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## LIFTRITE CRANE HIRE Pty. Ltd. – Terms and Conditions of Hire

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### 1. Definitions

- 1.1 "LCH" shall mean LIFTRITE CRANE HIRE Pty. Ltd., its successors and assigns any person acting on behalf of and with the authority of LIFTRITE CRANE HIRE Pty. Ltd.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Equipment" shall mean Equipment supplied on hire by LCH to the Client (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by LCH to the Client.
- 1.5 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by LCH to the Client.
- 1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between LCH and the Client subject to clause 3 of this contract.

### 2. Acceptance

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

### 3. Price and Payment

- 3.1 At LCH's sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by LCH to the Client in respect of Equipment supplied on hire; or
  - (b) LCH's current hourly rate, at the date of delivery of the equipment; according to LCH's current Price List; or
  - (c) LCH's quoted Price (subject to 3.2) which shall be binding upon LCH provided that the Client shall accept in writing LCH's quotation within thirty (30) days.
- 3.2 LCH reserves the right to change the Price in the event of a variation to LCH's quotation.
- 3.3 At LCH's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to LCH.
- 3.4 At LCH's sole discretion payment shall be due on delivery of the Equipment.
- 3.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 3.6 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and LCH.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price and clearly marked on the invoice except when they are expressly included in the Price.
- 3.9 Payments made by Credit Card (Visa or Mastercard) will incur a 1.5% Surcharge which will be added to the total of the Invoice at the time of payment. This charge is GST free.
- 3.10 Payment by American Express is not accepted

#### **4. Hire Period**

- 4.1 Hire charges shall commence from the time the Equipment leaves the LCH depot and will continue until the return of the Equipment to the LCH depot, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.2 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless LCH confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies LCH immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

#### **5. Delivery of Equipment**

- 5.1 At LCH's sole discretion the costs of travelling to and from the Client's site will be included in the Price.
- 5.2 The Client shall make all arrangements necessary to take delivery of the Equipment whenever it is scheduled for delivery. In the event that the Client is unable to take delivery of the Equipment as arranged then LCH shall be entitled to charge a reasonable fee for redelivery.
- 5.3 The Client shall be responsible for free access by LCH to the site on which the Equipment is required. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse LCH for all lost hire fees associated with making the site available. The Client shall also be responsible for all other expenses and costs incurred by LCH due to delays in access to the Client's site.
- 5.4 The failure of LCH to carry out the scheduled lift shall not entitle either party to treat this contract as repudiated.
- 5.5 LCH shall not be liable for any loss or damage whatever due to failure by LCH to deliver the Equipment (or any of it) promptly, or at all, where due to circumstances beyond the control of LCH.

#### **6. Risk**

- 6.1 LCH retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery to site.
- 6.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies LCH for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Client.
- 6.3 The Client accepts full responsibility for and shall keep LCH indemnified against all liability in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

#### **7. Title**

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

#### **8. Defects**

- 8.1 The Customer shall inspect the Equipment on delivery and shall within twenty four (24) hours notify LCH of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford LCH an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which LCH has agreed in writing that the Client is entitled to reject, LCH's liability is limited to either repairing or replacing the Equipment, except where the Client has hired Equipment as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

#### **9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

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

## **10. Warranty**

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

## **11. Client's Responsibilities**

11.1 The Client shall:

- (a) Notify LCH immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirement to safeguard the Equipment by giving such notification.
- (b) Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- (c) Comply with all occupational health and safety laws relating to the Equipment and its operation;
- (d) On termination of the hire, the Client shall return the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to LCH;

11.2 Immediately on request by LCH the Client will pay:

- (a) The new list price of any Equipment that is for whatever reason destroyed, written off or not returned to LCH;
- (b) The cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (c) The cost of repairing any damage to the Equipment caused by vandalism, or (in LCH's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.

## **12. Cancellation**

12.1 LCH may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving phone or written notice. On giving such notice LCH shall repay to the Client any sums paid in respect of the Price. LCH shall not be liable for any loss or damage whatever arising from such cancellation.

