

TCI GROUP

Tower Cranes Pty - ABN 46 137 155 652
Tower Cranes International Pty Ltd - ABN 45 137 155 269

PLANT HIRE CONTRACT

General Terms & Conditions

MEANINGS

1. All words and expressions which appear in bold type are defined either in the Details at the front of the contract or in the definitions Clause 53.

HIRE CONTRACT

2. **The Owner** agrees to hire the **Plant** to the **Hirer** for the **Period of Hire** and the **Hirer** agrees to pay the owner the **Deposit** and the **Hire Fees** on the terms and conditions contained in this contract, which includes the **Quotation**.

OWNER'S OBLIGATIONS

3. **The Owner** agrees to perform the **Owner's Activities** and the following activities in a professional manner:
 - 3.1 Make the **Plant** available on or after the **Start Date** as agreed, whether for collection by the **Hirer** unassembled from the **Delivery Point** or assembled and ready for use on the **Site** subject to the **Hirer's** obligations regarding **Site Preparation**.
 - 3.2 Before transportation, to inspect and test the **Plant** in accordance with WorkCover NSW regulations and other **Owner's Activities** specified in the quotation.
 - 3.3 Pay all costs associated with any unscheduled servicing and maintenance of the **Plant** from the time of commencement to the time of **Plant Acceptance** provided that:
 - 3.3.1 the problem must not have been caused by the **Hirer** or a **Related Party** of the **Hirer**
 - 3.3.2 the work was previously authorised by the **Owner**
 - 3.3.3 the **Hirer** took all proper care to ensure that the work was properly executed and the costs involved were not excessive relative to the work performed
 - 3.3.4 should the **Owner** be required to undertake work outside **Normal Working Hours**, such work shall be at the **Hirer's** expense
 - 3.3.5 if the **Owner** decides that urgent repairs to the **Plant** are necessary, the **Owner** may arrange for the repairs to be carried out on **Site** or at any other location. If relocation is necessary, the **Owner** shall replace the **Plant** with similar **Plant** if available. If the **Owner** is unable to replace the **Plant**, it may terminate this contract immediately by giving written notice to the **Hirer**. If termination occurs within 3 months from the time of commencement, the **Owner** shall pay all associated transport charges. If the termination occurs after that time, the **Owner** shall be liable only for the cost of reloading and return transport.
 - 3.4 Release the **Deposit** to the **Hirer** within 60 days of the time of **Plant Acceptance**, subject to any right of the **Owner** to claim the **Deposit** or any part of it under this contract.

HIRER'S OBLIGATIONS

4. In consideration of the **Owner** entering into this contract, the **Hirer** agrees as follows:
 - 4.1 to pay the **Deposit** to the **Owner** within 14 days of the date of this contract
 - 4.2 to pay the **Hire Fees** within 7 days of the date of the **Owner's** monthly invoice and the **Owner's** charges for labour and other costs within 14 days of the date on the invoice
 - 4.3 the **Hirer** shall pay interest on any outstanding amount due to the **Owner** under this contract at the rate of 15% p.a. compounding monthly and calculated from the due date of any outstanding amount.
 - 4.4 the **Hirer** accepts full and sole responsibility for all the following items associated with **Plant Activities**:
 - 4.4.1 the **Risk of the Plant**, the **Plant Documentation** and the **Plant Activities**
 - 4.4.2 access to land or air space or any other property rights
 - 4.4.3 all **Consents** relating to the **Site**
 - 4.4.4 the foundations and support for the **Plant** and the load to be borne by the **Plant**.
5. **The Hirer** must not, without the prior written consent of the **Owner**:
 - 5.1 Move the **Plant** from the **Site**.
 - 5.2 Remove, deface, cover up or obscure any of the **Owner's** name plate, mark, logo, sign or notice on the **Plant**.
 - 5.3 Paint the **Plant** in any colour other than its colours as at the **Start Date**.
 - 5.4 Allow the **Plant** to be used for or by any person who is not a **Related Party** of either the **Owner** or the **Hirer**.
 - 5.5 Make any representation to any person that it is the **Owner** of the **Plant** or that it has any property rights or interest in the **Plant**.
 - 5.6 Attach or fix any part of the **Plant** to any other goods, material or chattel.
 - 5.7 Allow the **Plant** to be affixed to the **Site** as a fixture.
 - 5.8 Re-hire, sub-let or lend to any third party the **Plant** or any part of the **Plant**.

