

STANDARD TERMS AND CONDITIONS OF HIRE AGREEMENT - SERVICES AND EQUIPMENT

1. GENERAL

- 1.1 These Standard Terms and Conditions of Hire together with the Hire Agreement set out the terms and conditions on which QWEST CRANE HIRE (ACN 618 455 235) (**the Owner**) will hire the Equipment and provide the Services to you (**the Hirer**).
- 1.2 By ordering the hire of Equipment and provision of Services from the Owner, the Hirer shall be deemed to have accepted these Standard Terms and Conditions of Hire and the Hire Agreement to the exclusion of all others.
- 1.3 If there is any inconsistency between the application of these Standard Terms and Conditions of Hire and the Hire Agreement then these Standard Terms and Conditions of Hire will take precedence.

2. DEFINITIONS AND INTERPRETATIONS

Definitions

The following defined terms will have the following meanings:

"Agreement" means the agreement formed by these Standard Terms and Conditions of Hire and the Hire Agreement as amended or varied from time to time and any reference to this Agreement refers to the combination of the two;

"Business Day" means a day other than a Saturday, Sunday or public holiday in Queensland;

"Equipment" means the equipment hired to the Hirer specified in the Internal Job Card or otherwise agreed by the parties;

"GST" means the tax imposed by any of:

- (a) *A New Tax System (Goods and Services Tax Imposition – General) Act 1999* (Cth);
- (b) *A New Tax System (Goods and Services Tax Imposition – Customs) Act 1999* (Cth); and
- (c) *A New Tax System (Goods and Services Tax Imposition – Excise) Act 1999* (Cth),

or any other Act or Acts of equivalent effect, together with any additional tax, interest, penalty, fine or other charge;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations;

"Hire Agreement" means the terms and conditions attached to the the Qwest Crane Hire Rates Card and/or the Internal Job Card;

"Hire Fees" means the fees payable by the Hirer to the Owner for the hire of Equipment at the rates set out in the Qwest Crane Hire Rates Card as varied from time to time;

"Internal Job Card" means the internal job card which supplements this Hire Agreement and is signed by the Hirer and accepted by the Owner;

"Location" means the location specified in the Internal Job Card or otherwise agreed by the parties;

"PPSA" means the *Personal Properties Securities Act 2009*;

"Service Fees" means the fees payable by the Hirer to the Owner for the provision of Services at the rates set out in the Qwest Crane Hire Rates Card as varied from time to time;

"Services" means the services provided to the Hirer specified in the Internal Job Card or otherwise agreed by the parties;

"Standard Terms and Conditions of Hire" means this document; and

"Term" means the term of hire specified in the Internal Job Card or otherwise agreed to by the parties on each occasion of hire, which shall not be more than a period of 85 days, unless expressly agreed by the Owner in writing.

Interpretation

The terms "Owner" and "Hirer" shall mean and include their and each of their personal representatives, permitted assigns and successors in title respectively.

Where applicable, words denoting the singular include the plural, words denoting the plural include the singular, and words denoting a gender include each gender.

3. HIRE OF EQUIPMENT AND PROVISION OF SERVICES

The Owner will hire the Equipment and provide the Services to the Hirer on and subject to the terms and conditions of this Agreement.

4. TERM

- 4.1 The Hirer will hire the Equipment and provide the Services for the Term of hire.

5. HIRING FEE AND SERVICE FEE

- 5.1 The Hirer must pay in full, without deduction or set off, the Hire Fee for the Equipment and Service Fee for the Services within 30 days of receiving a tax invoice from the Owner.
- 5.2 Without affecting any other right available to the Owner under this Agreement the Hirer must pay the Owner, on demand, interest on any outstanding monies calculated daily from the time the money is first owed to the time it is paid to the Owner at the National Australia Bank Business Overdraft Rate (as varied from time to time) plus 5%.

6. PROPERTY AND RISK

- 6.1 The Equipment will remain the property of the Owner at all times.
- 6.2 Risk in the Equipment will be the responsibility of the Hirer when on the Hirer's premises until the Equipment is collected by the Owner.

