

GENERAL CONDITIONS OF CONTRACT FOR CRANE HIRE



BILFINGER

1. **DEFINITIONS**

- 1.1. "owner/we/our/us" means Steinmüller Africa (Pty) Limited.
- 1.2. "hirer/you/your" means the person, company or other entity that places the order on the owner.
- 1.3. "the / this agreement" means the agreement concluded between the parties arising out of hirer's acceptance of owner's quotation.
- 1.4. "the order" means the order placed by the hirer on the owner for the hire of cranes, and includes all attachments to the order.
- 1.5. "personal information" means personal information as defined in the Protection of Personal Information Act 4 of 2013 (POPIA).
- 1.6. "crane" means the crane or cranes specified in the quotation.
- 1.7. "quotation" means the owner's offer to the hirer for the hire of cranes.

2. **AGREEMENT**

The owner, in consideration of payment or an undertaking by the hirer to pay the hire charges set out in the quotation, lets to the hirer the crane described in the quotation. The conditions of hire set out in this document take precedence over any other terms which may have been included in the order. This agreement records the whole agreement between the parties and overrides all other agreements relating to the hire of the crane. Only conditions, terms or representations expressed herein shall be binding on the parties and no variation shall be binding unless reduced to writing and signed by both parties.

3. **ORDER OF PRECEDENCE**

In the event of ambiguity or conflict between the documents forming part of this agreement, the following order of precedence shall apply:

- a. Quotation, as amended by agreement between the parties (if applicable)
- b. These general conditions of contract for crane hire
- c. Order

4. **NO CESSION OR SUBLETTING**

The hirer shall not cede or assign this agreement, nor sublet, encumber, or re-hire the crane to any third party or part with possession thereof without first obtaining the written consent of the owner.

5. **PAYMENT**

- 5.1. Unless stated to the contrary, hire charges payable by the hirer are based on the hours reflected on the signed time sheets. The operator shall during the period of hire retain in his possession a pad of unsigned time sheets. Should the hirer dispute the content of the time sheet, it shall within 24 (twenty-four) hours of presentation of the time sheet notify the owner of such dispute and the grounds therefor. In this regard notification to the operator shall not constitute notification to the owner.
- 5.2. Time sheets duly completed by the operator shall be prima facie evidence of the correctness thereof.
- 5.3. Signature of any time sheet by or on behalf of the hirer constitutes acceptance by the hirer of the correctness of the content of the time sheet.
- 5.4. The hirer warrants, and this agreement is entered into on the strength of such warranty, that whoever signs time sheets on behalf of the hirer will be duly authorised by the hirer to do so.
- 5.5. Payment shall be made within 30 days from date of invoice or, in the case of COD (cash on delivery) customers, prior to delivery of the crane to the hirer.
- 5.6. Interest on overdue accounts will accrue at 2% above the prime overdraft rate charged by the owner's bankers from time to time.
- 5.7. Unless otherwise agreed, the hirer shall not be entitled to claim set off in respect of any amount owing or alleged to be owing to the hirer under any circumstances whatsoever.

6. **PERIOD OF HIRE, TERMINATION, MINIMUM HOURS AND DOWNTIME**

- 6.1. The period of hire shall commence when the crane is delivered to the site specified in the quotation and will continue until it is collected by the owner from such site.
- 6.2. The hirer shall be liable for the hire charges notwithstanding that the crane is idle as a result of inclement weather, normal running repairs including refuelling, changing tyres and repairing punctures, or as a result of any other factor beyond the owner's control. The hirer shall not be liable for hire charges when the crane is idle due to unavailability of the operator or due to breakdown of the crane caused by defect in the crane.

7. **RATED CAPACITY AND USE OF CRANE**

- 7.1. The owner undertakes that the crane will perform substantially in accordance with the manufacturers rated capacity and specifications and shall be serviced and maintained. The hirer acknowledges that the owner has tendered to the hirer the manufacturers rated capacity and specifications of the crane. Signature of the daily time sheets shall be deemed to be acceptance by the hirer that the crane has performed satisfactorily.
- 7.2. The hirer undertakes that it will use or permit the crane to be used only in a responsible manner and undertakes not to perform or attempt to perform any work beyond the cranes rated capacity and specification. During the period of hire the hirer undertakes and warrants that it will use or permit the crane to be used only for the purpose for which it was hired.

