

## Conditions of Hire for Mobile Cranes

*All hires are undertaken strictly in accordance with the NSAI Code of Practice for the Safe use of Cranes in the Construction Industry IS360 (Hereinafter referred to as NSAI CoP IS360)*

### **1. Definitions**

- 1.1 The "Contract" is the contract between the Owner and the Hirer for the hire of the Crane, which consists of the Offer and these Conditions of Hire.
- 1.2 The "Crane" covers all classes of cranes, machinery, equipment, and accessories which the Owner agrees to hire to the Hirer.
- 1.3 A "Day" shall be no period less than 8 hours unless otherwise specified in the Contract.
- 1.4 The "Hire Period" shall commence from the time when the Crane leaves the owner's depot or place where last employed and shall continue until the Crane is received back at the Owner's named depot or equal.
- 1.5 The "Hirer" is the company, firm, person, corporation, or public authority taking the Owner's Crane on hire and includes their successors or personal representatives.
- 1.6 "Offer" is the Owner's offer to hire the Crane to the Hirer which will include details of the Crane to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.
- 1.7 The "Owner" is the company, firm or person letting the Crane on hire and includes their successors, assigns or personal representatives.
- 1.8 A "Week" shall be seven consecutive days.

### **2. Entire Agreement**

This Contract constitutes the entire agreement between the Owner and the Hirer and supersedes all prior negotiations, discussions, correspondence, agreements, or arrangements whether written or oral. Any conditions, exclusions or limitations of liability sought to be imposed by the Hirer shall be deemed to be excluded and inapplicable.

### **3. Conditions of Use**

- 3.1 The Hirer shall be responsible for unloading and loading the Crane at site, and any personnel supplied by the Owner shall be deemed to be under the Hirer's control and shall comply with all directions of the Hirer. Where a driver or operator or any person is supplied by the Owner with the Crane, they shall, for all purposes in connection with their employment in the working of the Crane, be regarded as the servants and/or agents of the Hirer. Such drivers or operators or persons shall not operate any other Crane or machinery or undertake work other than that for which they are supplied by the Owner unless previously agreed in writing between the Owner and the Hirer.
- 3.2 The Crane shall not be moved from the site to which it was delivered or consigned without the authority of the Owner, such authority to be confirmed in writing.
- 3.3 The Hirer shall be responsible for the safe keeping and security of the Crane, and where hired without the Owner's operator or driver, for its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and / or the Owner's recommendations and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted). If the Crane is operated or used in an unsafe and/or unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, costs, expense or accidents whether directly or indirectly arising therefrom.

### **4. Repair**

- 4.1 The Hirer shall not repair the Crane without the written authority of the Owner. The Hirer shall allow, and hereby authorises and grants a licence to the Owner, his agents and or his insurers to have unobstructed access to the Crane to inspect, test, adjust, repair, or replace the same. Without prejudice to any other right under the Contract, the Hirer hereby grants the Owner, his agents and or his insurers an irrevocable licence to enter upon the site unimpeded to remove the Crane from the site for any reason whatsoever and this right shall survive termination of the Contract.



4.2 If during the Hire Period the Owner decides that urgent repairs to the Crane are necessary, then he may arrange for such repairs to be carried out on site or at any location of his nomination. In such circumstances, the Owner shall be entitled to terminate the Contract forthwith by giving written notice to the Hirer.

## 5. Ground Conditions

5.1 Notwithstanding the NSAI CoP IS360, the Hirer shall ensure that ground conditions, including access and egress routes are suitable for the Crane's imposed loads. If, in the opinion of the Hirer, the ground (including any access and or egress route) is soft or unsuitable for the Crane to operate on, then the Hirer shall not operate the Crane, or permit the Crane to be operated, in such conditions unless and until it ensures that it provides all necessary and suitable supports to cater for the imposed loads.

