



## Mobile & Tower Crane Hire – Terms & Conditions

### 1. HIRE AGREEMENT BETWEEN YOU AND US

These Terms of Hire, together with: (a) each Hire Schedule provided to You by Us, whether signed or not; and (b) any Special Conditions specific to the type of Equipment You have hired, set out the terms of the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Hire Agreement.

### 2. DEFINITIONS

When We refer to the following terms in this document: "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth). "Consumer" means a consumer as that term is defined in the ACL. "Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL. "Credit Application" means any application for a Credit Account completed by You. "Credit Account" means any billing arrangement We have extended to You upon Our approval of the Credit Application. "Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment. "Equipment" means any equipment provided by Us to You under the Hire Agreement, including any associated or attached tools, accessories and parts available for hire. "Expected Off Hire Date" means the date that You expect the Hire Period to end. This date is set out in the Hire Schedule. "Hire Charge" or "Hire Charges" means the rates and charges payable by You for the hire of the Equipment (including labour). "Hire Period" means the period described in clause 4. "Hire Schedule" means the document provided by Us to You which includes details of the Equipment You have hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment. "Long Distance Location" is a location in excess of 50km from Our nearest branch. "Non Excludable Provision" has the meaning set out in clause 16.3. "Off Hire Date" has the meaning set out in clause 5.7. "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it and the following words in clause 9.2, 10 and 30 have the respective meanings given to them in the PPSA: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement. "Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works. "Related Body Corporate" has the same meaning as in the Corporations Act 2001. "Relevant Documents" means: (a) the Credit Application; and (b) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us. "Special Conditions" means the RAR Hire special conditions of hire July 2014 edition or as amended from time to time. "We/Us/Our" means RAR Crane Hire Pty Ltd and, in some cases, may include Related Body Corporates of RAR Crane Hire and their successors and assigns. "You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

### 3. OUR HIRE COMMITMENT TO YOU

We agree to hire the Equipment to You and will provide the Equipment to You in good working order.

### 4. THE HIRE PERIOD

**4.1** Subject to anything in the contrary in the Special Conditions, the Hire Period commences on the earlier of the following: (a) when You take possession of the Equipment; OR (b) if You request delivery of the Equipment, the time We deliver the Equipment to the address in the Hire Schedule. **4.2** The Hire Period is for an indefinite term and ends when the Equipment is back in Our control and possession. **4.3** The Hire Period includes weekends and public holidays, continues in periods of inclement weather, industrial dispute, RDO, lockdowns, union actions days, Easter and Christmas shutdown. **4.4** A minimum Hire Period may apply in respect of certain items of Equipment ("Minimum Hire Period"). We will advise you at the time of hiring if a Minimum Hire Period applies. If You do not require the Equipment for the full Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

### 5. OPTION TO EXTEND HIRE PERIOD

**5.1** We may in our absolute sole and unfettered discretion but without being obliged to do so, extend the original Hire Period if you deliver a written notice of exercise of option on or before the date specified in the Schedule. We are not required to exercise our discretion under this clause for your benefit, and we do not have any obligation under this Hire Agreement to extend the original Hire Period. **5.2** If We extend the Hire Period then: (a) the Hire Period will be extended for the duration specified in the notice at the new Hire Rate specified in the Schedule; and (b) All the terms and conditions of this Hire Agreement Shall continue to apply.

### 6. SECURITY

**6.1** You must pay a cash deposit to Us for the Security Amount (the "Security Deposit") as security for the due and proper performance by You of your obligations under this Hire Agreement and within 14 days of the date of this Hire Agreement or the date on which you require Equipment, whichever comes first. **6.2** If: (a) We have a Claim against you (including for breach of contract); or (b) you fail to pay Us an amount due and payable under this Hire Agreement within the time provided under this Hire Agreement, then We may have recourse to Security Deposit. **6.3** If We have recourse to the Security Deposit in accordance with the terms of this Hire Agreement, then You must, upon notice from Us, replenish the Security Deposit to the Security Amount within 5 days of such notice. **6.4** Our entitlement to the Security Deposit shall cease 60 days after the expiration of the Hire Period (including as extended in accordance with clause 5) and We shall release and return any remaining money comprising the Security Deposit to You by that time.

