

## PART 5: TERMS OF TRADE

### Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Services and apply whenever Services are quoted for or performed by us for you.
2. Any terms or conditions included in, attached to, or referenced in your Order, or any other document provided by you (including any purchase order terms subsequently given to us by you) deviating from, or inconsistent with, these Terms, are expressly rejected by us and will not vary or supplement these Terms.
  - Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
  - Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict or inconsistency.

### Quotations

- Quotations made by us are estimates only and will not be construed as an offer or obligation to perform any Services.
- Unless stated otherwise, quotations made by us:
  - are exclusive of GST; and
  - will remain valid for a period of thirty (30) days from the date of quotation.
- You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
- Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Service Fee will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case:
  - such Services will be deemed a variation and additional charges will apply and will be payable by you; and
  - where the Services are valued by hourly rates (for each hour or part thereof that the Services are performed), you will be charged a minimum of four (4) hours for the Wet Hire of Equipment (even if the Services are completed in less than four (4) hours).
- We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 11.

### Formation of Contract

- You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
  - confirm your acceptance of these Terms; or
  - place an Order with us.
- We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to perform any Services for you at any time.
- Any Order placed by you will be construed as an offer. A binding Contract will only come into existence, if:
  - we communicate our acceptance of your Order, whether in writing or by electronic means; or
  - we perform any Services following receipt of your Order (or otherwise commence mobilisation of our Equipment).
- For clarity, a Contract is formed at the location of ours where your Order is placed.

### Service Fee and payment terms

- In consideration for us performing the Services, you agree to pay to us the Service Fee. You will be liable to pay for mobilisation and demobilisation of the Equipment, unless otherwise agreed in writing.
  - Subject to clause 11, the Service Fee payable for Services will be in accordance with our then prevailing price list/rates (as notified by us to you from time to time), as applicable as at the date the Services are performed.
  - Where we have issued you a quotation, the Service Fee will be our quoted price (subject to clauses 11 and 12 to 13) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
  - Unless we have granted you a credit facility, all Services performed by us must be paid for on a performance basis.
  - Payment may be made by cash, Electronic Funds Transfer (EFT), Visa, and MasterCard credit cards. We reserve the right to change the payment methods that we accept at any time.
  - You acknowledge that we will be at liberty to charge a payment surcharge for applicable transactions equal to our reasonable cost of acceptance.
  - We reserve the right to require payment of a non-refundable deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 11, unless otherwise agreed in writing. For clarity:
    - where we require payment of a deposit, we are under no obligation to perform any Services until the deposit has been received by us in cleared funds; and
    - the deposit will be refundable in circumstances where:
      - you are entitled to a refund under the Australian Consumer Law; or
      - you terminate a Contract because of our breach.
  - If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
  - You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
  - Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever (including by way of cash retention).
3. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

### Default

- If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice (including any deposit required by us under clause 11), we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
  - charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
  - require you to pay, in advance, for the Services (or any part of the Services) which have not yet been provided; and
  - suspend or cease the performance of any further Services.

### Variations

- If you request or direct that any Services be performed that are not strictly in accordance with our quotation or your Order, then such Services will constitute a variation.
- A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.
- You understand and agree that:
  - (a) all variations must be agreed in writing prior to the Services that are the subject of the variation being performed; and
    - all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then prevailing price list/rates.
  - (b) Notwithstanding clauses 11 to 13, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Service Fee, if:
    - Services specified in your Order are varied from the Services specified in our quotation (or are otherwise varied following the formation of a Contract);
  - (c) there is any movement in the cost of performing the Services (including any actual increase in our costs in procuring or transporting the Equipment (including where pilot vehicles and/or a police escort is required or where it is necessary to temporarily remove power lines), and/or actual increases in labour in connection with the provision of Services by PD Cranes Personnel (such as loadings, penalties, and allowances);
  - (d) you require PD Cranes Personnel to be subject to Site specific requirements, such as medical requirements or inductions; or
    - otherwise as provided for in these Terms.

