

## TERMS AND CONDITIONS

In these terms and conditions:

'BOPMCL' means Bop Minicranes Limited and (if applicable) its related companies, successors, assigns and authorised agents;

'customer' means the person, company or entity purchasing goods and/or services from BOPMCL;

'invoice' includes any written quotation and other contractual document issued by BOPMCL;

'goods' means all goods sold or to be sold by BOPMCL to the customer; and

'services' means all services provided by BOPMCL to the customer.

### 1. TERMS AND CONDITIONS PARAMOUNT

1.1 Except as expressly agreed in writing these terms and conditions shall apply to and govern all contracts and other dealings between BOPMCL and the customer notwithstanding any statement to the contrary in any document of the customer.

1.2 BOPMCL reserves the right at any time and from time to time to amend, vary or add to these terms and conditions with effect from the date of notification to the customer.

1.3 The customer agrees to adhere to these terms and conditions.

### 2. QUOTATION AND ACCEPTANCE

2.1 Any instructions received and accepted by BOPMCL from a customer for the supply of goods and/or services shall constitute a binding contract and acceptance of these terms and conditions.

2.2 If BOPMCL has provided the customer with a quote for the goods and/or services, the quote will be valid for a period of 30 Calendar days from the date of the quote. BOPMCL reserves the right, at its sole discretion, to withdraw the quote prior to acceptance by the customer.

2.3 Services provided by BOPMCL shall be charged on the basis of either a fixed quote or time charge at BOPMCL's rates from time-to-time.

### 3. DELIVERY

3.1 BOPMCL will perform the Services with all due expedition.

### 4. PRICE

4.1 The customer shall pay the price stated on BOPMCL's invoice, save for errors, which BOPMCL reserves the right to correct. All prices shall be as provided for in the quote, subject to any variation agreed to in writing. The prices as stated in BOPMCL's invoice shall be shown net excluding GST, and do not include any other taxes or levies, delivery/freight charges, insurance charges or currency exchange fluctuations which, if applicable, will be extra charges payable by the customer.

4.2 Any discounts offered below the standard hourly rate of \$150.00 + gst will be a prompt payment discount which will be noted on each invoice. The customer acknowledges and agrees that:

(a) Should it not pay the invoice in accordance with clause 5.1, BOPMCL will immediately charge the client the Discount sum which will be payable immediately;

(b) The default interest provisions noted at clause 5.4 will also be applicable to the Discount sum.

4.3 Any published prices are indications only. Any published price is subject to alteration without prior notice.

4.4 The customer shall pay for all materials used and all other out-of-pocket expenses incurred by BOPMCL in connection with the provision of services and travelling expenses where applicable. If in BOPMCL's invoice there is reference to a deposit or any component of the purchase price for the goods or services being non-refundable, then the customer shall not be entitled to a refund of any amount so paid in the event of cancellation or termination of contract for any reason whatsoever.

### 5. PAYMENT

5.1 The customer acknowledges that payment of the invoice is due by the 20th day of the month following the date of

invoice relating to the Goods or Services. BOPMCL will issue invoices monthly for progress claims or upon completion of a job, as applicable. The customer shall make the payments without set-off or deduction of any kind.

5.2 Notwithstanding that the customer may have a credit account or other agreed trading terms, BOPMCL reserves the right to require other payment terms in respect of any particular supply of goods or services.

5.3 No credit shall be extended on overdue accounts.

5.4 Time for payment shall be of the essence. In the event that payment is not received by the due date default interest may be charged by BOPMCL at a rate equivalent to 14 per cent per annum above the unsecured overdraft interest rate charged by BOPMCL's bank and calculated on a daily basis on all moneys outstanding for the period during which the payment has been overdue until all due moneys have been paid in full.

5.5 All payments shall be applied first in payment of default interest (if any).

5.6 Any discount offered by BOPMCL is contingent upon receipt of all monies owed by the customer on or before the payment due date(s). If the customer fails to make full payment by the due date any discount will immediately be withdrawn and debited to the customer's account.

5.7 BOPMCL may at its discretion apply any payments it receives from the customer in and towards the satisfaction of any indebtedness of the customer to BOPMCL and BOPMCL shall not be bound by any conditions or qualifications that the customer may make in relation to any payment.

