

## NEW AND USED EQUIPMENT TERMS & CONDITIONS OF SALE

### 1. SALE AGREEMENT BETWEEN GLEASON CRANES AND CUSTOMER

These Terms and Conditions of Sale, together with the Tax Invoice provided, make up the sale agreement (the "Agreement") under which Gleason Cranes provides the Goods to the Customer.

### 2. DEFINITIONS In this document:

- a. **"Business Day"** means a day that is not a Saturday, Sunday or Public holiday in the State in which the Goods are located.
- b. **"Confirmation and Authority Form"** means the form which authorizes the Customer or its authorised representative as stated on the form to collect the Equipment from a site designated by Gleason Cranes.
- c. **"Customer"** means the legal person or entity that is the purchaser of the Goods and as named on the Tax Invoice.
- d. **"Delivery Date"** means the date specified by Gleason Cranes that the Goods are available for collection from the Premises or the date the Goods will be delivered to a place nominated by the Customer.
- e. **"Deposit"** means the amount stipulated on a Tax Invoice as being the deposit for the Goods.
- f. **"Force Majeure"** means an matter outside the control of the parties including an act of God, war, terrorism, civil commotion, riots, floods, fires, pandemics, strikes, labour shortages or government actions .
- g. **"Gleason Cranes"** means Gleason Cranes Sales and Rentals Group Pty Ltd (ACN 651 590 608).
- h. **"Goods"** means any equipment including but not limited to, cranes, access equipment and construction and equipment and accessories and parts, consignment cranes and equipment sold or supplied by Gleason Cranes.
- i. **"Order"** means a purchaser order for the Goods submitted by the Customer in response to a quote.
- j. **"Premises"** means the premises of Gleason Cranes or the Seller (whichever is applicable).
- k. **"Quote"** means a written quotation, estimate or price given by Gleason Cranes to the Customer in relation to the Goods.
- l. **"Seller"** means any third-party seller, including but not limited to any auction houses lawfully appointed by Gleason Cranes and equipment listed through consignment.
- m. **"Tax Invoice"** means a fully itemized validly issued tax invoice for the purchase of the Goods which includes the Delivery Date.
- n. **"Terms"** means these terms and conditions of sale comprising the Agreement.

### 3. TERMS OF SALE

- a. Any Order placed with Gleason Cranes by the Customer will constitute agreement to the Terms.
- b. The Terms are the only terms that apply to the supply of the Goods unless otherwise agreed in writing and signed by an authorized representative of Gleason Cranes.

### 4. OFFER TO SUPPLY & QUOTATION VALIDITY

- a. Any Quote provided is valid for the time stated on the Quote, or if no time is stated, a period of 30 calendar days from the date of the Quote.
- b. All Orders are subject to and conditional on acceptance by Gleason Cranes.

### 5. TERMS OF PAYMENT

- a. Deposit
  - i. The Deposit must be paid within seven (7) days from the date Gleason Cranes accepts the Order;
  - ii. Deposits are non-refundable, non-transferable and cannot be exchanged for a credit except in accordance with this Agreement.
- b. Payment Obligations
  - i. Payment for the Goods must be received in full before the Goods are removed from the Premises.
  - ii. Should the Customer not pay the full amount owing by the due date stated on the Tax Invoice, Gleason Cranes reserves the right to cancel any Order and the deposit will be forfeited.
- c. GST

Unless otherwise indicated, amounts indicated in a Quote or Tax Invoice do not include GST.

### 6. TITLE OF GOODS

- a. All risk in the Goods passes to the Customer upon delivery or collection of the Goods.
- b. Legal and equitable title to the Goods will pass to the Customer when the Customer has paid for the Goods in full.
- c. The Customer acknowledges that until the Customer has paid all amounts owing to Gleason Cranes on any account, the Customer holds the Goods as bailee for Gleason Cranes and that a fiduciary relationship exists between the Customer and Gleason Cranes.

### 7. CANCELLATIONS

- a. Any cancellation of an Order must be in writing and

- will result in the forfeiture of the Deposit.
- b. Notwithstanding clause 7(a) Gleason Cranes may at its discretion refund the Deposit if the cancellation is due to the Goods being unavailable for collection by the date that is three months after the Delivery Date.