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- 5.9 Sell, mortgage, charge, pledge, part with possession of or otherwise deal with the **Plant**.
- 5.10 Allow any person who is not a **Related Party** of the **Owner** to operate the **Plant** without the written approval of the **Owner**.
6. **Repairs.** Until the **Plant** is returned to the **Return Point**, the **Hirer** shall be liable for any damage to any item of **Plant** for the full cost of any repairs necessary to restore the **Plant** to its undamaged state.
7. **Suitability of Plant.** The **Hirer** acknowledges that it has satisfied itself of the suitability of the **Plant** for the purpose for which it is to be used and the **Hirer** hereby accepts full responsibility for the choice of the **Plant** for that purpose and declares that it has the knowledge, capability and understanding necessary to select and operate the **Plant** for that purpose.
8. **Indemnity.** The **Hirer** assumes total responsibility for and releases and indemnifies the **Owner** and its **Related Parties** from any claim or loss in connection with:
- 8.1 injury, illness or death of any person
- 8.2 loss of or damage to any real or personal property, whether by fire, theft, accident, seizure, confiscation or otherwise (including property of the **Owner**)
- 8.3 any third party claims whatsoever
- 8.4 any liability which may arise in connection with the **Hirer's** use of the **Plant** or the **Plant Activities** and any breach, act, omission or wilful misconduct of the **Hirer** or any of its **Related Parties**.
9. **Insurance.** The **Hirer** shall effect and maintain at all times from the **Time of Commencement** to the **Time of Plant Acceptance** an insurance policy which covers:-
- 9.1 **All Risks Physical Damage Insurance**
The **Plant** for its full insurable replacement value against theft or loss or damage of any kind, including during transit and
- 9.2 **Public Liability Insurance**
All third party risks, including liability for damage or injury of any kind to any property or person for an amount of cover for any single incident not less than the amount stated in the Details, with an insurer approved by the **Owner** and in the joint names of the **Hirer** and the **Owner** and covering them against their respective rights and liabilities.
- 9.3 The **Hirer** shall:
- 9.3.1 ensure that the **Owner** is noted on all policies as an interested party.
- 9.3.2 deliver to the **Owner** before the **Time of Commencement** a certificate of insurance confirming the existence of the policies.
- 9.4 The **Hirer** shall not do anything which may in any way invalidate or prejudice any insurance referred to in this contract or the interests of any of the parties and shall notify the **Owner** in writing of any event which leads or might lead to a claim under any insurance policy effected pursuant to this contract.
10. **Risk of Plant etc.** Except as otherwise specifically provided in this contract, the **Hirer** shall be responsible for and shall bear the risk of:
- 10.1 the **Plant**, the **Plant Documentation** and the **Plant Activities** from the **Time Of Commencement** until the **Time of Plant Acceptance**
- 10.2 the safekeeping of the **Plant** and the **Plant Documentation**, keeping the **Plant** in good condition and substantial repair, making good all theft, loss of or damage to the **Plant** (fair wear and tear excepted) and security of the **Site**
- 10.3 except to the extent that the **Owner** is responsible for it under this contract, the transport of the **Plant** to and from the **Site**, unloading and reloading of the **Plant** at the **Site**, erection, assembly, installation and mobilising of the **Plant** ready for use
- 10.4 suitable preparations, including any private access road or track, to ensure that the **Plant** is properly supported for the purpose of the **Plant Activities**
- 10.5 ensuring that the **Plant** is used properly as required by the design, manufacturer's instructions, the law (including Occupational Health & Safety laws) and industry practice
- 10.6 all persons involved in the **Plant Activities** being suitably trained, qualified and experienced
- 10.7 upon the **Owner's** request, providing documentary evidence of the qualifications and competence of any person involved in any of the **Plant Activities**
- 10.8 the adequate stability of the **Plant** at all times during **Plant Activities**
- 10.9 all inspections and checks required by the **Plant Documentation** or by law or by industry practice and sending documentary evidence of such inspections and checks to the **Owner** on a weekly basis
- 10.10 providing all fuels, consumables and accessories necessary for the **Plant Activities**
- 10.11 obtaining all spare parts and components necessary for the operation of the **Plant**
- 10.12 carrying out all repairs and maintenance of the **Plant**
- 10.13 dismantling and uninstalling the **Plant** ready for transit
- 10.14 notifying the **Owner** immediately by telephone, with confirmation in writing, of:
- 10.14.1 any incident involving injury to any person or damage to property, equipment or any facility
- 10.14.2 any breakdown, potential breakdown or any part of the **Plant** not working satisfactorily
- 10.15 returning the **Plant** on completion of the **Period of Hire**, to the **Return Point** painted in the same colour scheme as existed on the **Start Date**, clean and in good order and condition (fair wear and tear excepted).

