

TERMS OF TRADE



1. DEFINITIONS

“**Customer**” means the person or company placing an order with Ace Crane Trucks for the hire of Services.

“**Approved Customer or Customer**” means a hirer having an account in good standing with Ace Crane Trucks.

“**Conditions**” means these Standard Conditions of Sale.

“**Force Majeure**” means an event beyond the control of either party subject to Clause 14

“**Goods**” means all wares, merchandise, materials, plant, machinery or motor vehicles.

“**Services**” means services, trucks, plant and equipment supplied by Ace Crane Trucks pursuant to these conditions to the Customer or as the Customer may direct.

2. INTERPRETATION

In this Agreement, unless the context indicates a contrary intention:

- a) references to the singular include the plural;
- b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- c) references to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them;
- d) Headings do not affect the interpretation of this Agreement.

3. TERMS OF SALE

- 3.1. These conditions shall apply to all orders for Services placed by the Customer with Ace Crane Trucks and shall prevail over all other terms or conditions unless otherwise expressly agreed in writing. If the terms of the Customer's order are inconsistent with these conditions the delivery of the Services to the Customer or as the Customer directs shall constitute an offer by Ace Crane Trucks to hire the Services to the Customer pursuant to these conditions which offer the Customer shall be deemed to accept by hiring the Services.

4. ORDERS

- 4.1. The Customer must provide an accurate description of the Goods so Ace Crane Trucks can provide an accurate quote for the Services. Failure to provide an accurate description of the Goods, may result in additional charges to the Customer.
- 4.2. The Customer must disclose to Ace Crane Trucks if the Goods are, or may become dangerous or offensive. Failure to disclose dangerous or offensive Goods, may result, at Ace Crane Trucks absolute discretion, in Ace Crane Trucks rescinding their Services.
- 4.3. Ace Crane Trucks reserves the right to accept or to decline in whole or part any order and any order or part order not accepted is deemed cancelled. Quotations, unless otherwise stated, are given subject to the receipt of the Customer's order and acceptance thereof by Ace Crane Trucks and are subject to supply and price fluctuations without notice.
- 4.4. Orders by telephone shall be proof-read to the Customer who shall have sole responsibility for the accuracy of the instructions and specifications included in telephone orders. Orders written by Ace Crane Trucks telephone operator shall be conclusive evidence of such order and its particulars.
- 4.5. The date for delivery (if any) is the estimated and tentative date for delivery only and Ace Crane Trucks shall be under no liability for any loss or damage howsoever arising if the Services are not delivered by that date. When delivery is delayed by a cause beyond the control of Ace Crane Trucks then the estimated date for delivery shall be extended until the cessation of the effect of such delaying cause.
- 4.6. If the Customer has declared the weight of the Goods and Ace Crane Trucks had relied upon such declared weights then the Customer shall be responsible for all extra costs and risk incurred by Ace Crane Trucks and shall be liable for any loss or damage either directly or indirectly to Ace Crane Trucks by reason of Ace Crane Trucks having relied upon, such declared weight.

5. QUOTATIONS

- 5.1. Quotations make no allowance for waiting time and all extra cost arising from waiting time shall be an additional charge to the Customer.
- 5.2. Quotations are based upon prompt availability of the Goods for loading. Failure in the Customer providing prompt availability of the Goods, shall result in Ace Crane Trucks applying a charge to the Customer in respect of the delay.
- 5.3. Quotations are subject to Ace Crane Trucks having clear access and manoeuvring into loading or unloading positions and a stable and firm ground surface. Any site preparation costs required for Ace Crane Trucks to complete the Services will be an additional charge to the Customer.
- 5.4. Should the weights and dimensions exceed those stipulated on this quotation Ace Crane Trucks may at its absolute discretion revoke the quotation and charge the Customer accordingly.

6. DELAYS

- 6.1. Any delays caused beyond the control of Ace Crane Trucks or where the delay is caused by Ace Crane Trucks following instructions given by the Customer or the Customer's representative the cost of such delay shall be an additional charge to the Customer.
- 6.2. Where a vehicle is bogged whilst following instructions from the Customer or the Customer's representative, the cost of recovering the vehicle shall be an additional charge to the Customer, along with any damage to equipment or plant caused by the recovery shall be an additional charge to the Customer.