### 7. HOW WE CALCULATE YOUR HIRE CHARGES

**7.1** You will pay Us for the hire of the Equipment at the Hire Charge set out in the Hire Schedule. **7.2** The Hire Schedule will specify the type of rate which will apply to You and the method of calculation. **7.3** Additional Hire Charges as set out in the Hire Schedule will apply if the Equipment is used for more than 8 hours or 1 shift per day. **7.4** You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date. This obligation survives termination of the Hire Agreement. **7.5** Hire Charges will commence from the Hire Period and continue until the date You notify Us that the Equipment will be available for collection (the "Off Hire Date"). The Equipment must be available for collection by no later than the time of day at which Your hire commenced (e.g. if Your hire commenced at 10am, then the Equipment must be ready for collection by no later than 10am on the Off Hire Date), otherwise We reserve the right to charge additional Hire Charges. For the avoidance of doubt, the Expected Off Hire Date is not considered to be Your notice to Us that the Equipment is available for collection. **7.6**, if we have provided You with a quote, the price quoted is valid for 30 days and is subject to the receipt of an official purchase order, availability of equipment, variation to the Scope of Works and site inspection prior to commencement of work. **7.7** Extra visits to site due to inclement weather, industrial dispute or for any other circumstances for which RAR Cranes have no control or responsibility will incur additional charges. **7.8** If Equipment is not available, We will endeavour to offer alternative Equipment but cannot guarantee supply. **7.9** You may engage us by accepting our quotation or accepting delivery of or using Equipment.

### 8. OTHER CHARGES

In addition to the Hire Charges, You agree to pay as listed in the Hire Schedule: (a) for any additional items or labour, fuel or trade materials We supply to You; (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You; (c) any stamp duty or GST arising out of this Hire Agreement; (d) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment; (e) charges for payment made by credit card; (f) an environmental charge in relation to any item of Equipment, as detailed in the Hire Schedule; (g) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us; (h) charges in connection with the administration of Your Credit Account, as detailed in the Hire Schedule, which may include printing and postage



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costs; (i) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours.

### 9. PAYMENT

**9.1** We will invoice all charges to You monthly. You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement set out in the Hire Schedule within 30 days of the date of our invoice from end of month. **9.2** If You do not pay the invoice in full by the payment due date, We may cancel any further bookings and charge, in addition to any other costs recoverable under this Hire Agreement: (a) interest, calculated and compounding monthly, on the total outstanding balance (the interest rate used to calculate the interest payable for the month is 12% per annum) and (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement. **9.3** We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

### 10. YOUR OBLIGATIONS TO US

**10.1** This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing. **10.2** You agree that You have satisfied Yourself as to the suitability and condition of the Equipment. Subject to clauses 16.2 and 16.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose. **10.3** You must (a) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; (b) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and (c) not remove fuel or oil tank caps, bund plugs or seals from the Equipment. **10.4** At all times during the Hire Period, You must store the Equipment safely and securely. **10.5** You will allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period. **10.6** You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling. **10.7** You must not remove the Equipment from the State or Territory in which You hired it without Our written consent. **10.8** You must not use or move the Equipment over water without Our prior written consent, which may be reasonably withheld. **10.9** You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment. **10.10** You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 10.8, You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment is not capable of being decontaminated, You will be charged for the replacement cost of the Equipment. **10.11** We will supply an operator to operate the Equipment ("Operator"): (a) the Operator will be under Your direction and control during the Hire Period and will comply with Your reasonable directions; (b) We will not, while the Operator is working under Your direction and control in accordance with clause 10.11(a), seek to direct or supervise any of the work undertaken by Operator; (c) We will not be liable to You for any acts or omissions of the Operator where they are acting under your direction and control during the Hire Period; and (d) You will not allow any other person to operate the Equipment without Our prior written consent.

