

TERMS AND CONDITIONS OF TRADE



1. DEFINITIONS

- 1.1. "Crane" means a crane hired by Titan Cranes to the Customer (whether the original crane hired or any substitute), and includes all accessories and other Equipment belonging to Titan Cranes attached to the crane or to be used in connection with it. For the purposes of these Terms and Conditions, the crane shall be deemed to be the property of Titan Cranes, whether such is the fact or not.
- 1.2. Titan Cranes means Titan Cranes Limited, or any agents or employees thereof.
- 1.3. "Customer" means any person, corporation or other entity hiring Equipment and Services, their agents and employees, successors, assigns or any person acting on behalf of that person, corporation or entity.
- 1.4. "Equipment" means all equipment and materials provided by Titan Cranes to the Customer including, without limitation, all Cranes (with or without operators), hoists, vehicles and pre-cast buildings and any fee or charge associated with the supply of such equipment.
- 1.5. "Services" means any services provided by Titan Cranes to the Customer in relation to the Equipment including, without limitation, any transport services, labour hire or advice and any fee or charge associated with the supply of such services.
- 1.6. "Price" means the cost of the Equipment and/or Services as agreed between Titan Cranes and the Customer subject to clause 4 of these Terms and Conditions.
- 1.7. "Carrier" means Titan Cranes Limited, or any agents or employees thereof.

1a. HIRE OF EQUIPMENT AND SERVICES

The Customer agrees to hire the Equipment and otherwise accept the supply of the Services from Titan Cranes in accordance with these Terms and Conditions.

2. ACCEPTANCE

- 2.1. Any instructions received by Titan Cranes from the Customer for the supply of Equipment and/or Services including Equipment and/or Services that Titan Cranes has ordered or is required to order from overseas shall constitute a binding contract and acceptance of these Terms and Conditions.

3. COLLECTION AND USE OF INFORMATION

- 3.1. The Customer authorises Titan 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/or Services provided by Titan Cranes to any other party.
- 3.2. The Customer authorises Titan Cranes to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3. 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, the Equipment and/or Services shall be deemed to be hired at the current amount as such Equipment and/or Services are hired by Titan Cranes at the time of the contract.
- 4.2. The Price may be increased by the amount of any reasonable increase in the cost of supply of the Equipment and/or Services that is beyond the control of Titan Cranes between the date of the contract and delivery of the Equipment and Services.
- 4.3. Titan Cranes may require the payment of a deposit, the sum of which will be determined by Titan Cranes in its sole discretion and shall constitute a part payment of the total cost of Equipment and/or Services hired.
- 4.4. Titan will be entitled to charge a surcharge for all works, Equipment and/or Services the Customer requires on a public holiday.
- 4.5. Titan 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/or Services supplied must be paid for in full no later than the 20th day of the month following the date of Titan Crane's invoice ("the Due Date").
- 5.2. Interest may be charged on any amount owing after the Due Date at the rate of 2.5% per month or part month, and will, if so charged, be paid by the Customer.
- 5.3. Without limiting clause 8.3, the Customer shall upon demand, pay or reimburse the Equipment owner for any expenses, disbursements and legal costs incurred by Titan Cranes, in the enforcement of any rights, powers or remedies under or in relation to these Terms and Conditions, including, without limitation, any reasonable solicitor's fees, other legal and court costs and debt recovery expenses.
- 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. Where the Customer cancels the Equipment and/or Services less than 24 hours prior to the commencement of hire (communication of such cancellation to be provided verbally and in writing to a Titan Cranes representative), the Customer shall be liable to pay Titan Cranes up to 80% of the full Equipment and/or Service costs. Such sum to be determined by Titan Cranes in its sole discretion.

6. QUOTATION

- 6.1. Where a written quotation is given by Titan Cranes for Equipment and/or Services:
 - 6.1.1. The quotation shall be valid for sixty (60) days from the date of issue; and
 - 6.1.2. The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2. Where Equipment and/or Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Equipment and Services.
- 6.3. Any quoted prices may be subject to certain requirements provided by Titan Cranes to the Customer which are to be read in addition to these Terms and Conditions. Only written quotations are binding on Titan Cranes.