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11. The **Hirer** shall at all times allow the **Owner** or its insurers to have access to the **Site** and the **Plant** for any reason provided that any work required will be performed at times which do not materially inconvenience the **Hirer**. The **Hirer** shall indemnify the **Owner** and its related parties against any claims or loss arising out of or in connection with their entry upon the **Site** for any reason.

GENERAL

12. **Inconsistencies.** In the event of any inconsistencies between these general conditions and the **Quotation**, the terms in the **Quotation** shall override these conditions.
13. **Hire rates.** The hire rates are in Australian currency and exclusive of GST. They are based upon the assumption that the **Hirer's Normal Working Hours** are 5.5 days or 56 hours per week.
14. **Working hours.** The **Owner** shall be entitled to increase its charges proportionately in the event that the **Hirer** increases its working hours beyond its **Normal Working Hours** within any one week.
15. **Dry Hire Rate.** The **Dry Hire Rate** does not include any of the following activities:
 - 15.1 transportation of the **Plant** to, from and on the **Site**, unloading, assembling, erection, mobilisation, operation, dismantling, demobilisation or reloading of the **Plant**, repair and maintenance of the **Plant**, consumables including fuels and lubricants, resharpening of drills or metals, recovery of any **Plant**, including from soft ground and the cost of any storage or securing of the **Plant**.
16. **Hire Fees.** The **Hirer** must pay hire fees to the **Owner** regardless of whether the **Plant** is operated. The **Owner** shall not be responsible for any stoppages in the operation of the **Plant** beyond its obligation under the **Breakdown** provisions of this contract.
17. **Breakdown.** In the event of any **Breakdown** (as defined in this contract) the **Hire Fees** shall be suspended from the time that the **Hirer** notifies the **Owner** of the breakdown until the affected **Plant** is, in the **Owner's** reasonable opinion, operational.
 - 17.1 Each of the items which comprise the **Plant** is hired as a separate unit. The **Breakdown** of one or more units of plant through any cause whatsoever, shall not entitle the **Hirer** to compensation or an allowance for the loss of working time of any other unit or units of **Plant**. The **Hirer** shall be entitled to a credit equal to the hourly rate charged on the item of **Plant** based on the **Normal Working Hours** of the **Hirer** during which the unit of **Plant** broken down was not operational.
18. **Deposit.** If the **Owner** has a claim against the **Hirer** of any kind connected with this contract or the **Plant**, or if the **Hirer** fails to pay the **Owner** an amount due under this contract by its due date, the **Owner** may have recourse to the **Deposit** and it shall be entitled to demand, by notice in writing to the **Hirer**, that the **Deposit** be replenished within 5 business days of the date of that notice.
19. **Insurance Claims.** The **Hirer** and the **Owner** acknowledge and agree that each party is entitled to receive payments of moneys recovered under any insurance policy effected pursuant to this contract according to its interest in the policy under this contract.
 - 19.1 Each party agrees to assist and co-operate with the other in making, pursuing and settling any claim made under any of the policies.
20. **Damage to Plant.** If any item of **Plant** is damaged between the time of commencement and the **Time of Plant Acceptance**, the **Hirer** shall be liable for the full cost of any repairs necessary to restore the **Plant** to its undamaged state. Also, the **Hire Fee** shall apply notwithstanding any loss of use or operation of the **Plant** during such repair or replacement.
21. **Limitation of Owner's Liability.** Notwithstanding any other provision of this contract, the maximum aggregate liability of the **Owner** to the **Hirer** arising out of or in connection with the contract or the **Plant** on any grounds whatsoever is limited to 10% of the amount of **Hire Fees** paid by the **Hirer** under the contract. For the avoidance of doubt, this clause will survive fundamental breach, rescission, frustration, suspension, discharge, termination or expiration of the contract.
22. **Delivery of Plant.** Unless notification in writing to the contrary is received by the **Owner** within 72 hours of the **Time of Commencement**, the **Plant** shall be deemed to be in good order and to the **Hirer's** satisfaction provided that where the contract requires the **Owner** to perform any activities on **Site**, the period stated above shall commence from the time that the **Owner** has completed the **Owner's Activities** on **Site** which are required before commencement of operation of the **Plant**.
23. **Return of Plant.** The **Hirer** shall return the **Plant** to the **Owner** at the expiration of the **Period Of Hire** in the same condition that it was in at the **Time of Commencement**, subject to fair wear and tear.
 - 23.1 The **Hirer** shall give the **Owner** at least 7 days' advance notice of its intention to return the **Plant** to the **Owner** and it must prepare the **Plant** for inspection by the **Owner** on site in order to determine whether the **Plant** is in an acceptable condition. The **Owner** shall not be obliged to accept delivery of the **Plant** from the **Hirer** until such time as any defects or damage have been rectified by the **Hirer** or at the **Hirer's** expense.
 - 23.2 If upon inspection by the **Owner** no damage or defect is observed beyond fair wear and tear, the **Owner** must notify the **Hirer** that the **Plant** is unacceptable condition and that the period of hire shall expire upon the **Hirer** returning the **Plant** in that condition to the **Return Point**.
24. **Title.** Ownership and title in the **Plant** shall at all times remain wholly with the **Owner**. Nothing in this contract shall confer on the **Hirer** any interest in the **Plant**.
 - 24.1 The **Hirer** shall not do or omit to do anything which could put at risk the **Owner's** ownership and title in the **Plant**.
 - 24.2 The **Owner** shall be entitled to register its interest under the Personal Property Securities Act 2009 (**PPSA**) or any other Act of parliament or law.

