

MCLEOD TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "McLeod" shall mean McLeod Cranes Ltd, or McLeod Hiabs Ltd as the context requires, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing equipment and services from McLeod.
- 1.3 "Equipment" means all equipment and materials provided by McLeod to the Customer, including without limitation all Cranes (with or without operators), Hiab, forklift, telehandler, transport, transporters, hoists and vehicles.
- 1.4 "Services" shall mean all services or advice provided by McLeod to the Customer including without limitation all charges for labour and work hire charges, insurance charges, or any fee or charge associated with the supply of equipment and services by McLeod to the Customer.
- 1.5 "Price" shall mean the cost of the equipment and services as agreed between McLeod and the Customer subject to clause 5 of this contract.
- 1.6 "Site" shall mean the place or area where the Equipment and Services is to be used for the purposes of this contract.
- 1.7 "Crane" means a crane hired by McLeod to the Customer (whether the original crane hired or any substituted crane) and includes all accessories and other equipment belonging to McLeod attached to the crane or to be used in connection with it. For the purposes of these Terms and Conditions the crane shall be deemed to be the property of McLeod.

2. HIRE OF EQUIPMENT AND SERVICES

- 2.1 The Customer agrees to hire the Equipment & Services and accepts the supply of the Equipment and Services from McLeod in accordance with these Terms and Conditions of Trade.
- 2.2 The Customer agrees that it has used its own skill and knowledge in selecting the Equipment and Services to be provided by McLeod so that the Equipment and Services are fit for their intended purpose.

3. ACCEPTANCE

- 3.1 Any instructions received by McLeod from the Customer for the supply of equipment and services, including equipment and services that McLeod has ordered or is required to order from overseas shall constitute a binding contract and acceptance of these terms and Conditions of Trade.

4. COLLECTION AND USE OF INFORMATION

- 4.1 The Customer authorises McLeod to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Equipment and Services provided by McLeod to any other party.
- 4.2 The Customer authorises McLeod to disclose any information obtained to any person for the purposes set out in clause 4.1.
- 4.3 Where the Customer is a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.

5. PRICE

- 5.1 Where no price is stated in writing the equipment and services shall be deemed to be hired at the current amount as such equipment and services are hired by McLeod at the time of entering the contract.
- 5.2 The Price is subject to any reasonable increase in the cost of supply of the Equipment and Services that is beyond the control of McLeod between the date of the contract and delivery of the Equipment and Services.
- 5.3 McLeod may require the payment of a deposit, the sum of which will be determined by McLeod in its sole discretion.
- 5.4 McLeod reserves the right to revise its rates of hire and related charges without notice.

6. PAYMENT

- 6.1 Unless agreed otherwise all Equipment & Services supplied must be paid for in full on or before seven calendar (7) days following the date of the invoice ("the Due Date"), without deduction.
- 6.2 Compounding monthly interest may be charged on any amount owing after the Due Date at the rate of 2.5% per month or part thereof. This clause 6.2 excludes any disputed amounts, subject to those disputed amounts being resolved within thirty (30) days of notification of the disputed payments by the Customer to McLeod, after which the aforementioned interest charge may apply.
- 6.3 Without limiting any other obligation under these Terms and Conditions of Trade, the Customer shall upon demand pay or reimburse McLeod for any expenses, disbursements and legal costs incurred by McLeod in the enforcement of any rights, powers or remedies under or in relation to these Terms and Conditions of Trade, including, and without limitation, any reasonable solicitor's fees, other legal and court costs and debt recovery expenses.
- 6.4 Payment is not deemed to be effected until any payment appears as cleared funds in McLeod bank account.
- 6.5 A deposit may be required before the provision of Equipment & Services.

7. QUOTATION

- 7.1 Where a written quotation is given by McLeod for Equipment & Services:
 - 7.1.1 The quotation shall be valid for thirty (30) days from the date of issue; and
 - 7.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary; and
 - 7.1.3 Only written quotations are binding on McLeod.
- 7.2 Any quoted prices may be subject to certain requirements provided by McLeod to the Customer which are to be read in addition to these terms and conditions of trade.

