

## **GENERAL TERMS AND CONDITIONS OF HIRE**

### **1. AGREEMENT**

The owner, in consideration of payment of or an undertaking by the hirer to pay the amount of the hire charges calculated in terms of the hire rates set out overleaf, lets to the hirer and the hirer hires, the crane described overleaf. The conditions of hire set out in this document take precedence over any other conditions which may be included in the hirer's offer to hire and signature by the hirer of this contract constitutes a cancellation of any such prior conditions. This agreement records the whole agreement between the owner and the hirer and overrides all other agreements, terms or conditions purporting to relate to the hire of the crane and collateral verbal agreements are expressly excluded. No condition, terms or representation not expressed herein shall be binding on the owner or the hirer and no variation shall be binding on either of the parties unless reduced to writing and agreed to by the owner and the hirer.

### **2. PERIOD OF HIRE AND TERMINATION**

If the hire is for a definite period and if the hirer does not return the crane to the owner at the expiration of such period then the hire of the crane will thereafter continue upon the same terms and conditions as are set out herein for an indefinite period subject to either party being entitled to give the other not less than 24 (twenty four) hours written notice of termination. After termination of this agreement, the owner shall be entitled to retake possession of the crane without prejudice to any other rights which it might have against the hirer. Notice of termination to the owner's operator shall not constitute valid notice of termination of the agreement of hire. If the hire specified overleaf is for an indefinite or an estimated period it will be deemed to be automatically extended at the end of such

period for additional periods of 24 ( twenty four) continuous hours upon the same terms and conditions as are set out herein and upon payment of the hirer to the owner of hire rates specified overleaf until terminated by either party in writing and on 24(Twenty Four) hours notice. Where the crane is required to be transported by low bed or any other means of transport then unless otherwise specified overleaf the hire period shall be deemed to commence when the crane leaves the owners depot or nominated site.

3. **NO CESSION OR SUBLETTING**

The hirer shall not cede or assign this agreement nor sublet, mortgage, pledge or in any way encumber the crane on the site and, save for the purpose of returning it to the owner shall neither remove nor allow it to be removed from the site without first obtaining written consent of the owner.

4. **ACCESS AND SITE CONDITIONS**

The owner or its duly authorised representative shall at all times be entitled to have access to the site and to inspect the crane. Where the ground or surface at the site is soft or unsuitable for the safe travelling or operation of the crane, the hirer shall be obliged, at its own cost to provide and lay suitable materials for the crane to travel or work on site. Failure by the hirer to comply with this obligation will constitute a breach of a material term of the agreement entitling the owner to cancel the agreement alternatively excusing the owner of performance of its obligation until such time as the hirer has provided and laid suitable materials.

5. **DEFECTS AND BREAKDOWN REPORT**

The hirer shall be obliged to notify the owner of any defects or deficiencies in the crane which are, or which become apparent, and/or are notified to the hirer by the operator, immediately by the quickest practical methods. In such event the hirer

shall cease using the crane forthwith failing which the hirer shall be liable for the agreed rate and for all loss or damage, including consequential loss or damage sustained by the owner arising out of such continued use of the crane.

Any breakdown of the crane shall be reported immediately by the quickest practical means by the hirer to the owner and such report shall be confirmed in writing forthwith. If the hirer fails to notify the owner of any breakdown to the crane caused by defect in the crane in terms of this clause then the hirer shall not be entitled to any reduction in the hire rate.

6. **RATED CAPACITY AND USE OF CRANE**

The owner undertakes that the crane shall perform substantially in accordance with the manufacturers rated capacity and specifications and shall be serviced and maintained by it. The hirer acknowledges that the owner has tendered to the hirer the manufacturers rated capacity and specifications of the crane. Signature of the daily time sheets shall be deemed to be acceptance by the hirer that the crane has performed satisfactorily or when no operator is supplied, signature of the hirer of the delivery note shall be deemed to be acceptance by the hirer that having regard to the manufacturers rated capacity and specifications, the crane is fit for the purpose for which it has been hired.

The hirer undertakes that it will use or permit the crane to be used only in a responsible manner and undertakes not to perform any lifts beyond the cranes rated capacity and specification, nor to perform any tandem or multiple lifts without the written consent of the owner first being obtained. During the period of hire the hirer undertakes and warrants that it will use or permit the crane to be used only for the purpose for which it was hired.

7. **HIRER'S SUPERVISION OF OPERATOR**

Whilst on the site the operator shall be under the sole and absolute control and supervision of the hirer who shall be responsible for all the operators acts or omissions. The hirer warrants and undertakes that it will give to the operator clear and specific instructions and directions for all work to be performed by the operator and the crane on site. The hirer shall be obliged and warrants that it will supervise or will provide responsible and competent supervision for the operator whilst the crane is on site during the period of hire.

8. **OPERATORS ACCOMMODATION AND MESSING**

Where it is necessary for the operator to reside on or near the site during the period of this agreement and where it is agreed that the hirer shall supply accommodation, this shall be specified overleaf and throughout such period the hirer shall be obliged to provide reasonable accommodation and messing of a standard appropriate to the operator and transport to and from such accommodation to the site.

