



Trading as **Qld Self Erecting Cranes**

ABN 56 412 435 789

TERMS AND CONDITIONS OF HIRE

1.0 DEFINITIONS

- 1.1 **“Agreement”** means these terms and conditions, the Quote, any execution pages and any written variations agreed to by the parties.
- 1.2 **“Boland Cranes”** means Boland Cranes Pty Ltd ABN 56 412 435 789 and any subsidiary company or business, successor or assignee, and where applicable, its sub-contractors, employees, servants and agents.
- 1.3 **“Breakdown”** includes breakdown, damage, full or partial loss, loss of use, seizure or impoundment by operation of law or otherwise.
- 1.4 **“Client”** shall mean the client specified in the Quote, and includes any person acting on behalf of and with the authority of the client specified in the Quote.
- 1.5 **“Dismantling Costs”** means the costs associated with dismantling and removal of the Plant and Equipment from the Work Site and the transport of the Plant and Equipment from the Work Site as determined by Boland Cranes and set out in the Quote.
- 1.6 **“Docket(s)”** means the daily schedule whereby Boland Cranes records their hours worked on the Work Site, which includes, but is not limited to, the Client name, address and Work Site location.
- 1.7 **“Due Date for Payment”** means, unless otherwise specified, thirty (30) days from the issuing date of any invoice provided by Boland Cranes to the Client;
- 1.8 **“Erection and Commissioning Costs”** means the costs associated with the delivery and transport of the Plant and equipment to the Work Site, engineering a base design, supply and install of the embedded element, in addition to the erection and commissioning of the Plant and Equipment at the Work Site as determined by Boland Cranes and set out in the Quote.
- 1.9 **“Event of Default”** means an event specified in clause 9 of these terms and conditions.
- 1.10 **“Force Majeure”** means an unforeseeable supervening event that renders a party’s obligation or obligations under this Agreement incapable of being performed, and does not include an intervening event that arises as a result of the conduct of any of the relevant parties. Force Majeure includes but is not limited to:
 - 1.10.1 an Act of God;
 - 1.10.2 a fire, explosion, flood, fog or bad weather;
 - 1.10.3 the act of any government or authority (including refusal or revocation of any license or consent);
 - 1.10.4 power failure, failure of telecommunication lines, failure or breakdown of Plant Equipment, machinery or vehicles;
 - 1.10.5 default of suppliers or independent contractors;
 - 1.10.6 theft or malicious damage;
 - 1.10.7 strike, lockout or industrial action of any kind whatsoever;
 - 1.10.8 any cause or circumstance whatsoever (excluding financial difficulties or lack of funds experienced by a party to this Agreement) beyond the reasonable control of a party to this Agreement.
- 1.11 **“Hire Charge”** means the rates and charges specified in the Quote or such other rate specified and quoted by Boland Cranes to the Client from time to time.

- 1.12 **"Hire Site"** means the premises from which Boland Cranes trades from or such other premises as notified to the Client in writing from time to time.
- 1.13 **"Including"** and other similar words are not words of limitation.
- 1.14 **"Quote"** means the written document setting out the particulars of the Agreement, including but not limited to:
- 1.14.1 the description of the Plant and Equipment being supplied by Boland Cranes;
 - 1.14.2 the Hire Charge; and
 - 1.14.3 the Term.
- 1.15 **"Person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), body corporate, a partnership and a trust;
- 1.16 **"Plant and Equipment"** means the goods specified in the Quote and includes but is not limited to any item of plant, machinery or vehicle, and any tools, accessories, parts, items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle let by Boland Cranes to the Client.
- 1.17 **"Term"** means the term of the Agreement as specified in the Quote or such further period as is agreed upon by Boland Cranes in writing.
- 1.18 **"Work Site"** means the site where the Client requires the Plant and Equipment to be used during the course of the Term.

2.0 INTERPRETATION

- 2.1 General words following words describing a particular class or category are not restricted to that class or category.
- 2.2 Headings are for reference only and do not affect the meaning or interpretation of this document unless the context indicates a contrary intention.
- 2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- 2.4 A reference to a business day means a day on which all banks are open for business generally in Brisbane, Queensland, Australia, which does not include Saturday, Sunday or any public holiday.
- 2.5 Unless otherwise required by the context of the subject matter, a reference to a party includes that party's executors, administrators, personal representatives, successors and assignees. If a party comprises of two or more persons, a reference to a party includes the executors, administrators, personal representatives, successors and assignees of each of those persons.
- 2.6 References to any legislation or to any provision of any legislation shall include any modification or re-enactment, or any legislation or legislative provision substituted for or corresponding or similar to, and all legislative and statutory instruments issued under such legislation or such provision.

3.0 ACCEPTANCE

- 3.1 Any instructions received by Boland Cranes from the Client in writing for the hire of Plant and Equipment, and or the Client's acceptance of Plant and Equipment on hire by Boland Cranes in writing, shall constitute acceptance of the Agreement including these terms and conditions.
- 3.2 Where the Agreement is between Boland Cranes and two or more Clients, each of the Clients shall be jointly and severally liable for the Hire Charge.

