to:
- (a) retain all monies paid to it under this agreement; and
- (b) recover from the Client any other monies due and owing under this agreement as at the date of termination.
- 21.4 On termination, the Client must deliver up to Max the Equipment (together with all parts and accessories) in clean and good order as delivered (with allowance for fair wear and tear).
- 21.5 Upon termination of this agreement following the occurrence of a Default Event, the Client must pay to Max by way of liquidated damages, in addition to and without prejudice to any other right or remedy of Max, an amount equal to the total of:
- (a) the unpaid balance of the Charges for the Hire Period which would have been payable until the expiration of the Hire Period had the agreement not been terminated;
- (b) Max's costs and expenses incurred in repossessing and storing, insuring and registering the Equipment and in entering on and removing the Equipment from land or premises on which the Equipment was situated, and make good any injury or damage caused to the land or premises;
- (c) Max's costs and expenses of repairs reasonably necessary to bring the Equipment to an operational/usable condition;
- (d) interest calculated in accordance with clause 20.2(a)(ii) of this agreement.
- 21.6 On, or before, termination of this agreement, the Client shall return the Equipment to Max's premises and the Client acknowledges and agrees that the Charges are payable:
- (a) until such time as the Equipment is returned to Max's premises and returned to its condition as specified in the on-hire inspection, normal wear and tear excepted; and
- (b) for the entirety of the Hire Period, notwithstanding that the Equipment may be returned to Max prior to termination.
22. Privacy Act 1988
- 22.1 The Client agrees for Max to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Max.
- 22.2 The Client agrees that Max may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 22.3 The Client consents to Max being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by Max for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 22.5 Max may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
- (b) name of the credit provider and that Max is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Max has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Max, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.7 The Client shall have the right to request (by e-mail) from Max:
- (a) a copy of the information about the Client retained by Max and the right to request that Max correct any incorrect information; and
- (b) that Max does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 Max will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 22.9 The Client can make a privacy complaint by contacting Max via e-mail. Max will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
23. Force Majeure
- 23.1 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party ("Force Majeure").
- 23.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this agreement:
- (a) The party must give the other party prompt written notice of:
- (i) detailed particulars of the Force Majeure;
- (ii) so far as is known, the probably extent to which the party will be unable to perform or will be delayed in performing the duty or obligation;
- (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
- (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible.
24. General
- 24.1 Failure to exercise or delay in exercising any right, power or privilege in this agreement by a party does not operate as a waiver of that right, power or privilege, and a single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege, or the exercise of any other right, power or privilege.
- 24.2 If any provision of these terms and conditions shall be prohibited, invalid, void, illegal or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting, prejudicing or impairing the validity, existence, legality and enforceability of the remaining provisions of these terms and conditions, or that provision is any other jurisdiction.
- 24.3 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which Max has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 24.4 The Client agrees to assist and cooperate with Max in relation to Max exercising any and all of their rights in respect to the Equipment, including without limitation to, Max instituting, carrying on or enforcing, compromising or completing any legal proceedings which Max thinks desirable to protect their rights in respect of the Equipment.
- 24.5 A notice or demand given or made to any person under this agreement must be made in writing, may be served by delivering it to that person personally or addressing it to that person and leaving it or posting it by pre-paid or certified post to the address of that person appearing in this agreement, or any other address nominated by that person by notice to the person giving the notice, and will be deemed to be given or made in the case of personal delivery, when delivered, and in the case of service by leaving the notice at an address specified above, when left at that address, and in the case of service by post, on the second business day following the date of the posting.
- 24.6 Max may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.7 The Client agrees that Max may amend these terms and conditions at any time. If Max makes a change to these terms and conditions, then that change will take effect from the date on which Max notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Max to provide any Equipment to the Client.
- 24.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.