7. DISPUTES

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- 7.1. No claim relating to Equipment and/or Services will be considered unless made within seven (7) days of delivery or, where appropriate, supply and erection.
- 7.2. In the event of any dispute or difference arising between the parties in respect of any matter concerning these Terms and Conditions, the parties shall in good faith in the first instance use their best endeavours to resolve the matter themselves.
- 7.3. In the event that the parties are not able to resolve the matter themselves, the parties may agree upon a formal mediation to be conducted by a mediator acceptable to both parties.
- 7.4. The Customer and Titan Cranes shall bear the costs of the mediator equally.
- 7.5. In the event that:
 - a) the parties do not agree upon the appointment of a mediator within a reasonable period; orthe parties are unable to resolve the dispute by mediation, the dispute shall be referred to arbitration under and in accordance with the Arbitration Act 1996.

8. LIABILITY

- 8.1. The Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Titan Cranes which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Titan Cranes, Titan Crane's liability shall only apply to the minimum extent required by the relevant statute.
- 8.2. Except as otherwise provided by clause 8.1, Titan Cranes shall not be liable for any loss or damage of any kind whatsoever 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/or Services provided by Titan Cranes to the Customer except where such loss or damage arises directly from the negligence or default of Titan Cranes. Titan Cranes shall not in any circumstances be liable for any indirect or consequential loss or damage (including, without limitation, loss of profits or revenue) incurred by the Customer or any other person.
- 8.3. The Customer shall indemnify Titan Cranes against all claims and loss of any kind whatsoever however caused or arising brought by any person in connection with any matter, act, omission, or error in connection with the Equipment and/or Services unless Titan Cranes is responsible for such claims or losses under Clause 8.1 or 8.2.
- 8.4. Titan Cranes will not be liable for any loss or damage of any kind whatsoever arising from any Equipment not arriving on time or from deficiencies in the performance or reliability of any Equipment.
- 8.5. No party shall have any claim against Titan Cranes nor shall Titan Cranes be liable for any matter arising from or relating to the Crane Hire Agreement or these Terms and Conditions generally.

9. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

- 9.1. The Customer shall comply with its obligations under the Health and Safety in Employment Act 1992 (and any applicable regulations or codes of practice made pursuant to that Act including, but not limited to, the HSE (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999) to ensure that, in performing its obligations under this contract, a safe working environment exists for:
 - a) employees and contractors of Titan Cranes and the Customer; and
 - b) third parties entering or on the site.

10. HIRE OF EQUIPMENT AND SERVICES

- 10.1. Where Equipment is hired from Titan Cranes:
 - 10.1.1. The Customer shall not part with possession of the Equipment AND shall not sublet, sell, or attempt to alienate the Equipment in any way, or grant a security interest in, or deal with the Equipment in any way that may be prejudicial to Titan Cranes;
 - 10.1.2. Except as otherwise provided by these Terms and Conditions, the Customer shall be liable for any damage to, or loss of, the Equipment however caused AND in the event of any Equipment being damaged or lost the Customer shall pay to Titan Cranes the cost of making good the repair to the Equipment or the cost of replacing the Equipment whichever is the lesser;
 - 10.1.3. Slings:

Titan 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. All slings and ancillary Equipment shall be used by the Customer at the sole risk of the Customer. Titan Cranes does not accept responsibility for the correct use of slings or lifting Equipment or for the method of slinging. If any slings or lifting Equipment belonging to Titan Cranes are destroyed or damaged, the Customer shall pay to Titan Cranes the cost of replacement or repair (as the case may be) resulting from that destruction or damage;
 - 10.1.4. Site Conditions and Access:
 - a) The Customer will ensure:
 - i) that the ground at the site is adequate to support the Crane under its wheels, tracks and outriggers;
 - ii) that the ground giving access to the site is stable and firm and of a gradient no steeper than 1 in 10; and
 - iii) that clearance of 4 metres is afforded in respect of all overhead wires and that footpaths, kerbs and channels are suitably planked;
 - b) Should the Crane need to be towed into or out of the site, the cost shall be additional to the rate quoted and will be to the Customer's account;
 - 10.1.5. Use and Handling of Crane:
 - a) The Crane operator shall be provided by Titan Cranes. Notwithstanding this, the Customer shall be responsible for all claims arising in connection with the operation of the Crane by the operator where such operation is under the direction of the Customer;
 - b) The Customer shall not:
 - i. require, permit or suffer the Crane operator to do anything contrary to any act, regulation, by-law, requirement, code of practice or recognised convention;
 - ii. allow any other person to operate the Crane without first obtaining the written consent of Titan Cranes;
 - iii. permit or suffer the operation or direction of the Crane by any person who by reason of intake of drink or drugs has his or her faculties impaired;