- 3.3 Upon the Client's acceptance of the Agreement, such terms are irrevocable and can only be amended with the Client being provided express written consent by Boland Cranes.
- 3.4 The Client shall give Boland Cranes no less than fourteen (14) days prior written notice:
 - 3.4.1 If the Client is a corporation, of any proposed change of ownership of the Client;
 - 3.4.2 Of any change of the Client's name;
 - 3.4.3 Of any change in the Client's details, including but not limited to;
 - 3.4.3.1 The Client's address; and
 - 3.4.3.2 The Client's facsimile number, phone number, and email address.
- 3.5 The Client shall be liable for any loss or detriment sustained by Boland Cranes as a result of non-compliance with clause 3.4.

4.0 INTENTION OF THE PARTIES

- 4.1 It is the parties' intentions, that should the parties enter any subsequent agreement, these terms and conditions will be incorporated by reference, in the alternative these terms and conditions represent a collateral contract.

5.0 PAYMENT OF HIRE CHARGES AND OTHER COSTS

- 5.1 The Client shall pay Boland Cranes the Hire Charge strictly in accordance with the manner specified in the Quote on the Due Date for Payment .
- 5.2 The Hire Charge shall not be subject to any set-off or deduction for any reason whatsoever. This includes such circumstances including but not limited to:
 - 5.2.1 Inclement weather;
 - 5.2.2 Industrial dispute;
 - 5.2.3 Public holidays;
 - 5.2.4 Rostered days off;
 - 5.2.5 Site closures; or
 - 5.2.6 Any other non-working time howsoever caused during the Term or extension thereof.
- 5.3 If payment is not made by the Client to Boland Cranes by the Due Date for Payment:
 - 5.3.1 Boland Cranes will be at liberty to restrict access to the Plant and Equipment and/or resume possession of the Plant and Equipment as it sees fit. Any recommencement of the Term will be at Boland Cranes' discretion; or
 - 5.3.2 Boland Cranes may charge interest at the rate of 8% on any outstanding amount.
- 5.4 The Client shall not be relieved from his responsibility to pay the Hire Charge for the entire Term in the event the Plant and Equipment is returned to Boland Cranes prior to the expiration of the Term.
- 5.5 The Client shall pay any sales, rental or other taxation, stamp duty, import duties, bonds or any other charges which may be levied upon the Agreement and/or the use or delivery of the Plant and Equipment.

6.0 HIRE PERIOD

- 6.1 The Hire Charge shall commence from the time the Plant and Equipment leaves the Hire Site and will continue until the return of the Plant and Equipment to the Hire Site, and/or until the expiry of the Term, whichever last occurs.

7.0 DOCKETS

- 7.1 Dockets must be signed by the Client on a daily basis. In the event the Dockets are not signed daily, the Client is not entitled to retrospectively dispute the information on a past Docket.
- 7.2 The Client should not sign the Docket if the client does not agree with the information on the Docket. No credit is given for signed Dockets.

8.0 DELIVERY OF PLANT AND EQUIPMENT

- 8.1 At Boland Cranes' sole discretion, the costs of traveling to and from the Client's site will be included in the Quote.
- 8.2 Unless otherwise specified, Boland Cranes will arrange for the transportation of the Plant and Equipment from the Hire Site to the Work Site.
- 8.3 Unless otherwise specified, Boland Cranes will supply of all necessary craneage, labour, equipment, materials, and other requirements relating to the delivery of the Plant and Equipment.
- 8.4 The Client is responsible for arranging the supply of ancillary equipment which Boland Cranes does not have in its possession at the Delivery Date or otherwise.
- 8.5 Boland Cranes will use reasonable endeavours to maintain the Deliver Date.
- 8.6 The failure of Boland Cranes to carry out the scheduled delivery on the Delivery Date shall not entitle either party to treat the Agreement as repudiated by Boland Cranes.
- 8.7 Boland Cranes shall not be liable for any loss or damage sustained by the Client whatsoever, due to the failure of Boland Cranes to deliver the Plant and Equipment on the Delivery Date, in circumstances where there has been a Force Majeure.
- 8.8 The Client shall make all arrangements necessary to take delivery of the Plant and Equipment on the Delivery Date.
- 8.9 In the event the Client is unable to take delivery of the Plant and Equipment on the Delivery Date, Boland Cranes shall be entitled to charge a reasonable fee for redelivery.
- 8.10 The Client shall be responsible for free access for Boland Cranes to enter the Work Site for the purposes of delivery of the Plant and Equipment.
- 8.11 In the event there are any delays due to free access to the Work Site not being available, then the Client shall be responsible and shall reimburse Boland Cranes for all lost hire fees associated with making the Work Site available. The Client shall also be liable for all other expenses and costs incurred by Boland Cranes due to delays in accessing the Work Site.
- 8.12 Unless otherwise specified, the Client will be responsible for the cost of additional labour, equipment, materials, expenses and other requirements.
- 8.13 The Erection and Commissioning Costs will be payable by the Client, and are payable upon the Client's acceptance of the Agreement pursuant to clause 3.1.
- 8.14 The Dismantling Costs will be payable by the Client.
- 8.15 Boland Cranes is entitled to increase the Erection and Commissioning Costs and the Dismantling Costs in the event that the work is required to be carried out on a gazetted public holiday in the area of the Hire Site.
- 8.16 Boland Cranes may, at its discretion, consent to the work subject of the Erection and Commissioning Costs, to be carried out by the Client or a third party, however, this will be subject to Boland Cranes first providing all necessary documents and certifications as requested by Boland Cranes, and the Client complying with all further requirements sought by Boland Cranes.

