

THESE ARE THE TERMS AND CONDITIONS OF CONTRACT OF
WILLIAMS CRANES & RIGGING PTY LTD ACN 056 901 725

1. Application of Terms and Conditions of Contract

- 1.1 All Services are subject to these Terms and Conditions.
1.2 To be valid, any variation to these Terms and Conditions must be in writing and agreed to by Us and You.

2. Definitions and Interpretations

2.1 In these Terms and Conditions:

- (1) **“Us, We or Our”** means Williams Cranes & Rigging Pty Ltd and where the context permits includes Our servants, agents and subcontractors;
(2) **“You or Your”** means any person at whose request or on whose behalf We provide Services. Where an individual purports to sign this Contract on behalf of a corporation, that person shall be jointly and severally liable hereunder with the corporation as if the person so signing was a principal contracting party;
(3) **“Services”** means the work performed or to be performed under this contract whether provided gratuitously or otherwise and includes the supply of Equipment and personnel;
(4) **“Equipment”** means any crane, vehicle, plant or other equipment provided to carry out the Contract;
(5) **“Goods”** means all wares, merchandise, plant, machinery and articles of every kind and description and includes packages, crates, cases and contents thereof of whatsoever kind, to be handled, lifted and/or carried in accordance with this Contract;
(6) **“Charges”** means the rates shown on Our current price list for the Services provided unless otherwise provided by separate agreement;
(7) **“Person”** reference to a person includes a firm, corporation, unincorporated association and government body and any contractor, servant, agent and other person or corporation claiming through, under or in trust for such person.

3. Subcontracting

- 3.1 We have full liberty to arrange a subcontractor to perform the Services or any part of the Services.

4. Charges

- 4.1 Charges are calculated on the time from when the Equipment leaves Our depot to perform the Services until it returns to such depot.
4.2 We are entitled to charge and You will pay Us Charges for any time during which the Equipment is delayed either in travelling to or from or at the site at which You require Services to be performed so long as such delays result from any cause beyond Our reasonable control.
4.3 You must pay Us all agreed amounts as soon as they are due and without any deduction or deferral for any claim, legal action or setoff.
4.4 Unless We notify You otherwise, payment is required when the Services are supplied.
4.5 Payment Claim under the Building Industry Fairness (Security of Payment) Act 2017 – We are entitled to make a claim for payment on each day Services are supplied.

5. Your Obligations

- 5.1 You are bound by these Terms and Conditions.
5.2 You warrant that You have the authority to agree to these Terms and Conditions.
5.3 You must give Us sufficient instructions to enable us to adequately perform the Services.
5.4 You must provide Us with any information concerning the nature of the Goods and their packaging that We reasonably request.
5.5 You must declare to Us the weight and nature of the Goods. We will rely on such declaration in providing the Services and You will be responsible for all extra costs, losses and damages incurred by Us due to such reliance and You will bear the full risk of such reliance. We will not be responsible for any loss of or damage to any Goods sustained as a result of nondisclosure by You of any special or hidden features of the Goods.
5.6 You will be responsible for ensuring that the Equipment is not used on Your behalf for any purposes other than that for which it was expressly hired and that it is not employed by You to handle, lift and/or carry any load which is beyond the rated lifting and/or carrying capacity, and you will be liable for and indemnify Us against all claims and demands for any damage whatsoever caused as a result of any such misuse or overload, which includes any damage to Our Equipment.
5.7 You will provide clear access to and from and on all work sites, including the location and identification of all underground services, excavations and trenching. Any damage incurred as a result of not providing the above will be to Your cost.

- 5.8 You will bear the cost of and We will not be responsible for any delays, inconvenience or loss or damage whether direct or indirect of any kind whatsoever incurred by Us due to or as a result of any accident, bogging, breakdown or defect in the Equipment or any part thereof for any reason or from any other cause whatsoever, or as a result of Us obeying any instructions given by You, and any delays will be charged for by Us as Charges.
- 5.9 On completion of the Services or on termination of this contract for any reason You will at Your expense return the Equipment to Our depot in good and serviceable order and condition, fair wear and tear only excepted.
- 5.10 Where You direct Services You will be responsible for those Services.
- 5.11 Where Goods are transported to, from or on the site at Your request, direction or for Your benefit the transportation of those Goods will be at Your risk and without limiting the generality thereof You will be responsible for any loss or damage occasioned to those Goods and any consequential loss or damage howsoever arising caused to You or any person arising from the transportation of those Goods. Goods will be transported for the purposes of this clause where they are moved from one place to another by propulsion of the Equipment.
- 6. Your Indemnities to Us**
- 6.1 You release, indemnify Us and keep Us indemnified against all actions, demands, claims, suits, losses and/or damages sustained by Us as a result of any damage caused to the person or property of any person as a result of Us carrying out this Contract whether caused by any acts, defaults or negligence of Us or otherwise.
- 6.2 You indemnify Us against any claim or legal action arising from any breach of Your obligations under these Terms and Conditions or any act or omission by You or any person acting on Your behalf or handling, loading, stowage, or unloading of the Goods by You or any person acting on Your behalf or Our complying with the instructions given by or on behalf of You or the act or order of any Authority, whether the claim or legal action is made by You or any other persons, and for direct, consequential or other loss.
- 6.3 You must pay to Us all liabilities and costs referred to in any indemnity contained in the Terms and Conditions whether or not We have paid or satisfied them.
- 7. Our Liability**
- 7.1 Subject to clause 9 We will not be liable for any claim or loss including any claims or losses arising from Our negligence; deterioration of the Goods; delay; bailment; tortious liability; non-performance of any obligation; misdelivery; death or injury to persons; breach of contract; or any other cause, whether the claim is made by You or any other person; and/or for direct, consequential or other loss; whether such loss or damage was caused by any acts, defaults or negligence on the part of Us or otherwise.
- 7.2 We are discharged from all liability unless notice of any claim or legal action is received by us within 28 days and legal proceedings are commenced and written notice of those proceedings is received by Us with 12 months after the Services have been provided.
- 8. Insurances**
- 8.1 We will not arrange any insurance for Goods unless You ask Us to do so in writing; You pay the cost of the insurance and insurance is available. We may at our option, decline to effect / arrange such insurance.
- 9. Trade Practices Act**
- 9.1 These Terms and Conditions including any limitation of liability are subject to the provision of the *Trade Practices Act 1974*. All warranties regarding the Services are excluded to the fullest extent permitted by Law. However this exclusion does not extend to those minimum requirements of the *Trade Practices Act* which cannot be excluded.
- 10.** All Services are provided and all Goods are handled, lifted and/or carried entirely at Your risk.
- 11.** If You breach any terms of this Contract or are presented with a petition for winding up then We may terminate this Contract and recover the Equipment and We will be entitled to recover from You as a debt due and owing any costs, losses or damages incurred by Us as a result of such termination and recovery.
- 12.** If any provisions of this Contract will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be in any way affected or impaired thereby and the provisions of this Contract will be of full force and effect except to the extent that they are or any part thereof is void by operation of any relevant legislation.
- 13.** Headings are inserted for guidance and do not affect the interpretation of these Terms and Conditions.

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14. This Contract will be governed by the Laws of Queensland. Any proceedings arising out of this Contract will be commenced in the Brisbane Registry of a Court of Appropriate Jurisdiction.
 15. This contract contains the entire agreement between the parties and supersedes all prior negotiations, understandings, requests, terms of any order (other than the extent to which the order refers to Charges and in those circumstances the order forms a part of this contract only to the extent of the rates to which it refers, all other terms stipulations or conditions of the order are of no effect) and agreements whether oral or written.