8. DISPUTES

- 8.1 No claim relating to Equipment & Services will be considered unless made within three (3) calendar days of delivery of the Equipment & Services, or where appropriate, supply and erection of other works.
- 8.2 In the event of any dispute or difference arising between the parties in respect of any matter concerning these Terms and Conditions of Trade, the parties shall in good faith in the first instance use their best endeavours to resolve the matter themselves.
- 8.3 If the parties are not able to resolve the matter themselves the parties may agree upon a formal mediation to be conducted by a mediator acceptable to both parties. The Customer and McLeod shall bear the costs of the mediator equally.
- 8.4 If the parties do not agree upon the appointment of a mediator within a reasonable period, or the parties are unable to resolve the dispute by mediation, the dispute shall be referred to Expert Determination.
- 8.5 The Expert shall be appointed by the President of AMINZ. The Customer and McLeod shall bear the costs of the Expert equally.
- 8.6 The Customer and McLeod agree that the Expert's Determination is final and binding on the Customer and McLeod.

9. ORAL AGREEMENTS AND STIPULATIONS

- 9.1 No oral agreement, promise, collateral stipulation, representation, condition or warranty given or entered into by McLeod, or by McLeod and not in conformity with the McLeod Terms and Conditions of Trade shall be binding upon McLeod unless confirmed in writing by McLeod.

10. LIABILITY

- 10.1 In respect of any implied warranties, conditions or terms imposed on McLeod by statute or law, McLeod's liability shall only apply to the minimum extent required by the relevant statute or law.
- 10.2 All carriage shall be in accordance with Contract and Commercial Law Act 2017 at limited carrier's risk unless otherwise agreed in writing.
- 10.3 Except as otherwise provided by clause 10.1, McLeod shall not be liable for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer, or another person, and whether in contract, or tort, or otherwise, and whether such loss or damage arises directly or indirectly from Equipment & Services provided by McLeod to the Customer, except where such loss or damage arises directly from the negligence or default of McLeod.
- 10.4 McLeod shall not in any circumstances be liable for any indirect or consequential loss or damage (including, without limitation, loss of profits or revenue) incurred by the Customer or any other person.
- 10.5 The Customer shall indemnify McLeod against all claims and loss of any kind whatsoever however caused or arising, brought by any person in connection with any matter, act, omission, or error in connection with the Equipment & Services, unless McLeod is responsible for such claims or losses as provided under clause 10.3.
- 10.6 McLeod will not be liable for any loss or damage of any kind whatsoever arising from any Equipment & Service not arriving on time, or from deficiencies in the performance or reliability of any Equipment & Service, unless such deficiencies in the performance or reliability are as a result of any willful act or omission by McLeod or its servants, agents, contractors or subcontractors.
- 10.7 No party shall have any claim against McLeod nor shall McLeod be liable for any matter arising from or relating to these Terms and Conditions of Trade.

11. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

- 11.1 McLeod's Staff, Customer and Sub-Contractor Handbook ("the Handbook") sets out responsibilities relating to the health and safety responsibilities of the Customer. The Customer shall when using the Equipment and Services, comply with the responsibilities in the Handbook, which shall be made available to the Customer on request to McLeod. The contents of the Handbook are to be read together with and form part of this contract.
- 11.2 The Customer and McLeod shall comply with their respective obligations under the Health and Safety at Work Act 2015 (and any applicable regulations or codes of practice made pursuant to that Act including, but not limited to, the HSE (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999) to ensure that, in performing their respective obligations under this contract, a safe working environment exists for:
 - 11.2.1 employees and contractors of McLeod and the Customer; and
 - 11.2.2 third parties entering on or the Site

