

Quinn Crane Hire Limited– Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean Quinn Crane Hire Limited its successors and assigns or any person acting on behalf of and with the authority of Quinn Crane Hire Limited.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Client subject to clause 3 of this contract.
- 1.7 "Hire" shall mean to engage in the temporary use of for a Price.
- 1.8 "Hirer" shall mean the organisation and/or the individual in whose name the booking is made.
- 1.9 A "day" shall be 8 hours unless otherwise stated in the Hire agreement.
- 1.10 A "week" shall be seven consecutive days.
- 1.11 A "working week" shall cover starting time on Monday to finishing time on Friday.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Client/Hirer for the supply of Goods and/or the Client/Hirer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client/Hirer has entered into this agreement, the Client/Hirers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client/Hirer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The Client/Hirer undertakes to give the Seller at least fourteen (14) days notice of any change in the Client/Hirer's name, address and/or any other change in the Client/Hirer's details.

3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Seller to the Client/Hirer in respect of Goods supplied; or
- (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client/Hirer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.4 Payment shall be due on delivery of the Goods.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit.
- 3.6 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At the Seller's sole discretion delivery of the Goods shall take place when;
- (a) the Client/Hirer takes possession of the Goods at the Seller's address or
- (b) the Client/Hirer takes possession of the Goods at the Client/Hirer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
- (c) the Client/Hirer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client/Hirer's agent.
- 4.2 At the Seller's sole discretion the costs of delivery are;
- (a) included in the Price, or
- (b) in addition to the Price, or
- (c) for the Client/Hirer's account.
- 4.3 The Client/Hirer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client/Hirer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Client/Hirer is deemed to be delivery to the Client/Hirer for the purposes of this agreement.
- 4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client or the return of the goods to the Seller at the end of the Hire agreement, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Title

- 6.1 It is the intention of the Seller and agreed by the Client that ownership of the Goods shall not pass until:
- (a) the Client has paid all amounts owing for the particular Goods, and
- (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 Where a Hire agreement is in place, it is the intention of the Seller and agreed by the Hirer that ownership of the goods shall not pass at any time.
- 6.4 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are

- met; or until the end of the hire agreement at which time the hirer shall return the goods to the Seller, and
- (b) until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
- (f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
- (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

7. Client/Hirer's Disclaimer

- 7.1 The Client/Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client/Hirer by the Seller and the Client/Hirer acknowledges that the Goods are bought relying solely upon the Client/Hirer's skill and judgment.

8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

9. Returns

- 9.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 The Seller may (in its discretion) accept the return of Goods for credit or refund but this may incur a restocking fee of 20% of the value of the returned Goods plus any freight.

10. Warranty

- 10.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.2 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 10.3 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Hire Terms

- 11.1 Immediately on request by the Seller the Hirer will pay:
- (a) all costs of repairing any damage caused by the ordinary use of the Goods up to an amount equal to 10% of the new list price of the Goods; and
- (b) the cost of repairing any breakdowns or damage to the Goods caused by the negligence of the Hirer or the Hirer's agent; and
- (c) the cost of repairing any damage to the Goods caused by vandalism, or (in Seller reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Hirer.

12. Breakdowns

- 12.1 Where the Goods are hired without the Seller's Driver or Operator, any breakdown or unsatisfactory working of any part, must be notified to the Seller immediately. Claims for breakdown time shall only be considered from the date and time of notification. Each item specified in the hire agreement shall be treated as a separate unit for the purposes of breakdown time consideration.
- 12.2 Where breakdown occurs as a result of an inherent fault or, on reasonable examination, a fault not attributable to fair wear and tear, full allowance for Hire charges will be made to the Hirer.
- 12.3 The Hirer shall not (except in the case of punctures where responsibility lies with the Hirer) repair the Goods.
- 12.4 Breakdown time shall be allowed for, not to exceed 8 hours each day, on Monday to Friday less the actual daily hours worked.

13. Hirer's Responsibilities

- 13.1 The Hirer shall:
- (a) take on hire on simple hire for the minimum period as agreed between the Seller and the Client and thereafter from day to day, from week to week, or from month to month, or from year to year, until the hiring is concluded by either party by giving notice in writing or by telephone call; and
- (b) In the event that the Goods are hired with the Seller's Driver or Operator then the Driver or Operator of the Goods remains an employee of the Seller and