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- 24.3 If the **Hirer** sells or otherwise disposes of the **Plant** in any way, it shall do so as the **Owner's** fiduciary agent and the **Proceeds** of any such sale or other disposal shall remain the property of the **Owner** held by the **Hirer** on trust for the **Owner**. Pursuant to the **Owner's** interest in the **Deposit** this contract constitutes a **Security Interest** as defined in the **PPSA**.
- 24.4 The **Hirer** unconditionally waives its right to receive any notice from the **Owner** in connection with the registration of the **Security Interest** arising under this contract and the **Hirer** agrees to take such steps as the **Owner** may reasonably require perfecting or otherwise ensuring the enforceability of any **Security Interest** granted to the **Owner** under this contract. The steps may include but are not limited to the following:
- 24.4.1 Obtaining and giving consents
 - 24.4.2 Producing and providing receipts
 - 24.4.3 Attending to the signing of documents
 - 24.4.4 Facilitating the registration of any **Security Interest** on the **PPSA** register in any form reasonably requested by the **Owner**
 - 24.4.5 Facilitating the giving of notice to any person, including any person who also has, or appears to have, a **Security Interest** over **Relevant Collateral**
 - 24.4.6 Facilitating the exercise of the **Owner's** right in enforcing any **Security Interest**.
25. **Not a fixture.** The **Hirer** shall ensure that the **Plant** does not become a fixture to any land and that it does not become an **Accession** (as defined in the **PPSA**) to other goods.
- 25.1 Upon request from the **Owner**, the **Hirer** shall at its own expense prevent or remedy the affixation of the **Plant** to any land or **Accession** to any goods by any reasonable means specified by the **Owner** including but not limited to the following:
- 25.1.1 procuring appropriate acknowledgements and consents from landlords, mortgagees and property owners and
 - 25.1.2 detaching, or procuring the detachment of, the **Plant** from any land or goods to which it has become attached.
26. **Not Inventory.** The **Plant** is not and will not become at any time, "**Inventory**" of the **Hirer**, within its meaning in the **PPSA**
27. **Non-applicable provisions of PPSA.** For the purposes of Section 115 of the **PPSA**, the following sections of the **PPSA** shall not apply to any **Plant** or part thereof or to any **Relevant Collateral**:
- 27.1 Section 95 (notice by Secured Party of removal of **Accession**)
 - 27.2 Section 121(4) (notice by Secured Party of enforcement of **Security Interest** in liquid assets)
 - 27.3 Section 125 (obligation of Secured Party to dispose of or retain **Collateral** after seizure)
 - 27.4 Section 130, to the extent that it requires the **Owner** to give any notice to the **Hirer** (notice by Secured Party of disposal of **Collateral**)
 - 27.5 Section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account)
 - 27.6 Section 132(4) (statement of account by Secured Party if it does not dispose of **Collateral** within prescribed period)
 - 27.7 Section 135 (notice by Secured Party of retention of **Collateral**) and
 - 27.8 Section 143 (reinstatement of security agreement).