- iv. use or permit the use of the Crane to lift any load which is beyond the rated lifting capacity of the Crane or for any purpose other than for which Titan Cranes has permitted it to be hired. For the avoidance of doubt, Titan Cranes does not warrant that the Crane is fit or suitable for any such purpose; or
 - v. Issue instructions to the Crane operator which conflict with the directions of Titan Cranes, the Crane operator's employment obligations, or would otherwise breach these Terms and Conditions or cause any risk to persons or property;
 - c) Titan Cranes reserves the right to provide a supervisor to the site if Titan Cranes in its sole discretion considers it necessary. If Titan Cranes does so the charges payable by the Customer shall be increased accordingly;
 - d) The Customer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift (measured from the radial point of the Crane) will not be exceeded at any time. Where the weight is getting close to the maximum lifting capacity of the Crane, as stated by the Crane's safe load indicator, the Titan Cranes operator or supervisor has absolute discretion whether to complete the lift as planned or use a safer alternative. A larger capacity Crane may be required and that will be at a cost agreed before completion of the lift;
 - e) Where the Customer has understated the weight or dimensions of the goods to be lifted by the Crane and Titan Cranes has relied on the weight, dimensions or working radius stated, the Customer shall be responsible for all extra cost and risk incurred by Titan Cranes by reason of Titan Crane's reliance upon such stated weight, dimensions or working radius;
 - f) The Customer shall be responsible for all loss or damage whatsoever caused while the Crane is entering, leaving or on the site, including the cost of repairs suffered or incurred by Titan Cranes in consequence of any breakdown or damage to the Crane where such breakdown or damage is caused by any negligent act, omission, misdirection, or misuse of the Crane on the part of the Customer or the Customer's servants, agents, contractors or subcontractors and in particular shall be responsible for the payment of hire at the appropriate negotiated rate during the period that the Crane is necessarily idle as a result of any such negligent act, omission, misdirection or misuse of the Crane;
- 10.1.6. Damage to Goods:
Titan Cranes is not liable for loss or damage to goods being handled by the Crane or damaged by the Crane however caused during the period of the hire;
- 10.1.7. Damage to Services and Property:
The Customer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, vehicles or any other property whatsoever caused by the crane during the period of hire except where such loss or damage arises directly as a result of the negligence or default of Titan Cranes. For the avoidance of doubt, the Customer shall be responsible for fully complying with clause 10.1.4 above and for advising and informing Titan Cranes of any site hazards, ground instability or other issues that may interfere with the proper operation of the crane during the period of hire;
- 10.1.8. Stoppages:
Titan Cranes shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond Titan Crane's control including, but not limited to, weather conditions, ground conditions, strikes and industrial disputes;
- 10.1.9. 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 delivery of the Crane to the Customer at Titan Crane's depot to the time of re-delivery of the Crane by the Customer to Titan Crane's depot on that or any other day. Hire shall be charged accordingly;
- 10.1.10. 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;
- 10.1.11. Overtime:
Additional charges will be payable by the Customer in accordance with Titan Crane's 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 operator applies to work carried out on callback Saturdays, Sundays or public holidays;
- 10.1.12. Site Allowance:
Where site allowances are payable, there will be an additional charge to the Customer; and
- 10.1.13. Crane Operator's Accommodation:
Where the site is at a distance from the depot so that overnight accommodation for the Crane operator and any other accompanying personnel is necessary, the cost of the accommodation and meals will be to the Customer's account.

11. CONSUMER GUARANTEES ACT

- 11.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer hires Cranes or otherwise acquires Equipment and/or Services from Titan Cranes for the purposes of a business in terms of section 2 and 43 of that Act.

12. CARRIAGE OF GOODS

- 12.1. Goods are to be carried at owner's risk. This means that the Carrier will pay no compensation if the goods are lost or damaged, unless the Carrier intentionally loses or damages them.
- 12.2. The Customer is responsible for giving accurate information to the Carrier (including the estimation of weight or length) which will enable the safe and legal carriage of the goods. The Customer shall indemnify the Carrier in the event that this provision is breached and this indemnity is for the full amount of all losses or damages incurred by the Carrier, including penalties, fees, charges or fines imposed by the police or any court.
- 12.3. The Carrier may terminate the contract for carriage where the carriage is interrupted or cannot be completed due to an Act of God, extreme weather conditions or any event outside the reasonable control of the Carrier. In the case of termination under this clause, the Carrier shall not be liable for any losses or damage suffered by, or affecting the goods.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1. If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Titan Cranes agreeing to supply Equipment and/or Services and grant credit to the Customer, also sign this contract in their personal capacity and jointly and severally personally guarantee and undertake to Titan Cranes the payment of any and all other monies now or hereafter owed by the Customer to Titan Cranes. Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and the Customer shall be jointly and severally liable under the terms and conditions of this contract.