7. TITLE

Until payment in full to Ace Crane Trucks for the Services:

- 7.1. Property in the Services remains with Ace Crane Trucks and the Customer agrees to hold the Services as Bailee for Ace Crane Trucks.
- 7.2. Ace Crane Trucks may at any time terminate any contract relating to the Services and the bailment without notice to the Customer and may thereupon take possession of the Services.
- 7.3. The Customer shall not hold itself out as the owner of any of the Services of Ace Crane Trucks and the Customer shall deliver up on demand by Ace Crane Trucks Services on its premises or on the premises of a third party as agent or contracting party for the Customer and if the Customer fails to do so, the Customer authorises Ace Crane Trucks by its servants or agents to enter any premises owned, leased or otherwise occupied by the Customer for the purpose of taking possession of the Services and plant and equipment and authorises Ace Crane Trucks by its servants or agents to use all reasonable force to obtain such possession; and the cost of retaking possession of the Services as above shall constitute additional charges payable by the Customer to Ace Crane Trucks.
- 7.4. In the event that Ace Crane Trucks elects to retake possession of the Services and they are not situated at the Customer's premises, the Customer shall so arrange it that Ace Crane Trucks is entitled to and may collect the Services wherever they are situated.

8. INVOICES

- 8.1. The Customer shall notify Ace Crane Trucks in writing within fourteen (14) days of the date of issue of the invoice of any objection or discrepancy as to the invoice.
- 8.2. Failure to notify Ace Crane Trucks within fourteen (14) days of any objection or discrepancy under Clause 8.1, the Customer shall be deemed the Invoice as correct in its entirety and the amount stipulated on the Invoice shall remain due and payable by the Customer to Ace Crane Trucks.
- 8.3. Ace Crane Trucks shall accept no liability for non-delivery of Services invoiced unless written notification of such non-delivery is received within that period. Ace Crane Trucks liability for non-delivery shall be limited to replacement of the Services within a reasonable time or crediting the invoice.
- 8.4. Statements shall be sent to approved Customers each month comprising all invoices issued during the relevant month and all outstanding invoices as at the date of the statement.

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9. TERMS OF PAYMENT

- 9.1. Payments for Services shall be made to Ace Crane Trucks strictly within seven (7) days from the date of the invoice, unless otherwise specifically agreed. Each invoice shall be paid in full notwithstanding any outstanding deliveries.
- 9.2. For approved Customers, payments for Services shall be made to Ace Crane Trucks within thirty (30) days from the date of the invoice, unless otherwise specifically agreed. Each invoice shall be paid in full notwithstanding any outstanding deliveries.
- 9.3. Invoices amounts which have not been paid as aforesaid may attract an interest charge at the rate of 2% per calendar month. The interest shall be calculated from the date when such payment fell due and payable until paid and notwithstanding any agreement for extension of time of payment.
- 9.4. All payments Ace Crane Trucks receives shall be applied first towards reduction of any interest owing and then in reduction of any principal amount.
- 9.5. Where payments are overdue, Ace Crane Trucks may at its option either cancel incomplete contracts or orders forthwith or suspend delivery of Services yet to be delivered without prejudice to any other remedy.
- 9.6. In the event that the Customer instructs Ace Crane Trucks to debit its account with a paying agent and to send invoices to be paid by a paying agent acting on behalf of the Customer, the same Terms of Trade shall be applicable to the paying agent, unless otherwise agreed in writing by Ace Crane Trucks, the Customer and the paying agent.
- 9.7. In the event the Customer's financial condition shall become impaired prior to delivery or full payment to Ace Crane Trucks, the Customer shall notify Ace Crane Trucks immediately.
- 9.8. In the event that Ace Crane Trucks in its sole and unfettered discretion, finds the financial condition of the Customer or its paying agent unsatisfactory (with or without notice from the Customer), Ace Crane Trucks may exercise any or all the following options at any time:
 - i. Demand immediate payment;
 - ii. Suspend all further deliveries; or
 - iii. Terminate any agreement upon two (2) days written notice to the Customer, without limitation of any other rights or remedies a person or company shall have under law.
- 9.9. The Customer, in the event of its default hereunder, either directly, indirectly or through agent, shall be liable for Ace Crane Trucks damages to the Services (including expenses, legal costs and cost of collection) in addition to other remedies the company shall have under law.
- 9.10. Ace Crane Trucks shall not be liable for any loss or costs which the Customer may incur as a result of any suspension or termination of Service(s) that Ace Crane Trucks may impose onto the Customer at any time under Clause 9.6

10. WARRANTIES

- 10.1. Ace Crane Trucks represents and warrants to its Customer that Ace Crane Trucks and any of its employees are fully qualified to provide the Services and hold such trade, professional or other qualifications and have such experience as is necessary to render the Services in a proper, skilful, diligent and professional manner.
- 10.2. Unless otherwise agreed Ace Crane Trucks liability is limited to the supply of Services in conformity with Ace Crane Trucks standard specification therefor.