### 6. DEFAULT

6.1 If the customer fails to pay any amount owed to BOPMCL by the due date, or fails to comply with any other obligation owed to BOPMCL, then without prejudice to any of its other rights, remedies and powers BOPMCL may (notwithstanding that BOPMCL may have waived any previous default by the customer):

(a) Cancel any contract and/or suspend further deliveries of goods or provision of services to the customer.

(b) Enter the customer's premises or any other premises that the customer is authorised to enter and retake possession of goods and sell them without being liable in any way to the customer.

(c) Appoint a receiver pursuant to the Receiverships Act 1993 in respect of the goods (including their proceeds) and any such receiver may take possession of the goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.

(d) Charge penalty interest as set out under "Payment" above.

6.2 BOPMCL may at any time by notice in writing suspend or terminate a customer's credit account (if applicable) or any other agreed trading terms and require immediate payment by the customer of all amounts owed to BOPMCL and BOPMCL shall be entitled to exercise the powers set out in the preceding paragraphs.

6.3 The customer will upon demand pay to BOPMCL all costs, charges and expenses (including, but not only, collection commissions and legal costs on a solicitor and own client basis) incurred by BOPMCL in collecting or taking action to collect any amount owed by the customer and in connection with the exercise, enforcement or preservation of any of BOPMCL's rights, powers or interests.

### 7. RETENTION OF TITLE

7.1 Notwithstanding delivery and the passing of risk in goods, or any other provision of these terms and conditions, all

- goods (including, where applicable, any resulting product into which the goods are incorporated, manufactured or commingled, whether or not the original identity of the goods is lost) shall remain and be the property of BOPMCL as legal and equitable owner until BOPMCL has received cleared payment in full of all moneys owed by the customer to BOPMCL.
- 7.2 Until BOPMCL has received cleared full payment of all moneys owed by the customer to BOPMCL, the customer shall hold the goods on trust for BOPMCL and shall store the goods in such a way that it is clear that they are the property of BOPMCL.
- 7.3 Until such time as the property in goods passes to the customer, provided the goods are still in existence and have not been resold, BOPMCL shall be entitled at any time to require the customer to return the goods to BOPMCL and BOPMCL and its agents may at any time without further notice enter the customer's premises or any other premises where the goods are stored and retake possession of the goods (if required, disconnecting the goods from any vessel, structure or equipment to which they may be attached or installed) or perfect BOPMCL's security interest in the goods. In so doing, BOPMCL shall have no liability for any losses, costs or charges suffered or incurred by the customer and the customer indemnifies and keeps indemnified BOPMCL against all liability BOPMCL may have to any third party in so acting.
8. **PRIVACY ACT 1993**
- 8.1 The customer authorises BOPMCL to obtain at any time from any person or entity any information that BOPMCL may require for the purpose of assessing the customer's creditworthiness and the customer irrevocably authorises and requests all such persons and entities to release to BOPMCL any personal information held concerning the customer. Where the customer is a natural person then such authority is authority and consent for the purposes of the Privacy Act 1993. The customer agrees that in the event of its default BOPMCL may provide details of that default and personal information relating to the customer to any credit agency so that such credit agency can maintain effective records.
9. **PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 9.1 The goods shall be the collateral as that term is defined in the PPSA. The customer grants in favour of BOPMCL a charge over all goods supplied by BOPMCL where such goods have been delivered but the customer has not paid all moneys owed to BOPMCL and over all the customer's present and after-acquired property supplied by BOPMCL, and such charge shall be a "security interest" for the purposes of the PPSA and shall secure payment of all moneys owed by the customer to BOPMCL including interest and other amounts payable under these terms and conditions and the costs of registering such security interest.
- 9.2 Where a charge granted over any goods is a registrable security interest under the PPSA the following shall apply:
- (a) The customer irrevocably appoints BOPMCL as the customer's attorney to do anything required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and obtain such information from third parties as is necessary or desirable to register the security interest.
- (b) The customer consents to the collection from any third party of any information necessary or desirable to register the security interest.
- (c) The customer will provide such information and do such acts and execute such further documents as in the opinion of BOPMCL may be necessary or desirable to enable BOPMCL to register and perfect under the PPSA the security interest as a first priority interest or with such other priority as BOPMCL may agree in writing.
- (d) The customer shall not challenge in any way BOPMCL's right to register the security interest.
- (i) The customer shall not seek to obtain or register a discharge of the security interest without the prior written consent of BOPMCL.
- (e) The customer agrees that sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129 and 131 to 133 of the PPSA shall not apply to these terms and conditions or the security created hereunder.
- (f) The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
- (g) The customer shall not change its name, without first notifying BOPMCL of its new name at least seven days prior to the change taking effect. The customer must not allow or permit the creation of a lien over any goods prior to payment in full to BOPMCL of all moneys owed by the customer to BOPMCL. The customer will upon demand pay all BOPMCL's expenses and legal costs (on a solicitor and own client basis) in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions or of obtaining an order under section 167 of the PPSA. If all moneys owed by the customer have been paid to BOPMCL in full, including all moneys payable under these terms and conditions, BOPMCL shall at the request of the customer and at the customer's cost, register a discharge of the security interest.
10. **WARRANTIES/DEFECTS**
- 10.1 BOPMCL will ensure, and warrants, that all of the services performed under this Agreement will be fit for the purpose intended by the customer and will be performed in a proper, professional and workmanlike manner and in accordance with the appropriate performance standards
- 10.2 No guarantee, warranty, representation or statement shall be binding on BOPMCL unless made in writing by a director or senior officer of BOPMCL. Except as expressly set forth in these terms and conditions all warranties and conditions, whether implied by law or otherwise, are excluded and BOPMCL shall have no liability whatsoever to the customer. BOPMCL shall not be liable to the customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or BOPMCL had been advised of the possibility of the customer incurring the same.
- 10.3 If it shall be held that BOPMCL has any liability to the customer then, except as expressly set forth in these terms and conditions, the liability of BOPMCL to the customer shall not exceed the lesser of:
- (a) the value of the goods or services the subject of any claim; or
- (b) the contract price.
- 10.4 BOPMCL shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by it.
- 10.5 Nothing in these terms and conditions shall affect the rights of the customer under the Consumer Guarantees Act 1993, Fair Trading Act 1986 and other statutes that may imply warranties and conditions, provided that, if the customer is, or holds itself out to be, acquiring the goods