9.0 BREAKDOWN OF PLANT AND EQUIPMENT

- 9.1 Boland Cranes shall without delay take all reasonable steps to replace the Plant and Equipment the subject of the Breakdown with Plant and Equipment of a similar type or capacity but is under no obligation to do so.
- 9.2 Boland Cranes shall not be liable for any direct, indirect or consequential costs, losses or damages suffered by Client or third parties in relation to a Breakdown.
- 9.3 In the event of a Breakdown, the Client will remain liable for paying the Hire Charge and any other costs as agreed between the parties in the Quote or otherwise.
- 9.4 Boland Cranes is under no obligation to replace or repair any Equipment which is the subject of a Breakdown, and the Boland Cranes shall not be liable for any direct, indirect or consequential costs, losses or damages suffered by the Client or third parties in relation to a Breakdown.
- 9.5 For the avoidance of doubt, in the event of a Breakdown, Boland Cranes will not be liable to pay any back charges.

10.0 RISK

- 10.1 Boland Cranes retains property in the Plant and Equipment nonetheless all risk for the Plant and Equipment passes to the Client on delivery to site.
- 10.2 The Client accepts full responsibility for the safekeeping of the Plant and Equipment and indemnifies Boland Cranes for all loss theft or damage to the Plant and Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Client.
- 10.3 The Client accepts full responsibility for and shall keep Boland Cranes indemnified against all liability in respect of any injury to persons or damage to property arising out of the use of the Plant and Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other person, including in the event that the Client supplies its own dogmen on the Hire Site.

11.0 DEFAULT AND CONSEQUENCES OF DEFAULT

- 11.1 If the Client defaults in payment of any invoice when due, the Client shall indemnify Boland Cranes from and against all costs and disbursements incurred by Boland Cranes in pursuing the debt including legal costs on a solicitor and own client basis and Boland Cranes' collection agency costs.
- 11.2 Without prejudice to any other remedies Boland Cranes may have, if at any time the Client is in breach of any obligation (including those relating to payment), Boland Cranes may suspend or terminate the supply of Equipment or services to the Client and any of its other obligation under the terms and conditions. Boland Cranes will not be liable to the Client for any loss or damage the Client suffers because Boland Cranes has exercised its rights under this clause.
- 11.3 Without prejudice to Boland Cranes' other remedies at law Boland Cranes shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies Boland Cranes may have and all amounts owing to Boland Cranes shall, whether or not due for payment, become immediately payable in the event that:
 - 11.3.1 Any money payable to Boland Cranes become overdue, or in Boland Cranes' opinion the Client will be unable to meet its payment as they fall due; or

- 11.3.2 The Client 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
- 11.3.3 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12.0 TERMINATION

- 12.1 Boland Cranes may terminate the Agreement without reason or for its convenience upon 24 hours advance notice to the Client. Boland Cranes shall not be liable for any loss or damage whatever arising from such termination.
- 12.2 Boland Cranes may terminate the Agreement without notice if the Client:
 - 12.2.1 commits a breach of the Agreement;
 - 12.2.2 permits any act or thing to be done which may prejudice, diminish or alienate Boland Cranes' rights to or in the Plant and Equipment;
 - 12.2.3 commits an act of bankruptcy;
 - 12.2.4 becomes insolvent or is unable to pay its debts when they fall due;
 - 12.2.5 enters into voluntary liquidation, provisional liquidation, administration or receivership,
 - 12.2.6 has a winding up petition presented against it;
 - 12.2.7 has any of its property seized by a secured creditor or any secured creditor takes steps to enforce its rights;
 - 12.2.8 ceases to be carrying on business or substantially changes its business activities, or
 - 12.2.9 suffers a change of management or voting control without prior Boland Cranes' approval.
- 12.3 On termination of the Agreement, Boland Cranes is entitled to immediate possession of the Plant and Equipment and where such possession is not obtained, the Client irrevocably appoints Boland Cranes as its agent and authorised attorney to enter upon any land or premises on behalf of the Client to recover the Plant and Equipment and agrees to indemnify Client in respect of any claims, damages or expenses arising out of any action taken under this condition.
- 12.4 In the event of the Client terminating the Agreement, the Client shall be liable for any loss incurred by Boland Cranes (including, but not limited to, any loss of profits) up to the time of termination.

13.0 GOVERNING, LAW AND DISPUTES

- 13.1 This document is governed and construed by the laws of Queensland. The parties submit the jurisdiction of the Queensland Courts and will not object to the exercise of jurisdiction by such courts on any basis.