11. INSURANCE

- 11.1. Ace Crane Trucks neither offers nor arranges insurance for any damage, loss or delay to any Goods except upon the written instructions of the Customer and then only at the Customer's expense and upon receipt of declaration of value a reasonable time prior to pick up.
- 11.2. The Customer acknowledges and agrees that the price charged for the Services does not offer or arrange insurance of the Goods.

12. INDEMNITY

The Customer shall Indemnify Ace Crane Trucks against –

- 12.1. Loss of or damage to property of the Customer, including existing property in or upon which the Services are being carried out; and
- 12.2. Any delay, mis-delivery or failure to deliver the Goods and/or Services; and

- 12.3. Claims by any person against Ace Crane Trucks in respect of personal injury or death or loss of or damage to any property, arising out of or as a consequence of the carrying out the Services under this Agreement; and
- 12.4. Indemnity shall be reduced proportionally to the extent that the act or omission of Ace Crane Trucks or employees or agents of Ace Crane Trucks may have contributed to the loss, damage, death or injury.

13. LIMITATION OF LIABILITY AND INDEMNITY

- 13.1. Subject to Clauses 11 & 12, which are paramount, Ace Crane Trucks shall be discharged from all liability whatsoever in respect of the Services, where notice in writing of a claim has not been given to Ace Crane Trucks within;
 - i. Twenty one (21) days of the date of delivery of where delivery has not been made; or
 - ii. Twenty one (21) days of the date when delivery ought to have or would have in the course of business been effected; and
- 13.2. Where legal proceedings is not brought within:
 - i. Twelve (12) months of the date of delivery; or
 - ii. Where delivery has not been made, within twelve (12) months of the date when delivery ought to have or would have in the course of business been effected.

14. FORCE MAJEURE

- 14.1. If, owing to an act of God, war, strikes, lock-outs, industrial disputes, work bans, blockades, picketing, fire, flood, drought or any other cause beyond the control of either of the parties, the Hire Agreement cannot be carried out, then the Hire Agreement may be terminated by either party upon written notice within 7 days of date of the event which has given rise to the operation of this force majeure.
- 14.2. The Customer shall be liable for any costs that the Ace Crane Trucks may incur in the event that Ace Crane Trucks cannot complete fulfilling the Service(s) due to any picketing, strikes, lock-outs, or any other form of industrial dispute that may occur from time to time.
- 14.3. These Terms of Trade and this contract between Ace Crane Trucks and the Customer shall be governed by the laws of South Australia and the parties accept the jurisdiction of the Courts of South Australia in respect of any action taken under this Agreement.

15. GST

- 15.1. All amounts payable under this Agreement are inclusive of GST. Each party agrees that to the extent it makes taxable supplies under this Agreement, it shall issue a tax invoice to the other party.
- 15.2. In Clause 15.1 "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999 (Cth).

16. GENERAL TERMS

- 16.1. These conditions and any contract incorporating the same shall be governed by and construed in accordance with the laws of the State of South Australia and the parties hereto accept the non-exclusive jurisdiction of courts exercising jurisdiction in that State.
- 16.2. Ace Crane Trucks failure to insist upon strict performance of any of the terms herein shall not be deemed a waiver of any rights or remedies that Ace Crane Trucks may have and shall not be deemed a waiver of any subsequent breach or default or default in their terms, conditions and covenants herein contained.
- 16.3. Ace Crane Trucks is not a common carrier and shall not accept the obligations or liabilities of a common carrier.
- 16.4. Ace Crane Trucks has the right to vary these Terms of Trade at any time by notice to the Customer and thereafter the varied Terms of Trade are binding on the Customer.
- 16.5. The Customer warrants that the person engaging Ace Crane Trucks Services agree to these Terms of Trade and has the authority of the Customer to do so and is empowered by the Customer to bind the Customer to these Terms of Trade and hereby indemnifies Ace Crane Trucks against all losses, costs and claims incurred by Ace Crane Trucks arising out of the person so signing these Terms of Trade not having such power and/or authority.