### 11. OWNERSHIP OF THE EQUIPMENT

**11.1** Except as detailed in clause 9.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only. **11.2** Except in the circumstances set out in clause 10, You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way. **11.3** In no

circumstances will the Equipment be deemed to be a fixture, except for the purposes of the PPSA. **11.4** You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

### 12. PPSA

**12.1** We may register any actual or impending security interest (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment. **12.2** You undertake to: (a) do anything that is required by Us (i) so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA; (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and (c) not create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent. **12.3** You : (a) waive Your right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement; (b) agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of : section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and (c) agree that the following provisions of the PPSA will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137. **12.4** Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information. **12.5** For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA. **12.6** You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

### 13. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.

### 14. WHAT TO DO IF EQUIPMENT BREAKS DOWN

**14.1** In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period We will: (a) immediately stop using the Equipment; (b) with You, take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment; (c) with You, take all steps necessary to prevent any further damage to the Equipment itself **14.2** We will: (a) take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and (b) not impose the costs associated with any repair or replacement of the Equipment. Other Maintenance and servicing will be performed in normal working hours. If requested outside these hours an additional overtime charge will apply per hour. **14.3** Our minimum response time to breakdown is 8 (eight) hours.

### 15. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

**15.1** If the Equipment has broken down or become unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for: (a) any costs incurred by Us to recover and repair or replace the Equipment;



and (b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced. **15.2** Provided that You pay the costs and charges described in clause 15.1, We will return or replace the Equipment, and You must continue to pay the Hire Charges for the remainder of the Hire Period.

### 16. INDEMNITIES AND EXCLUSION OF LIABILITIES

**16.1** Subject to clause 16.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law. **16.2** Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees. **16.3** Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election): (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again. **16.4** Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions. **16.5** Subject to clauses 16.3 and 16.4, We will not be liable to You for any consequential, indirect or special loss or damage, economic loss, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage. **16.6** You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of: (a) personal injury; (b) damage to property; or (c) a claim by a third party, in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses. **16.7** Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. **16.8** We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

### 17. TERMINATION OF HIRE AGREEMENT

**17.1** Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if: (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach; or (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business. **17.2** We may terminate the Hire Agreement and any Hire Period at any time for any other reason by giving 1 months' notice in

writing. **17.3** We may terminate the Hire Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents. **17.4** You may terminate this Hire Agreement and any Hire Period by giving one month's notice in writing to us, however You are responsible for costs incurred prior to and up to date of termination, for plant and equipment transfer, plant and equipment holding charges while not in use until end of the original term of contract. **17.5** These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

### 18. RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 18, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment pursuant to this clause.

### 19. SECURITY

**19.1** As security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property. **19.2** Without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a caveat, mortgage or other instrument of security over any real property and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments.; **19.3** You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage document.

### 20. LONG DISTANCE MAINTENANCE

**20.1** This clause 20 applies if You hire Equipment for use at a Long Distance Location. **20.2** All Equipment located at a Long Distance Location will be subject to a per kilometre charge both to and from the premises nominated by You. There will be no charge for the first 50 km either way. **20.3** Multiple items of Equipment which are located at the Long Distance Location will only be charged as one call out. **20.4** If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

### 21. LABOUR RATES

**21.1** Labour rates are subject to changes in accordance with EBA and/or Award increments, conditions or rulings. **21.2** Labour rates do not include multi storey or site allowances. These will be charged at an additional rate where We incur them. **21.3** For inclement weather, labour will be charged at a minimum of 8 hours per day. **21.4** Unless specifically excluded, all required Award payments will be to the Hirer e.g. inclement weather, late lunch, site/height allowance, double time for next shift if there is no 10 hour break, etc.

### 22. PRIVACY

**22.1** We will comply with the Australian Privacy Principles in all dealings with You. **22.2** We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to: (a) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 10; (b) provide services to You; (c) prevent theft of Our Equipment; (d) enter into contracts with You or third parties, and (e) to market to You and maintain a client relationship with You. **22.3** You also consent to Us disclosing Your personal information: (a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and (b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You. **22.4** You have the right to access the



personal information We hold about You. **22.5** Copies of Our Privacy Policy and Credit Reporting Policy are available upon request.

