

ZAMOTRO PTY LTD trading as FRANCRANE - TERMS & CONDITIONS OF HIRE

1 DEFINITIONS

- 1.1** "Owner" means Zamotro Pty Ltd trading as Francrane (ABN 21 003 859 952), its successors and assigns or any employee, agent, sub-contractor or person acting on behalf of and with the authority of the Owner.
- 1.2** "Hirer" means the Hirer and includes any party claiming through, under, in trust for or on behalf of the Hirer. Where more than one Hirer has entered into this agreement, the Hirers shall be jointly and severally liable for all obligations.
- 1.3** "Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Hirer on a principal debtor basis.
- 1.4** "Equipment" means the Equipment supplied by the Owner and shall include any other Equipment supplied by the Owner to the Hirer, and where the context requires, any supply of Services as described on invoices, quotation, schedule of rates or contract agreements.
- 1.5** "Fee" means the cost of the hire of the Equipment as agreed between the Owner and the Hirer subject to clause 7.
- 1.6** "Services" means all services (and Equipment where applicable) supplied by the Owner to the Hirer and includes any recommendations or advice provided by the Owner.
- 1.7** "Site" means the location or locations at which the Equipment is to be operated.
- 1.8** "Minimum Hire Period" means the minimum hire period as stated on the invoices, quotation, authority to hire, or any other forms as provided by the Owner.
- 1.9** "Term" means the term of the hire specified or such further period as agreed by the parties in writing.
- 1.10** "Agreement" means the agreed arrangement, either verbal or written, between the Owner and the Hirer and includes these terms and conditions.

2 HIRING OF EQUIPMENT

2.1 Acceptance of Agreement

- 2.1.1** The Owner agrees to hire the Equipment to the Hirer based on these Terms and Conditions of Hire to the exclusion of anything to the contrary in the terms of the Hirer's order, notwithstanding that any such order is placed on terms that purport to override these Terms and Conditions of Hire.
- 2.1.2** Any instructions by the Hirer for the supply of the Equipment and/or the Hirer's acceptance of the Equipment supplied by the Owner shall constitute an acceptance of these Terms and Conditions of Hire.
- 2.1.3** The Terms and Conditions herein are to be read in conjunction with the Owner's "Price List", which price list, invoices, quotation, authority to hire, or any other work authorisation forms shall also form part of this Agreement.

2.2 Ownership

The Equipment is and will at all times remain the absolute property of the Owner.

2.3 Release of Owner

The Hirer releases the Owner from any liability for loss, damage, injury or death arising out of the delivery, installation, ownership, hiring use or operation of the Equipment of whatsoever nature or kind.

2.4 No Warranties

The Hirer acknowledges that in entering into this Agreement:

- (a) It has relied solely on its own skill and judgement and not relied in any way on any representations, statements or warranties made by the Owner; and
- (b) It has satisfied itself as to the condition, specifications, quality and fitness of the Equipment for its proposed purpose.
- (c) To the maximum extent permitted by law, no warranty is provided by the Owner in respect of the condition of the Equipment or its fitness for any particular purpose. The Hirer shall indemnify and hold harmless the Owner in respect of all claims arising out of the use of the Equipment.

2.5 Risk and Indemnity

2.5.1 The Hirer assumes liability for and indemnifies the Owner against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Owner shall or may become liable in respect of (including without limitation):

- (a) Any loss, theft or damage to the Equipment or any property arising from the use of the Equipment;
- (b) Any death or injury to any person suffered or sustained in connection with the Equipment or use of the Equipment, whether arising from or is otherwise attributable to any negligence, failure or omission of the Hirer or any other persons.
- (c) Any underground or overhead services, footpaths, roads, driveways, grounds, lawns, fences or any other like property, whether public or private, however sustained, caused or contributed to by the use of the Equipment.

2.5.2 It is the responsibility of the Hirer to hold insurance cover for all items being lifted, and the Owner will not accept any responsibility for any damage to or loss of such items.

2.5.3 The Owner shall not be held liable for any delay in arrival on Site, delivery and/or recovery of Equipment and/or Goods, or commencement of work or interruption to the continuity of work due to reasons beyond its practical control, including but not limited to acts of God, terrorism, civil disturbance, war, riots, Government intervention or regulations, Council conditions or specifications, breakdown of plant, transport delays or accidents, industrial disputes, lockouts or other labour difficulties.