9. **RISK**

The risk of any loss of or damage to the crane and/or to property and/or injury to persons, passes to the hirer on arrival of the crane on site. Such risk remains with the hirer until the crane leaves site.

Where the crane is required to be transported by lowbed or any other means of transport, excluding self-propulsion, which is provided or arranged by the hirer the risk of loss or damage to the crane whilst in transit or being handled, loaded or off loaded at any place shall be assumed by and shall pass to the hirer at the commencement of the loading operation at the owner's depot or nominated site and shall remain with the hirer until the crane has returned to the owner for off loading by it at its depot or nominated site. In any case where transport is provided or

arranged by the hirer whether on commencement or termination of the hire period the hirer indemnifies the owner against any loss of or damage to any property whatsoever, or arising from injury to or death of any person, caused or occurring whilst the crane is in transit or being loaded, handled or off loaded.

10. **INDEMNITY BY THE HIRER AND EXCLUSION OF OWNER'S LIABILITY**

While the crane is at the risk of the hirer, the owner shall not be responsible or liable to the hirer or to any other person for any acts or omissions on the part of the owner's operator (or on the part of the hirer's servants, employees or contractors) nor shall the owner be liable for any damages whether direct or consequential of whatsoever nature occasioned to the hirer or to any other person or property. The hirer indemnifies and holds the owner harmless against all such claims including the cost of defending any such claim or action. Without limiting the generality of this sub clause, the indemnity and exclusion of liability provided herein shall specifically apply to damage to goods on the hook and surrounding property.

The owner shall not be liable or responsible to the hirer, the hirer's principal or anyone else for any direct or consequential loss or damage suffered by the hirer or any other person arising out of the stoppage of the crane through any cause whatsoever. The hirer hereby indemnifies and holds the owner harmless in respect of any such claim made by any other person against the owner arising out of the hire of the crane or from any cause aforesaid.

11. **DOWNTIME**

The hirer shall be liable for ongoing hire charges calculated at the rates specified overleaf notwithstanding that the crane is idle as a result of inclement weather, normal running repairs including refuelling, changing tyres and repairing punctures or as a result of any other factor beyond the owner's control. The hirer shall not be

liable for hire charges when the crane is idle due to unavailability of the operator or due to breakdown of the crane caused by defect in the crane subject to compliance by the hirer with the terms of clause 5.

12. **HIRER'S LIABILITY FOR DIRECT AND CONSEQUENTIAL LOSS**

The hirer shall be responsible for all loss or damage suffered by the owner as a result of accident or breakdown whilst the crane is at the hirers risk including the cost and expenses of recovering the crane and including the travelling and subsistence expenses of the owner or it's nominee incurred as a direct result of any accident or breakdown.

The hirer shall be responsible for any consequential loss suffered by the owner as a result of any accident or breakdown whilst the crane is at the owners risk, such loss not being restricted to the hire charges for the unexpired period of hire but extending to and including, loss of income suffered by the owner for such period as is reasonably required to repair or replace the crane.

The provisions of sub-clause 1 and 2 above shall not apply to breakdown of the crane, caused by inherent defect in the crane or by the owner's failure to maintain the crane, subject always to compliance by the hirer with the provisions clause 5.

13. **INSURANCE**

Insurance of all and any liability of whatsoever nature on the part of the hirer arising out of the use of the crane or the hire of the crane is the responsibility of the hirer.

14. **BREACH**

If the hirer commits any breach of the conditions of this agreement, including failure to pay any amount due by the hirer to the owner, or if any judgment is obtained against the hirer, or the hirer commits an act of insolvency, or is placed under judicial management, or ceases to carry on business, then the owner shall be entitled forthwith without notice to the hirer to cancel this agreement and take possession of the crane and the hirer shall immediately restore and give possession of the crane to the owner. Notwithstanding the cancellation of this agreement by the owner or the taking of possession by the owner of the crane, the owner shall be entitled to recover from the hirer all monies due to or to become due in terms of this agreement for the full and unexpired hire period, together with all costs, incurred or made by the owner in connection with cancellation of the agreement and/or obtaining possession of the crane.

15. **TIME SHEETS**

15.1. Unless stated to the contrary overleaf hire charges payable by the hirer are based on the hours or days reflected on the time sheets. The operator shall during the period of hire retain in his possession a pad of unsigned time sheets. According to whether the hire as stated overleaf is for a period of days or weeks the operator shall present to the hirer daily or weekly time sheets for signature by or on behalf of the hirer. In the event that the hirer disputes the content of the daily or weekly time sheet and/or refuses to sign any time sheet, he shall within 24 (twenty four) hours of presentation of the time sheet notify the owner of the fact of his refusal and the grounds therefore. In this regard notification to the operator shall not constitute notification to the owner.

15.2. Time sheets duly completed by the operator shall be *prima facie* evidence of the correctness of the content of the time sheet.

