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## **JOYCE KRANE AUSTRALIA PTY LTD T/A JOYCE KRANE – TERMS & CONDITIONS OF HIRE**

### **1 DEFINITIONS**

- 1.1 “Supplier” shall mean Joyce Krane Australia Pty Ltd T/A Joyce Krane, its successors and assigns or any person acting on behalf of and with the authority of Joyce Krane Australia Pty Ltd T/A Joyce Krane.
- 1.2 “Client” shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 “Guarantor” means that person (or persons) who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Equipment” shall mean all Equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.
- 1.5 “Minimum Hire Period” shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.6 “Price” shall mean the cost of the hire of the Equipment as agreed between the Supplier and the Client subject to clause 3 of this contract.

### **2 ACCEPTANCE**

- 2.1 Any instructions received by the Supplier from the Client for the hire of Equipment and/or the Client’s acceptance of Equipment supplied on hire by the Supplier shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Supplier.
- 2.4 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client’s failure to comply with this clause.
- 2.5 Equipment is supplied by the Supplier based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

### **3 PRICE AND PAYMENT**

- 3.1 At the Supplier’s sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied on hire;
  - or
  - (b) the Supplier’s quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier’s quotation within thirty (30) days.
- 3.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier’s quotation.
- 3.3 At the Supplier’s sole discretion a non-refundable deposit may be required.

- 3.4 At the Supplier's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Supplier.
- 3.5 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 thirty (30) days following the date of the invoice.
- 3.6 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4 HIRE PERIOD**

- 4.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 4.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

#### **5 DELIVERY OF EQUIPMENT**

- 5.1 At the Supplier's sole discretion delivery of the Equipment shall take place when:
  - (a) the Client takes possession of the Equipment at the Supplier's nominated address; or
  - (b) the Client takes possession of the Equipment at the Client's address.
- 5.2 At the Supplier's sole discretion the costs of Delivery are:
  - (a) in addition to the Price; or
  - (b) for the Client's account.
- 5.3 The Client shall be responsible for free access by the Supplier to the site on which the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Supplier or returned to the Supplier's premises.
- 5.4 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Equipment (or any of it) promptly, or at all, where due to circumstances beyond the control of the Supplier.

## **6 RISK**

- 6.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 6.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 6.3 The Client will insure, or self-insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 6.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 6.5 Where the Client expressly requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

## **7 TITLE**

- 7.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 7.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## **8 PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

- 8.1 In this clause:
  - (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;
  - (c) security agreement means the security agreement under the PPSA created between the Client and the Supplier by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
  - (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in:
    - (i) all Goods previously supplied by the Supplier to the Client (if any);
    - (ii) all Goods that will be supplied in the future by the Supplier to the Client.
- 8.3 The Client undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or

- (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
  - (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 8.3 to 8.5.

## **9 DEFECTS**

- 9.1 The Client shall inspect the Equipment on delivery and shall within forty eight (48) hours notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either repairing or replacing the Equipment, except where the Client has hired Equipment as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

## **10 THE COMMONWEALTH TRADE PRACTICES ACT 1974 ("TPA") AND FAIR TRADING ACTS ("FTA")**

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **11 WARRANTY**

- 11.1 No Warranty is provided by the Supplier in respect of the condition of the Equipment or its fitness for any particular purpose. The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of use of the Equipment.

## **12 DRY HIRE**

### **12.1 The Client shall:**

- (a) Complete daily Pre-starts and send them in weekly to Joyce Krane Operations (every Monday with running hours noted)
- (b) be responsible for lift studies and a job safety analysis
- (c) Ensure that Tyre pressures are checked daily, In particular Non-slewing pick and carry cranes.
- (d) be responsible for lubricating, refuelling, maintaining and daily servicing and pre-start checks of the Equipment (as per the manufacturers recommendations), replacing the tyres where necessary due to negligence to the Equipment, and to keep the Equipment in a clean working order and condition;
- (e) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (f) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (g) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (h) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
- (i) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (j) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
- (k) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to a lien over the Equipment;
- (l) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (m) ..... employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any third party for any purpose;
- (n) not exceed the recommended or legal load and capacity limits of the Equipment;
- (o) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (p) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- (q) It is expressly understood and agreed that a dry hire is based on a maximum 84 hours per calendar week calculated over the total monthly rental period.
- (r) Additional hours over the agreed 84 hours are chargeable at 70% of the rental agreement
- (s) All hours in excess are to be settled on a monthly basis

### **12.2 Immediately on request by the Supplier the Client will pay:**

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (f) the cost of fuels and consumables provided by the Supplier and used by the Client.



### **13 WET HIRE**

- 13.1 In the event of “wet” hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client’s instructions. As such the Supplier shall not be liable for any actions of the operator (including, but not limited to the rigger, dogman, trades assistant and labourers) in following the Client’s instructions.

### **14 CANCELLATION**

- 14.1 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

### **15 DEFAULT & CONSEQUENCES OF DEFAULT**

- 15.1 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 percent (2.5%) per calendar month (and at the Client’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Client’s payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Supplier.
- 15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier’s collection agency costs.
- 15.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Supplier may repossess the Equipment as per clause 7.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to the Supplier’s other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier’s opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **16 SECURITY AND CHARGE**

- 16.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the Supplier of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

## **17 PRIVACY ACT 1988**

- 17.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.
- 17.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 17.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):
- (a) the provision of Equipment on Hire; and/or
  - (b) the marketing of services by the Supplier, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment on hire; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of the Equipment.
- 17.5 The Supplier may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

17.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that the Supplier is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Supplier has been paid or otherwise discharged.

## **18 GENERAL**

- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 18.4 The Supplier shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions.
- 18.5 In the event of any breach of this contract by the Supplier the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price.
- 18.6 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Supplier.
- 18.7 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.8 The Supplier reserves the right to review these terms and conditions at any time. 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 Supplier notifies the Client of such change.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.10 The failure by the Client to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Client's right to subsequently enforce that provision.