

Trade Terms

Compact Cranes

The following terms apply to all order of Supplies by you from Compact Cranes Pty Ltd ACN 618 923 881 (**us, we, our**). Each Docket is a separate agreement between you and us. You warrant that any person that places an order, signs a Docket or accepts the delivery of Supplies on your behalf is authorised to do so and will also do so as agent for each of your related entities that use or access the Supplies.

1. QUOTES AND DOCKETS

If you provide you with a quote, unless the quote states otherwise, it will be valid for 60 days from the date of issue and may be adjusted by us prior to you placing an order. Quoted times for delivery are an estimate only. Minimum hire periods apply as per our Schedule of Rates. We may refuse to accept an order (or part of it) on reasonable grounds.

2. CANCELLATION OF DOCKETS

If you cancel an order prior to delivery, we will refund any Price paid, less any cancellation fees notified to you and costs incurred by us due to the cancellation. If an order is cancelled less than 24 hours prior to delivery, we reserve the right to charge a minimum hire fee as a cancellation fee.

We may cancel an order at any time prior to delivery by notice to you where the order has been placed in breach of these terms. Where we cancel a Docket we will give you a refund of any Price paid for that Docket.

3. PRICE

Unless otherwise agreed, your payment of the Price is due within 30 days from the date we issue an invoice for the Supplies. We may change any advertised price for Supplies at any time without notice.

The Price will be calculated from the time equipment leaves our depot until the time it returns to that depot according to our Schedule of Rates, including time, labour, assembly and disassembly of equipment. In addition, you are responsible for the costs of all accommodation, meals, travel and fares to and from the site unless explicitly stated. Our normal operating hours are 7.00am to 3.30pm from Monday to Friday. Our Schedule of Rates apply to Supplies delivered outside these times.

If we offer you credit you must comply with our Credit Terms.

4. FAILURE TO PAY

Where you fail to make full payment of the Price by the due date, we may impose interest on any overdue amounts at 10% per annum, calculated daily. Time is of the essence in respect of your obligation to pay the Price.

If we incur costs of collection of any amount you have failed to pay by the due date you agree to indemnify us against such costs.

5. DELIVERY AND DELAY

We will endeavour to meet the delivery times nominated in an order or Docket, however you acknowledge that we do not guarantee such times and will not be responsible for any loss or expense suffered by you or a third party due to delays in delivering the Supplies, including but not limited to being caused by any accident, breakdown or defect in our equipment, following your instructions or traffic. We will charge at our Schedule of Rates for any delay caused by you. You agree to comply with any delivery requirements we notify to you when you place a Docket.

6. SUPPLIES

We are not a common carrier. We may refuse the handling of any goods for any person at our absolute discretion.

We will use reasonable endeavours to comply with your lawful directions in relation to the Supplies and our personnel must be the sole person to operate any of our equipment. We may subcontract the performance of the Supplies.

We warrant that the Supplies are of an acceptable quality and otherwise comply with the guarantees that apply compulsorily under the ACL if they apply to you. To the extent permitted by law, we exclude all other guarantees, warranties, undertakings and representations expressed or implied, whether arising by statute or otherwise, which are not given in these terms or any warranty document given at the time of supply.

7. YOUR RESPONSIBILITIES

You must fully disclose any goods of a noxious, flammable, hazardous, dangerous or explosive nature to us prior to placing an order. Your failure to do so fully releases us and our personnel from any loss or damage occasioned whatsoever either directly or indirectly in relation to such goods.

Where you have declared nature or the weight of any goods the subject of our Supplies on which we have relied, you shall be responsible for all extra costs and risk incurred by us, and shall be liable for any loss or damages suffered by us by reason of our reliance upon the accuracy of such declaration.

You must have all permits, licences and authorisations required to acquire the Supplies, and provide and maintain clear accessibility at the Site, including a clear, levelled and consolidated surface for the operation of equipment.

Any recovery costs and/or lost time due to your failure to comply with these Terms will be borne by you.

8. LIABILITIES

Other than as specifically accepted by us below, we are not liable for any other losses or damages you may suffer in relation to the Supplies, including any:

- 8.1. loss incurred due to us following your instructions;
- 8.2. loss caused by you or to the extent it results from your failure to take reasonable steps to avoid or minimise that loss;
- 8.3. loss caused by events falling outside our reasonable control;
- 8.4. indirect or consequential losses (including loss of revenue, profits, enjoyment or loss of business).

Subject to these Terms, we accept liability for any direct loss that is reasonably foreseeable from our material breach of these Terms, however unless required to do otherwise under the Australian Consumer Law and provided its fair and reasonable to do so we limit our liability to the replacement of the Supplies the provision of equivalent Supplies or the cost of providing those Supplies (at our election).

9. INDEMNITY

You indemnify, and keep indemnified, us and our directors, officers, employees and agents from and against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by us arising from any claim, demand, suit, action or proceeding by any person against us where such loss or liability arose out of, or in connection with your acts or omissions, us following your instructions, your breach of these terms, or your use of the Supplies.

10. TERMINATION

If you commit an Act of Default which is not remedied within 5 days of us giving written notice to do so, we may terminate these terms or suspend supply until you remedy the Act of Default. If we terminate these terms, all amounts payable by you to us will immediately become due and payable notwithstanding that the due date has not yet arisen.

If we commit an Act of Default which is not remedied within 5 days of you giving written notice to do so, you may terminate these terms and obtain a refund of any amount of the Price already paid for Supplies not delivered, less any other amounts due and payable to us.

11. DISPUTES

If a dispute arises under these terms, the party claiming that a dispute has arisen must give notice to the other party specifying the nature of the dispute and the parties will attempt to negotiate a resolution in good faith. If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.

Save for seeking urgent interlocutory or injunctive relief, neither party may issue court proceedings in relation to a dispute until resolution by mediation has been attempted.

12. ASSIGNMENT

Neither party may assign, novate or otherwise transfer any of its rights or obligations arising out of or under these terms to another person without the other party's prior written approval (which will not be unreasonably withheld).

13. FORCE MAJEURE

We will not be liable for any delay or failure in the performance of any obligation or the exercise of any right under these terms or for any loss or damage suffered by you as a result if such performance or exercise is prevented or hindered in whole or in part by reason of an event beyond our reasonable control.

14. ENTIRE AGREEMENT

These terms represent the entire agreement between the parties in relation to the Supplies and supersedes any other terms or agreements, and all prior discussions, negotiations, understandings and agreements in relation to those Supplies.

15. GOVERNING LAW

These terms will be governed by the Laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that jurisdiction.

16. RELATIONSHIP

The relationship between us is that of principal and independent contractor. You must not represent yourself as our employee or agent.

17. INTERPRETATION

In the Agreement words in the singular include the plural and words in the plural include singular, according to the requirements of the context and terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context otherwise requires.

18. DEFINITIONS

- 18.1. **Act of Default** occurs if either party:
 - 18.1.1. commits a material breach of these terms;
 - 18.1.2. is unable to pay its debts as and when they fall due;
 - 18.1.3. commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
 - 18.1.4. has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets.
- 18.2. **Docket** means any request for the provision of Supplies by you that has been accepted by us, evidenced by a document constituting a Tax Invoice.
- 18.3. **Personnel** means a party's employees, secondees, directors, officers, contractors, professional advisors and agents.
- 18.4. **Price** means the amount payable for the Supplies specified in a Docket or by applying our Schedule of Rates in accordance with these Terms.
- 18.5. **Supplies** means the items, deliverables and/or services provided, or to be provided, by us to you as identified in a Docket.