## 8. COLLECTION OF GOODS FROM PREMISES

- a. Unless otherwise agreed:
  - i. the Customer is responsible for collecting the Goods from the Premises and acknowledges that entry onto the Premises is at the Customer's (or its agent, employee or representative's) own risk and Gleason Cranes will not be liable for any loss, damage or injury caused by any act or omission whatsoever while on the Premises;
  - ii. The Customer is liable for all costs for preparing, dismantling, loading, and transporting the Goods from the Premises, and such actions are at the Customer's sole risk and liability.
  - iii. The Customer indemnifies Gleason Cranes from any loss, claim or damage arising out of the attendance at the Premises except to the extent the Gleason Cranes has committed and act of negligence.
- b. The Customer must provide Gleason Cranes or the Seller (whichever is applicable) at least two (2) Business Days prior written notice before attending the Premises to collect the Goods or perform dismantling works. Access may be denied if such notice is not given.
- c. The Customer must provide Gleason Cranes or the Seller (whichever is applicable) a copy of the executed Confirmation and Authority Form and proof of payment in full before collecting the Goods

## 9. DELIVERY

- a. If the Goods are delivered, the Customer authorises Gleason Cranes to deliver the Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. Gleason Cranes is not obliged to obtain a signed receipt, signed delivery docket or other acknowledgment of the Goods from any person at the nominated place for delivery, but if such signature or acknowledgment is obtained from a person reasonably believed by Gleason Cranes to hold authority to sign for or otherwise take delivery of the Goods, then such signed receipt, signed delivery docket or other acknowledgment will be conclusive evidence of the Customer's acceptance of the Goods.
- b. The Customer must provide a suitable and safe area at the nominated delivery site to unload the Goods and ensure that Gleason Cranes (or agent's, employees or contractors of Gleason Cranes) use of

the nominated delivery site is compliant with relevant work health and safety legislation.

- c. Delivery of the Goods is deemed to occur when they are handed to the Customer or the Customer's representative, whichever occurs first. Gleason Cranes will not be liable on any basis whatsoever for loss suffered by the Customer after the Goods are delivered.
- d. The Customer agrees to examine the Goods immediately after delivery.
- e. The Customer must pay and Gleason Cranes reserves the right to charge the Customer all costs and fees incurred as a result of:
  - i. any delay in delivery of the Goods which is caused by the Customer or the conditions of the nominated delivery site or the nature of the Goods being delivered;
  - ii. any unexpected labour or additional costs in connection with the delivery; and
  - iii. any permit or licence or other extraordinary costs of transporting or delivering the Goods (including wide or long loads).
- f. If Gleason Cranes are unable to deliver the Goods due to the Customer, Gleason Cranes reserve the right to store the Goods or deliver the Goods to any nominated delivery site and charge the Customer all costs of storage or delivery (as applicable) incurred by Gleason Cranes for such storage or delivery.
- g. The Customer agrees to indemnify and hold Gleason Cranes (or agent's, employees or contractors of Gleason Cranes) from any and all claims, loss and damage arising out of:
  - i. Delivery of the Goods (including any loss or damage cause by delivering the Goods to an unattended site and loss or damage suffered by Gleason Cranes as a result of any property damage or personal injury caused by the delivery and unloading the Goods);
  - ii. The Customer's failure to provide a safe, suitable and compliant nominated delivery site in accordance with clause 9(a);

except to the extent that Gleason Cranes (or agent's, employees or contractors of Gleason Cranes) have committed an act of negligence, breach of the law or breach of the Agreement.

## 10. DELAY IN DELIVERY DATE

- a. Gleason Cranes will endeavour to ensure that Goods are available on the Delivery Date from the Premises or are delivered to the place nominated by the Customer on the Delivery Date.
- b. Gleason Cranes will advise the Customer as soon as reasonably practicable of any changes to the Delivery Date.
- c. Gleason Cranes is not liable for any loss or damages

suffered by the Customer (whether indirect or direct) for failure to provide the Goods by the Delivery Date, if such delay is caused by an act, matter or event beyond the control of Gleason Cranes including but not limited to an act of Force Majeure, stoppages of work, war, Government action, outside supplier shortages, manufacturer delays, shipping or transport delays, finance delays or any other delay or happening.