28. **Seizure.** The **Hirer** shall be in default of this contract for the purposes of section 123(1) of the **PPSA** if any person with a **Security Interest** in **Relevant Collateral** seizes or becomes entitled to seize that **Relevant Collateral** without the consent of the **Owner**.
29. **Assignment by Owner.** The **Owner** shall be entitled to assign its rights and obligations under this contract.
30. **Event Beyond Control.** If either party becomes unable to perform its obligations under this contract due to an event which has occurred and that event was not reasonably foreseeable and not within the control of that party, it shall give the other party written notice of the uncontrolled event within 3 days of becoming aware of that event. On giving such notice the party affected shall be relieved of the obligations under this contract which the affected party is unable to perform due to the uncontrolled event.
- 30.1 The affected party shall take all reasonable steps to mitigate the effects of the uncontrolled event and facilitate the continued performance of the contract.
- 30.2 If the uncontrolled event prevents the affected party from being able to comply with a material part of its obligations under this contract for a period of at least 90 days, then either party may terminate this contract by giving 10 business days' written notice to the other party.
31. **Events of Default.** Each of the following events shall be events of default entitling the other party to take action for breach of contract:
- 31.1 a party fails to observe, satisfy or perform any obligation, liability or other provision of this contract and that failure continues for a period of 3 days after the other party has served on the defaulting party a notice in writing specifying the default
 - 31.2 any insurance policy which relates to the **Plant** is cancelled or is not renewed due to the negligence or default of the party responsible for effecting the insurance
 - 31.3 immediately upon a party becoming insolvent.
32. **Termination.** The **Hirer** may terminate this contract in the event that the **Owner** commits an act or omission which is an event of default. The **Owner** may terminate this contract if the **Hirer** commits an act or omission which is an event of default.
- 32.1 To terminate this contract the party requiring termination must give written notice to the other party, whereupon termination shall occur upon the date specified in the notice. If no date is specified, termination shall occur upon receipt by the other party of that notice
 - 32.2 Termination of this contract shall not affect the rights and obligations of the parties existing prior to the date of termination and nor will it affect any rights, powers and remedies of the parties at law or in equity
 - 32.3 Upon termination of this contract, the **Owner** shall be entitled to immediately retake possession of the **Plant**.
33. **Extension of Hire Period.** If so requested by the **Hirer**, the **Owner** may in its absolute discretion, by notice in writing, extend the original **Period of Hire** for such an additional period as the **Owner** sees fit. The **Hirer** acknowledges that the **Owner** is better able to exercise its discretion in the **Hirers** favour if reasonable notice is given to the **Owner**.
- 33.1 If the **Owner** extends the **Period of Hire** then:
- 33.1.1 The **Period of Hire** will be extended by the period specified in the written notice at the **New Hire Rate** specified in the Details and