7. MAINTENANCE, OPERATION AND ALTERATION

7.1 General

- (a) While the Equipment is hired, the Hirer must promptly pay any applicable fees, duties and charges in relation to the Equipment, proof of payment of which must be provided to the Owner upon demand.
- (b) The Hirer indemnifies the Owner:
 - (i) for the payment of any fees, duties and charges payable in accordance with clause 7.1(a); and
 - (ii) against any proceedings, claims or demands in respect to the payment or non payment of those sums.
- (c) The Hirer must during this Agreement, at its sole cost and expense, ensure it complies with (where applicable):
 - (i) all statutes, regulations, ordinances and by laws; and
 - (ii) the conditions of any licence or approval relating to the Equipment or the Services; and
 - (iii) the requirements of any third party including compliance with any standards, procedures, policies or protocols specified by the owners or occupiers of the locations at which the Equipment will be used or the Services provided.

7.2 Repair and Maintenance

- (a) The Hirer must not engage, employ or permit any person other than the Owner to carry out repairs, maintenance or servicing of any kind to the Equipment at any time.
- (b) The Owner is not liable for any loss or damage which is suffered or incurred by the Hirer resulting from any piece of Equipment not being useable due to repairs, servicing and maintenance.

7.3 Unsatisfactory Equipment

- (a) If the Hirer finds the Equipment is damaged, faulty or unsafe the Hirer must immediately notify the Owner who may, in its discretion:
 - (i) repair or remove the Equipment; and
 - (ii) offer a replacement piece of Equipment which, if the Hirer accepts, will be hired by the Hirer on the same terms and conditions as if the replacement piece of Equipment were originally hired by the Hirer under this Agreement.
- (b) The Hirer permits the Owner to collect that piece of damaged, faulty or unsafe Equipment at the cost and expense of the Owner.
- (c) The Hirer will not be required to pay the Hire Fee from the time the faulty or damaged Equipment is collected by the Owner.
- (d) If the Equipment is damaged, faulty or unsafe the Owner will not be liable for any direct or indirect loss or damage the Hirer suffers or incurs as a result of the Equipment being damaged, faulty or unsafe, from the time the Equipment is deemed damaged, faulty or unsafe until the time the Equipment is collected by the Owner.

7.4 Operation and Use by Owner

- (a) The Equipment shall:
 - (i) only be operated by the Owner as part of the Services provided under this Agreement;
 - (ii) not operate the Equipment itself, nor engage, employ or permit any person other than the Owner to operate the Equipment;
 - (iii) be used for the purpose for which it is designed, manufactured and normally used; and
 - (iv) be used in accordance with the manufacturer's guidelines and recommendations, as amended from time to time.
- (b) The Hirer must not do or permit any act or thing which does, or is likely to risk:
 - (i) the safety, condition or the value of the Equipment; or
 - (ii) the ability of the Owner to recover the Equipment upon termination of this Agreement or any Term of hire.

7.5 Owner's Entitlement

The Owner may, without notice to the Hirer, do anything which the Hirer is required to do in accordance with this clause 7 and the Hirer must immediately, upon demand, reimburse the Owner for any costs and expenses incurred or paid by the Owner in accordance with this clause 7.5.

8. INSURANCE

8.1 Insurance Required

The Hirer must, at its own expense, have in place or effect and maintain (as required by the Owner) the following insurances:

- (a) adequate insurance for any person providing the Services for all risks usually insured against as if that person was an employee of the Hirer including, but not limited to, insurance for:
 - (i) public liability;
 - (ii) occupational health and safety; and
 - (iii) workers compensation;
- (b) insurance for the Equipment (but only if expressly requested by the Owner) in the name of the Owner and the Hirer for their respective rights and interests for the full insurable value against loss or damage by all risks usually insured against and any other risks specified by the Owner; and
- (c) obtain and maintain such other insurances as the Owner may reasonably require.

