

Introduction

This **Agreement** is made between Performance Cranes & Rigging Pty Ltd (**PCR**) and the person who is described as a customer or client on any Form to which the terms and conditions set out below (**these terms**) are attached or who, after receiving a copy of these terms, orders, purchases, receives or accepts goods or services from PCR from time to time (that person is referred to as **you** or **your** as the context may require). Your agreement with PCR (**this Agreement**) includes this Introduction, these terms and the information in any attached Form.

Terms and Conditions

You agree with PCR as follows:

1. Definitions and Interpretation

- 1.1 Expressions used in these terms have the same meaning given to them in the Introduction above.
- 1.2 In these terms and in the Introduction above:
 - (a) **Equipment** means all Goods including any accessories supplied on hire by PCR to you (and where the context so permits shall include any supply of Services) on your request;
 - (b) **Form** means any credit account application, hire form, order form, invoice, day labour form or other document, howsoever described;
 - (c) **Goods** means all goods supplied by PCR to you (and where the context so permits shall include any supply of Services) on your request;
 - (d) **Intellectual Property** means all forms of intellectual property throughout the world, whether or not it is registered or registrable, including copyright, patent, design, trade mark and confidential information including know-how and trade secrets;
 - (e) **PCR** includes its successors and assigns;
 - (f) **Personnel** means, in relation to a person, that person's directors, employees, officers, contractors and agents (if any);
 - (g) **PPS Act** means the *Personal Properties Securities Act 2009* (Cth) as amended from time to time;
 - (h) **Price** means the price set out in clause 3.2;
 - (i) **Security Interest** means a purchase money security interest under the PPS Act, any other mortgage, pledge, lien or charge and any other interest that secures the payment of money or performance of an obligation; and
 - (j) **Services** means all services supplied by PCR to you on your request.
- 1.3 In these terms and the Introduction: words importing the singular include the plural and vice versa; a word derived from a defined word has a corresponding meaning; headings are inserted for convenience only and must not be used when interpreting this Agreement; including and includes are not words of limitation; a reference to a clause is a reference to a clause in these terms; a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and a reference to a thing includes each part of that thing.

2. Application, Entire Agreement and Variation

- 2.1 These terms apply to each hire, sale or delivery of Equipment or Goods by PCR to you. Each request by you for Equipment or Goods from PCR is deemed to be an offer to hire or purchase goods or services on and subject to these terms, without alteration, that PCR may accept by providing that Equipment or those Goods to you.
- 2.2 These terms record the entire agreement between you and PCR and supersede and prevail over anything else that has been communicated between you and PCR, is contained in any materials PCR provides to you or is referred to in any order or any other document containing terms or conditions that you give PCR from time to time.
- 2.3 These terms may only be changed by prior written agreement with PCR that is signed by PCR's authorised representative.

3. Commercial Credit, Price and Payment

- 3.1 Unless you agree to pay PCR cash on delivery or to pay in a manner that PCR agrees in writing, you must apply to PCR for commercial credit. PCR may grant commercial credit on such terms and conditions that PCR may in PCR's sole discretion determine. PCR may refuse or revoke commercial credit at PCR's sole discretion at any time. If you apply to PCR for commercial credit, you irrevocably consent to PCR's collection, use and disclosure of any personal information relating to you or your personnel (and you must procure the genuine consent of your personnel to those actions for PCR's benefit) for the purposes of assessing your credit worthiness or to recover any Goods or Equipment or money owing to PCR and you authorise any person whose name you provide to PCR to disclose all

