

# GENERAL HIRE AGREEMENT

General Hire Agreement (**Agreement**) is made on [date]

## SCHEDULE 1 – HIRE SCHEDULE

<b>Item 1. Owner Details</b>	<p>Owner <b>BURPENGARY CRANE HIRE PTY LTD</b>  <b>ABN 30121586570</b>  <b>ACN 121586570</b>  Owner's representative  Email address <b>info@bchire.net.au</b>  Phone no. <b>0754281118</b></p>
<b>Item 2. Hirer Details</b>	<p>Hirer (full legal name as per ASIC or otherwise)  Trust (full legal name if the Hirer is a corporate trustee)  ABN (if applicable)  ACN (if applicable)  Owner's representative  Email address  Phone no.</p>
<b>Item 3. Rates</b>	As per attached Rate Sheet with pricing notes
<b>Item 4. Project Address</b>	Project Address:
<b>Item 5. Commencement Date</b>	Commencement Date:
<b>Item 6: Payment Terms</b>	Payment to be made as per Hirers account terms with Burpengary Crane Hire PTY LTD. If no account is registered terms will remain as COD.
<b>Item 7: Relevant SOP Legislation</b>	<i>Building Industry Fairness (Security of Payment) Act 2017 (QLD)</i>

**EXECUTED AS AN AGREEMENT** and delivered on the date shown below:

**This Agreement is made on** \_\_\_\_\_.

Executed by *BURPENGARY CRANE HIRE PTY LTD (Owner)* **ACN 121586570** by an authorised officer in the presence of:

Signature of Witness

Signature of Director / Authorised person

Name of Witness (BLOCK LETTERS)

Name of Director / Authorised person (BLOCK LETTERS)

Executed by (Hirer) **ACN** \_\_\_\_\_ by an authorised officer in the presence of:

Signature of Witness

Signature of Director / Authorised person

Name of Witness (BLOCK LETTERS)

Name of Director / Authorised person (BLOCK LETTERS)

## **BURPENGARY CRANE HIRE PTY LTD: FULL TERMS & CONDITIONS**

### **1 Definitions**

- 1.1 "Agreement" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 "Completion" means when the Works are complete in accordance with this Agreement as in substantially complete in that the Works are reasonably fit for use except for minor defects/works which will not inconvenience the Hirer.
- 1.3 "Credit Application" means a credit facility/account provided by the Owner.
- 1.4 "Equipment" means all equipment supplied by Owner to the Hirer at the Hirer's request from time to time.
- 1.5 "GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).
- 1.6 "Goods" means all Goods or Services supplied by Owner to the Hirer at the Hirer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 "Hire Period" means the period in which the Owner supplied equipment and/or labour to the Hirer.
- 1.8 "Owner" means the person/s or any person acting on behalf of and with the authority of the Owner and set out in Schedule 1.
- 1.9 "Hirer" means and includes the person shown on the docket/ tax invoice as being the hirer of the crane and includes such person, contractors, services, merchandise, plant and machinery, article of every kind and description and includes packages, crates, cases, and contents thereof whatsoever kind.
- 1.10 "Payment Claim" means an invoice issued to the Hirer by Owner for Services under this Agreement and has the same meaning as under the relevant SOP legislation in Schedule 1.
- 1.11 "Payment Schedule" means the Hirer's response to a Payment Claim and has the same meaning as under the relevant SOP legislation.
- 1.12 "Price" means the Owner's Quotation or Rate Sheet annexed to this Agreement.
- 1.13 "Quotation" means any price or quote annexed to this Agreement.
- 1.14 "Rate Sheet" means any rate sheet for Services annexed to this Agreement.
- 1.15 "Works" means all Goods or Services supplied by Owner to the Hirer at the Hirer's request from time to time.

### **2 Acceptance**

- 2.1 Any rates schedule annexed to this Agreement is valid for 30 days from the date of issuance and subject to cost escalation thereafter.
- 2.2 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for or accepts services provided by the Owner.
- 2.3 The entire agreement between the Owner and the Hirer is set out in this document, any quotes, or invoices and/ or any Credit Application.
- 2.4 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 2.5 The Hirer acknowledges that the supply of Works on credit shall not take effect until the Hirer has completed a credit application with the Owner and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Works request exceeds the Hirer's credit limit and/or the account exceeds the payment terms, the Owner reserves the right to refuse delivery.
- 2.7 The Owner reserves the right to adjust the credit limit of the Hirer at its absolute discretion.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **3 Exclusions**

- 3.1 Excluded from any Quotation or Rate Sheet: any item not specifically listed in the Rate Sheet or Quotation.

