

TERMS AND CONDITIONS

Terms & Conditions

1. DEFINITIONS

- 1.1 "Customer" shall mean the customer, any person or entity acting on behalf of and with the authority of the Customer, or any person purchasing Equipment and Services from Wanaka Cranes.
- 1.2 "Equipment" means all equipment and materials provided by Wanaka Cranes to the Customer for hireage, including without limitation cranes with operators ("Cranes"), transport, precast building, labour hire, other equipment hire and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of equipment by Wanaka Cranes to the Customer.
- 1.3 "Price" shall mean the cost of the equipment and services (exclusive of GST) as agreed between Wanaka Cranes and the Customer subject to clause 4 of this contract.
- 1.4 "Services" means all services or advice provided by Wanaka Cranes to the Customer including without limitation charges for labour and work, hire charges, insurance charges or any fee or charge associated with the hireage of the Equipment or the provision of the Services by Wanaka Cranes to the Customer.
- 1.5 "Site" means any place or area where the Equipment and Services are performed.
- 1.6 "Wanaka Cranes" means Wanaka Cranes Limited, or any agents or employees thereof.

2. ACCEPTANCE

- 2.1 Any instructions received by Wanaka Cranes from the Customer for the supply of Equipment and Services including equipment and services that Wanaka Crane have ordered or are required to order from overseas shall constitute a binding contract and acceptance of these terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Wanaka Cranes to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any equipment and services provided by Wanaka Cranes to any other party.
- 3.2 The Customer authorises Wanaka Cranes to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.2 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no Price is stated in writing or agreed to orally, the Equipment and Services shall be deemed to be provided at the prevailing rate at the time the Equipment and Services are requested or ordered by the Customer.
- 4.2 Wanaka Cranes may, at its sole discretion, increase the Price after the original quote given to the Customer (or the order made by the Customer) pursuant to clause 4.1 and before providing the Equipment and Services where its own costs of the supply of the Equipment and Services are increased, and where such increase is beyond its control.
- 4.3 Wanaka Cranes may require the payment of a deposit prior to the provision of the Equipment and Services, the sum of which will be determined by Wanaka Cranes at its sole discretion.
- 4.4 Wanaka Cranes reserves the right to revise its rates of hire and related charges without notice.

5. PAYMENT

- 5.1 Unless otherwise agreed all Equipment and Services must be paid for in full on or before seven (7) days following the date of invoice ("Due Date").
- 5.2 Interest may be charged on any amount owing after the Due Date at the rate of 2.56% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Wanaka Cranes in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required before the provision of Equipment and Services.

6. QUOTATION

- 6.1 Where a written quotation is given by Wanaka Cranes for the Equipment and Services:
 - 6.1.1 the quotation shall be valid for 30 days (30) from the date of issue (or as otherwise stated in the quotation); and
 - 6.1.2 the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where further Equipment and Services are required that did not form part of the initial quotation the Customer agrees to pay for the additional cost of such Equipment and Services.
- 6.3 Wanaka Cranes may, at its sole discretion, include further terms or conditions in any quotation, which will take precedence over these terms and conditions.
- 6.4 Only written quotations are binding on Wanaka Cranes.

7. DISPUTES AND DISPUTE RESOLUTION

- 7.1 No claim relating to Equipment and Services will be considered unless made within seven (7) days of the performance of the Equipment and Services.
- 7.2 If a dispute or any difference arises between the parties in respect of any matter concerning these Terms and Conditions, the parties shall in the first place and in good faith, use their best endeavours to resolve the dispute or difference themselves.
- 7.3 If the parties are not able to resolve the dispute or difference themselves, the parties may agree to a formal mediation to be conducted by a mediator acceptable to both parties, the cost of which shall be shared equally between the parties.
- 7.4 If the parties are unable to agree to a mediator pursuant to clause 7.3, the parties shall apply to the President of AMINZ (Arbitrators and Mediators Institute of New Zealand) to appoint an Expert to undertake Expert Determination, the cost of which shall be shared equally between the parties.
- 7.5 Wanaka Cranes and the Customer agree that the Expert's Determination is final and binding on both of them.
- 7.6 In this clause 7, the meaning of the words *Expert* and *Expert Determination* shall be in accordance with their use by AMINZ.