14. TERMINATION

- 14.1. Titan Cranes may immediately and without notice terminate the supply of Equipment and/or Services if:
- 14.1.1. the Customer fails to pay any money due or to perform any of its obligations under these Terms and Conditions;
 - 14.1.2. Titan Cranes believes on reasonable grounds that the Customer is about to breach or has breached any of these Terms and Conditions and that such breach may endanger any person or property;
 - 14.1.3. the Crane is destroyed or damaged to such an extent that it is inoperable or unsafe for use;
 - 14.1.4. the Customer does anything that in Titan Crane's opinion prejudices Titan Crane's rights in the Crane under this contract;
 - 14.1.5. the Customer, if it is a company, goes into liquidation or a petition to liquidate or a notice of intention to propose a resolution to liquidate is presented to the Customer; or
 - 14.1.6. the Customer, if it is a person, becomes bankrupt or dies.
- 14.2. Any such termination shall be without prejudice to the rights of Titan Cranes in respect of any breach of these Terms and Conditions

15. PERSONAL PROPERTY SECURITIES ACT 1999

- 15.1. The Customer acknowledges that:
- 15.1.1. these Terms and Conditions create a security interest (as defined in the Personal Property Securities Act 1999) in favour of Titan Cranes in Equipment hired to the Customer by Titan Cranes for a term of more than 1 year (within the meaning of the term "lease for a term of more than 1 year" as defined in the Personal Property Securities Act 1999);
 - 15.1.2. the Customer undertakes to do such acts and provide such information as in the opinion of Titan Cranes may be necessary or desirable to enable Titan Cranes to perfect any security interest created or provided for by these Terms and Conditions, as a perfected security interest with first priority. The Customer shall act immediately when requested by Titan Cranes; and
 - 15.1.3. to the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to any security interest created or provided for by, or perfected in the manner contemplated by these Terms and Conditions.
- 15.2. In addition to the security interest referred to in clause 15.1.1, the Customer also grants a security interest in all present and after acquired Equipment as security for all moneys now and in the future owing by the Customer to Titan Cranes.

16. INSURANCE

- 16.1. Titan Cranes may, at its own expense, arrange and maintain such insurance as it, in its discretion, considers is required in respect of any Equipment and Service, including (without limitation) public liability insurance for the goods being handled by any Equipment, to such an amount as Titan Cranes considers appropriate in the circumstances.
- 16.2. During the course of the hire, the Customer shall not do, or omit to do, anything that may allow the insurance cover referred to in Clause 16.1 or claims under that insurance cover to be cancelled or refused.
- 16.3. Where the Customer is required to obtain its own insurance for the Equipment and Service, it will name Titan Cranes as a co-owner of the policy and provide Titan Cranes with a copy of the policy at least 1 working day prior to the commencement of the hire.

17. NOTICE OF ACCIDENTS

- 17.1. If any Crane is involved in any accident resulting in injury to any person or damage to any property (including damage to the Crane itself), the Customer must give immediate notice of the accident to Titan Cranes by telephone and must within 24 hours of the incident provide full details of the accident to Titan Cranes in writing.

18. MISCELLANEOUS

- 18.1. Titan 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.
- 18.2. Failure by Titan 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 obligations Titan Cranes has under this contract.
- 18.3. If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.4. No amendment to these Terms and Conditions will be effective unless it is in writing signed by both parties.
- 18.5. Neither party may assign, transfer or deal in any manner with the benefit or burden of these Terms and Conditions without the prior consent of the other party.
- 18.6. These Terms and Conditions may be executed in two counterparts, each which will be deemed an original, but both of which will constitute one and the same instrument. A party may enter into this contract by signing a counterpart.
- 18.7. These Terms and Conditions, together with the Guarantee and Indemnity constitute the entire agreement between the parties on the supply of the Equipment and Services. Together they replace all earlier agreements, conditions and warranties, whether oral or written, between the parties relating to the supply of the Equipment and Services.