- information relating to you that PCR may request for those purposes
- 3.2 You agree that the amount you must pay PCR for any Goods, Services or Equipment shall be the aggregate of:
 - (a) the amount:
 - (i) quoted by PCR to you for those Goods, Services or Equipment, provided that you accept PCR's quotation in writing within ninety (90) days of receipt of that quotation; or
 - (ii) referred to on any Forms provided by PCR to you in respect of the Goods, Services or Equipment; and
 - (b) plus the amount referred to in clause 3.3, collectively referred to as the **Price**.
 - 3.3 You agree that, in addition to any amount quoted to you by PCR or set out on any Form, you must pay PCR for:
 - (a) delivery costs unless the amount quoted to you by PCR or set out on any Form expressly includes delivery costs;
 - (b) all of PCR's reasonable fees or charge for any additional goods or services that you request;
 - (c) all of PCR's reasonable fees and charges for any damage you cause or any variations to any work or specifications that you request or that arise from any unforeseen circumstances including any delays in delivery or errors in fabrication as a result of your instructions or as a result of increases incurred by PCR in the cost of materials and labour; and
 - (d) any additional costs or expenses incurred by PCR that could not reasonably be foreseen by PCR at the time any quotation or Form was completed or provided to you.
 - 3.4 PCR may require you to pay the Price or any part of the Price at the time of supply of any goods or services to you.
 - 3.5 You agree that:
 - (a) you must pay PCR a deposit if PCR requests one;
 - (b) you must pay the Price in full to PCR in accordance with any invoice or Form provided by PCR to you;
 - (c) the Price shall be due and payable in full on delivery of the Goods to you unless PCR agrees otherwise in writing;
 - (d) time for payment for the Goods shall be of the essence; and
 - (e) unless otherwise provided by these terms, you must pay PCR in full the Price no later than thirty (30) days following the date of each invoice provided by PCR to you.
 - 3.6 You may pay amounts owing to PCR by cheque, bank cheque, direct credit or by any other method that has been agreed between you and PCR in writing.
 - 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery of Goods and Risk

- 4.1 Delivery of the Goods and Equipment occurs at the earlier of the time that PCR makes the Goods or Equipment available for your collection or that you or your agent takes possession of the Goods or Equipment, whichever occurs first.
- 4.2 The failure of PCR to deliver any Goods or Equipment shall not entitle either party to treat this contract as repudiated.
- 4.3 PCR will endeavour to deliver Goods or Equipment you have requested to you by any date PCR agrees with you, however, to the fullest extent permitted by law, PCR is not liable to you for any damages or losses you suffer or incur if the Goods or Equipment are not delivered on that date. You must ensure that PCR's delivery personnel are provided with safe and unrestricted access at the agreed delivery location on the delivery date PCR notifies to you and you must pay PCR any reasonable costs PCR incurs to store or redeliver the Goods or Equipment if PCR is unable to deliver the Goods or Equipment because you have not complied fully with these terms.
- 4.4 All risk in Goods and Equipment delivered to you shall pass to you upon delivery and you must carry insurance for those Goods and that Equipment until you have paid the Price for the Goods to PCR in full or returned the Equipment to PCR.

5. Security Agreement

- 5.1 You agree and acknowledge that this Agreement creates a Security Interest for PCR's benefit in all Goods and Equipment that PCR delivers to you and that Security Interest is granted by you to secure the punctual payment of all amounts owing by you under these terms and the performance of all your other obligations under this Agreement. Your signature on any Form to which these terms are attached or acceptance of delivery of any Goods or Equipment signifies your agreement to be bound by these terms and to create the Security Interest referred to in this clause 5.1 on these terms.
- 5.2 You agree that the Security Interest created by this Agreement attaches or otherwise takes effect immediately

- upon delivery of any of the Goods or Equipment to you and extends not only to the Goods or Equipment but also to any and all proceeds arising from any dealings with the Goods or Equipment.
- 5.3 You consent for PCR to register a financing statement or financing change statement from time to time to perfect PCR's Security Interest. You agree that sections 96, 125, 132(4) and 135 of the PPS Act shall not apply and sections 95 and 130 of the PPS Act shall not apply to the extent that PCR is required to give a notice to you.
 - 5.4 You irrevocably authorise and grant PCR's representatives a licence to enter premises where any Goods or Equipment is kept and take back the Goods or Equipment using reasonable force if you do not pay PCR any amount in full when that amount is due. If this Agreement ends, the provisions set out in these terms under the heading "Security Agreement" shall survive and continue to the extent that PCR may exercise PCR's rights to recover the Goods or Equipment or any money due to PCR.
 - 5.5 You agree that:
 - (a) the Goods shall be kept separate and identifiable until PCR has received payment in full and all of your obligations have been met;
 - (b) PCR may stop any Goods in transit whether or not delivery has been made;
 - (c) you are a bailee of the Goods and until such time as PCR has received payment in full for the Goods then you shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount you owe to PCR for the Goods, on trust for PCR; and
 - (d) you shall not charge the Goods in any way nor grant nor otherwise give any interest or Security Interest in the Goods other than in accordance with these terms.

