

## 1. Definitions

In these conditions:

“Campbell” means Campbell Crane Services Pty Ltd;

“Conditions” means these General Conditions of Hire;

“Hire Period” means the time from when the Plant leaves Campbell’s depot or place where last issued until received back at Campbell’s depot or other place named by Campbell;

“Hirer” means a person, firm or corporation, jointly and severally if there is more than one, hiring Plant from Campbell;

“Labour” means all crane or machine operators, riggers, spotters, crane coordinators, dogmen or traffic controllers hired by the Hirer from Campbell either in conjunction with Plant or separately;

“Plant” means all plant, equipment, cranes, forklifts, trailers, machinery and accessories of whatever nature hired by the Hirer from Campbell;

“Site” means any site to which the Plant is or is to be delivered and including without limitation any ship, truck or other vehicle upon which the Plant is intended to be used by the Hirer.

## 2. Basis of Contract

2.1 Unless otherwise agreed by Campbell in writing, the Conditions apply exclusively to every contract for the hire of Plant and Labour by the Hirer from Campbell and cannot be varied or supplanted by any other conditions without the prior written consent of Campbell.

2.2 Any written quotation provided by Campbell to the Hirer concerning the proposed supply of Plant and Labour is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation. Any terms in Campbell’s quotation form part of the Conditions and if inconsistent will prevail.

## 3. Variation and Cancellation

1.1 If through circumstances beyond the control of Campbell, Campbell is unable to provide Plant and Labour, then Campbell may cancel any order (even if it has already been accepted) by notice in writing.

1.2 No purported cancellation or suspension of an order or any part thereof by the Hirer is binding on Campbell after that order has been accepted by Campbell.

## 4. Price and Price Variation

1.1 Unless otherwise agreed in writing to the contrary, the Hirer will pay the hiring charges for Plant and/or Labour at the short and long term rates referred to in Campbell’s price list current at the time at which the hiring commences, calculated on the time from which the Plant and/or Labour leaves Campbell’s depot to the time they return to such depot.

1.2 Unless otherwise stated, prices for the hire of Plant and/or Labour exclude any insurance and delivery charges, any consumption or goods and services tax, and any other taxes, duties, levies or excise imposed on or in relation to the hire of Plant and/or Labour;

1.3 Where there is any change in the costs incurred by Campbell in relation to the provision of the Plant and/or Labour, Campbell may vary its price to take \*\*\*\*\* of any such changes.

## 5. Invoicing and payment

1.1 Payment for Plant and Labour hired charges are due and payable on the date of the invoice. For Hirers with an approved credit facility, payment must be made within 30 days from the date of Campbell’s invoice. Payment by cheque shall not be deemed made until clearance of the cheque.

## 6. Delivery and transport

6.1 The Hirer shall pay the cost of transportation of the Plant from Campbell’s depot or a place specified by Campbell to the Site and return to Campbell’s depot or a place specified by Campbell on completion of the Hire Period.

6.2 If the Plant requires transportation for repair or replacement then cost of transport is to be met by Campbell unless the repair or replacement is due to damage or breakdown of the Plant caused by the Hirer.

6.3 If the Hirer fails to return the Plant for any reason whatsoever then the Hirer is liable to Campbell for:

- (a) the whole cost of replacement of the Plant; and
- (b) Campbell’s hire charges for the Plant until payment of the Plant replacement costs.

## 7. Operation of Plant & Labour

1.1 **Loading and Unloading:** The Hirer is responsible for loading and unloading the Plant at Site. Any Campbell personnel supplied for loading and unloading shall do so as agents of the Hirer.

1.2 **Handling of Goods:** All goods are handled, lifted and/or carried entirely at the Hirer’s risk.

1.3 **Disclosure of Goods:** The Hirer shall disclose to Campbell the nature and weight of the goods to be handled, lifted and/or carried. Campbell may rely on such disclosed weight when arranging for handling. The Hirer shall be responsible for all extra costs and risk incurred by Campbell and for any and all damage sustained by reliance on the disclosed weight.

1.4 **Discretion of Campbell:** Campbell may refuse the handling, lifting and/or carriage of any class of goods for any Hirer at its discretion and without being bound to provide any reason for such refusal.