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2.5.4 The Hirer shall disclose to the Owner the nature of the Goods to be handled, lifted and/or carried. If the Owner deems the Goods are or may become dangerous or offensive, the Owner may do anything it believes to be appropriate to avoid or minimise any loss, damage or offence.

2.6 Breakdown and Non Usage

2.6.1 In the event of any breakdown or failure of the Equipment for whatever reason, the Owner will not be liable for any loss or damage whatsoever that may be occasioned by the Hirer.

2.6.2 No allowance will be made in respect of any period of time for which the Equipment is not in use for any reason, unless otherwise agreed in writing by the Owner. Non usage for inclement weather and industrial disruptions will be charged at the applicable rate, as per the Fee.

2.7 Compliance with Laws

2.7.1 The Hirer and the Owner shall comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the works.

2.7.2 Unless otherwise agreed in writing, the Hirer shall obtain (at the expense of the Hirer) all licences, permits and approvals that may be required for the works.

2.7.3 The Hirer agrees that the worksite shall at all times comply with any occupational health and safety laws relating to the worksite and any other relevant safety standards or legislation.

2.8 General

The Owner is not a Common Carrier and will accept no liability as such. Accordingly, the Owner reserves the right to refuse to lift or move any particular item(s) at its sole discretion.

3 CRANE HIRE (The following clauses apply in the event of Crane Hire)

3.1 Site Requirements

3.1.1 The Hirer shall be responsible for:

- (a) Ensuring the Owner has clear and free access and egress to the worksite at which the Equipment is to be located; and
- (b) Ensuring that the ground (and access) at the worksite is firm and stable, with adequate compaction to support the Equipment under its wheels, tracks or outriggers, including ensuring any footpaths, curbs and channels are suitable planked; and
- (c) Ensuring that the worksite (or access to the worksite) does not have excessive slope; and
- (d) Ensuring that adequate lighting is provided during all work activities; and
- (e) Making all necessary arrangements where any access is required through private property; and
- (f) Ensuring that a minimum clearance of 3.5m is allowed in respect of overhead obstacles, trees or power lines; and
- (g) Notifying the Owner of the location of any underground services on the Site.

3.1.2 The Owner reserves the right not to enter any worksite that it believes unsafe and the Hirer shall remain liable for the Fees payable until the issue is resolved.

3.2 Responsibilities of Hirer

3.2.1 Notwithstanding the fact that the operator of the Equipment is an employee or representative of the Owner, the operator shall operate the Equipment in accordance with instructions from the Hirer, and accordingly, the Hirer shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Hirer's instructions.

3.2.2 The Hirer shall provide amenities and first aid services to the Owner's employees in compliance with all applicable health & safety legislation in operation in the State where the work is undertaken.

3.2.3 Should it be necessary for Equipment to be towed into or out of a worksite, then the Hirer shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Fee and will be either charged to the Hirer's account plus a margin of ten percent (10%), or payable direct to the salvage company by the Hirer.

3.2.4 The Hirer shall declare the weight of the goods and the Owner will rely on such declared weight when arranging for handling. Therefore, the Hirer shall be responsible for all extra cost and risk incurred by the Owner and for any and all damage sustained by reliance on the declared weight, if the weight declared is found to be wrong.

3.2.5 The Hirer shall provide adequate security for any Equipment left on site overnight or during periods when the worksite is left unattended unless it has been otherwise agreed in writing that the Owner arrange such security on the Hirer's behalf.

3.3 Responsibilities of the Owner

The Owner will:

- (a) Supply a standard selection of slings with the Equipment; and
- (b) Take all reasonable actions in the event of any breakdown or stoppage of the Equipment and will if required, replace any Equipment onsite as quickly as possible, provided that the Hirer shall not be responsible for the Fee for the period whilst the Equipment is being repaired or replaced.

3.4 Hire Fee

3.4.1 The Fee payable by the Hirer shall be calculated on a working day of eight (8) hours per day (from 7.00am to 3:30pm, allowing a thirty (30) minute lunch break). If the Equipment is used outside these hours or on a weekend or public holiday, additional Fees will be payable by the Hirer in accordance with the Owner's current rate schedule.