6. Defects

- 6.1 You shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify PCR of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote relevant to the Goods. You shall afford PCR an opportunity to inspect the Goods within a reasonable time following delivery if you believe the Goods are defective in any way. If you fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

7. Warranty, Guarantees and Repairs

- 7.1 PCR's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 7.2 To notify PCR of any defects, you can call PCR on (02) 9833 4480 or send PCR a written notice at 11 Holm Road, St Marys NSW 2760.
- 7.3 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.
- 7.4 Other than those statutory guarantees that apply to the goods or services that PCR supplies to you, which are not excluded, modified or restricted by these terms, and other than the warranties expressly set out in these terms, to the fullest extent permitted by law, PCR does not give any guarantee or warranty or make any representation of any kind, express or implied, with respect to the supply of goods or services under or in connection with this Agreement.

8. Limitations on Liability

- 8.1 Nothing in these terms restricts, modifies or excludes any rights you have, or obligations that PCR has, that cannot be lawfully restricted, modified or excluded. To the fullest extent permitted by law, PCR's liability in connection with this Agreement is, in the case of goods, limited at PCR's option to replacing the relevant goods, supplying equivalent goods, repairing the goods or paying to have the goods repaired and, in the case of services, limited at PCR's option to either supplying the services again or paying the cost of having the services supplied again. You agree and acknowledge that PCR's liability for anything in relation to any Goods or Equipment or its use, including damage or economic loss to anyone, is limited as much as it lawfully can be. Other than in respect of goods that have a safety defect (as defined under the Australian Consumer Law) and subject to statutory rights that you have under the Australian Consumer Law or other laws, which are not excluded, modified or restricted by this provision, PCR is not liable to you or any other person, whether in contract, tort (including negligence), under any statute (to the extent permitted by that statute) or otherwise for, or in respect of, any loss or

damage that is specific to you (including loss of profits, loss of revenue, loss of anticipated savings, pure economic loss, loss of opportunity or expectation loss) or any special, punitive or exemplary loss or damage incurred or suffered by you and arising out of any breach or other act or omission in connection with this Agreement, nor for any amounts payable under obligations of indemnity or restitution or other entitlements you may have to compensation.

9. Intellectual Property

9.1 PCR owns or licences and reserves all Intellectual Property rights in any Goods and Equipment and any materials PCR notifies or provides to you from time to time. If PCR makes available PCR's Intellectual Property to you, all proprietary rights to that Intellectual Property shall remain PCR's property.

10. Default and Consequences of Default

10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate that is two percent (2%) per annum higher than the commercial overdraft rates charged by PCR's banker (and at PCR's sole discretion such interest shall compound monthly at such a rate) calculated on a daily basis.

10.2 In the event that your payment is dishonoured for any reason you shall be liable for any dishonour fees incurred by PCR.

10.3 If you default in payment of any invoice when due, you shall immediately indemnify PCR from and against all costs and disbursements incurred by PCR in pursuing the debt including legal costs on a solicitor and own client basis and PCR's collection agency costs.

10.4 Without prejudice to any other remedies PCR may have, if at any time you is in breach of any obligation (including those relating to payment) PCR may suspend or terminate the supply of Goods to you and any of its other obligations under the terms and conditions. PCR will not be liable to you for any loss or damage you suffer because PCR has exercised its rights under this clause.

10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.

10.6 Without prejudice to PCR's other remedies at law PCR shall be entitled to cancel all or any part of any order which remains unfulfilled and all amounts owing to PCR shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to PCR becomes overdue, or in PCR's opinion you will be unable to meet your payments as they fall due;
- (b) you become insolvent, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors;
- (c) a receiver, manager, liquidator (provisional or otherwise) or trustee in bankruptcy or similar person is appointed in respect of you or your assets.

11. Indemnity

11.1 You immediately indemnify PCR and shall keep PCR indemnified against any claims, losses, damages, judgments, liabilities, costs (including legal costs on a solicitor/client basis), debt collection fees, expenses, charges and disbursements PCR may directly or indirectly suffer or incur arising out of or in connection with:

- (a) your failure or refusal to pay all amounts owing by you under these terms to PCR when due;
- (b) any breach by you of any term, condition or warranty under this Agreement; or
- (c) any negligent act or omission by you or your Personnel.