1.5 **Hazardous Goods:** Goods of a noxious, inflammable, hazardous, dangerous or explosive nature shall not be tendered to Campbell without full prior disclosure of the nature of the goods, and such goods may be handled, lifted and/or carried only by special agreement in writing between the Hirer and Campbell. If any such goods are otherwise tendered, the Hirer shall be liable for any loss or damage occasioned either directly or indirectly to Campbell.

1.6 **Care of Plant:** The Hirer is responsible for the following:

- (i) safekeeping of the Plant during the Hire Period;
- (ii) use of the Plant in strict conformity with Campbell’s specifications and any other relevant laws or regulations;
- (iii) ensuring that the Plant is not operated for any purpose beyond its capacity or in a manner likely to result in undue wear;
- (iv) inspecting the Plant and ensuring that it is not operate it if it has become defective, damaged, or in a dangerous state;
- (v) ensuring that the Plant is not moved from the Site;
- (vi) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the Plant;
- (vii) advising Campbell immediately if the Plant breaks down or fails to operate properly; and
- (viii) protecting the Plant against theft, distress or seizure.

1.1 **Access:** The Hirer must allow Campbell’s servants, agents and Insurers access to the Plant at all reasonable times to deliver, remove, inspect, test, adjust, maintain, repair or replace the same. The Hirer is responsible for providing safe and proper access and is liable for all loss or damage suffered by Campbell or by Campbell’s servants, agents or Insurers as a result of the Hirer’s failure or delay in doing so.

1.2 **Maintenance/Service:** The Hirer must notify Campbell in writing immediately if the Plant has operated for 250 hours from the date it was last serviced or from the start of the Hire Period, whichever is later. Campbell will service the Plant within 1 week of Campbell advising the Hirer that it will do so. If the Hirer fails to notify Campbell or if Campbell is unable to access the Plant to service the Plant during business hours within the period specified, the Hirer will be responsible for:

- (i) compensation for added wear, tear and damage to the Plant;
  - (ii) any overtime costs incurred by Campbell; and
  - (iii) the costs of the next service and any consequential repairs;
- in any other event, Campbell will bear the cost of servicing the Plant. The Hirer must not try to effect any repairs on the Plant.

1.3 **Transfer and Rehiring:** The Plant and/or Labour must not be lent, rehired or sub-let to any third party. If Campbell consents in writing to the rehire or sub-lease of the Plant and/or Labour, the Hirer remains bound by all terms of the Conditions and must ensure that any sub-lessee also complies with all terms of the Conditions relating to the use of the Plant and/or Labour.

1.4 **Alterations or Additions:** The Hirer shall not make any alteration or addition to the Plant or any part thereof and shall be solely responsible for any liability arising out of such alterations or additions.

1.5 **Operation of Labour:** Where Labour is supplied by Campbell to perform certain tasks for the Hirer, that Labour operator is deemed to be a servant under the direction and control of the Hirer. The Hirer is responsible for the acts and omissions of all hired Labour. Where the Hirer has engaged Labour to operate the Plant, the Hirer shall not permit any other person to operate the Plant without Campbell’s prior consent in writing.

**1.6 Safety:** The Hirer is solely responsible for the provision of a working environment satisfying the Occupational Health and Safety standards ("Standards") applicable in Victoria, Australia. The Hirer will bear the cost of any liability for damage or loss to any person or property caused by a breach of the Standards and will indemnify Campbell against any liability resulting from a breach of the Standards.

**8. Breakdown or Delay**

8.1 Breakdowns or defects in Plant resulting from proper ordinary usage or fair wear and tear or the development of an inherent fault or a fault not ascertainable prior to commencement of the Hire Period may, at Campbell's option, either be repaired or the Plant be replaced at Campbell's expense. The Hirer will not be charged from the date of its notification of breakdown until the repair or replacement of the Plant.

8.2 If repair is impracticable and if replacement Plant is not available, Campbell may terminate the hire contract forthwith and will not have any liability whatever to the Hirer for such termination or any consequences of breakdown.

8.3 No relief from hire charges nor any claims will be allowed by Campbell for delays or stoppages due to causes out of Campbell's control including without limitation inclement weather, industrial disputes or Site conditions.