## 6. Breakdown, Accidents and Notifications

6.1 Any breakdown or the unsatisfactory working of or damage to any part of the Crane must be notified immediately to the Owner and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Owner. An allowance for hire charges will be made to the Hirer for any stoppage due to the breakdown of the Crane not caused or contributed to by the Hirer or for all stoppages for normal running repairs in accordance with the terms of the Contract. Breakdown time in respect of such periods shall not exceed more than eight hours each day less the actual hours worked on any day.

6.2 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner's office no later than 24 hours after such telephone notification.

6.3 The Hirer shall be responsible for all expense, costs and losses arising from any breakdown, including but not limited to punctures, damage to paintwork, damage to the Crane and all loss or damage incurred or suffered by the Owner howsoever arising and for the payment of hire at the appropriate rate during the period the Crane is necessarily idle due to such breakdown, damage or otherwise. For the avoidance of doubt, the Hirer is responsible for the cost of spares, repairs or the replacement of the Crane due to theft, loss or vandalism of the Crane.

## 7. Limitation of Liability

7.1 Notwithstanding the NSAI CoP IS360 and except as expressly set out in the Contract:

- (a) the Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control including, for the avoidance of doubt, in respect of any goods or other thing lifted or to be lifted;
- (b) the Owner shall have no liability or responsibility whatsoever in connection with the hire, for any indirect and/or consequential losses, including without limitation, the Hirer's loss of profit, loss of use of the Crane or any other asset, loss of production or productivity, loss of contracts with any third party, or any other indirect or consequential loss or damage of whatever nature; and
- (c) the Owner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated by these terms and conditions shall be limited to three times the hire charges, if any, received in accordance with the agreed payment terms by the Owner from the Hire for the Crane.

7.2 It is a condition of this Contract that the Hirer shall be liable for and indemnify the Owner against all loss, damage, claims, royalties, proceedings, costs and expenses arising under any statute or at common law in respect of loss or damage to property real or personal or the death or injury to any person whomsoever arising out of this Contract which may be due to, or has been contributed to by, any act, omission, default or negligence on the part



of the Hirer, his agents, servants or employees (which shall include, for the avoidance of doubt, drivers or operators supplied by the Owner with the Crane).

**8. Charges and Payment**

8.1 Unless specified otherwise in the Offer, where Crane is hired:

(a) on a “per hour” basis, the fully hourly rate will be charged for each hour or part thereof;

(b) on a “per day” basis, the fully daily rate will be charged for each day or part thereof; and

(b) on a “per week” basis, the full weekly rate will be charged for each week or part thereof.

8.2 Where the parties agree that the Crane is winded-off for a period during the Hire Period, the time when the Crane was winded-off shall be charged at two thirds of the agreed hire rates for the Crane. Where the Crane has been hired on the basis of a guaranteed minimum period, this reduction in hire rates shall only apply where the Crane has not been able to operate for the entire guaranteed minimum period. If the Crane has been operated at any time during the guaranteed minimum period, then the full hire charge shall apply and no reduction for winding-off will be allowed.

8.3 Any additional site costs, rates, bonuses incurred by the Owner shall be chargeable to the Hirer at cost plus 10%. The Hirer shall be responsible for arranging and paying for permits, traffic management arrangements, permissions, authorisations (whether statutory or otherwise) unless otherwise agreed between the parties.

8.4 Where a driver or operator is provided by the Owner, any increases in wages or rates of pay before and/or during the Hire Period arising from any amendments to the Industrial Relations Act 1946 to 2012, the National Minimum Wage Act 2000, any regulation, codes of practice, legally binding determinations of the Labour Court, any legally binding registered employment agreements or sectorial employment orders and/or site specific agreements shall be added to the hire costs and paid as an additional cost by the Hirer.

