

MCINTOSH CRANES TERMS AND CONDITIONS OF TRADE



1. DEFINITIONS

- 1.1 "McIntosh Cranes" shall mean McIntosh Brothers Engineers Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing equipment and services from McIntosh Brothers Engineers Limited.
- 1.3 "Equipment and Services" shall mean all equipment and services, materials or advice provided by McIntosh Brothers Engineers Limited to the customer, including without limitation the hire of cranes (with or without operators), transport, precast building, labour hire, other equipment hire and associated services and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of equipment and services by McIntosh Brothers Engineers Limited to the customer.
- 1.4 "Price" shall mean the cost of the equipment and services as agreed between McIntosh Brothers Engineers Limited and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by McIntosh Brothers Engineers Limited from the customer for the supply of equipment and services including equipment and services that McIntosh Brothers Engineers Limited have ordered or are required to order from overseas shall constitute a binding contract and acceptance of these terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises McIntosh Brothers Engineers Limited to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any equipment and services provided by McIntosh Brothers Engineers Limited to any other party.
- 3.2 The customer authorises McIntosh Brothers Engineers Limited to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the equipment and services shall be deemed to be sold at the current amount as such equipment and services are sold by McIntosh Brothers Engineers Limited at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the equipment and services that is beyond the control of McIntosh Brothers Engineers Limited between the date of the contract and delivery of the equipment and services.
- 4.3 McIntosh Brothers Engineers Limited may require the payment of a deposit, the sum of which will be determined by McIntosh Brothers Engineers Limited in its sole discretion.
- 4.4 McIntosh Brothers Engineers Limited reserves the right to revise its rates of hire and related charges without notice.

5. PAYMENT

- 5.1 Unless otherwise agreed all equipment and services must be paid for in full on or before seven (7) days following the date of invoice ("due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.56% per month or part month.

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5.3 Any expenses, disbursements and legal costs incurred by McIntosh Brothers Engineers Limited in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.

5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5 A deposit may be required before the provision of equipment and services.

6. QUOTATION

6.1 Where a written quotation is given by McIntosh Brothers Engineers Limited for equipment and services

6.1.1 The quotation shall be valid for 30 days (30) from the date of issue; and

6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.

6.2 Where equipment and services are required in addition to the quotation the customer agrees to pay for the additional cost of such equipment and services.

6.3 Any quoted prices may be subject to certain requirements provided by McIntosh Brothers Engineers Limited to the customer which are to be read in addition to these terms and conditions of trade. Only written quotations are binding on McIntosh Brothers Engineers Limited.

7. DISPUTES

7.1 No claim relating to equipment and services will be considered unless made within seven (7) days of delivery or where appropriate supply and erection.

8. LIABILITY

8.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, The Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon McIntosh Brothers Engineers Limited which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed McIntosh Brothers Engineers Limited, McIntosh Brothers Engineers Limited liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

8.2 Except as otherwise provided by clause 8.1, McIntosh Brothers Engineers Limited shall not be liable for:

8.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the customer or another person and whether in contract, or tort, or otherwise and whether such loss of damage arises directly or indirectly from equipment and services provided by McIntosh Brothers Engineers Limited to the customer; and

8.2.2 The customer shall indemnify McIntosh Brothers Engineers Limited against all claims and loss of any kind whatsoever however caused or arising (and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of McIntosh Brothers Engineers Limited or otherwise) brought by any person in connection with any matter, act, omission, or error by McIntosh Brothers Engineers Limited, its agents or employees in connection with the equipment and services.

8.3 McIntosh Brothers Engineers Limited will not be liable for any loss or damage of any kind whatsoever arising from any equipment hired not arriving on time or from deficiencies in the performance or reliability of equipment hired.

9. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

9.1 McIntosh Brothers Engineers Limited staff, customer and sub-contractor hand-book sets out certain responsibilities relating to the health and safety responsibilities of the customer.

9.2 These responsibilities are to be read together with and form part of this contract.

10. HIRE OF EQUIPMENT

10.1 Where equipment is hired from McIntosh Brothers Engineers Limited:

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10.1.1 The customer shall not part with the possession of the equipment AND shall not sublet, or sell, or attempt to alienate the equipment in any way, or deal with the equipment in any way that may be prejudicial to McIntosh Brothers Engineers Limited; and

10.1.2 Except where waived in this contract the customer shall be liable for any damage to or loss of the equipment however caused AND in the event of any equipment being damaged or lost the customer shall pay to McIntosh Brothers Engineers Limited the cost of making good the repair to the equipment or the cost of replacing the equipment whichever is the lesser; and

Slings:

10.1.3 McIntosh Brothers Engineers Limited will supply its standard selection of slings and lifting equipment but accepts no responsibility for loss or delay if these are found to be unsuitable for the purpose required. All slings and ancillary equipment shall be used by the customer at the sole risk of the customer. McIntosh Brothers Engineers Limited does not accept responsibility for the correct use of slings or lifting equipment or the method of slinging. If any slings or lifting equipment belonging to McIntosh Brothers Engineers Limited is destroyed or damaged, the customer shall pay to McIntosh Brothers Engineers Limited the cost of replacement or repair (as the case may be) resulting from that destruction or damage.