8.2 Owner may Effect

If the insurances outlined in clause 8.1 are not effected and maintained in accordance with this Agreement, the Owner may effect that insurance itself and the Hirer must immediately upon demand reimburse the Owner for the premiums and any cost incurred or paid by the Owner.

8.3 Terms of Policies

The Hirer must (if requested by the Owner), in relation to each insurance policy:

- (a) ensure each insurance policy:
 - (i) conforms to the Owner's reasonable requirements; and
 - (ii) where possible, contain provisions for cross liability and waiver of subrogation rights;
- (b) upon demand by the Owner:
 - (i) supply the Owner with the details of the insurance policy;
 - (ii) produce the policy or certificate/s of insurance and all receipts for premiums or certificates of currency; and
 - (iii) provide the Owner with details of any alteration to policies; and
- (c) notify the Owner as soon as possible after:
 - (i) the happening of any event which gives rise to a claim under or which may prejudice a policy; or
 - (ii) a policy being altered or cancelled.

8.4 Assignment

The Hirer:

- (a) assigns to the Owner its rights and interests under every policy of insurance effected and maintained in accordance with clause 8.1; and
- (b) pending the perfection of any assignment, irrevocably:
 - (i) authorises the Owner to appropriate any money received from an insurance policy towards any money due and owing to the Owner under this or any other agreement with the Hirer; and
 - (ii) for valuable consideration, appoints the Owner and every employee of the Owner severally as its attorney to make claims, recover, compromise and give releases for any insurance policy effected and maintained in accordance with clause 8.1.

8.5 Additional Premiums

The Hirer must not do anything to the Equipment which:

- (a) might render the insurances void or voidable; or
 - (b) which might cause the rate of premium to be increased,
- and must pay all additional premiums resulting from any additional or increased risk proposed to be added to any insurance policy effected and maintained in accordance with clause 10.1 which the Owner approves in writing.

9. TERMINATION

9.1 This Agreement will terminate immediately:

- (a) upon the expiry of each Term of hire as specified in the Internal Job Card or on any Rates Card; or
- (b) by the Owner providing written notice of such termination to the Hirer.

9.2 Upon termination of this Agreement the Hirer must permit the Owner to collect the Equipment.

10. EVENTS OF DEFAULT

10.1 An Event of Default will be deemed to occur if:

- (a) the Hirer or any other person or corporation with whom the Hirer is jointly or severally liable fails to pay any money payable which is due and payable whether or not demand for payment is made;
- (b) the Hirer permits or causes servicing, maintenance or repairs to be effected to the Equipment while on the Hirer's premises or site and without the prior written consent of the Owner;
- (c) any insurance policy required under this Agreement is not effected or is cancelled, voided or expires without being immediately renewed;
- (d) the Hirer defaults in complying with its obligations not to encumber or licence the Equipment;
- (e) the Hirer is in breach of any of the Hirer's covenants under this Agreement for 7 days after notice has been given to the Hirer;
- (f) where the Hirer is a corporation:
 - (i) an application is made or a resolution is passed for the Hirer to be wound up unless the winding up is for the purpose of reconstruction or amalgamation;
 - (ii) a resolution is passed for the Hirer to be placed under official management;
 - (iii) an insolvency agreement is made between the Hirer and its respective creditors;
 - (iv) an application is made to a Court for an order summoning a meeting of any class of creditors of the Hirer;
 - (v) a receiver or an agent in possession for a mortgagee is appointed for any property of the Hirer;
 - (vi) an administrator is appointed of the Hirer;
- (g) a mortgagee takes possession of any property of the Hirer;
- (h) the Hirer being a natural person, commits an act of bankruptcy, dies or is incapable of managing their own affairs by reason of mental illness or other condition;
- (i) if the Hirer is a partnership, the partnership is dissolved or any application to a Court for the dissolution of the partnership is made;
- (j) the holder of any security given at any time over any assets of the Hirer becomes entitled to exercise any powers arising on default pursuant to that security or otherwise takes action to enforce such security;
- (k) the Owner becomes entitled to take possession of any other property from the Hirer pursuant to any other agreement; or
- (l) the Equipment is abandoned or relocated without the Owner's prior consent.