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33.1.2 all the terms and conditions of this contract shall otherwise continue to apply.

DISPUTE RESOLUTION

34. **Notice.** If a dispute arises between the parties in connection with this contract, either party may give to the other a written dispute notice specifying the nature of the dispute and nominating a representative who is authorised to negotiate and settle the dispute on its behalf.
- 34.1 **Response.** Upon receipt of a dispute notice the other party shall respond in writing within 2 **Business Days** and nominate its representative authorised to negotiate and settle the dispute on its behalf.
- 34.2 **Negotiations.** The parties' representatives shall negotiate with a view to resolving the dispute within 30 days from the date of receipt of the original dispute notice.
- 34.3 **Senior Level Negotiations.** If negotiations are not resolved within the said 30 day period, the dispute shall be referred immediately to the General Manager or Chief Executive Officer of each of the parties or a delegate on their behalf, fully authorised to settle the dispute. Within 7 days of a referral, the appointed senior officers shall meet and negotiate for a resolution of the dispute over a period of not more than 14 days.
- 34.4 **Litigation.** No party to this contract is permitted to commence legal proceedings related to this contract unless the procedure laid down in this clause has been followed.

CONFIDENTIALITY

35. Neither the **Owner** nor the **Hirer** shall disclose to any third party:
- 35.1 information about the terms of this contract
- 35.2 information about the obligations secured by any **Security Interest** under this contract or the terms of payment or performance in respect of any obligation under this contract at any particular time or
- 35.3 any information of the kind described in section 275(1) of the **PPSA**, including:
- (i) a copy of this document
 - (ii) the amount or the obligation secured by any **Security Interest** created by this document, and the terms of payment or performance or
 - (iii) a list of personal property in relation to which any **Security Interest** created by this document is granted,
- Except:
- a. to its officers, employees, legal and other advisers and auditors
 - b. with the consent of the non-disclosing party; or
 - c. to the extent it is necessary for either party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.

NOTICES

36. **Form.** Unless expressly stated otherwise in this contract, all notices, certificates, consents, approvals, waivers, and other communications in connection with this contract must be:
- 36.1 in writing;
- 36.2 in English or accompanied by a certified translation into English;
- 36.3 signed by the sender (if an individual) or an authorised officer of the sender; and
- 36.4 marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.
37. **Delivery.** Communications must be sent to the address in the Details in any of the following ways:
- 37.1 Left at the address
- 37.2 Sent by prepaid ordinary post (airmail if appropriate)
- 37.3 Sent by fax to a fax number in the Details
- 37.4 Sent by email
- 37.5 Given in any other way permitted by law.
- However, if the intended recipient had notified a change of address, fax number, or email address, the communications must be sent to that address, fax number or email address.
38. **When taken to be received.** Communications are taken to be received:
- 38.1 If sent by post, three days later after posting (or seven days after posting if sent from one country to another)
- 38.2 If sent by fax, at the time shown in the transmission report at the time that the whole fax was sent
- 38.3 If sent by email:-
- 38.3.1 when the sender received an automated message confirming delivery
 - 38.3.2 four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.
39. **Receipt outside business hours.** If communications are received or taken to be received after 5.00pm in the place of receipt or on a non-**Business Day**, they are taken to be received at 9.00am on the next **Business Day** and take effect from that time unless a later time is specified.
40. **Responsibility for Related Parties.** The **Hirer** shall be responsible for any acts or omissions of its **Related Parties** as if they were the acts or omissions of the **Hirer** itself and the **Owner** shall be responsible for the acts or omissions of its **Related Parties** as if they were the acts or omissions of the **Owner** itself.
41. The **Owner's** liability to the **Hirer** for loss or damage of any kind arising out of this contract in any way whatsoever shall be reduced by the extent (if any) that the **Hirer** causes or contributes to the loss or damage.
42. **No duty of care.** The **Owner** nor any of its **Related Parties** assumes or owes any duty of care to the **Hirer** or any other person in respect of the performance or the non-performance of the **Owner's** obligations under this contract.
43. **Variation and waiver.** No term or condition of this contract may be varied or waived except by agreement in writing, signed by the party or parties to be bound.