### **23. FORCE MAJEURE**

**23.1** Subject to clause 23.2, We will not be responsible for any delays in delivery, erection, dismantling or use of Equipment due to causes beyond our control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods or other inclement weather, strikes, lockouts or other labour difficulties and industrial action, shortages of or inability to obtain shipping space or land transportation, site instruction all of which will incur costs and be invoiced accordingly as a variation to this Hire Agreement. **23.2** Nothing in clause 23.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

### **24. SEVERABILITY**

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

### **25. GOVERNING LAW**

The Hire Agreement is governed by the laws of the Australian Capital Territory and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **26. ENTIRE AGREEMENT**

The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 28.

### **27. NO RELIANCE**

You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

### **28. VARIATION**

From time to time, We may wish to vary this Hire Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

### **29. NO WAIVER OF RIGHTS**

No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

### **30. REVIEW OF YOUR CREDIT APPROVAL**

**30.1** From time to time We may review any Credit Account We have granted to You without notice. **30.2** We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement. **30.3** If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must: (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and (b) pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

### **31. SIGNING THIS HIRE AGREEMENT**

**31.1** The person signing any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it. **31.2** The person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of a breach of warranty contained in clause 31.1.

### **32. ASSIGNMENT**

**32.1** We may assign this Hire Agreement to any third party (including a Related Body Corporate) without Your consent. **32.2** Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, then we may assign this Hire Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement. If You have reasonable grounds to believe the assignment will be detrimental to Your rights, You may terminate this Hire Agreement without penalty by giving Us 28 days written notice that You wish to terminate the Hire Agreement.

### **33. DIRECTOR'S GUARANTEE AND INDEMNITY**

**33.1** Where You are entering into this Hire Agreement in the capacity of a corporation that is not an ASX listed entity, each of Your directors agrees to act as guarantor ('Guarantor') for Your obligations under this Hire Agreement. **33.2** Each Guarantor guarantees to Us the prompt performance of all of your obligations contained or implied in this Hire Agreement. If the obligation is to pay money, We may recover the money from the Guarantor as a liquidated debt. **33.3** If You are not bound by some or all of your obligations under this Hire Agreement, the Guarantor agrees, by way of indemnity and principal obligation, to pay to Us the amount which would have been payable by the Guarantor to us under the guarantee in this clause had You been bound. **33.4** The Guarantor's liability under this clause is not affected by: (a) the granting of any time, forbearance or other concession by Us to You or any Guarantor; (b) any absolute or partial release of You or any Guarantor or any compromise with You or any Guarantor; (c) any variation or renewal of this Hire Agreement; (d) any assignment of this Hire Agreement; (e) the termination of this Hire Agreement; (f) the fact that this Hire Agreement is wholly or partially void, voidable or unenforceable; (g) non-execution of this Hire Agreement by one or more persons named as Guarantor or the unenforceability of the guarantee or indemnity against one or more of the Guarantors; or (h) the exercise or purported exercise by Us of our rights under this Hire Agreements. **33.5** The Guarantor's liability is not discharged by any payment to Us which is later voided by law. If that happens, the parties and the Guarantor will be restored to their respective rights as if the payment had not been made. **33.6** If a liquidator disclaims this Hire Agreement, the Guarantor indemnifies Us against any resulting loss. **33.7** The Guarantor must not prove or claim in any liquidation, composition, arrangement or assignment for the benefit of creditors until We have received all money payable to Us by You. The Guarantor must hold any proof, claim or dividend received by it on trust for Us. **33.8** Where more than 1 person is Guarantor under this guarantee and indemnity, the word Guarantor refers to, and this guarantee and indemnity binds, each of them individually and any 2 or more of them jointly. **33.9** The Guarantor may not: (a) raise a set-off or counterclaim available to it or You against Us in reduction of its liability under this guarantee and indemnity; (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by Us in connection with this Hire Agreement; (c) make a claim or enforce a right against Us or our property; or (d) prove in competition with Us if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of You or You are otherwise unable to pay your debts when they fall due, until all money payable to Us in connection with this Hire Agreement is paid; or (e) without our agreement, terminate or end this guarantee and indemnity.