10.1.4 Site Conditions and Access

a) The customer will ensure

- i) That the site is adequate to support the crane under its wheels, tracks and/or outriggers
- ii) That the ground giving access to the site is stable and firm and of a gradient no steeper than 1 in 10
- iii) That clearance of 4 metres is afforded in respect of all overhead wires and that footpaths, kerbs and channels are suitably planked

b) Should the crane need to be towed into or out of the site, the cost shall be additional to the rate quoted and will be to the customer's account.

10.1.5 Use and Handling of Crane

a) The crane operator shall be under the direction and control of McIntosh Brothers Engineers Limited.

The customer alone shall be responsible for all claims arising in connection with the operation of the crane by the operator.

b) The customer shall not:

- i) Require, permit or suffer the crane operator to do anything contrary to any act, regulation, by-law, requirement, code of practice or recognized convention.
- ii) Allow any other person to operate without first obtaining the written consent of McIntosh Brothers Engineers Limited.
- iii) Permit or suffer the operation or direction of the cranes by any person who by reason of intake of drink or drugs has his or her faculties impaired.
- iv) Use or permit the use of the crane to lift any load which is beyond the rated lifting capacity of the crane for any purpose other than for which it is hired pursuant to this agreement.

c) McIntosh Brothers Engineers Limited reserves the right to provide a supervisor to the site if McIntosh Brothers Engineers Limited in its sole discretion considers it necessary. If McIntosh Brothers Engineers Limited does so the charges payable by the customer shall be increased accordingly.

d) The customer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift (measured from the radial point of the crane) will not be exceeded at any time. Where the weight is getting close to the maximum lifting capacity of the crane, as stated by the crane's safe lifting indicator, the McIntosh Brothers Engineers Limited operator or supervisor has absolute discretion whether to complete the lift as planned or use a safer alternative. A larger capacity machine may be required and that will be at a cost agreed before completion of the lift.

e) Where the customer has understated the weight or dimensions of the goods to be lifted by the crane and McIntosh Brothers Engineers Limited has relied on the weight, dimensions or working radius stated, the customer shall be responsible for all extra cost and risk incurred by McIntosh Brothers Engineers Limited by reason of McIntosh Brothers Engineer's Limited reliance upon such stated weight, dimensions

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or working radius.

f) The customer shall be responsible for all loss or damage caused while the crane is entering, leaving or on site, including the cost of repairs suffered or incurred by McIntosh Brothers Engineers Limited in consequence of any breakdown or damage to the crane where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the crane on the part of the customer or the customer's servants, agents, contractors or subcontractors and in particular shall be responsible for the payment of hire at the appropriate negotiated rate during the period the crane is necessarily idle as a result of any such negligent act, omission, misdirection or misuse of the crane.

10.1.6 Damage to Goods

McIntosh Brothers Engineers Limited accepts no responsibility for loss or damage to goods being handled by the crane or damaged by the crane however caused during the period of the hire except for loss or damage arising out of any negligent act or default of McIntosh Brothers Engineers Limited.

10.1.7 Damage to Services and Property

The customer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, structures, vehicles or any other property whatsoever caused by the customer during the period of hire.

10.1.8 Stoppages

McIntosh Brothers Engineers Limited shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond McIntosh Brothers Engineers Limited's control including but not limited to weather conditions, ground conditions, strikes and industrial disputes.

10.1.9 Period of Hire

The period of hire shall be calculated on a depot to depot basis and shall therefore be the elapsed time in any day from the time of the delivery of the crane to the customer at McIntosh Brothers Engineers Limited's depot to the time of re-delivery of the crane by the customer to McIntosh Brothers Engineers Limited's depot on that or any other day. Hire shall be charged accordingly.

10.1.10 Additional Jib Sections and Crane Equipment

Where transport of additional jib sections and crane equipment is required, the cost of it will be additional to the hire rates quoted and will be to the customer's account, together with the cost of rigging and de-rigging.

10.1.11 Overtime

Additional charges will be payable by the customer in accordance with McIntosh Brothers Engineers Limited's current hire price list for all work performed outside normal working hours and on Saturdays, Sundays, or Public Holidays. A minimum charge of three hours for the operator applies to work carried out on callback Saturdays, Sundays or Public Holidays.

10.1.12 Site Allowance:

When site allowances are payable, there will be an additional charge to the customer.

10.1.13 Crane Operator's Accommodation

Where the site is at a distance from the depot so that overnight accommodation for the crane operator and any other accompanying personnel is necessary, the cost of the accommodation and meals will be to the customer's account.

11. CONSUMER GUARANTEES ACT

11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires equipment and services from McIntosh Brothers Engineers Limited for the purposes of a business in terms of Sections 2 and 43 of that Act.

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12. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

12.1 If the Customer is a company or trust, the directors or trustee(s) signing the contract, in consideration for McIntosh Brothers Engineers Limited agreeing to supply equipment and services and grant credit to the customer, also sign the contract in their personal capacity and jointly and severally personally guarantee and undertake to McIntosh Brothers Engineers Limited the payment of any and all other monies, now or hereafter owed by the customer to McIntosh Cranes. Any personal guarantee made by any party shall not exclude the customer any way whatsoever from the liabilities and obligations contained in this contract.

13. MISCELLANEOUS

13.1 McIntosh Brothers Engineers Limited shall not be liable for delay or failure to Perform its obligations if the cause of the delay or failure is beyond its control.

13.2 Failure by McIntosh Brothers Engineers Limited to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or McIntosh Brothers Engineers Limited has under this contract.

13.3 If any provisions of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and forceability of the remaining provisions shall not be affected, prejudiced or impaired.