8. **PERMITS**

The hirer shall at its own expense apply for and obtain any permits, licences, certificates, permission or exemptions which may be required for entry and use of the crane on the site.

9. **ACCESS AND SITE CONDITIONS**

- 9.1. The owner shall at all times be entitled to have access to the site to inspect the crane, means of access and site conditions.
- 9.2. The hirer shall be obliged, at its own cost, to prepare the site and, where the surface is unsuitable for the safe operation of the crane, provide and lay suitable materials for the crane to travel or work on site. Failure by the hirer to comply with this obligation will constitute a breach of a material term entitling the owner to cancel the agreement.
- 9.3. The hirer acknowledges that the crane may cause superficial damage to the ground, particularly in wet weather, and damage to underground services, such as drains and sewers. The operator shall as far as possible limit any such damage, but the owner will not be responsible therefor. Should the hirer wish to avoid such superficial damage, the owner may be able to quote for additional protection.

10. **DEFECTS AND BREAKDOWN REPORT**

- 10.1. The hirer shall be obliged to notify the owner immediately of any defects or deficiencies in the crane which are, or which become apparent, and/or are notified to the hirer by the operator. In such event the hirer shall immediately cease using the crane, failing which the hirer shall be liable for all loss or damage, including consequential loss or damage, sustained by the owner arising out of such continued use of the crane.
- 10.2. Any breakdown of the crane shall be reported immediately by the hirer to the owner and such report shall be confirmed in writing. If a breakdown of the crane has been reported in accordance with this clause the hirer shall not be charged for the duration of the downtime. If the hirer fails to notify the owner of any breakdown, the hirer shall not be entitled to any reduction in the hire rate.
- 10.3. If at any time after the date of delivery, the crane is in the opinion of the owner in need of repairs, it may stop the further use thereof until such repairs have been carried out. The owner may replace the crane with a similar one under the same agreement or, after consultation with the hirer, terminate the agreement with immediate effect.