## 11. FAILURE TO COLLECT GOODS FROM PREMISES

- a. If the Customer has not collected the Goods from the Premises within 30 Business Days of the Delivery Date (or such other later time as agreed in writing) then Gleason Cranes or the Seller may at their sole discretion:
  - i. remove the Goods from the Premises and store the Goods at the sole cost and risk of the Customer; or
  - ii. deem the Order to be cancelled, the Deposit and any part payments made to be forfeited.
- b. If the Goods are placed in storage under clause 10(a)(i) and the Customer fails to collect them within a timeframe stipulated by Gleason Cranes (acting reasonably but in any case no less than 14 days) then Gleason Cranes may in its discretion at any time after the expiration of the timeframe and before the Goods are collected deem the Order cancelled in which case the Deposit and any other payments made will be forfeited.
- c. If an Order is deemed cancelled under clause 11(a)(ii) or 11(b) Gleason Cranes:
  - i. may re-sell or otherwise dispose of the Goods without notice and at the Customer's expense; and
  - ii. will be entitled to charge for and recover from the Customer any costs, charges, fees, expenses, damages or loss suffered or incurred by it due to the Customer's failure to collect the Goods.
- d. This clause will not operate if the Customer is prevented from collecting the Goods by an act of Force Majeure.

## 12. INSURANCE

- a. If the Customer needs to dismantle or perform any other work whatsoever on the Goods at the Premises, the Customer must provide the following forms of insurances:
  - i. Worker's Compensation Insurance which meets the requirements of the laws of the State in which the work is being done; and
  - ii. A General Liability Insurance policy for personal injury and property damage, with combined limits of not less than \$10,000,000 per occurrence with Gleason Cranes' interest as principal noted on the policy.

## 13. CERTIFICATES

- a. Certificates provided by Gleason Cranes on Goods will be completed in accordance with all relevant Australian Standards, including:
  - i. Annual Inspections/Periodic third party Inspections, completed by an independent 3<sup>rd</sup> party provider appointed by Gleason Cranes unless otherwise agreed upon in accordance with all relevant standards; and
  - ii. 10 Year Inspections/Major Inspections, completed by an independent third party provider appointed by Gleason Cranes unless otherwise agreed upon in accordance with all relevant standards.

## 14. LIMITED WARRANTY

- a. The warranty period for the Goods (if any) will be stated on the Tax Invoice along with the extent of the warranty which may be parts only or part and labour.
- b. Warranties for parts are only applicable if the parts are sourced or approved by Gleason Cranes and warranties for labour are only applicable if such labour was completed or approved by Gleason Cranes.
- c. Any warranty provided for in clause 13(a) is limited to claims arising from faulty workmanship or material defects and is subject to Gleason Cranes being satisfied at its discretion acting reasonably that the Goods have been properly stored, serviced and used.
- d. No returns will be accepted without prior written authorization by Gleason Cranes.
- e. Gleason Cranes is not liable for any machine downtime, loss of use or profits, any special, indirect, consequential, punitive or other loss or damage.
- f. No warranty is provided where the Goods require repair or replacement as a result of:
  - i. being used otherwise than for their intended purpose and/or not being used in a manner which is in conformity with the operation manual, maintenance manuals and any other prescribed documents (**Prescribed Documents**);
  - ii. a failure by the Customer to regularly (and correctly) maintain and/or inspect the Goods in accordance with the Prescribed Documents;
  - iii. Installation and/or use of parts (including lubricants) not approved by the manufacturer of the Goods and/or Gleason Cranes;
  - iv. Accident including accidental shock loading;
  - v. Unauthorised removal and/or modifications to the Goods or any component or part of the Goods;
  - vi. A failure to respond to error goods and