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- 3.4.2 The hiring commences from the time of departure from the Owner's premises to the time of return to the Owner's premises. The minimum hire charge is specified in the Agreement and calculated at the appropriate hourly rate plus travel, unless otherwise specified by the Owner prior to the commencement of work.
- 3.4.3 In the event the Hirer requires an employee of the Owner to undertake a recognised safety course or medical examination during working hours, the Hirer will be liable to pay the hourly hire Fee for that period notwithstanding that the Equipment is not being operated during such time.
- 3.4.4 If any course as specified in Clause 3.4.3 is undertaken outside of the hire period then the Hirer shall be liable to pay the Owner's standard hourly labour rate.

3.5 Cancellation

The failure by the Hirer to notify the Owner of the cancellation of intended work or the Hirer's inability to commence work where the Equipment has arrived on Site or has departed the Owner's premises and is travelling to Site, shall deem the Hirer liable for the minimum hire Fee as stated in the Agreement or other such lesser amount as specified by the Owner.

4 TRUCK HIRE (*The following clauses apply in the event of Truck Hire for cartage*)

- 4.1 These conditions apply to the Services performed by the Owner in connection with each carriage of the Hirer's Goods, and any work reasonably performed in addition to the work quoted.
- 4.2 The Hirer warrants that when Goods are given to the Owner for carriage, the Hirer is acting as agent for each person who has an interest in the Goods. Each of them is a party to the Agreement and is bound by these Terms and Conditions.
- 4.3 The Hirer hereby authorises any deviation from the usual route or manner of carriage of goods, which may in the absolute discretion of the Owner be deemed desirable or necessary in the circumstances.
- 4.4 The Goods are delivered when they are left at the place nominated by the Hirer. If the nominated place of delivery is unattended, the Owner may choose whether to leave the Goods there, store them, or return them to the Hirer. If the Goods are stored or returned to the Hirer, all reasonable costs and charges must be paid by the Hirer.
- 4.5 The Owner holds a lien over the Goods and any related documents in the Owner's possession as security for all sums payable to the Owner by the Hirer. The Owner may sell the Goods without giving the Hirer notice if an Event of Default in relation to payment of the Fee by the Hirer occurs. In this instance, the Owner is entitled to offset against the money received any money owed to it by the Hirer.
- 4.6 The Hirer must comply with all legal requirements, and any requirements of the person/s to whom the Owner delivers the Goods, in relation to the Goods, including requirements relating to their shape, packaging, labeling and transportation.
- 4.7 At the end of the carriage, the Hirer must ensure that any containers, pallets or packaging that are delivered to the Owner with the Goods are returned to their respective legal owner.
- 4.8 The Owner is not liable to the Hirer for any indirect or consequent losses, loss of profits or any rectification costs or any third party claims in connection with the carriage of Goods.
- 4.9 The Owner reserves the right to rescind all discounted quoted rates and prices and recalculate outstanding charges, rates and prices at the current advertised schedule should accounts fail to be finalized within the Owner's trading terms from time to time.
- 4.10 The Owner's charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the consignor's premises and shall be payable and non-refundable in any event.

5 SECURITY AND CHARGE

- 5.1 Notwithstanding any contrary provision or any other rights which the Owner may have, where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, the Hirer and/or the Guarantor:
- 5.1.1 Agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or other asset to the Owner (or the Owner's nominee) to secure all amounts payable under these Terms and Conditions;
- 5.1.2 Acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge a caveat (if required), which shall be released once all amounts payable under these Terms and Agreements have been satisfied;
- 5.1.3 Indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis;
- 5.1.4 Irrevocably nominate, constitute and appoint the Owner (or the Owner's nominee) as the Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

6 PRIVACY ACT 1988

- 6.1 The Hirer and/or the Guarantor/s authorise and consent to the Owner, where necessary:
- 6.1.1 Obtaining a credit report about the Hirer and Guarantor/s in relation to credit provided by the Owner;
- 6.1.2 Exchanging information about the Hirer and the Guarantor/s with those credit providers either named as trade referees by the Hirer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) To assess an application by the Hirer;