12. CONDITIONS OF USE AND HIRE OF EQUIPMENT AND SERVICES

- 12.1 Where equipment is hired from McLeod:
 - 12.1.1 The Customer shall not part with possession of the Equipment AND shall not sublet, sell, or attempt to alienate the Equipment in any way, or grant a security interest in, or deal with the Equipment in any way that may be prejudicial to McLeod; and
 - 12.1.2 Except as otherwise provided by these Terms and Conditions, the Customer shall be liable for any damage to, or loss of, the Equipment however caused (but excluding fair wear and tear) AND in the event of any Equipment being damaged or lost the Customer shall pay to McLeod the cost of making good the repair to the Equipment or the cost of replacing the Equipment whichever is the lesser.
- 12.2 Slings: McLeod will supply its standard selection of slings and lifting equipment but accepts no responsibility for loss or delay if these are found to be unsuitable for the purpose required. All slings and ancillary equipment shall be used by the customer at the sole risk of the customer. McLeod does not accept responsibility for the correct use of slings or lifting equipment or for the method of slinging. If any slings or lifting equipment belonging to McLeod is destroyed or damaged, the customer shall pay to McLeod the cost of replacement or repair (as the case may be) resulting from that destruction or damage.
- 12.3 Site Conditions and Access – The Customer will ensure:
 - 12.3.1 That the ground at the site is adequate to support the crane or transporter under its wheels, tracks and or outriggers; and
 - 12.3.2 That the ground giving access to the site is stable and firm and of a gradient no steeper than 1 in 10; and
 - 12.3.3 That at all times a minimum clearance of 4 metres is maintained in respect of all overhead wires and that footpaths, kerbs and channels are suitably planked, and
 - 12.3.4 Should the crane or transporter need to be towed into or out of the site, the cost shall be additional to the rate quoted and will be to the Customer's cost.
- 12.4 Use and Handling of Crane:
 - 12.4.1 When the Crane Operator is under the direct direction and control of the Customer and is acting as instructed the Customer alone shall be responsible for all claims arising in connection with the operation of the crane by the Crane Operator.
 - 12.4.2 The Customer shall not:
 - (i) Require, permit or suffer the crane operator to do anything contrary to any act, regulation, by-law, requirement, code of practice or recognised convention;
 - (ii) Allow any other person to operate the crane without first obtaining the written consent of McLeod;
 - (iii) Permit or suffer the operation or direction of the Crane by any person who is under the influence of drugs or alcohol; or
 - (iv) Use or permit the use of the Crane to lift any load which is beyond the rated lifting capacity of the Crane or for any purpose other than for which McLeod has permitted it to be hired. For the avoidance of doubt McLeod does not warrant that the Crane is fit or suitable for any such purpose; or

- (v) Issue instructions to the Crane operator which conflict with the directions of McLeod, the Crane operator's employment obligations, or would otherwise breach these Terms and Conditions of Trade or cause any risk to persons or property