for the purposes of a business, then such statutes are excluded.

11. **WAIVER**

11.1 These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. BOPMCL shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by a director of BOPMCL and any such waiver shall apply only to the particular transaction to which it refers.

12. **SEVERABILITY**

12.1 If any clause or provision of these terms and conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

13. **GOVERNING LAW**

13.1 These terms shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

14. **PROVISION OF SERVICES**

14.1 BOPMCL will provide the services to the customer, in accordance with these terms. In the event that the services are to be provided to a related or associated company of the customer, the parties agree that the

provisions of these terms are also for the benefit of, and are intended to be enforceable by, such related or associated company under the Contracts (Privity) Act 1982.

15. **STANDARD OF SERVICES**

15.1 BOPMCL will ensure that its employees, agents and sub-contractors (if any), perform the services in a proper, professional and workmanlike manner and in accordance with the appropriate performance standards.

15.2 BOPMCL acknowledges that the customer is relying on the expertise of BOPMCL in providing the services.

16. **DEGREE OF CARE AND SKILL**

16.1 In addition to performing the services in accordance with the appropriate performance standards, BOPMCL will exercise, and will ensure that its employees, agents and sub-contractors (if any) exercise, that degree of care, skill, diligence and foresight in performing its obligations under these terms which would reasonably and ordinarily be expected from a skilled and experienced operator in BOPMCL's profession or industry.

17. **EMPLOYEES, SUB-CONTRACTORS AND AGENTS**

17.1 BOPMCL will ensure that all persons engaged by it in the performance of the services, whether as employees, sub-contractors, agents or otherwise, are appropriately skilled and qualified for the performance of the services and hold all relevant certifications in respect of the performance of such services.

**For and on behalf of the Customer, \_\_\_\_\_, I/we confirm that I/we have read, understood and accept the above Terms and Conditions and I/we confirm that I am/we are duly authorised by the Customer to accept the Terms and Conditions so as to bind the Customer.**

Name of Signatory (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Position of Signatory (please print): \_\_\_\_\_

Date: \_\_\_\_\_

Name of Signatory (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Position of Signatory (please print): \_\_\_\_\_

Date: \_\_\_\_\_

**Please note:** if the Customer is a limited liability company these Terms and Conditions *must* be signed by at least one director of the Customer company.