11. REPUDIATION

11.1 If an Event of Default occurs, the defaulting party will be deemed to have repudiated this Agreement and the non defaulting party may terminate this Agreement immediately by written notice to the defaulting party or, in the case of the Hirer being the defaulting party, by the Owner collecting and taking possession of the Equipment.

12. POSSESSION AFTER TERMINATION OR EXPIRY

12.1 Upon the earlier of either termination of this Agreement or expiry of any Term of hire:

- (a) the Owner is immediately entitled to possession of the Equipment; and
- (b) the Hirer irrevocably authorises the Owner to go on to the Hirer's site or any other property where the Equipment is located and repossess the Equipment.

13. COMPENSATION

13.1 If the Owner does not recover all or any of the Equipment upon termination of this Agreement or following a demand for the return of the Equipment, the Hirer shall within 14 days following receipt of written notice from the Owner immediately pay to the Owner a sum equivalent to the then present day cost of equipment similar to the item(s) of Equipment which the Owner has been unable to recover or which have been lost or destroyed, which sum will be determined by the Owner and will be final and binding on the Hirer.

14. SUBSTANTIAL LOSS OR DESTRUCTION

14.1 If, in the Owner's reasonable opinion, the Equipment is substantially or totally lost or destroyed and it serves notice on the Hirer to that effect:

- (a) the hire of the Equipment shall cease;
- (b) the Owner is immediately entitled to possession of the Equipment; and
- (c) the Hirer must immediately return to the Owner, or permit the Owner to collect, what remains of the Equipment; and
- (d) upon demand, the Hirer must pay the amount of compensation determined in accordance with clause 13 and any other money payable under this Agreement.

15. INDEMNITY

15.1 Owner

The Owner shall not be liable to the Hirer for any loss, damage, injury, pollution, environmental damage or other liability whatsoever to any person or the property of any party (including their agents and employees) arising out of or resulting from the provision of the Services or the use, installation or operation of the Equipment, or otherwise generally in relation to the Equipment and the provision of the Services and the Hirer agrees to indemnify the Owner and keep the Owner harmless from and against all claims, actions, damages and demands for any such loss, damage, injury, pollution, environmental damage or other liability of whatever nature arising out of or resulting from the provision for the Services and the use, installation or operation of the Equipment, except to the extent caused directly by the negligence or willful misconduct of the Owner.

15.2 Hirer's indemnity

The Hirer indemnifies the Owner against any loss, damage, cost or claim arising, directly or indirectly, out of:

- (a) the loss of, destruction or damage to the Equipment;
- (b) the use or state of the Equipment including, without limitation, any loss of life or damage or destruction caused by the Equipment or its use;
- (c) anything done by the Owner in the exercise or purposed exercise of the Owner's rights under this Agreement;
- (d) any claim affecting the Owner's interest in or title to the Equipment and any action taken by the Owner to protect such interest and title; and
- (e) any breach by the Hirer, an Event of Default or the repossession of the Equipment or its storage.

16. WARRANTY

16.1 The Hirer warrants to the Owner that:

- (a) all the information at any time given to the Owner is correct and is not by content or omission misleading;
- (b) the Hirer has, examined the Equipment and satisfied itself as to the good condition, merchantable quality and suitability of the Equipment and otherwise for the Hirer's intended purpose and that the Equipment complies with its description;
- (c) it will:
 - (i) at all times, provide a safe working environment;
 - (ii) carry out inductions and, where necessary, training, for each person providing the Services;
 - (iii) provide adequate supervision of any person providing the Services;
 - (iv) inform the Owner immediately if there is a change in the Hirer's site or workplace which may impact on the health or safety of any person providing the Services or which may impact their ability to perform the Services;
 - (v) communicate with any person providing the Services as to:
 - (A) potential hazards on or in the Hirer's site;
 - (B) the Hirer's policies and procedures;
 - (C) any equipment, including personal protective equipment, which the Hirer requires the person to supply;
- (d) it is satisfied that any person providing the Services has the necessary skills and qualifications.