12.2 In the event of the Client cancelling delivery of the Equipment, the Client shall be liable for any loss incurred by LCH (including, but not limited to, any loss of profits) up to the time of cancellation.

## **13. Nomination of Sub-Contractor**

13.1 Where the Client requests Equipment which is unavailable at the time of request, LCH may offer to arrange with a Sub-Contractor to supply the Equipment that is the subject of the Contract. In this instance, LCH is entitled to charge 10% on top of the Sub-Contractor's Hire Charge. Upon declaration and agreement by the Client, the contract will be deemed to be ratified by the Client upon delivery of the Equipment to the Client. The Sub-Contractor shall thereupon be entitled to the full benefit of these Terms and Conditions to the same extent as LCH. All payment and purchasing information will be LCH's responsibility.

13.2 Unless otherwise agreed, LCH will use its best endeavours to deliver the Equipment to the Client at the time requested by the Client but no liability will accrue to LCH, if LCH cannot deliver the Equipment by reason of (a) an accident; (b) any mechanical failure which is beyond the reasonable control of LCH; (c) any other act or omission which is reasonably beyond the control of LCH. Under these circumstances, LCH will use its best endeavours to hire a Sub-Contractor to deliver the Equipment to the Client. LCH will notify the Client as soon as possible of the Sub-Contractor's details. All payment and purchasing information will be LCH's responsibility and as part of hiring the Sub-Contractor to complete the delivery of Equipment, the Sub-Contractor shall thereupon be entitled to the full benefit of these Terms and Conditions to the same extent as LCH.

#### **14. Default and Consequences of Default**

- 14.1 If the Client defaults in payment of any invoice when due, the Client shall indemnify LCH from and against all costs and disbursements incurred by LCH in pursuing the debt including legal costs on a solicitor and own client basis and LCH's collection agency costs.
- 14.2 Without prejudice to any other remedies LCH may have, if at any time the Client is in breach of any obligation (including those relating to payment), LCH may suspend or terminate the supply of Equipment or services to the Client and any of its other obligation under the terms and conditions. LCH will not be liable to the Client for any loss or damage the Client suffers because LCH has exercised its rights under this clause.
- 14.3 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.4 Without prejudice to LCH's other remedies at law LCH shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies LCH may have and all amounts owing to LCH shall, whether or not due for payment, become immediately payable in the event that:
- (a) Any money payable to LCH become overdue, or in LCH's opinion the Client will be unable to meet its payment as they fall due; or
  - (b) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **15. Privacy Act 1988**

- 15.1 The Client and/or the Guarantor/s agree for LCH to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by LCH.
- 15.2 The Client and/or the Guarantor/s agree that LCH may exchange information about the Client and the Guarantor/s with those credit providers either names as trade referees by the Client or name in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) To assess an application by the Client; and/or
  - (b) To notify other credit providers of a default by the Client; and/or
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) To assess the credit worthiness of the Client and/or Guarantor/s.
- 15.3 The Client consents to LCH being given a consumer credit report to collect overdue payment on commercial credit (Section 18: (1) (h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by LCH for the following purposes and for other purposes as shall be agreed between the Client and LCH or required by law from time to time:
- (a) The provision of Equipment on hire; and/or
  - (b) Marketing of services by LCH, its agents or distributors in relation to the Equipment; and/or
  - (c) Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Equipment on hire; and or
  - (d) Processing of any payment instructions, direct debit facilities request by Client; and/or
  - (e) Enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of the Equipment.
- 15.5 LCH may give information about the Client to a credit reporting agency for the following purposes:
- (a) To obtain a consumer credit report about the Client; and/or
  - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

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### 16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 16.3 LCH shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by LCH of these terms and conditions.
- 16.4 In the event of any breach of this contract by LCH the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of LCH exceed the Price.
- 16.5 LCH may license or sub-contract all or any part of it's rights and obligation with the Client's consent.
- 16.6 LCH reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which LCH notifies the Client of such change.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other beyond the reasonable control of either party.
- 16.8 The failure by LCH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect LCH's right to subsequently enforce that provision.