### **34. PREVIOUS EDITIONS**

This edition of the Terms of Hire replaces and supersedes all previous editions of the Terms of Hire We have issued.



### 1. HIRE OF MOBILE CRANES

When You hire a Mobile Crane from Us, these additional Special Conditions of Hire form part of Your Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Terms of Hire unless indicated otherwise: **1.1 “Mobile Crane”** means mobile Equipment that is used for controlling the lifting, lowering and positioning of large, heavy or complex structures and includes all rigging and ancillary equipment. **1.2** In the event that the Mobile Crane is lost, stolen or damaged during the Hire Period, for the avoidance of doubt, Your liability is determined in accordance with this Hire Agreement. **1.3 “Hire Period”** is redefined in these Special Conditions, such that: (a) it commences when the Mobile Crane leaves Our premises; (b) is for an indefinite term; (c) ends when the Mobile Crane is back at Our premises; and (d) includes weekends and public holidays, and continues in periods of inclement weather, industrial dispute, RDO, lockdowns, union actions days, Easter and Christmas shutdown. **1.4** Clause 16.6 of the Terms of Hire is varied, such that We will not waive Our rights to claim against You for loss, theft or damage to the Mobile Crane. **1.5** In the event of an accident occurring to the Mobile Crane during the Hire Period, You will thoroughly record the circumstances of the accident, and fully co-operate with Us or our insurer. **1.6** You warrant that you may refuse to load the Mobile Crane in excess of the Mobile Crane’s gross vehicle mass at any time during the Hire Period. **1.7** You will be liable to pay Us a charge specified by us, which will include a labour fee, for all fuel used by the Mobile crane and refilling it during the Hire Period. **1.8** If there is any inconsistency between the Terms of Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency. **1.9** Any designs, calculations, drawings, specifications, sketches, advice or site assistance produced or given by Us for You are prepared solely on the information supplied by You and we are not responsible for the accuracy of the details contained therein. All designs, calculations, drawings, specifications, sketches, advice and site assistance produced or given by Us are indicative only. You acknowledge and agree that We are not liable for any loss or damage arising from the use of such designs, calculations, drawings, specifications, sketches, advice or site assistance. You indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of: (a) personal injury and death; (b) damage to tangible property; or (c) a claim by a third party, in relation to Your use or reliance on the designs, calculations, drawings, specifications, sketches, advice or site assistance produced or given by Us. **1.10** We are also excluded from all liability relating to the hire and use of the Mobile Crane, including, but not limited to, liability arising from: (a) damage to utilities or services on, above or below the ground; (b) damage to all existing, related, adjacent or surrounding structures on above or below the ground; (c) the operation of the Mobile Crane where it is not adequate for conditions, Your required purpose, specific job requirements, or intended use; or (d) malfunction of the Mobile Crane.

### 2. HIRE OF TOWER CRANES

**2.1** When You hire a Tower Crane from Us, these additional Special Conditions of Hire form part of Your Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Terms of Hire unless indicated otherwise: **2.2 “Tower Crane”** means Equipment that is temporarily erected on site and used for controlling the lifting, lowering and positioning of large, heavy or complex structures and includes all rigging and ancillary equipment. **2.2** In the event that the Tower Crane is stolen or damaged during the Hire Period, for the avoidance of doubt, Your liability is determined in accordance with this Hire Agreement. **2.3 “Hire Period”** is redefined in these Special Conditions, such that it (a) commences on the commissioning of the Tower Crane or after the start date, as advised by the Hirer to RAR Cranes in writing, or as otherwise agreed in writing by them; (b) is for an indefinite term and ends when the Tower Crane is fully removed from site, or as may be otherwise agreed in writing; and (c) includes weekends and public holidays, and continues in periods of inclement weather, industrial dispute, RDO, lockdowns, union actions days, Easter and Christmas shutdown. **2.4** Hire rates for plant and equipment are based on a single shift. In the event of the plant or equipment being used for additional shifts a 50% surcharge of the normal weekly rate will apply. **2.5** We may choose not to commence the erection of any Tower Crane without a purchase order from You. However, if we do so, then the pricing is as per our quote. **2.6** All critical works, (erections, dismantles, climbs, tie installations, etc.) have been priced for one visit to