17. LIMITATION OF LIABILITIES

- 17.1 The Owner acknowledges that the Competition and Consumer Act 2010 (Cth) (as amended) and other statutes from time to time in force imply or impose statutory guarantees, conditions or warranties into contracts for the hire of equipment and/or provision of services which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent (Non Excludable Terms). Nothing in this Agreement is intended to exclude or restrict the application of the Non Excludable Terms.
- 17.2 Other than the Non Excludable Terms, the Owner hereby excludes to the full extent permitted by law all conditions, warranties, guarantees, terms and obligations expressed or implied by law in connection with this Agreement.
- 17.3 The Owner will be under no liability to the Hirer or any third party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.

18. ACKNOWLEDGEMENT

- 18.1 The Hirer acknowledges that:
- (a) in addition to these Standard Terms and Conditions of Hire, the Hirer has read, understands and agrees to the Hire Agreement (attached to the Qwest Crane Hire Rates Card and/or the Internal Job Card);
 - (b) it has sought any suitable independent legal and financial advice the Hirer prior to entering into this Agreement;
 - (c) other than as Bailee upon the terms of this Agreement, the Hirer has no other interest in the Equipment;
 - (d) it has relied solely on its own skill and judgment in selecting the Equipment and accepting the Services;
 - (e) it has not relied upon any representation or statement made by or on behalf of the Owner concerning the Hirer's rights or position in relation to this Agreement or any law relating to taxation or concerning the quality of the Equipment or its fitness or suitability for their intended use;
 - (f) it has no right or option to extend the Term of hire, unless expressly agreed to by the Owner in writing;
 - (g) it has no right or option to purchase the Equipment; and
 - (h) it has no authority to deal with or use the Equipment other than permitted by this Agreement nor to incur any liability for or on behalf of the Owner.

19. PROHIBITIONS ON DEALINGS

- 19.1 The Hirer:
- (a) must ensure the Owner retains an unencumbered title in the Equipment; and
 - (b) must not attempt to sell, assign, pledge, mortgage, charge, encumber or otherwise deal with the Equipment or permit any lien to exist in respect of the Equipment; and
 - (c) must not hire, licence, assign its rights in relation to the Equipment without the Owner's prior written consent.

20. OWNERS RIGHT TO DEAL

- 20.1 The Owner may transfer, assign, mortgage or otherwise deal with all or part of its interest in this Agreement and the Equipment in its absolute discretion; and

21. FULL ACCESS TO EQUIPMENT

- 21.1 The Hirer:
- (a) must procure and allow the Owner unfettered access to the Equipment for any purpose including, without limitation, to operate, use, inspect and/or test the Equipment; and
 - (b) irrevocably authorises the Owner, its employees, servants and agents to use all necessary and reasonable measures to obtain access to or possession of the Equipment following an Event of Default or the failure to permit collection of the Equipment by the Owner.

22. GST

- 22.1 If a party (GST Supplier) makes a supply to another party (GST Recipient) in connection with this Agreement, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that supply (GST Amount), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- 22.2 The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which the GST is calculated. If the GST Amount is not calculated on monetary consideration, the GST Recipient must pay the GST Amount within seven (7) days of receipt of a written demand from the GST Supplier.
- 22.3 The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing the GST Recipient with a tax invoice that complies with the GST Act. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit to which it is entitled.
- 22.4 The amount recoverable on account of GST under this clause will include any fines, penalties, interest and other charges incurred as a result of late payment or other default by the GST Recipient.
- 22.5 If a party is required to pay, reimburse or indemnify another party for any cost, expense or other amount that the other party has incurred or will incur in connection with this Agreement, that amount will be reduced by any part thereof for which the other party can claim an input tax credit.