- 12.4.3 McLeod reserves the right to provide a supervisor to the site if McLeod in its sole discretion considers it necessary. The Customer is required to pay the cost of the supervisor to McLeod.
- 12.4.4 The Customer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift (measured from the radial point of the Crane) will not be exceeded at any time. Where the weight is getting close to the maximum lifting capacity of the Crane, as stated by the Crane's safe load indicator, McLeod's operator or supervisor has absolute discretion whether to complete the lift as planned or use a safer alternative. A larger capacity Crane may be required and that will be at a cost agreed before completion of the lift.
- 12.4.5 Where the Customer has understated the weight or dimensions of the goods to be lifted by the Crane, and McLeod has relied on the weight, dimensions or working radius stated, the Customer shall be responsible for all extra cost and risk incurred by McLeod by reason of McLeod's reliance upon such stated weight, dimensions or working radius.
- 12.4.6 The Customer shall be responsible for all loss or damage whatsoever caused while the Crane is entering, leaving or on the site, including the cost of repairs suffered or incurred by McLeod in consequence of any breakdown or damage to the Crane where such breakdown or damage is caused by any negligent act, omission, misdirection, or misuse of the Crane on the part of the Customer or the Customer's servants, agents, contractors or subcontractors. The Customer's liability in respect of this clause 12.4.6 will be reduced proportionately to the extent that any loss or damage is as a result of a willful act or omission by McLeod or its servants, agents, contractors or subcontractors.
- 12.4.7 The Customer shall be responsible for all damage caused when requiring lifts by the crane to reach into buildings from outside of the building such as that which occurs during plaster board deliveries due to the high risk nature of this activity.
- 12.4.8 The Customer shall be solely responsible for the strength and suitability of all lift points used to secure rigging for lifting.
- 12.4.9 The Customer agrees that the wind speed on site determines if the lift is safe to proceed based on the crane manufacturers limit, the crane operators limit, the McLeod company wind limit, the limit imposed by the load and the Site wind limit. If the work cannot proceed due to wind speed the Customer shall be responsible for all extra cost incurred by McLeod.
- 12.5 Use and Handling of "Transporter" (Hiab Trucks, Semi-Truck, Rigid Trucks and Trailers): The Customer shall be responsible for all loss or damage whatsoever caused while the Transporter is entering, leaving or on the site, including the cost of repairs suffered or incurred by McLeod in consequence of any breakdown or damage to the Transporter where such breakdown or damage is caused by any negligent act, omission, misdirection, or misuse of the Transporter on the part of the Customer or the Customer's servants, agents, contractors or subcontractors. The Customer's liability in respect of this clause 12.5 will be reduced proportionately to the extent that any loss or damage is as a result of a willful act or omission by McLeod or its servants, agents, contractors or subcontractors.
- 12.6 Equipment Loss of Traction and Recovery: The Customer shall be fully responsible for the recovery of all Equipment that becomes stuck or loses traction on the Site.
- 12.7 Damage to Goods: McLeod accepts no responsibility for loss or damage to goods being handled by the crane or damaged by the crane however caused during the period of the hire.
- 12.8 Damage to Services and Property: The Customer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, vehicles or any other property whatsoever caused by the Customer during the period of hire.
- 12.9 Stoppages: McLeod shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond McLeod control including but not limited to weather conditions, ground conditions, strikes and industrial disputes.
- 12.10 Site Security: It is the Customer's responsibility to ensure the security of Equipment. The Customer shall be responsible for all losses or damage whatsoever caused while the Crane, Transporters or Equipment is left on the Site, including the cost of repairing damage suffered or incurred by McLeod as a consequence of any damage caused by any act - or omission on the part of the Customer or the Customer's contractors, sub-contractors or members of the public and shall be responsible for the payment of hire at the appropriate cost during the period the Equipment is idle as a result of any such act or omission.
- 12.11 Period of Hire: The period of hire shall be calculated on a depot to depot basis and shall therefore be the elapsed time in any day from the time of the dispatch of the Equipment to the Customer from the McLeod depot to the time of re-delivery of the Equipment by the Customer to McLeod depot on that or any other day. Hire cost may include a minimum of one hour of elapsed time on site. McLeod may choose to use a Km rate on a depot to depot basis rather than a time rate.
- 12.12 Additional Job Sections and Crane Equipment: Where transport of additional job sections and Crane equipment is required, the cost of it will be additional to the hire rates quoted and will be to the Customer's account, together with the cost of rigging and de-rigging.
- 12.13 Overtime: Additional charges will be payable by the Customer in accordance with McLeod current hire price list for all work performed outside normal working hours 7am to 5pm and on Saturdays, Sundays or public holidays. A minimum charge of four hours for the operator applies to work carried out on Saturdays, Sundays or call back on Saturdays/Sundays. A minimum charge of eight hours for the operator applies to work carried out on public holidays or call back on public holidays.
- 12.14 Site Allowance: Where site allowances are payable, there will be an additional charge to the Customer.
- 12.15 Operator's Accommodation: Where the site is at a distance from the depot so that overnight accommodation for the Crane operator and any other accompanying personnel is necessary, the cost of travel between the accommodation and the site, the accommodation and meals will be at the Customer's cost.

13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires equipment and services from McLeod for the purposes of a business in terms of section 2 and 43 of that Act.

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for McLeod agreeing to supply Equipment and Services and grant credit to the Customer, the director(s) or trustee(s) also sign this contract in their personal capacity and jointly and severally personally guarantee and undertake to McLeod the payment of any and all present and future monies owed by the Customer to McLeod.
- 14.2 Any personal guarantee made by any party shall relieve the Customer in any way whatsoever from the liabilities and obligations contained in these Terms and Conditions. The guarantors and the Customer shall be jointly and severally liable under the Terms and Conditions of this contract.