site only and erection and dismantling of the Tower Crane is to be performed in normal working hours. **2.7** Clause 14.6 of the Terms of Hire is varied, such that We will not waive Our rights to claim against You for loss, theft or damage to Tower Crane. **2.8** You will be liable to pay Us a charge specified by us, which will include a labour fee, for all fuel used by the Tower Crane and refilling it during the Hire Period. **2.9** Tower Crane hire and labour charges will continue in the event of a breakdown during the 8 (eight) hours response time, after the written notice is received from the hirer. **2.10** The following items are NOT included in our quotation: (a) GST; (b) excavation, reinforcement, concrete and labour for Tower Crane base; (c) fuel and power to Tower Crane and/or plant and equipment; (d) road closures, permits, traffic control/management; (e) FAC/railway approvals; (f) signage and/or painting to Tower Crane to Your specification; (g) clear and safe access to base of Tower Crane; (h) supply, installation, removal and maintenance of signage; (i) engineer’s approval and sign off for banners/signs of Tower Crane; (j) survey set out and levelling; (k) site and Tower Crane security, including hoardings as may be required; (l) clear access for cranes, transport and personnel parking when critical works are in progress; (m) engineers’ approval and back propping of concrete slabs for mobile crane access; and (n) Tower Crane crew for critical works (erection, dismantle, climbs, tie installation etc) in excess of the manufacturer’s specifications at any time during the Hire Period. **2.11** Prior to any critical crane works being carried out including but not limited to erection, crane climbing, installation of ties, dismantling etc, We will require a written site instruction from you to proceed which must be received not less than 48 (forty eight) hours prior to work commencement. **2.12** We will complete all work in accordance with relevant Australian Standards including: (a) commissioning and testing of crane to AS 1418.4 Tower Cranes; (b) Computers (SMIE,BPE), test and calibration to AS 1418.4 Tower Cranes; (c) Inspection and testing of steel wire ropes to AS 3569 and AS 2759; and (d) Commissioning and testing of hoist to AS 1418.7 Builders Hoists. **2.13** We will not operate the Tower Crane when wind velocities exceed the manufacturers’ instructions or specifications. We will not accept responsibility for any loss or damage (whether direct, indirect, consequential or otherwise) that may result from the Tower Crane being unable to be operated or from being misused. You will be charged for any labour and part costs incurred due to misuse; **2.14** Where base design and installation is provided by You or others, We will require document certification from an engineer confirming the base design and base installation is in accordance with the relevant Australian Standards and conforms to the engineers drawings provided. We will also require an on-site inspection to confirm that the base is in accordance with the design and meets the requirements of the crane to be supplied. **2.15** Any designs, calculations, drawings, specifications, sketches, advice or site assistance produced or given by Us for You are prepared solely on the information supplied by You and we are not responsible for the accuracy of the details contained therein. All designs, calculations, drawings, specifications, sketches, advice and site assistance produced or given by Us are indicative only. You acknowledge and agree that We are not liable for any loss or damage arising from the use of such designs, calculations, drawings, specifications, sketches, advice or site assistance. You indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of: (a) personal injury and death; (b) damage to tangible property; or (c) a claim by a third party, in relation to Your use or reliance on the designs, calculations, drawings, specifications, sketches, advice or site assistance produced or given by Us. **2.16** We are also excluded from all liability relating to the hire and use of the Tower Crane, including, but not limited to, liability arising from: (a) damage to utilities or services on, above or below the ground; (b) damage to all existing, related, adjacent or surrounding structures on above or below the ground; (c) the operation of the Tower Crane where it is not adequate for conditions, Your required purpose, specific job requirements, or intended use; or (d) malfunction of the Tower Crane. **2.15** If there is any inconsistency between the Terms of Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.