12. Cancellation

12.1 PCR may cancel any contract to which these terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to you. On giving such notice PCR shall repay to you any amounts received from you that you paid in respect of those Goods. PCR shall not be liable for any loss or damage whatsoever arising from such cancellation.

12.2 In the event that you cancel your order for Goods or Equipment you shall be liable for any damage suffered or loss incurred by PCR (including any loss of profits) up to and including the time of cancellation.

12.3 You agree and warrant that you shall not cancel any order or request for Goods that are to your specifications if production of those Goods has commenced.

13. Privacy

13.1 You agree that PCR may obtain from a credit reporting agency a credit report containing personal credit information about you in relation to credit provided by PCR.

13.2 You agree that PCR may exchange information about you with those credit providers either named as trade referees by you or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by you;
- (b) to notify other credit providers of a default by you;
- (c) to exchange information with other credit providers as to the status of this credit account, where you are in default with other credit providers; or
- (d) to assess your creditworthiness.

You acknowledge that the information exchanged can include anything about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

13.3 You consent to PCR being given a consumer credit report to collect overdue payment on commercial credit.

13.4 You agree that personal credit information provided may be used and retained by PCR for the following purposes (and for other purposes as shall be agreed between you and PCR or required by law from time to time):

- (a) the provision of Goods;
- (b) the marketing of Goods by PCR, its agents or distributors;
- (c) analysing, verifying and/or checking your credit, payment and/or status in relation to the provision of Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by you; or
- (e) enabling the daily operation of your account and/or the collection of amounts outstanding in your account in relation to the Goods.

13.5 PCR may give information about you to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about you; or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.

13.6 The information given to the credit reporting agency may include:

- (a) personal particulars (your name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning your application for credit or commercial credit and the amount requested;
- (c) advice that PCR is a current credit provider to you;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that your overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of PCR, you has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations);
- (g) advice that cheques drawn by you for one hundred dollars (\$100) or more, have been dishonoured more than once; or
- (h) that credit provided to you by PCR has been paid or otherwise discharged.

14. Building and Construction Industry Security of Payments Act 1999

14.1 At PCR's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

14.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

15. Equipment Hire

15.1 The Equipment shall at all times remain the property of PCR and is returnable on PCR's request. In the event that the Equipment is not returned to PCR in the condition in which it was delivered you must immediately pay to PCR the reasonable cost of repair or replacement of the Equipment.

15.2 You shall;

- (a) keep the Equipment in your own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
- (b) not alter or make any additions to the Equipment including by defacing or erasing any identifying mark,

plate or number on or in the Equipment or in any other manner interfere with the Equipment; and

- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PCR to you.

15.3 You accept full responsibility for the safekeeping of the Equipment and you agree to insure, or self-insure, PCR's interest in the Equipment and shall immediately indemnify PCR against physical loss or damage to the Equipment including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further you will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

16. Wet Hire

16.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of PCR and operates the Equipment in accordance with your instructions at your risk. PCR shall not be liable for any actions of any person who is following your instructions.

17. Hire Period

17.1 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by you from PCR's premises and will continue until the return of the Equipment to PCR's premises or until the expiry of the minimum hire period applicable to that Equipment or referred to on the Form, whichever last occurs.

18. General

18.1 If any provision of these terms is or becomes wholly or partly illegal, invalid or unenforceable then that provision is severed from these terms to the extent of the illegality, invalidity or unenforceability and the remaining provisions shall remain in full force and effect and not be affected and operate as if the severed provision had not been included.

18.2 The laws applicable in New South Wales govern this Agreement and you irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and any courts competent to hear appeals from those courts..

18.3 You must not set off against, or deduct from the Price, any sums owed or claimed to be owed to you by PCR, or to withhold payment of any invoice issued to you by PCR if part of that invoice is in dispute.

18.4 PCR may license or sub-contract all or any part of its rights and obligations without your consent.

18.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party other in respect of the punctual payment of any amount owing under this Agreement.

18.6 A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party. Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements contained in this Agreement.

19. Transparency

19.1 You acknowledge that these terms are legible and presented clearly and, in the event that these terms are not legible or presented clearly, you warrant that you shall obtain a copy of these terms in larger print from PCR or from PCR's website.

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