

## TERMS & CONDITIONS OF CONTRACT

### **Manned Crane Hire**

1. INTERPRETATION - "Charges" means the hourly rate specified in this Contract or if no such rate is specified then as set out in Gold Coast Cranes' Schedule of Rates current at the date of commencement of the service; "Customer" means any person, firm or corporation named herein as customer, with this agreement being personal to the customer and non-assignable. Where an individual purports to sign on behalf of a corporation as customer, that person shall be jointly and severally liable hereunder with the corporation as if that person was a principal contracting party; "Equipment" means any equipment needed to carry out the Service and includes all parts thereof whether normally detachable or not and any substitute or replacement equipment and including all equipment provided by Gold Coast Cranes including that of any sub-contractors or agents for use in performance of the Service; "Customer's Equipment" means any equipment owned or supplied by the customer for use in the performance of the service; "Goods" include any item of personal property and where the expression is used in connection with the customer the expression extends to and includes customer's goods, freight, all items of packaging and material, handling and customer's equipment; "Service" means the service referred to herein and shall include without limitation manned crane hire, carriage of goods, the service and repair of equipment, storage of goods, construction work and any other services which Gold Coast Cranes in its sole discretion deems necessary to carry out the performance of the contract. The date or time of commencement of the Service shall be the date or time specified herein and if no such date or time is so specified the date or time of formation of the contract. Any purported variation to this contract must be in writing and signed by the customer and by a director on behalf of Gold Coast Cranes.
2. Gold Coast Cranes agrees to perform the service and the customer agrees to accept same.
3. Gold Coast Cranes is hereby authorised by customer to engage sub-contractors or agents for the performance of the whole or any part of the Service of this contract. Such sub-contractors or agents will be deemed to be entitled to all benefits and indemnities contained in this contract as though they had been an original party to this contract and for that purpose Gold Coast Cranes is deemed to have entered into this contract for its own benefit and also as agent for such sub-contractors or agents.
4. The whole of Gold Coast Crane's charges will be deemed to have been earned at the commencement of performance of the Service. The customer further acknowledges that the charges have been set by Gold Coast Cranes upon the basis of the specifications and description of the Service supplied by the customer, and in the event of any misdescription or incorrect specification provided by the customer or in the event of any variation to the Service which Gold Coast Cranes in its sole discretion may deem to be necessary for reasons beyond its control, Gold Coast Cranes reserves the right to impose additional charges for all necessary variations in that regard, and the customer undertakes to be liable for payment of all such additional charges in addition to the charges specified herein. Further, but without limiting the foregoing, in the event of any misdescription or incorrect specifications supplied by the customer, Gold Coast Cranes may, in its sole discretion, suspend performance of the contract and shall not be obliged to complete the service in such cases where the misdescription or incorrect specification, in the sole opinion of Gold Coast Cranes, renders the Service incapable or impracticable to be performed, or if the customer refuses to accept any additional charges imposed by Gold Coast Cranes or in any other case where Gold Coast Cranes considers it necessary to suspend completion of the Service, and in such event, Gold Coast Cranes may apply and appropriate the charges specified herein in and towards satisfaction of the costs of the works already performed and any additional charges or costs incurred by Gold Coast Cranes as a result of such misdescription or incorrect specification.

5. The customer acknowledges that Gold Coast Cranes shall be entitled to adopt whatever method of performance of the service as it may from time to time deem appropriate and advisable and that any goods may be transported by such route and such means as Gold Coast Cranes deems appropriate or advisable, notwithstanding that any other method of performance or transport or route may have been specified. All goods are at the sole risk of the customer and the customer hereby indemnifies Gold Coast Cranes against all losses or claims in any way relating to the goods and the customer assures Gold Coast Cranes that customer will maintain at all times an adequate insurance policy in respect of all of customer's goods.
6. In all cases where goods are supplied or tendered by customer to Gold Coast Cranes, customer must disclose to Gold Coast Cranes a true, complete and accurate description of the nature, quantity and quality of such goods and including complete disclosure of any goods which are of a dangerous or hazardous nature. All labels, marks and packaging supplied by customer must be adequate and accurate. The customer hereby indemnifies Gold Coast Cranes against all or any loss or damage suffered or any claims made arising out of any dangerous or hazardous goods supplied by or tendered by customer irrespective of any negligence or breach of contract by Gold Coast Cranes.
7. In addition to the charges, customer must pay to Gold Coast Cranes all further fees, taxes (other than income tax), Goods and Services Tax, customer duties, stamp duties or any other imposts, fees or taxes, or any increases in the same, which shall now or hereafter become payable to any government or other authority by reason of or in any way associated with or arising out of the service of this contract or any fees or charges payable hereunder.
8. Where any part of the service includes construction projects, Gold Coast Cranes may, at its sole discretion, elect to incorporate into the contract and these terms and conditions, the general conditions of contract, Australian Standard 2124-19001 as if the same were set out in full herein.
9. Gold Coast Cranes is not a common carrier and accepts no liability as such and all services performed by Gold Coast Cranes are upon this express basis. Gold Coast Cranes reserves the right to refuse, at its discretion, the performance of services for any person or to refuse the carriage of any class or category of goods. If Gold Coast Cranes is required by any relevant authority or elects at its sole discretion to recover or retrieve customer's goods in transit, then all costs relating to such retrieval or recovery will be borne by customer and will be added to Gold Coast Crane's charges irrespective of any negligence or breach of contract by Gold Coast Cranes.
10. The customer indemnifies Gold Coast Cranes against all actions, claims, demands, costs (including legal costs on a solicitor and own client basis), loss and damage in any way associated with or arising out of or in the course of rendering the service and including any loss or damage to the equipment caused through any act, neglect, omission or default of the customer or any liability in respect of any third parties arising out of or in the course of rendering the Service, irrespective of any negligence or breach of contract by Gold Coast Cranes.
11. In the event of any default, breach of contract, negligence, act or omission by Gold Coast Cranes (herein called "default") the sole remedy which the customer shall have against Gold Coast Cranes will be that Gold Coast Cranes may, in its sole discretion, at its cost, as soon as practicable, cause such default to be rectified in so far as it relates to the contract and the services to be performed hereunder so that the Service is completed as provided in this contract. The said rectification of default and completion of the contract shall be the sole remedy available against Gold Coast Cranes and it is expressly agreed between the customer and Gold Coast Cranes that under no circumstances will Gold Coast Cranes be liable for any damages for breach of contract or for negligence, nor any damages nor any other remedy in respect of any consequential loss whatsoever which may have arisen out of or be associated with or have occurred during the course of performance of the contract and the rendering of the services. The customer hereby expressly releases and indemnifies Gold Coast Cranes against all actions, claims and demands in respect of any loss, damage or consequential damage of any kind arising out of the contract or the performance of the services, whether suffered by the customer or any other party, and irrespective of any negligence or breach of contract or any other default by Gold Coast Cranes, except to the extent of the remedy specified in this clause.
12. If any provision of this contract shall be held to be invalid, illegal or unenforceable then the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the offending provision or provisions shall be deemed to be deleted from this Contract and the remainder of this contract shall remain in full force and effect.
13. This Agreement shall be governed by the laws of the State of Queensland.