- warning lights from the Goods; and
- vii. Damage caused to a windscreen which is not the result of a stress fracture.
- g. The following items are not covered by warranty:
- i. Parts worn out as a result of fair wear and tear (including normal aging or deterioration by pollutants);
  - ii. Misuses, abuse and or negligence of the Goods;
  - iii. Consumable items including but limited to oil, grease, filters and tires; and
  - iv. Cost to diagnose the defects of the goods, including contracted labour and test services
- h. To the extent permitted by law all conditions, guarantees or warranties (whether implied or otherwise) not set out in this clause 13 are excluded. Nothing in this clause 13 is intended to exclude, restrict or modify any law or statute applicable to the sale of Goods which cannot be excluded restricted or modified.
- i. To the extent permitted by law Gleason Crane's liability for a breach of such conditions, guarantees or warranties is limited to and completely discharged (at Gleason Crane's option) to one of the following:
- i. The replacement or repair of the Goods; or
  - ii. Supply of equivalent goods or the payment of the cost of replacing or repairing the Goods or supplying equivalent goods.

## 15. PRODUCT INFORMATION

- a. Any production or performance standards furnished by Gleason Cranes may depend on several variable factors, and as such no results or estimates are guaranteed.
- b. Gleason Cranes endeavours to ensure that the descriptions and specifications in relation to the products on its website or in catalogues are accurate. However, photographs, drawings, illustrations, weights, dimensions, and any other particulars accompanying, associated with or given in a quotation, descriptive literature or a catalogue are based on information provided by manufacturers and suppliers and, as such Gleason Cranes does not guarantee that those descriptions and specification are accurate or free from errors or omissions. Gleason Cranes reserves the right to make any necessary corrections to the descriptions or specifications without notice.
- c. The Customer is invited, urged and cautioned to inspect the Goods prior to placing any Order. The Goods are available for inspection at the places and times specified by Gleason Cranes or the Seller after a request is made by the Customer.

## 16. DEFECTS

- a. The Customer shall inspect the Goods on collection and shall within seven (7) days of collecting the Goods notify Gleason Cranes of any alleged defect, damage or failure to comply with the Order or Quote.
- b. The Customer shall afford Gleason Cranes an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.
- c. If the Customer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Agreement and free from any defect or damage.
- d. If Gleason Cranes accepts that Goods are defective, its liability is limited as per clause 13(i).

## 17. INDEMNITY

- a. The Customer indemnifies Gleason Crane's from and against all losses, claims, expenses, damages and liabilities (including legal fees on an indemnity basis) which arise out of:
  - i. Any breach of this Agreement by the Customer;
  - ii. The purchase and use of the Goods; or
  - iii. Any negligent, fraudulent or criminal act or omission by the Customer or their personnel in connection with the Goods, Except to the extent that the loss, damage, claim or expense is contributed to by the negligence of Gleason Cranes.
- b. The Customer shall, to the full extent permitted by law, indemnify and keep indemnified Gleason Cranes against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against Gleason Cranes by any third party or by any of the Customer's employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply of the Goods.

## 18. HAZARDOUS CHEMICALS AND MATERIALS

- a. The Customer acknowledges that the Goods You purchased may bear or contain hazardous substances, hazardous materials or hazardous waste which may be, or may become by chemical reaction or otherwise, directly or indirectly, hazardous to life, to health, or to property.
- b. To the extent permitted by law, the Customer hereby discharges and releases Gleason Cranes from any and all liability directly or indirectly resulting from the presence of any hazardous substances, materials or waste

## 19. GENERAL

- a. **Governing Law**

This Agreement is governed by the laws applying in

Victoria, Australia and each party irrevocably agree that the courts of the State of Victoria, Australia shall have exclusive jurisdiction over any claim or matter arising under or in connection with this Agreement.

b. **Severability**

If any part of this document is found to be illegal or unenforceable, then that part shall be severed and the balance of the document shall remain in full force and effect.

c. **Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of each other Party.

d. **Whole Understanding**

This Agreement and the Tax Invoice contain the entire agreement and understanding between Gleason Cranes and the Customer in relation to the Goods in any way whatsoever and shall not be amended, varied or waived unless such amendment, variation or waiver is in writing signed by the Customer and by a person authorised to sign such amendment, variation or waiver on behalf of the Gleason Cranes.