### Order cancellations

- You may not cancel an Order (or any part of an Order) once a Contract has been formed, and performance of the Services cannot be deferred except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation or deferral, including mobilisation and demobilisation costs, third party hire fees, cartage, and any other incidental expenses we suffer or incur.

### Performance of Services

4. Prior to the commencement of the Services, you must:
  - (a) provide us and PD Cranes Personnel with such information that we determine may reasonably be required to perform the Services; and
  - (b) provide us with all relevant information and documents relating to your requirements (including Site access requirements, irregular terrain, and safety requirements);
5. You acknowledge and agree that:
  - (a) any estimate for performance or completion of the Services provided by us is an estimate only and is not a contractual commitment;
  - (b) unless specified by us in writing, we make no warranty or representation that we will be capable of performing or completing the Services within any timeframe specified by you;
  - (c) you are not relieved from any obligation arising under any Contract of which these Terms form part by reason of any delay in the performance or completion of the Services;
    - you must comply with the reasonable directions of PD Cranes Personnel in relation to the use and operation of the Equipment;
  - (d) we may suspend or cease performance of the Services at any time upon written notice to you if, in the reasonable opinion of PD Cranes Personnel, it would be unsafe for any person for us to perform (or continue to perform) the Services.
6. You must ensure that the Site is suitable to accept the weight of laden Equipment, as may be deemed necessary by us.
7. You must at all reasonable times during the performance of the Services permit PD Cranes Personnel to have free, clear, and unrestricted access to the Site to enable us to fulfil our obligations without unreasonable interruption, impediment, delay, or obstruction.
8. If free, clear, and unrestricted access to the Site is not available to us and PD Cranes Personnel in accordance with clause 7, we reserve the right to suspend or cease the provision of Services upon the provision of notice to you. For clarity, if we exercise our rights under this clause you will be liable for payment of the Service Fee in respect of any Services already performed.
9. Without limiting clauses 6 to 8, you are liable for and indemnify us from any and all costs, expenses, and penalties (including claims for liquidated damages) incurred as result of:

- (a) PD Cranes Personnel being unable to gain suitable access to the Site;
- (b) delays in the performance of the Services caused by interrupted or unsuitable Site access; and
- (c) us recovering any Equipment from the Site in the event such Equipment becomes bogged, damaged, or otherwise immovable.

10. If we encounter any conditions at the Site or its surroundings ("**Conditions**"), which might impact on our ability to perform the Services, and which could not have been reasonably anticipated, we will notify you of the Conditions and obtain your instructions prior to performing (or continuing to perform) the Services. You acknowledge and agree that it is your responsibility to remedy the Conditions and that if any additional time or cost is suffered or incurred by us as a consequence of the Conditions, additional charges will apply and will be payable by you.

#### Unsafe conditions

11. If you make available access to the Site, you warrant to us that the Site is safe and that it complies with all relevant work health and safety laws and standards.

12. You acknowledge and agree that we may suspend or cease performance of the Services at any time if, in the reasonable opinion of PD Cranes Personnel, it would be unsafe to any person or detrimental to the Equipment for PD Cranes Personnel to operate the Equipment (or to continue to operate the Equipment).

#### Title

- You acknowledge that we own the Equipment and in all circumstances we retain title to the Equipment. In no circumstances will title to the Equipment pass to you.

#### Nature of relationship

- For the removal of doubt, nothing in these Terms, or any Contract of which these Terms form part, is to be construed as giving rise to a relationship of agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

#### Indemnity

- You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of:
  - any default by you in the performance or observance of your obligations under any Contract of which these Terms form part; and
- (a) loss of, or damage to, the Equipment however caused (including by lawful confiscation) other than as a result of an act or omission of PD Cranes Personnel.
- Your liability to indemnify us will be reduced proportionally only to the extent that any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity.
- Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
- It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.