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- operates the equipment in accordance with the Hirer's instructions. As such the Seller shall not be liable for any actions of the operation in following the Hirer's instructions
- (c) for each working week, provide to the Seller an accurate statement of the number of hours the Goods have been worked each day. Where the Seller has supplied a driver or operator, the Hirer shall sign the employee's timesheets daily/weekly as appropriate and breakdown allowances will be made by the Seller for absence of the driver or operator supplied by the Seller; and
- (d) notify the Seller immediately by telephone of the full circumstances of any accident. The Hirer is not absolved from the requirements to safeguard the Goods by giving such notification; and
- (e) satisfy itself at Commencement that the Goods are suitable for its purposes; and
- (f) operate the Goods only for its intended use; and
- (g) not move the goods from the site to which they were delivered without the written authority of the Seller; and
- (h) ensure that where the Seller provides an operator or driver (who shall be deemed by the Seller as being competent in operating the Goods), no other person shall operate the goods without the driver or operators consent; and
- (i) ensure that any operator or driver provided by the Hirer is competent in operating the Goods; and
- (j) keep the Goods in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over Goods and the Hirer accepts full responsibility for the safekeeping of the Goods and indemnifies the Seller for all, loss, theft or damage to the Goods 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 Seller; and
- (k) accept full responsibility for and indemnify the Seller against all claims in respect of any injury to persons or damage to property arising out of the use of the Goods during the hire period however arising, whether from the negligence of the Hirer or any other persons including but without limitation where the Goods are being serviced for any reason by the Seller their servants or agents; and
- (l) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods; and
- (m) accept full responsibility for ensuring that the ground conditions are in every way suitable for the goods to travel to work on. Where ground is soft or unsuitable for the equipment to work on, for the supply and lay of suitable timbers or equivalents in a suitable position for the equipment to travel to work on; and
- (n) accept full responsibility for the recovery and/or damage to persons or property or hired goods in the event of the goods being bogged down, toppled over or any damage whatsoever, if the goods are ordered off hard standing/hard roads ;and
- (o) be responsible for the loading and unloading of the goods at site,
- (p) ensure any fuel, oil or grease supplied by Hirer is of a grade or type specified by the Seller; and
- (q) accept full responsibility associated with any costs or liability due to the Goods obstructing any person/s or property. The Hirer shall also accept full responsibility associated with any costs or liability due to the Goods being in a location that it shouldn't or if the equipment or Seller incurs any fines, towage costs, seizure costs or impoundment costs while the Goods are in the custody of the Hirer; and
- (r) in order to allow the Seller to inspect, test, adjust, repair or replace the Goods, be responsible for free access by the Seller to the site where the Goods are located. If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Seller for all lost hire fees associated with the Goods being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by the Seller due to delays in access to the Goods; and
- (s) subject to the provisions of clause 20.10, be responsible for compliance with regulations issued by the Government or Local Authority including, but not restricted to; the Factories Acts, Health and Safety at Work Act and the Road Traffic Acts should they apply.
- 14. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 14.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 14.2 Notwithstanding clause 14.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 14.3 In particular where the Client buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
- 15. Default & Consequences Of Default**
- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 15.2 If the Client/Hirer defaults in payment of any invoice when due, the Client/Hirer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own Client/Hirer basis and the Seller's collection agency costs.
- 15.3 Without prejudice to any other remedies the Seller may have, if at any time the Client/Hirer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client/Hirer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client/Hirer for any loss or damage the Client/Hirer suffers because the Seller exercised its rights under this clause.
- 15.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client/Hirer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client/Hirer will be unable to meet its payments as they fall due; or
- (b) the Client/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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client/Hirer or any asset of the Client/Hirer.
- 16. Security And Charge**
- 16.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Client/Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client/Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client/Hirer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client/Hirer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Client/Hirer basis.
- (c) The Client/Hirer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client/Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.
- 17. Cancellation**
- 17.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller including, but not limited to, any loss of profits up to the time of cancellation.
- 17.3 In the event that the Hirer cancels the Hire agreement before the end of the contracted period of Hire the Client shall be responsible for:
- (a) any loss incurred by the Seller including, but not limited to, any loss of profits up to the end of the Hire agreement; and
- (b) care of the Goods until the Goods have been returned to the Seller.
- 18. Data Protection Act 1988 & Data Protection Act 2003**
- 18.1 The Client/Hirer and the Guarantor/s (if separate to the Client/Hirer) authorises the Seller to:
- (a) collect, retain and use any information about the Client/Hirer, for the purpose of assessing the Client/Hirer's creditworthiness or marketing products and services to the Client/Hirer; and
- (b) to disclose information about the Client/Hirer, whether collected by the Seller from the Client/Hirer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Client/Hirer on publicly accessible credit reporting databases.
- 18.2 Where the Client/Hirer is an individual the authorities under (clause 18.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 18.3 The Client/Hirer shall have the right to request the Seller for a copy of the information about the Client/Hirer retained by the Seller and the right to request the Seller to correct any incorrect information about the Client/Hirer held by the Seller.
- 19. Unpaid Seller's Rights**
- 19.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Seller is in possession of the item;
- (c) a right to sell the item,
- 19.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 20. General**
- 20.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 20.3 The Seller shall be under no liability whatever to the Client/Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Client/Hirer arising out of a breach by the Seller of these terms and conditions.
- 20.4 In the event of any breach of this contract by the Seller the remedies of the Client/Hirer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 20.5 The Client/Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client/Hirer by the Seller.
- 20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client/Hirer's consent.
- 20.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client/Hirer of such change. Except where the Seller supplies further Goods to the Client/Hirer and the Client/Hirer accepts such Goods, the Client/Hirer shall be under no obligation to accept such changes.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party
- 20.9 Travelling times and fares for Operators/Drivers supplied by the Seller shall in accordance with the appropriate national agreement be chargeable at cost.
- 20.10 The Seller shall supply, on the request of the Hirer, the current Inspection and Test Report required under the relevant legislation, or a copy thereof. This shall be returned on the completion of the hire.