11. **OPERATOR**

- 11.1. The owner shall supply an operator with each crane hired. The operator shall be under the sole control and supervision of the hirer who shall be responsible for all of the operator's acts or omissions. The hirer warrants and undertakes that it will give to the operator clear and specific instructions and directions for all work to be performed.
- 11.2. In the event that the owner's operator is indisposed through illness or refuses, fails or neglects to perform his duties, the hirer shall report same to the owner in which event the owner shall provide a substitute operator. The hirer shall have no other remedy against the owner arising therefrom, provided that it will not be responsible for the hire charge for standing time arising from the above.
- 11.3. Where it is necessary for the operator to reside on or near the site during the period of this agreement, this shall be specified in the quotation and throughout such period the hirer shall provide reasonable accommodation of a standard appropriate to the operator and transport to and from such accommodation to the site.
- 11.4. The hirer shall not permit or allow any person other than the operator supplied with the crane to operate the crane.
12. **ACCESSORIES AND TYRES**
- 12.1. Accessories for the crane are hired independently from the crane and the breakdown of any accessory shall not be deemed to be a breakdown in the crane and shall not affect the hire rate of the crane specified in the quotation.
- 12.2. There shall be no obligation upon the owner to supply lifting tackle. In the event that the owner agrees to supply lifting tackle, it gives no warranties that such lifting tackle will be suitable for the hirer's purposes or for any lift to be performed by the crane. All instructions for rigging and methods of slinging shall be the sole responsibility of the hirer who indemnifies and holds harmless the owner against all claims for loss or damage of any nature whatsoever arising out of the use of the said lifting tackle by the hirer.
- 12.3. The owner warrants that the crane will be supplied with tyres in good condition. Unless the hirer notifies the owner in writing to the contrary within 24 (twenty-four) hours of delivery of the crane to site, the tyres on the crane shall be deemed to be in good condition.
- 12.4. Unless otherwise specified in the quotation, tyres and tubes are the hirer's responsibility. The hirer shall be responsible for the cost of repairing all tyre and tube punctures or other damage to tyres or tubes negligently caused during the period of hire and shall be responsible for all cuts or abrasion of tyres and tubes and the replacement thereof while the crane is on site.
13. **NAMEPLATES**
The hirer shall not remove, deface or cover up any nameplate or identification mark or number on the crane, nor put any mark on the crane which suggests that the crane belongs to it.
14. **RISK AND LIABILITY**
- 14.1. The responsibility of care for the crane and the risk of loss of or damage to property or persons howsoever caused lies with the hirer for the period of hire, irrespective of any insurance policy covering either the crane or the hirer's liability for damage to the crane.
- 14.2. The hirer shall notify the owner as soon as possible of any event which may result in loss of or damage to the crane. The hirer shall take all reasonable steps to minimise the extent of the loss or damage and shall preserve damaged parts and make them available for inspection by the owner.
15. **INDEMNITY BY THE HIRER AND EXCLUSION OF OWNER'S LIABILITY**
- 15.1. While the crane is in the care of the hirer, the owner shall not be liable to the hirer or to any other person for any acts or omissions on the part of the owner's operator (or on the part of the hirer's servants or employees or contractors) nor shall the owner be liable for any damages, whether direct or consequential of whatsoever nature and howsoever arising, occasioned to the hirer or to any other person, and the hirer indemnifies and holds the owner harmless against all such claims, including the cost of defending any such claim or action.
- 15.2. The owner shall not be liable or responsible to the hirer or to anyone else for any direct or consequential loss or damage suffered by the hirer or any other person arising out of stoppage of the crane through any cause whatsoever, non-arrival of the crane or any accident or breakdown of the crane at any time. The hirer hereby indemnifies and holds the owner harmless in respect of any such claim made by any other person against the owner arising out of the hire of the crane or from any cause aforesaid.
16. **INSURANCE**
The owner will be responsible for insuring the crane and accessories included in the quotation. On the hook items will not be included in the insurance cover. In the event that there is an insurance claim for any loss or damage to the crane the Hirer will be responsible for the payment of any excess deducted from the claim. The excess amount varies from year to year and will be stipulated in the quote document that has been provided to the Hirer.
17. **OCCUPATIONAL HEALTH & SAFETY ACT 85 OF 1993 ("the Act")**
The hirer acknowledges that it is familiar with the provisions of the Act and the Regulations made thereunder insofar as they relate to the use of the crane and accessories and the hirer undertakes that to the extent it is an Employer user in terms of the Act, it will comply with the provisions of the Act and the Regulations.
18. **FORCE MAJEURE**
- 18.1. *Force majeure* means any circumstances beyond the reasonable control of either party and shall include but not be limited to, political, industrial or social disturbance or strike (not limited to the hirer's employees), war, revolution, invasion, insurrection, sabotage, epidemic, major accident, fire, flood or other natural disaster. The mere shortage of labour, material or utilities shall not constitute *force majeure* unless caused by circumstances which are in themselves *force majeure*.
- 18.2. If either party is prevented or delayed from performing any obligations by *force majeure*, the affected party must as soon as reasonably possible notify the other party of the circumstances constituting *force majeure* and of the obligations affected and the party giving such notice will thereafter be excused from the performance or punctual performance as the case may be of such obligation from the date of such notification for so long as the circumstances of prevention or delay continue.
- 18.3. In the event of the crane becoming inoperative as a consequence of a *force majeure* event, the parties will agree on appropriate steps to ensure the preservation of the crane and removal of the crane from hirer's site.
19. **BREACH AND TERMINATION**
- 19.1. Should either party commit a breach of this agreement and fail to remedy such breach within 24 hours of written demand from the other party, the aggrieved party shall be entitled, in addition to any other rights and remedies that it may have, including the right to recover damages, to claim specific performance of all the defaulting party's obligations, whether or not they are due for performance, or to cancel this agreement.
- 19.2. Either party shall be entitled to cancel this agreement without notice if the other party is made subject to any provisional or final order of liquidation or judicial management or commences business rescue proceedings or compounds with its creditors or enters into any arrangement of compromise with its creditors or suffers execution to be levied on its goods or fails to satisfy any judgment against it within 30 days thereof.
- 19.3. If the hirer fails to pay any amount within 7 days of due date, the owner shall be entitled to cancel this agreement and take possession of the crane. Notwithstanding the foregoing, the owner shall be entitled to recover all monies due or to become due in terms of this agreement for the full and unexpired period of hire, together with all costs, including legal costs, incurred by the owner in connection with cancellation of the agreement and/or obtaining possession of the crane.
20. **WAIVER**
Failure by either party to enforce any of the provisions of this agreement will not be construed to be a waiver of any of that party's rights in terms of this agreement or prejudice the right of that party to institute action in the future.
21. **JURISDICTION CLAUSE**
This agreement shall be interpreted in accordance with the laws of South Africa. The parties consent to the jurisdiction of the Magistrates Court notwithstanding that the claim exceeds the normal jurisdiction of the Magistrate's Court as to amount.