23. TIME OF THE ESSENCE

23.1 Time is of the essence in every respect.

24. COSTS AND STAMP DUTY

24.1 Each party must bear its own costs and expenses in relation to this Agreement, if any. Any party in default must pay all costs incurred by any other party in respect of that default, any notice relating to that default or exercise of the non defaulting party's rights under this Agreement.

25. NOTICE

25.1 A notice to a person:

- (a) must be in writing;
 - (b) may be given or made by:
 - (i) delivering it to that person personally;
 - (ii) addressing it to that person and leaving it at or posting it to the address nominated by that person or that person's usual or last known place of residence; or
 - (iii) sending a facsimile copy of the notice to the facsimile copier number nominated by that person by notice to the person giving the notice;
- (a) will be deemed to be given or made:
- (i) if by personal delivery, when delivered;
 - (ii) if by leaving at that person's address, it will be deemed to be given or made on the next following Business Day;
 - (iii) if by post, on the second Business Day following the date of posting; and
 - (iv) if by facsimile, when dispatched by facsimile, unless the time of despatch in the place to which it is sent is not on a Business Day or after 5 o'clock in the afternoon on a Business Day, when it will be deemed to be given or made on the next following Business Day; and
- (b) may be signed if given by an individual, by the person giving the notice or by a solicitor or other agent of the person giving the notice.

26. PROPER LAW

26.1 This Agreement is governed by and to be interpreted in accordance with the laws of Queensland and, where applicable, the laws of the Commonwealth of Australia.

27. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of the Agreement.

28. SEVERANCE

28.1 If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

29. VARIATION

29.1 This Agreement may be amended by the Owner from time to time and published on the Owner's website, as notified in writing by the Owner to the Hirer from time to time.

30. FURTHER ASSURANCES

30.1 The parties must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.

31. PERSONAL PROPERTY SECURITIES ACT (FOR HIRES OVER 85 DAYS)

- 31.1 This clause shall apply in the event the Hirer has requested, and the Owner has expressly agreed to hire the Equipment to the Hirer for a Term of hire over 85 days in duration.
- 31.2 If sections 95, 96, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA would, apart from this clause, apply to this Agreement or the security interest it creates, those sections will not apply to the maximum extent it is possible to exclude them under section 115 of the PPSA.
- 31.3 If section 116(2) of the PPSA applies, section 132 of the PPSA will not apply to the maximum extent it is possible to exclude it under section 115(7) of the PPSA.
- 31.4 The Hirer and any guarantor irrevocably authorise the Owner to obtain from the register under the PPSA, if the Hirer or any guarantor is an individual, disclosure of any registration in which the individual is registered as a grantor or a secured party and any other searches which may be permitted by section 172 of the PPSA.
- 31.5 The Hirer consents to the Owner effecting registration on the register under the PPSA in any manner the Owner considers appropriate in relation to any security interest in the Equipment arising under or in connection with or contemplated by this

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- Agreement.
- 31.6 The Hirer waives its right to receive notice of a verification statement in relation to any registration by the Owner on the register of the PPSA and any other notice required under the PPSA
- 31.7 The Hirer agrees to properly execute any documents, provide all relevant information, fully cooperate with the Owner and do any other act or thing the Owner requires to ensure any interest created under this Agreement is perfected and remains continuously perfected, has priority over any other security interest in the Equipment or otherwise and any defect a the security interest, including its registration is overcome.
- 31.8 The Hirer must not, without providing prior written notice to the Owner change its name, address, contact details or any other details that would cause any details in the financing statement to be different if the security interest was re-registered.
- 31.9 The Hirer will not register a financing change statement for the security interest without the Company's prior written consent.
- 31.10 The Hirer agrees to reimburse, on demand, the Owner for all costs and/or expenses incurred or payable by the Owner in relation to registering or maintaining any financing statement, releasing in whole or in part the Owner's security interest or any other document for any security interest and for the enforcement of any rights arising out of the Owner's security interest.
- 31.11 In this Agreement the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement, perfected, register, registration, security interest and verification statement.