15. TERMINATION

- 15.1 McLeod may immediately and without notice terminate the supply of Equipment and Services if:
 - 15.1.1 The Customer fails to pay any money due or to perform any of its obligations under these Terms and Conditions of Trade;
 - 15.1.2 McLeod believes on reasonable grounds that the Customer is about to breach or has breached any of these Terms and Conditions of Trade and that such breach may endanger any person or property;
 - 15.1.3 The Equipment is destroyed or damaged to such an extent that it is inoperable or unsafe for use;
 - 15.1.4 The Customer does anything that in McLeod opinion prejudices McLeod rights in the Equipment under this contract;
 - 15.1.5 The Customer, if it is a company, goes into liquidation or a petition to liquidate or a notice of intention to propose a resolution to liquidate is presented to the Customer; or
 - 15.1.6 The Customer, if it is a person, becomes bankrupt or dies.
- 15.2 Any such termination shall be without prejudice to the rights of McLeod in respect of any breach of these Terms and Conditions of Trade.

16. PERSONAL PROPERTY SECURITIES ACT 1999

- 16.1 The Customer acknowledges that:
 - 16.1.1 These Terms and Conditions create a security interest (as defined in the Personal Property Securities Act 1999) in favour of McLeod in Equipment hired to the Customer by McLeod for a term of more than 1 year (within the meaning of the term "lease for a term of more than 1 year" as defined in the Personal Property Securities Act 1999);
 - 16.1.2 The Customer undertakes to do such acts and provide such information as in the opinion of McLeod may be necessary or desirable to enable McLeod to perfect any security interest created or provided for by these Terms and Conditions, as a perfected security interest with first priority;
 - 16.1.3 The Customer shall act immediately when requested by McLeod; and
 - 16.1.4 To the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to any security interest created or provided for by, or perfected in the manner contemplated by these Terms and Conditions.
- 16.2 In addition to the security interest referred to in clause 16.1.1, the Customer also grants a security interest in all present and after acquired Equipment, against which monies are owed, as security for all monies now and in the future owing by the Customer to McLeod.

17. INSURANCE

- 17.1 Subject to clause 10.5, McLeod may, at its own expense, arrange and maintain such insurance as it, in its discretion, considers is required in respect of any Equipment and Service, including (without limitation) public liability insurance for the goods being handled by any Equipment, to such an amount as McLeod considers appropriate in the circumstances.
- 17.2 During the course of the hire, the Customer shall not do, or omit to do, anything that may allow the insurance cover referred to in Clause 16.1 or claims under that insurance cover to be void, cancelled or refused or whereby the premiums thereon may be increased.

18. MAINTENANCE OF CRANE

- 18.1 The Customer shall be responsible for the day to day maintenance of a Crane where such Crane is in the possession of a Customer on a Dry Hire basis including, without limitation, the supply of fuel for the operation of the Crane.

19. NOTICE OF INCIDENTS/ACCIDENTS

- 19.1 If any Equipment is involved in any accident resulting in injury to any person or damage to any property (including damage to the Equipment itself), or any incident that could have resulted in injury to any person or damage to any property (including damage to the Equipment itself), the Customer must give immediate notice of the accident/incident to McLeod by telephone and provide details of the accident/incident to McLeod within 24 hours in writing.

20. MISCELLANEOUS

- 20.1 Failure by either party to enforce any of the Terms and Conditions of Trade contained in this contract shall not be deemed to be a waiver of any of the rights or obligations that party has under this contract.
- 20.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.3 No amendment to these Terms and Conditions will be effective unless it is in writing signed by both parties.
- 20.4 Neither party may assign, transfer or deal in any manner with the benefit or burden of these Terms and Conditions without the prior consent of the other party.
- 20.5 These Terms and Conditions may be executed in two counterparts, each which will be deemed an original, but both of which will constitute one and the same instrument. A party may enter into this contract by signing a counterpart.
- 20.6 These Terms and Conditions of Trade, together with the Guarantee and Indemnity, Credit Account Application Form and the Handbook constitute the entire agreement between the parties on the supply of the Equipment and Services. Together they replace all earlier agreements, conditions and warranties, whether oral or written, between the parties relating to the supply of the Equipment and Services.
- 20.7 These Terms and Conditions of Trade are subject to the Laws of New Zealand unless stated otherwise.
- 20.8 All amounts due are payable in New Zealand Dollars unless stated otherwise.