22. **PERSONAL PROTECTION OF INFORMATION: CONSENT & DECLARATION**

These terms and conditions should be read in conjunction with our Privacy Notice(General) found on our website: www.steinmuller.bilfinger.com.

- 22.1. Where we process your Personal Information, we are obliged to provide you with a number of details pertaining thereto. These details are housed under the Privacy Notice (General). You are required to familiarise yourself with this document prior to providing us with Personal Information.
- 22.2. By providing us with your Personal Information, you consent (to the extent that consent is required under POPIA), to:
 - 22.2.1. the processing of your personal information for the purpose of creating a vendor profile on our system, administration of our obligations in terms of any agreement you have with us and for related legal and operational reasons;
 - 22.2.2. the sharing of your personal information with our other entities, employees, agents, subcontractors and affiliates (who may be outside of the Republic of South Africa) on condition they will keep such information private and confidential;
 - 22.2.3. the retention and disposal of such information in terms of applicable legislation.
- 22.3. Your Personal Information will be stored electronically in a centralised data base and where appropriate, some information may be retained in hard copy. In either event storage will be secured and audited regularly and retained in accordance with applicable legislation.
- 22.4. You warrant the accuracy and completeness of all Personal Information supplied to us by you and undertake to immediately advise us of any changes to such information.
- 22.5. Where we provide Personal Information to you for the purpose of performing under the Contract, we consent to the processing of our Personal Information where such consent is required in accordance with POPIA. You undertake to process such Personal Information strictly in compliance with POPIA and other applicable data privacy laws. Notwithstanding any limitation of liability contained herein or in any other agreement between the parties, you hereby indemnify and hold us and / or any affected third party harmless against all liability, loss or damage incurred as a result of your non-compliance with POPIA. Where we provide Personal Information to you to be processed on our behalf in your capacity as an "Operator" as defined POPIA, then in such case the provisions of the Operator Agreement will apply and are to be incorporated into and read together with this any other Agreement for the hire of cranes Contract.

23. **CODE OF CONDUCT**

- 23.1. We expect integrity and ethical, law-abiding behaviour from all our business partners in line with the Global Compact Initiative and the minimum standards set out below and request that you insist that your own subcontractors and suppliers comply with these principles and standards:
- 23.2. You should actively and consistently counteract criminal or unethical influence on decisions taken by the owner or other companies and institutions and fight corruption within your own companies.
- 23.3. You should not participate in anti-competitive bid rigging and should take action against illegal cartels.
- 23.4. You should comply with all legal requirements and effectively eliminate illegal employment.
- 23.5. You should respect the health and personal rights of your employees and adhere to the principles of respect, fairness and non-discrimination.
- 23.6. You should employ and remunerate your employees on the basis of fair and compliant contracts and maintain international minimum labour standards.
- 23.7. You should observe relevant legal environmental standards and minimise environmental pollution.
- 23.8. You are required to report your own violations of this Code of Conduct, insofar as these affect your business relations with the owner, and are also asked to report any knowledge of misconduct on the part of our employees.
- 23.9. You are required to actively resolve any suspicious cases and to cooperate unconditionally with the owner in this regard. If there are reasonable grounds to believe that you have failed to meet your obligations in this regard, we shall be entitled to terminate business relations with you with immediate effect.
- 23.10. Should you violate this Code of Conduct, we retain the right to initiate further legal measures, particularly damage claims. We reserve the right, from time to time, to update this Code of Conduct, and expect that you accept any such changes.
- 23.11. Contact Person: Compliance Representative - Tel: 011 806 3000 Fax: 086 613 1965.

Thus done and signed by the Contractor in _____ on ____ the _____ day of _____ 20 ____ .

Print name

Signature

Job Title (duly authorised)