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44. **Time of the essence.** Time is of the essence in this contract in respect of any obligation of the **Hirer** to pay money.
45. **GST.** If the supply of any **Plant** under this contract is a taxable supply for the purpose of a New Tax System (Goods and Services) Act 1999 as amended (GST Act) then the **Owner** shall be entitled to recover from the **Hirer** an additional amount on account of the GST, being an amount equal to the amount of the **Owner's** liability in respect of the supply.
- The **Owner** shall include the GST in its invoices and GST shall be recoverable at the same time as the amounts being invoiced.
46. **Operation of indemnities**
- 46.1 No indemnity in this contract limits the effect or operation of any other indemnity in this contract
- 46.2 Each indemnity in this contract is a continuing obligation, separate and independent from the other obligations of the parties
- 46.3 A party may recover a payment under an indemnity in this contract before it makes the payment in respect of which the indemnity is given
- 46.4 The **Owner** holds for itself and on trust for each of the **Owner's Related Parties** the benefit of each indemnity and release in this contract.
47. **Recourse for Unpaid Moneys.** The **Owner** may set off, deduct, or withhold from any moneys due to the **Hirer** pursuant to this contract any debt, amount, claim or any other entitlement the **Owner** may have against the **Hirer** for any reason whatsoever.
48. **Costs.** Each party will pay its own legal and other costs and expenses in connection with the preparation, execution and completion of this contract and any other related documentation.
49. **Survival of Provisions.** The following clauses shall survive fundamental breach, repudiation, rescission, frustration, suspension, discharge, termination or expiration of this contract:
- 49.1 Clause 21 (Limitation of Liability)
- 49.2 Clause 8 (Indemnity)
50. **Order of Precedence.** This contract is comprised of the **Quotation**, the Details, any Special Conditions and these General Terms & Conditions. In the event of any inconsistency between them, the following order of precedence in decreasing priority, will apply: the Details, the Special Conditions, the **Quotation** and these General Terms & Conditions.
- 50.1 This contract contains the entire agreement between the parties in relation to the subject plant hire. Any previous understanding, agreement, representation or warranty relating to that subject is replaced by this contract and has no further effect.
51. **Governing Law.** This contract is governed by the law in force in the State in which the **Return Point** is located.
52. **Hirer's Guarantors.** In consideration of the **Owner** contracting with the corporate **Hirer** the **Hirer's Guarantors** hereby jointly and individually guarantee the performance by the **Hirer** of all the **Hirer's** obligations under this contract and indemnify the **Owner** against any expense or loss whatsoever arising as a result of the default by the **Hirer** in performing its obligations under this contract for whatever reason.
- The **Owner** may seek to recover any loss from either or both of the **Hirer's Guarantors** before seeking recovery from the **Hirer** and any settlement or compromise with the **Hirer** will not release the **Hirer's Guarantors** from the obligation to pay any balance that may be owing to the **Owner**.
- This guarantee is jointly and severally binding on the **Hirer's Guarantors**, their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of this contract by the **Owner**.
53. **Definitions**
- Accession** has the meaning given in the **PPSA**.
- Breakdown** means any stoppage of the operation of the **Plant** due to the breakdown of the **Plant** which is caused by the development of either an inherent fault in the **Plant** or a fault in the **Plant** not ascertainable by reasonable examination or fair wear and tear and which subsists for a period exceeding twenty four (24) hours.
- Business Day** means a day that is not a Saturday, Sunday or a public holiday in the city of Sydney, New South Wales.
- Claim** includes any suit, claim, action, demand, proceeding, penalty, fine, order, or adverse judgement (at common law or in equity) under, arising out of, or in any way in connection with, this contract or the **Plant**.
- Collateral** has the meaning given in the **PPSA**.
- Consents** means all permits, authorisations approvals, licences, exemptions, clearances, consents, permissions, notifications, applications, filings, registrations, lodgements, deeds, certificates, directions, declarations or exemptions, or similar decisions of a kind which are required from, by or with a **Relevant Authority** or any part of it or in connection with the site.
- Insolvent**
- A person or company is **Insolvent** if:
- 1) It is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act).
 - 2) It has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property
 - 3) It is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this contract).
 - 4) An application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (1), (2), or (3) above.
 - 5) It is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand.
 - 6) It is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this contract reasonably deduces it is so subject).
 - 7) It is otherwise unable to pay its debts when they fall due.
 - 8) Something having a substantially similar effect to (1) (2) or (3) happens in connection with that person under the law of any jurisdiction.
- Internal or External Climbing** means the methods of climbing the crane as the building progresses – either bottom tower climbing system (internal) or top climbing system (external).
- Inventory** has the meaning given in the **PPSA**.
- Normal Working Hours** means the time between the hours of 7.00am and 3.30pm on each Monday through to Friday (inclusive) which is a **Business Day**.