### **4 Inclusions**

- 4.1 The Hirer warrants the accuracy of information and documents provided to the Owner and acknowledges and agrees that any Quotation or Rate Sheet annexed to this Agreement is based on the Owner's interpretation of the information provided to the Owner.
- 4.2 The entire agreement between the Hirer and the Owner is set out in this document and any Quotation or Rate Sheet.

### **5 Works**

- 5.1 Hours charged for Services supplied under this Agreement are rounded up to the nearest 15 minutes.
- 5.2 Stand down rates apply if the Owner were directed to attend the site and 12 hours' notice was not provided to cancel Services.
- 5.3 The Owner's standard working hours are Monday to Friday 7am to 3pm. This excludes rostered days off, lockdown weekends and public holidays.
- 5.4 Overtime rates apply for works requested outside the standard working hours specified in Clause 5.3.
- 5.5 Operator travel time and penalties are payable depot to depot when cranes remain onsite overnight. Dogman/Riggers travel time will be charged on the same basis as operators.
- 5.6 Goods of a noxious, inflammable, hazardous, and dangerous or explosive nature shall not be tendered to the Owner without prior full disclosure of the nature of the goods and may be handled, lifted and/or carried only by special agreement. If any such goods be tendered other than by special agreement, the Hirer shall be liable to the Owner for any loss or damage occasioned whatsoever.
- 5.7 Any site allowances enforced onsite will be charged on to the hourly rate for all applicable labour charges.

### **6 Progress Claims and Payments**

- 6.1 The Owner reserves the right to change the Price by written notice.
- 6.2 Variations refers to works outside the Rate Sheet which will be charged for on the basis of the Owner's quotation, and will be detailed in writing, and shown as variations on the Owner's invoice. The Hirer shall be required to respond to any variation submitted by the Owner within five (5) working days. Failure to do so will entitle the Owner to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 Time for payment of Works supplied under this Agreement being of the essence, the Price will be payable within the Payment Terms detailed in Schedule 1.

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- 6.4 The Owner is entitled to submit a Payment Claim at the times set out in Schedule 1.
- 6.5 A Payment Claim may be issued within a period of 24 months after the Works to which the Payment Claim relates, was last carried out.
- 6.6 The Hirer must issue a Payment Schedule to a Payment Claim issued by the Owner within five (5) Business Days of service of the Payment Claim.
- 6.7 Payment can be made by credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Hirer and the Owner. The Hirer authorises the Owner to charge its credit card for services supplied under this Agreement.
- 6.8 The Owner may apply and allocate payments received by, or on behalf of, the Hirer in a manner in the Owner's absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise. The Owner may allocate payments at the time of receipt at any time afterwards. On any default by the Hirer, the Owner may re-allocate payments previously received and allocated.
- 6.9 The Hirer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Hirer must pay to the Owner an amount equal to any GST that the Owner must pay for any Services by the Owner under this Agreement.

### **7 Compliance with Laws**

- 7.1 The Hirer and the Owner shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 7.2 The Hirer shall obtain (at the expense of the Hirer) all licenses and approvals that may be required for the Services.
- 7.3 The Hirer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

### **8 Default and Consequences of Default**

- 8.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 8.2 If the Hirer owes the Owner any money, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to internal administration fees and legal costs of a solicitor on an indemnity basis).
- 8.3 Without prejudice to the Owner's other remedies at law, the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable if:
  - 8.3.1 any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to make a payment when it falls due.
  - 8.3.2 the Hirer has exceeded any applicable credit limit provided by the Owner.
  - 8.3.3 the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 8.3.4 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.
- 8.4 In the event of default by the Hirer, all recovery costs (including but not limited to legal costs and any mercantile agent costs, both on an indemnity basis), incurred by the Owner, shall be deemed to be a debt immediately due and owing by the Hirer to the Owner..
- 8.5 THE HIRER HEREBY AGREES TO CHARGE ITS/HIS/HERS/THEIR INTEREST AND ESTATE IN ALL LAND presently held or hereafter acquired by it/him/her/them so as to better secure the performance of the Hirer of these terms and conditions and the Hirer hereby consents to the lodging of a caveat(s) by the Owner on all Certificate(s) of Title to any land held by the Hirer or its director(s).