8.4 Where Plant is bogged on a site as a result of carrying out instructions given by the Hirer, the costs of recovering the Plant from the bog shall be borne by the Hirer.

**9. Limitation and exclusion**

9.1 Except as specifically set out in the Conditions, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Plant or performance of Labour, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

9.2 Replacement or repair of the Plant is the absolute limit of Campbell's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Plant or alternatively the use of or any other dealings with the Plant by the Hirer or any third party.

9.3 Campbell is not liable for any direct, indirect or consequential losses or expenses suffered by the Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

9.4 Campbell will not be liable for any loss or damage suffered by the Hirer where Campbell has failed to meet any delivery date or cancels or suspends the supply of the Plant.

9.5 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

**10. Insurance**

10.1 The Hirer is responsible at its own expense for insuring itself, its property, third parties and their property against all risks arising from the presence or the operation of the Plant and/or Labour.

10.2 Campbell will provide theft and damage cover for the Plant to its full replacement value.

10.3 The Hirer will remain responsible for the following:

- (i) Damage due to misuse, abuse, or overloading of the Plant;
- (ii) Disappearance or wrongful conversion of the Plant;
- (iii) Loss or damage to a Labour operator or third party or property resulting from breach of the Conditions or any statutory laws or regulations.

10.4 The Hirer must on request provide Campbell with all assistance and information necessary to enable Campbell to claim under its insurance policies.

10.5 If the Plant is involved in any accident resulting in injury to persons or damage to the Plant or other property, immediate notice must be given to Campbell by telephone and confirmed in writing to Campbell's office. The Hirer must not make any admission, offer, promise, payment or indemnity without Campbell's prior written consent. Any insurance monies recovered

by the Hirer in respect of any risks specified in this clause 10 must be applied as reasonably directed by Campbell.

**11. Indemnity**

11.1 The Hirer shall be solely responsible for and shall hold Campbell fully indemnified against any loss or damage arising from or in connection with the Plant and/or Labour or as a result of the use or situation of the Plant. The Hirer shall fully and completely indemnify Campbell in respect of all costs, claims, demands, loss or damage by any person whatsoever for injury to person or property caused by or in connection with the Plant and/or Labour or the use or situation of the Plant whether arising under statute or common law.

**12. Default**

12.1 If the Hirer:

- (a) breaches any term of the Conditions;
- (b) defaults in payment by the due date of any amount payable to Campbell;
- (c) is an individual and dies or becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally;
- (d) is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has as a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Hirer; or
- (e) in the reasonable opinion of Campbell, the Hirer is likely to breach its obligations under the Contract;

then Campbell may, without prejudice to any other remedy available to it:

- (i) require immediate payment of all money which would become payable by the Hirer to Campbell at a later date on any \*\*\*\*\*, without notice to the Hirer;
- (ii) charge the Hirer interest at 1.5% per month for the period from the due date until the date of payment in full;
- (iii) charge the Hirer for all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover the Plant or any sum due or enforce the Conditions;
- (iv) charge the Hirer for the cost of repairing or replacing any damaged or destroyed Plant;
- (v) charge the Hirer for the hire charges for the Plant while the Plant is idle due to the damage or destruction and while repairs are being carried out or replacement Plant being purchased;
- (vi) claim damages from Hirer for breach of the Contract
- (vii) cease or suspend for such period as Campbell thinks fit, supply of any further Plant and Labour to the Hirer; and/or
- (viii) by notice in writing to the Hirer, terminate any contract with the Hirer so far as unperformed by Campbell;

without effect on the accrued rights of Campbell under this Agreement.

**13. Right to Terminate**

13.1 Campbell reserves the right to terminate the hire at any time by notice in writing to the Hirer.

13.2 Upon termination under this clause or clause 12, the Hirer must on demand immediately return the Plant. If the Hirer does not, Campbell is entitled to enter any premises of the Hirer where the Plant is suspected to be to repossess the Plant. Campbell will not be liable for any damage caused and the Hirer must indemnify Campbell from any liability to it or any third party in respect of any damage, proceedings, claims, demands, costs and expenses howsoever arising.

**14. Miscellaneous**

14.1 The law of Victoria from time to time governs the Conditions and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.