TCI GROUP

Tower Cranes Pty - ABN 46 137 155 652
Tower Cranes International Pty Ltd - ABN 45 137 155 269

Plant means the plant, machinery, vehicles or equipment described in the Details, accessories and components.

Plant Activities means any action or activity occurring or to occur with, to, on or in respect of the **Plant** including the transit, transportation, unloading, erection, use, operation, maintenance, repair, storage, securing, dismantling, unloading, return transit or return transportation of the **Plant** except for the **Owner's Activities** specified in the Details.

PPSA means the Personal Property Securities Act 2009 (CTH).

Proceeds has the meaning given in the **PPSA**.

Related Party means:

- 1) Any related body corporate, related entity or subsidiary.
- 2) An officer, employee or agent or any related body corporate, related entity or subsidiary and any officer, employee or agent of such a person.
- 3) Any subcontractor and any of their respective officers, employees or agent in its capacity as a subcontractor.
- 4) Any person on or at any of the sites at the express or implied invitation or any subcontractor.

Relevant Authority means any court or tribunal with the relevant jurisdiction, any local, state, national or supranational government, council, agency, authority, inspectorate, department, ministry, official or public or statutory person.

Relevant Collateral means Collateral which is the subject of a **Security Interest** granted under this contract.

Scheduled Servicing and Maintenance means on-ground servicing and testing prior to crane erection. Thereafter intermediate servicing & maintenance at the following intervals:

- TEREX – Three months & yearly inspections
- FMGRU – Three months & yearly inspection.
- RAIMONDI - Three months & yearly inspection
- CATTANEO - Three months & yearly inspection

Security Interest has the meaning in the **PPSA**.

Tie Installation or Removal means – frame system, where required, that safely connects the tower crane to a building or structure. Ties will be installed prior to the climbing of the crane and removed as the crane is climbing down.

Time of Commencement means the earlier of:

- 1) The time when the **Plant** leaves the **Owner's** depot or place where it was last deployed.
- 2) The Start Date for hire.

Time of Plant Acceptance means the time of the **Owner's** notice of acceptance of the **Plant**.