8. LIABILITY

- 8.1 In respect of any implied warranties, conditions or terms imposed on Wanaka Cranes by statute or law, Wanaka Cranes' liability shall only apply to the minimum extent required by the relevant statute or law.

- 8.2 Except as otherwise provided by clause 8.1, Wanaka Cranes shall not be liable for any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort or otherwise and whether such loss or damage arises directly or indirectly from Equipment and Services provided by Wanaka Cranes to the Customer. In this clause 8.2 consequential loss includes loss of production, loss of use, loss of revenue, loss of profit or anticipated profit, loss of sales, loss of business reputation, business interruptions of any nature, loss of opportunities or any kind of special, consequential, incidental or indirect loss or damage whatsoever.
- 8.3 The Customer shall indemnify Wanaka Cranes against all claims and losses of any kind whatsoever, however caused or arising (and without limiting the generality of the foregoing of this clause, whether caused or arising as a result of the negligence of Wanaka Cranes or otherwise) brought by any person in connection with any matter, act, omission, or error by Wanaka Cranes, its agents or employees in connection with the Equipment and Services.
- 8.4 Wanaka Cranes will not be liable for any loss or damage of any kind whatsoever arising from any Equipment and Services hired not arriving on time or from deficiencies in the performance or reliability of Equipment and Services.
- 8.5 No party shall have any claim against Wanaka Cranes, nor shall Wanaka Cranes be liable for any matter arising from or relating to these Terms and Conditions of hireage.

9. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

- 9.1 Wanaka Cranes' staff, customer and sub-contractor hand-book sets out certain responsibilities relating to the health and safety responsibilities of the Customer.
- 9.2 Wanaka Cranes and the Customer warrant that they will comply with their respective obligations under the Health and Safety at Work Act 2015 (and any applicable regulations or codes of practice pursuant to that Act, including but not limited to the HSE (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999) to ensure that whilst performing their respective obligations during the performance of the Equipment and Services, a safe working environment exists for:
- 10.1.1 employees and contractors of Wanaka Cranes and the Customer; and
 - 10.1.2 third parties entering or on the Site.
- 9.3 These responsibilities are to be read together with and form part of this contract.

10. HIRE OF EQUIPMENT

- 10.1 Where Equipment is hired from Wanaka Cranes:
- 10.1.1 the Equipment shall at all times remain the property of Wanaka Cranes;
 - 10.1.2 the Customer shall not attempt to alienate the Equipment in any way or deal with the Equipment in any way that may be prejudicial to Wanaka Cranes;
 - 10.1.3 the Customer warrants that it will provide a secure area for any Equipment (including Cranes) that is left on the Site unattended during non-business days, public holidays, weekends and after hours and agrees that it shall be liable for any damage to or loss of the Equipment during the aforementioned periods AND in the event of any Equipment subsequently being damaged or lost the Customer shall pay to Wanaka Cranes the cost of making good the repair to the Equipment or the cost of replacing the Equipment whichever is the lesser;
 - 10.1.4 Wanaka Cranes 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.

10.2 Site Conditions and Access

- 10.2.1 The Customer must advise Wanaka Cranes prior to the commencement of the Services or the performance of the Equipment of any factor that may prevent or delay the performance of the Equipment and Services or potentially cause damage to the Equipment, other property or utility services including but not limited to ground conditions, topographical conditions, underground services, footpaths, driveways, grounds, lawns, structures, access ways, working area and health and safety issues.
- 10.2.2 Should the Equipment or 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 customer's account.
- 10.2.3 The Customer will be liable for any cost whatsoever incurred by Wanaka Cranes for failure by the Customer to comply with clause 10.2.1 including any periods of inactivity of the Equipment resulting from the need to rectify any of those factors in clause 10.2.1.