### **9 Personal Property Securities Act 2009 (Cth) ("PPSA")**

- 9.1 In this clause, financing statement, financing change statement, inventory, purchase money security interest, security agreement, and security interest have the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates and grants a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Hirer to the Owner for Services – that have previously been supplied and that will be supplied in the future by the Owner to the Hirer.
- 9.3 The Hirer acknowledges the security is granted to secure the obligation to pay all amounts payable and to meet all obligations under this agreement (**Indebtedness**). The Hirer warrants that this Agreement does not relate to personal, domestic, or household purposes.
- 9.4 Where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the Goods present and after acquired by the Customer, of which the Goods form part, to the extent required to secure the Indebtedness.
- 9.5 The Hirer undertakes to do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of ensuring that any Security Interest of an Owner is enforceable, perfected, and otherwise effective as a first priority security interest under PPSA.
- 9.6 The Hirer waives any right to receive notice in relation to any registration or amendment to a registration on the PPSR. At its own expense, the Hirer will provide all reasonable assistance and relevant information to enable us to register on the PPSR and generally to obtain, maintain, register, and enforce the security interests created by this agreement.
- 9.7 Any payments received by the Owner from the Hirer shall be deemed to be made and applied by us in the following order (unless otherwise determined by the Owner): (1) to any obligation owed by the Hirer which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest (**PMSI**), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.

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### **10 Underground Services**

- 10.1 Prior to the Owner commencing any work, the Hirer must advise the Owner of the precise location of all underground services on the site and clearly mark the same.
- 10.2 Whilst the Owner will take all care to avoid damage to any underground services the Hirer agrees to indemnify the Owner in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

### **11 Cancellation**

- 11.1 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms and conditions, the Owner may suspend or terminate the supply of Works to the Hirer. Upon suspension or termination of the Agreement, the Owner has the right to remove the equipment at any time and access to the equipment must be granted.
- 11.2 The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 11.3 The Owner may cancel any Agreement to which these terms and conditions apply or cancel Services at any time before the Services are provided by giving written notice to the Hirer.
- 11.4 The Owner shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.5 In the event that the Hirer cancels Services, the Hirer shall be liable for any and all loss incurred (whether direct or indirect) by the Owner as a direct result of the cancellation (including, but not limited to, any loss of profits).

### **12 Limited Liability**

- 12.1 To the extent permitted by law, the Owner is not liable to the Hirer for any loss or damage, whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury, however caused (including negligence) which the Hirer or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the goods and/or services, any defects in the goods and/or services or in respect of any failure or omission by the Owner or any of its officers, agents or employees to comply with the Agreement or any obligation imposed by law.
- 12.2 Any claim for damages made by the Hirer against the Owner must be made in writing and lodged with the Owner at its registered office within forty eight (48) hours from the occurrence of the events which give rise to the claim for the claim for damages. Any claim not made in accordance with this clause shall be deemed to be waived by the Hirer.

### **13 Indemnity**

- 13.1 The Hirer will indemnify and keep indemnified the Owner from and against all or any liability which the Owner may incur or become liable for, or in respect of loss, damage or injury to any person or property arising out of or in connection with the use of the Equipment or the Services, whether for negligence, breach of statutory duty, nuisance or otherwise.

### **14 Use, Operation and Maintenance Equipment**

- 14.1 The Hirer must maintain the equipment as required by the Owner, notify the Owner immediately of any mechanical malfunction, damage, loss, destruction, or accident in connection with the Equipment, and ensure the Equipment is kept securely and in their own possession and control at all times.
- 14.2 The Hirer must, once the Hire Period has ended, return the equipment in a clean condition and in good repair and working order to the Owner.
- 14.3 Unless otherwise agreed, the Hirer shall ensure that the Owner has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Goods). The Owner shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Owner.
- 14.4 The Hirer shall be responsible for ensuring that the ground at the location is adequate to support the equipment under its wheels and outriggers.
- 14.5 Unless otherwise agreed, the Hirer will ensure that access is suitable to accept the weight of laden equipment. Additionally, that the gradient can support the weight of the equipment (under its wheels and outriggers). Unless the Hirer directs the Owner not to access an unsafe section and the Owner disregards this direction, the Hirer agrees to indemnify the Owner against all costs incurred by the Owner in recovering such vehicles in the event they become bogged or otherwise immovable.
- 14.6 The Hirer acknowledges that use of the equipment may involve risk of injury or damage to property, and the Hirer accepts all such dangers and risks.
- 14.7 The Hirer must not allow any of its officers, employees, agents, or contractors to tamper with, damage or alter the Equipment.
- 14.8 The Hirer shall declare the weight of the goods and the Owner will rely on such declared weight when arranging for handling. The Hirer shall be responsible for all extra cost and risk incurred by the Owner for any and all damage sustained by reliance on the declared weight. The Hirer shall disclose to the Owner the nature of the goods to be handled, lifted and/or carried.