15.3. Signature of any time sheet by or on behalf of the hirer constitutes acceptance by the hirer of the correctness of the content of the time sheet.

15.4. The hirer warrants, and this agreement is entered into on the strength of such warranty, that whoever signs time sheets on behalf of the hirer will be duly authorised by the hirer to do so.

16. **SLINGS AND RIGGINGS**

There shall be no obligation upon the owner to supply slings but in the event that the owner agrees to supply its standard selection of slings, it gives no warranties that the said slings will be suitable for the hirer's purposes or for any lift to be performed by the crane described overleaf at the hirer's instance and all directions and/or instructions for rigging and methods of slinging shall be the sole and absolute responsibility of the hirer who indemnifies and holds harmless the owner against all claims for loss or damage of any nature whatsoever whether consequential or otherwise arising out of the use of the said slings by the hirer, or arising out of the rigging and methods of slinging.

17. **TYRES AND TUBES - HIRER'S RESPONSIBILITY**

The owner hereby warrants that the tyres on the cranes supplied will be in good condition. The hirer shall however be liable and responsible for the cost of repairing all tyre and tube punctures or damage to tyres during the period of hire and shall be responsible for all cuts or abrasions of tyres and tubes and the replacement thereof during the period of hire. Unless the hirer notifies the owner in writing to the contrary within 24 (twenty four) continuous hours of delivery of the crane to site, the tyres on the cranes shall be deemed to be in good condition. Should the hirer object to the condition of the tyres in terms of this clause and a dispute arise as to such



condition then the dispute shall be referred to a representative appointed by the company which supplied the tyres whose decision shall be final and binding on both parties.

18. **MINIMUM HOURS**

A 6-hour minimum will be charged on a one-day hire for all cranes up to and including 50t capacity. Hires in excess of one day will be charged at a 9-hour minimum per day between the hours of 7h00 and 16h30. Cranes over 50t capacity are hired out at a 10-hour minimum from 7h00 to 17h30 at all times.

19. **SITE ESTABLISHMENT**

The charge for traveling the cranes to and from site is a fixed sum over and above the minimum period of hire and is referred to as site establishment.

20. **VAT**

All prices quoted are exclusive of VAT unless stipulated.

21. **AVAILABILITY**

The equipment offered is subject to availability at the time of your requirement.

22. **VOETSTOOTS**

All equipment is sold "voetstoots".

23. **LOAD TESTING, INDUCTIONS AND MEDICALS**

The rates quoted specifically exclude any tests, inductions and/or medicals, which may be required. These will be charged at rates ruling at the time of such requirements.

**24. RETURN OF CRANES FOR REPAIRS**

If at any time after the date of delivery, the crane is in the opinion of the owner in need of repairs, it may stop the further use thereof until such repairs have been carried out on site or the owner may arrange for such crane to be sent to a depot and in the latter event, the owner shall be entitled to replace such cranes forthwith with a similar crane, the owner paying all costs of transport involved in the removal of such cranes to the owner's depot or site nominated by it for repair and delivery of the substituted crane and the agreement shall continue as if the substituted crane had been the subject thereof alternatively the owner shall after consultation with hirer be entitled to terminate the agreement forthwith in relation to the crane by giving written notice to the hirer. Should the hirer insist that the operation continue despite apparent faults, the hirer shall take full responsibility for any damages which may result from its continued operation.

**25. PAYMENT –NO SET OFF**

25.1. Payment of the amount shown as due by the hirer on the owner's invoice shall be made to the owner within 30 (thirty) days of date invoice and free of exchange at the place indicated on the invoice.

25.2. Interest on overdue accounts will accrue at the prime overdraft rate charged by the owners bankers.

25.3. The hirer shall not be entitled to claim set off in respect of any amount owing or alleged to be owing to the hirer under any circumstances whatsoever.

**26. WAIVER**

Any act of relaxation, indulgence or grace granted by the owner to the hirer shall not operate as or be deemed to be a waiver by the owner of its rights hereunder or as a novation of this agreement.

27. **OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993**

27.1. Acceptance of these Conditions of Hire constitutes a written undertaking by the hirer to ensure the safe use of the crane as envisaged by Section 10(4) of the Occupational Health and Safety Act 85 of 1993.

27.2. In the event that the hirer believes he or it does not have the competence to ensure the safe use of the crane, the hirer shall notify the owner of that belief in writing on signature of this hire contract.

28. **HEADINGS TO CLAUSES**

The headings in this agreement are intended to facilitate easy reference and shall not affect the interpretation of the provisions of the agreement.

29. **JURISDICTION CLAUSE**

The hirer consents to the jurisdiction of the Magistrates Court in terms of section 45 of the Magistrate Court Act No. 32 of 1944 (as amended) having jurisdiction under section 28 of the said Act, notwithstanding that the claim by the owner exceeds the normal jurisdiction of the Magistrate's Court as to amount. The owner shall, in its discretion, be entitled to proceed against the hirer in any other court of competent jurisdiction, notwithstanding the foregoing.