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- (b) To notify other credit providers of a default by the Hirer;
 - (c) To exchange information as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
 - (d) To assess the credit worthiness of Hirer and/or Guarantor/s.
- 6.1.3 Receiving a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988);
- 6.1.4 Using and retaining personal credit information for the following purposes and for other purposes as shall be agreed between the Hirer and Owner or as required by law from time to time:
- (a) Provision of Equipment on hire;
 - (b) Marketing of Equipment by the Owner, its agents or distributors;
 - (c) Analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Equipment;
 - (d) Processing payment instructions, direct debit facilities and/or credit facilities requested by Hirer; and/or
 - (e) Enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the Equipment.
- 6.1.5 Providing information about the Hirer to a credit reporting agency for the following purposes:
- (a) To obtain a consumer credit report about the Hirer; and/or
 - (b) Allow the credit reporting agency to create or maintain a credit information file regarding the Hirer.

7 FEES AND PAYMENT

7.1 Hire Fee

- 7.1.1 The Hirer shall pay the Fee to the Owner for the duration of the Term.
- 7.1.2 At the Owner's sole discretion, the Fee shall be either:
- (a) As indicated on invoices provided by the Owner to the Hirer in respect of the Equipment supplied on hire or Goods delivered; or
 - (b) The Owner's current price as at the date of delivery of the Equipment, according to the Owner's current "Price List"; or
 - (c) The Owner's quoted price (subject to Clause 7.1.3) which shall be binding on the Owner provided that the Hirer shall accept in writing the Owner's quotation within the acceptable period specified on the quotation.
- 7.1.3 The Owner reserves the right to change the Fee at any time in the event of any variation to the Owner's quotation. The Owner shall advise the Hirer in writing of any change to the Fee and the effective date of the change.

7.2 Method of Payment

- 7.2.1 The Hirer will make payment to the Owner on each due date by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two per cent (2%) or by direct credit or such other method as agreed to between the Owner and the Hirer.
- 7.2.2 At the Owner's sole discretion payment for certain approved Hirers shall be due either seven (7), fourteen (14) or thirty (30) days following the date of the invoice.
- 7.2.3 At the Owner's sole discretion payment shall be due on delivery of the Equipment.
- 7.2.4 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.
- 7.2.5 The Owner may in its sole discretion require the Hirer to pay a deposit.

7.3 Goods and Services Tax (GST)

All Fees are exclusive of GST unless otherwise stated. The Hirer must pay GST and other taxes and duties that may be applicable in addition to the Fee.

7.4 Default of Payment

- 7.4.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half per cent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) until the outstanding amount is paid in full.
- 7.4.2 In addition, if any amount remains overdue for a period of thirty (30) days or more, then the Hirer must pay to the Owner the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) for administration fees.
- 7.4.3 In the event that the Hirer's payment is dishonoured for any reason, the Hirer shall be liable for any dishonor fees incurred by the Owner.
- 7.4.4 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis, and the Owner's collection agency costs.

8 GENERAL

8.1 Notice

The Hirer undertakes to give the Owner at least fourteen (14) days notice of any change in the Hirer's name, address and/or any other change in the Hirer's details. The Hirer shall be liable for any loss uncured by the Owner as a result of the Hirer's failure to comply with this Clause.

8.2 Laws

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- 8.2.1 At the Owner's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services, then the provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales may apply.
- 8.2.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 8.2.3 If any provision of these terms and conditions is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability that provision in any other jurisdiction.
- 8.2.4 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999, Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

8.3 Variation

- 8.3.1 The Owner reserves the right to review these terms and conditions at anytime. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Hirer of such change.
- 8.3.2 These terms and conditions are irrevocable and can only be amended with the written consent of the Owner.
- 8.3.3 Variations to any part of the work shall be agreed to in writing.

8.4 Liability of Owner

- 8.4.1 The Owner shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions. This applies to a delay in the delivery of Goods, misdelivery of them or the total failure to deliver them, or for loss of the Goods or damage to them.
- 8.4.2 In the event of any breach of this contract by the Owner the remedies of the Hirer shall be limited to damages and to the amount of the hire Fee.
- 8.4.3 The Hirer shall not be entitled to offset against or deduct from the Fee any sums owed or claimed to be owed to the Hirer by the Owner.

8.5 Assignment of Rights

The Owner may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.

8.6 No Liability

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

8.7 No Waiver

The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision. A waiver of the Hirer's obligations is ineffective unless it is in writing and is verified and signed by a duly appointed officer of the Owner.