#### Limitation of liability

- We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.
- Subject to clauses □, □, □, and □, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
- The limitation contemplated in clause □ is an aggregate limit for all claims, whenever made.
- Subject to clause □, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part.
- For clarity, and without limiting clauses □ to □, the Parties agree that clauses □ to □ are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
- If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses □ to □ do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

#### Termination of Contract

- We may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
  - you fail to make payment of a deposit required by us or any amount owed to us as and when due;
  - you commit a material or persistent breach of these Terms and do not remedy the breach within seven (7) days of receipt of a notice identifying the breach and requiring its remedy; or
  - we are no longer able to, for whatever reason, perform the Services (or any part of the Services).
- For clarity, termination of any Contract of which these Terms form part will not affect the rights which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

#### Costs

- You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

#### Force majeure

- We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.

#### Variation of Terms

- No variation of these Terms, or any Contract of which these Terms form part, requested by you will be effective, unless varied in writing and agreed between the Parties. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
- We may amend these Terms by notifying you in writing. The amended Terms will apply to any Order placed by you following us notifying you of the amendments.

#### Assignment

13. Neither Party may assign, transfer, or novate its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

#### Waiver

- A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

#### Severance

- If any provision of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

#### Entire agreement

- Subject to clause □, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

#### Governing law

- These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of Victoria, and the laws of the Commonwealth of Australia in force in Victoria.

14. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

#### Definitions

- Unless the contrary intention appears, in these Terms:

"**Australian Consumer Law**" means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

"**Business Day**" means a day that is not a Saturday, Sunday, or public holiday in Melbourne, Australia.

"**Contract**" means a contract for the performance of Services, as constituted by our quotation (if any), your Order, and these Terms.

"**Credit Facility Terms**" means our credit facility terms, as set out in the credit agreement executed by you (where applicable).

"**Customer**," "**you**," "**your**" means the corporation, partnership, person, or other entity acquiring Services from us.

"**Equipment**" means the plant, machinery, vehicles, and/or equipment (together with such accessories, tools, and associated items, as accompanies such things) used by us in performance of the Services.

"**Excluded Loss**" means any:

- consequential loss;
- loss of revenues;
- loss of reputation;
- loss of goodwill;
- loss of profits;
- loss of bargain;
- indirect loss;
- special loss;
- lost opportunities, including opportunities to enter into arrangements with third parties;
- loss or damage in connection with claims against you by third parties; or
- loss or corruption of data.

"**Force Majeure Event**" means any act of God, acts, decrees, or regulations of Government Authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.

"**Government Authority**" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental, or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Normal Working Hours**" means 07:00am to 3:30pm.

"**Order**" means a written or oral order placed by you offering to acquire Services from us.

"**Parties**" means PD Cranes and the Customer, and "**Party**" means either one of them.

"**PD Cranes**," "**we**," "**us**," "**our**" means P & D Cranes Australia Pty Ltd ACN 107 882 306.

"**PD Cranes Personnel**" means the person or persons employed or engaged by us to perform the Services (including those engaged by us to drive, operate, use, supervise, or transport the Equipment), as may be described in our quotation, invoices, work authorisation, job docket, or any other forms as provided by us to you, and may include drivers, operators, riggers, dogmen, supervisors, and any other personnel that may be required.

"**Service Fee**" means the price payable for our Services, as notified by us to you from time to time.

"**Services**" means all services performed by us and includes services performed on a Wet Hire basis (and where the context requires includes any supply of goods).

"Site" means the location at which the Equipment will be used and/or the Services performed.

"Tax Invoice" and "Taxable Supply" have the same meaning as in the GST Act.

"Terms" means these terms of trade.

"Wet Hire" means the hire of Equipment together with our Personnel to operate the Equipment.

#### Interpretation

15. If there is any conflict or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (in descending order of precedence):
- (a) any additional terms or conditions contained in our quotation (where applicable);
  - (b) our Credit Facility Terms (where applicable);
  - (c) these Terms; and
  - (d) any other documents issued by us.
    - Unless the contrary intention appears, a reference to:
      - these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
      - a reference to a clause is a reference to a clause contained in these Terms;
      - the singular includes the plural and vice versa;
      - "right" includes a benefit, remedy, authority, discretion, or power;
      - "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
      - "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
      - a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
      - any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
    - Headings are for convenience only and will not affect the interpretation of these Terms.
16. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
17. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
  - An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
  - Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.

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