10.3 Use and Handling of Cranes

- 10.3.1 The parties acknowledge that the operator of Cranes ("Crane Operator") is and remains an employee of Wanaka Cranes.
- 10.3.2 The Customer shall not attempt to undertake any maintenance, repair or modification on any of the Equipment on its Site and during the period of Hire. Accordingly, and subject to clause 10.2.3, Wanaka Cranes is solely responsible, at its cost, for the daily servicing of the Equipment, minor maintenance in accordance with the OEM operation and manufacturing requirements, repairs to hoses, belts, air-conditioning and electrical systems, maintenance and replacement of the undercarriage, steel wire ropes, buckets, hooks, pulleys, tyres, compactor feet, fuels, grease and lubricants and all other requirements for the operation of the Equipment.
- 10.3.3 The Customer shall not:
 - (a) require, permit or suffer the Crane Operator to do anything contrary to any act, regulation, by-law requirement, code of practice or recognized convention or perform any Services or use any Equipment or Crane in such a manner as to put at risk the health, safety and wellbeing of any person on the Site;
 - (b) allow any other person to operate a Crane or other Equipment without first obtaining the express written consent of Wanaka Cranes;
 - (c) where consent is granted under clause 10.3.3(b), permit or suffer the operation or direction of the Crane or other Equipment by any person who by reason of intake of drink or drugs has his or her faculties impaired; or
 - (d) request the Crane Operator to lift any load which is beyond the rated lifting capacity of the Crane for any purpose.
- 10.3.4 The Customer agrees that the Crane Operator may refuse to comply with any request made by the Customer in relation to the use of a Crane and accordingly must seek further advice or direction from Wanaka Cranes for a resumption by the Crane Operator and the Customer agrees that it will comply with such advice or directive given by Wanaka Cranes.
- 10.3.5 Where the Customer has understated the weight or dimensions of the goods to be lifted by a Crane and Wanaka Cranes has relied on the weight, dimensions or working radius stated, the Customer shall be responsible for all extra cost and risk incurred by Wanaka Cranes' requirement to adhere to any manufacturer's specifications relating to the Crane or Equipment.

10.4 Damage to Goods

Wanaka Cranes accepts no responsibility for loss or damage to goods during the performance of the Equipment and Services however caused during the period of the hire except for loss or damage arising out of a grossly negligent act or default of Wanaka Cranes.

10.5 Stoppages

Wanaka Cranes shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond Wanaka Cranes' control including but not limited to weather conditions, ground conditions, strikes, pandemics and industrial disputes.

10.6 Period of Hire

The period of hire shall be calculated on a depot to depot basis and shall therefore be the elapsed time in any day from the time of the departure of the Equipment to the Customer (or the Customer's Site) from Wanaka Cranes' depot, to the time of return of the Equipment to Wanaka Cranes' depot on that or any other day. Hire shall be charged accordingly.

10.7 Additional Jib Sections and Crane Equipment

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

10.8 Overtime

Additional charges will be payable by the Customer in accordance with Wanaka Cranes' current hire price list for all work performed outside normal working hours and on Saturdays, Sundays, or Public Holidays. A minimum charge of three hours for the Equipment and Services and Equipment Operator applies to work carried out on callback Saturdays, and a minimum of 6 hours on Sundays or Public Holidays.

10.9 Crane Operator's Accommodation

Where the Site is at a distance from the depot so that overnight accommodation for the Equipment Operator and any other accompanying personnel is necessary, the cost of the accommodation and meals will be to the Customer's account.

11. CONSUMER GUARANTEES ACT

11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires equipment and services from Wanaka Cranes for the purposes of a business in terms of Sections 2 and 43 of that Act.

12. PERSONAL GUARANTEE

12.1 The person(s) signing the contract, in consideration for Wanaka Cranes agreeing to supply the Equipment and Services and grant credit to the customer, agrees that he or she signs the contract in his or her personal capacity and jointly and severally personally guarantees and undertakes to Wanaka Cranes the correct payment of any and all other monies, now or hereafter owed by the Customer to Wanaka Cranes. Any personal guarantee made by any party shall not exclude the Customer any way whatsoever from the liabilities and obligations contained in this contract.

13. MISCELLANEOUS

13.1 Wanaka Cranes shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

13.2 Failure by Wanaka Cranes to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or Wanaka Cranes has under this contract.

13.3 If any provisions of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and forcibility of the remaining provisions shall not be affected, prejudiced or impaired.