8.5 The Hirer shall have twenty-one days, from the date of issue of an invoice by the Owner, to raise any issues it may have with the amount of the invoice. In the event that the Hirer does not raise any issues within this time period, the full amount of the invoice shall become due and owing and must be paid within thirty days of the date of the invoice. Where the Hirer raises any issues with the amount of the invoice within the twenty-one days from the date of issue of the invoice, the parties shall endeavour to resolve the issue through negotiation. In such circumstances, the Hirer shall pay the undisputed amount of such invoice within thirty days of the date of the invoice.

8.6 The Hirer shall not be allowed to set-off any amounts due or owing by the Owner to the Hirer against any amounts due or owing by the Hirer to the Owner under this Contract or any other contract.

8.7 A Diesel Price variation clause may be applied at the sole discretion of the owner up to a maximum value and/or metric which is stated on the Hire Agreement.

**9. Termination**

9.1 Where the Hire Period is indeterminate or having been defined becomes indeterminate, the Contract shall be terminable by notice in writing or by telephone call communicated by either party to the other (except in cases where the Crane has been lost or damaged). Notice given by the Hirer to the Owner’s driver or operator shall not constitute compliance with this clause.



9.2 If the Hirer terminates the Contract before the Hire Period commences, then the Hirer is liable for all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination. In the event that the Hirer terminates the Contract after the Hire Period has commenced, the Hirer shall be liable for the hire charges for the entire Hire Period, unless otherwise agreed between the parties.

9.3 The Owner may terminate the Contract where the Hirer has breached any of its terms or where the Owner reasonably believes that the Hirer is insolvent or in financial difficulty. Where the Contract is terminated in such circumstances, the Hirer shall be liable for all hire costs under the Contract and any losses, costs, expenses, or damages suffered by the Owner as a result of such termination.

## 10. Induction/Safety briefings/Toolbox talks or other activities on site that may delay operations

10.1 The Hirer is responsible for arranging for all site/contractor's inductions, briefings, medicals, and all similar activities and which will be charged at the applicable hire rate for the personnel and/or the associated Crane, including where multiple sessions are required and/or are carried out on different days. Where the Hirer hires the same category of and/or similar and/or different equipment/personnel to a site/contractor requiring an induction or similar activity, the Owner shall have no liability, impetus, or onus to provide personnel who have undergone the same induction or activity previously.

## 11. Lifting Operations

11.1 Notwithstanding the NSAI CoP IS360:

(a) where the Owner undertakes a site survey/offers guidance or technical information of any nature whatsoever, including but not limited to specifying the appropriate Crane required, the Hirer remains responsible for appointing the Appointed Person (as defined in NSAI CoP IS360, all competent personnel and for compliance with the NSAI CoP IS360;

(b) the Hirer shall be responsible for ensuring that all lifting points and lifting eyes are suitable to withstand the loads imposed on them at all times during the lifting operation. The Hirer, and not the Owner, shall be liable for all loss and/or damage arising from any unsuitability of the lifting points; and

(c) The Hirer shall be responsible for planning, supervising, and controlling lifting operations, including the preparation and distribution of risk assessments, method statements, lift drawings, calculations and plans and the safe slinging of goods to be lifted or handled. Where the Hirer seeks advice from the Owner, any such advice or information is given without responsibility or liability on the part of the Owner and shall in no way relieve the Hirer of his responsibilities.

## 12. Alternative Equipment

12.1 The Owner reserves the right to supply an alternative / re-hired Crane, personnel and/or equipment suitable to the requirements of the lift. Where it becomes necessary for the owner to supply an alternative crane, the costs associated with providing paperwork/ lift plans will be passed to the Hirer.

## 13. Indemnity and Insurance

13.1 The Hirer shall take out and maintain insurance against any and all liabilities the Hirer might incur under the Contract and shall provide evidence of such insurances to the Owner on request. Such insurance shall include hired-in-plant insurance with an appropriate and sufficient limit of indemnity to cover the cost of replacement of the Crane and consequential loss of hire, for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance.

**14. Severability**

- 14.1 If any of these clauses or provisions of the Contract are held to be unlawful, void, or unenforceable, then that clause or provision will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