### **15 Title and Risk**

- 15.1 The Hirer assumes all risk and liability in relation to the Equipment from the time of supply by the Owner, until the Equipment is returned to the Owner in an acceptable state.
- 15.2 The Owner retains title to the Equipment, and the Hirer's rights to the Equipment are as a bailee only.
- 15.3 The Hirer acknowledges and agrees that the Terms create an accepted and ongoing security agreement in relation to the supply of Equipment to the Hirer by the Owner.

### **16 Insurance**

- 16.1 It shall be the Hirer's responsibility to insure any property to be lifted by the Equipment within the confines of the Hirer's parameters of the Location, any of the Owner's Equipment left at the Location overnight or other extended period and to ensure that Owner's interest is noted on the relevant insurance policy.

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### **17 Privacy Policy**

- 17.1 The Hirer agrees for the Owner to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g.name, address, D.O.B, etc.) or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Hirer in relation to credit provided by the Owner.
- 17.2 The Hirer agrees that the Owner may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes.
  - 17.2.1 to assess an application by the Hirer; and/or
  - 17.2.2 to notify other credit providers of a default by the Hirer; and/or
  - 17.2.3 to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
  - 17.2.4 to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two (2) years.
- 17.3 The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Hirer agrees that personal credit information provided may be used and retained by the Owner.
- 17.5 The Owner may give information about the Hirer to a CRB..

### **18 General**

- 18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 18.2 These terms and conditions and any Agreement to which they apply shall be governed by the laws of Queensland, the state in which the Owner has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 18.3 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions (alternatively the Owner's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 The Owner may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Hirer's consent.
- 18.5 The Hirer cannot licence or assign without the written approval of the Owner.
- 18.6 The Hirer agrees that the Owner may amend their general terms and conditions for subsequent future Agreements with the Hirer by disclosing such to the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or the Owner at such time as the Hirer makes a further request for the Owner to provide Goods to the Hirer.
- 18.7 The Owner shall not 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.
- 18.8 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this Agreement creates binding and valid legal obligations on them.
- 18.9 The Owner is not a common Carrier and does not accept the obligations or liability of Common Carriers. The Owner may refuse the handling, lifting and/or carriage of goods for any person or any class of goods at its discretion and without being bound to give any reason for such refusal.
- 18.10 The Owner shall not be responsible for any delays, inconvenience or loss or any kind whatsoever incurred by the Hirer due to any accident, breakdown or defect in the crane, plant, etc or any part thereof, or from any other cause whatsoever.
- 18.11 The Owner shall be entitled to charge hiring charges at the usual price list rate for any time during which the crane, plant, etc is delayed either in travelling to or from or at the site at which the Hirer desires the crane to operate, so long as such delays result from any cause beyond the reasonable control of the Owner.

### **19 Access and Delivery**

- 19.1 The Hirer shall ensure that the Owner has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Goods). The Owner shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Owner.
- 19.2 It is the responsibility of the Hirer to ensure that access is suitable to accept the weight of laden equipment. Additionally, that the gradient is no steeper than 1 in 10 and can support the weight of the Equipment (under its wheels and or outriggers). The Hirer agrees to indemnify the Owner against all costs incurred by the Owner in recovering such vehicles in the event they become bogged, broken down or otherwise immovable. The Hirer will be charged at the applicable rate until such time that the Equipment is cleared from site and in a hireable condition.
- 19.3 It is the responsibility of the Hirer to make the premises available on the agreed date and time.
- 19.4 All traffic control requirements are the hirers responsibility, the hirer agrees to supply the owner with any required permits and TMP (traffic management plans) prior to crane mobilisation.

### **20 Notices**

- 20.1 Any notices issued under this Agreement can be sent by email or post to the other party via the details in Schedule 1
- 20.2 A notice via email is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.
- 20.3 A notice via post is deemed to be received 4 business days after the date sent unless evidence of earlier service is provided.