

**TERMS AND CONDITIONS OF CRANE HIRE**  
**(Excluding Bare Rentals)**

**SECTION A GENERAL TERMS**

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 Unless otherwise required by the context or subject matter, the following definitions shall apply:

**"Agreement"** means this agreement incorporating these terms and conditions, any schedule to this agreement and any written amendment to this agreement;

**"Bare Rental"** means the hire of plant and equipment by Sterling to the Customer without Sterling also providing an operator for such crane and equipment;

**"Charges"** means the charges payable to Sterling for the provision of the Services as specified on the face of this Agreement, or as specified on the particular quote or purchase order, for the provision of the Services;

**"Customer"** means the party specified as such on the face of this Agreement, or as specified on the particular quote, purchase order or invoice and includes any party claiming through, under or in trust for the Customer, and in the context of the payment of Charges or other expenses shall include any Third Party Payor;

**"Customer's Covenants"** means the covenants, agreements and obligations contained or implied in this Agreement or imposed by law to be observed and performed by the Customer;

**"Dispute"** means any dispute or issue arising between the Customer and Sterling pursuant to which the Customer considers that they should not pay Sterling or pursuant to which either the Customer or Sterling considers they have a claim against the other party;

**"Due Date for Payment"** means thirty (30) days from the date of the invoice sent to Customer for the provision of the Services,;

**"Event of Default"** means:

- (a) any money payable under this Agreement is not paid on or before the Due Date for Payment;
- (b) the Customer fails to observe and perform any of the Customer's Covenants, other than a failure to pay money, and such failure continues for more than 5 business days after Sterling has given the Customer notice requiring the Customer to remedy the breach;
- (c) Sterling ascertains that any warranty, representation or statement made by the Customer under or in connection with this Agreement has been false in any material respect;
- (d) the Customer, being an individual, becomes the subject of a bankruptcy or insolvency proceeding (or, in the good faith determination of Sterling, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment), is declared mentally ill, is charged with or convicted of a criminal offense or dies;
- (e) the Customer, being an entity, becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of Sterling, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment;
- (f) a receiver, or an agent in possession for a mortgagee is appointed in respect of any property of the Customer;
- (g) a mortgagee takes possession of any property of the Customer;
- (h) any writ of execution or similar process is made against the property of the Customer;
- (i) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Customer to be dissolved or otherwise wound up unless such process is for the purpose of a corporate restructuring;
- (j) a compromise or arrangement is made between the Customer and its creditors;
- (k) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Customer to be placed under official management;
- (l) the Customer admits in writing its inability to pay its debts; or
- (m) an application is made to a court for an order summoning a meeting of any class of creditors of the Customer.

**"Force Majeure"** means:

- (a) acts of god;
- (b) outbreak of hostilities, riot, civil disturbance, acts of terrorism;
- (c) the act of any government or authority (including refusal or revocation of any licence or consent) where the said act is not a result of some neglect or default on the part of the relevant party;
- (d) fire, explosion, flood, fog or bad weather;
- (e) power failure, failure of telecommunications lines, failure or breakdown of plant and equipment, machinery or vehicles;
- (f) default of suppliers or independent contractors;
- (g) theft or malicious damage;
- (h) break down of cranes unless such breakdown is caused by not following manufacturer's recommended maintenance schedule or industry best practises
- (i) strike, lockout or industrial action of any kind
- (j) pandemics; or
- (k) any other cause or circumstance whatsoever (except financial difficulties or lack of funds) beyond the reasonable control of the relevant party.

**"Fully Operated and Maintained Hire"** means the hire of any Crane and Equipment together with an Operator for that Crane and Equipment.

**"Operator"** means the operator employed or contracted by Sterling to operate Crane and Equipment during the period of Fully Operated and Maintained Hires of that Crane and Equipment;

**"Crane and Equipment"** means the crane and equipment supplied under this Agreement and includes but is not limited to any item of crane, equipment, machinery or vehicle, and any tools, accessories, parts, items of equipment and devices affixed to or supplied with such crane, equipment, machinery or vehicle supplied to the Customer by Sterling;

**"Rate"** means 2% more than the rate which Sterling's bank would charge Sterling in respect of an unsecured overdraft for an amount not exceeding \$100,000.00;

**"Services"** means the provision by Sterling to the Customer of Fully Operated and Maintained Crane and Equipment Hire;

**"Site"** means the site where the Customer requires the Services to be performed;

**"Sterling"** means Sterling Crane Division of Procrane Inc. of 2440 – 76 Avenue , Edmonton, Alberta and includes its employees, agents or any sub-contractors and their employees;

**"Term"** means the period for which the Customer has engaged Sterling to provide the Services; and

**"Third Party Payor"** shall mean a party other than the Customer, as specified on the face of this Agreement or as specified on the particular quote or purchase order, who shall be invoiced for the Charges by Sterling.

- 1.2 Unless otherwise required by the context or subject matter, a reference to a party includes that party's executors, administrators, personal representatives, successors and assigns. If a party comprises 2 or more persons, a reference to a party includes the executors, administrators, personal representatives, successors and assigns of each of those persons.
- 1.3 If a party comprises 2 or more persons, the covenants and agreements bind and must be performed by each of them jointly and severally and may be enforced against any one or any 2 or more of them.
- 1.4 This Agreement and any Dispute is governed by, and is to be interpreted in accordance with, the laws of Alberta, without regard to its conflict of laws or choice of laws principles.
- 1.5 By engaging Sterling, the Customer hereby accepts and agrees to the terms of the Agreement, and waives any conflicting or additional provisions contained in the Customer's forms. In the event of a conflict between the terms and conditions of this Agreement and any purchase order or other document supplied by the Customer or Sterling, the terms of this Agreement will control. Any provision, printed or otherwise, contained in any acceptance, confirmation, or acknowledgement issued by the Customer that is inconsistent with, different from, or in addition to this Agreement is hereby expressly rejected by the parties and will not be considered as part of the agreement between Sterling and the Customer.

## **2. PAYMENT OF CHARGES**

- 2.1 The Customer or the Third Party Payor as the case may be shall pay to Sterling the Charges without any right of set off or deduction and regardless of any Dispute on the Due Date for Payment plus interest at the Rate on any money due to be paid under this Agreement which remains unpaid calculated daily from the Due Date for Payment to the date of actual payment.
- 2.2 The Customer shall pay any sales, rental or other taxes, bonds or any other charges which may be levied upon this Agreement and/or the Services.
- 2.3 Every special instruction to the effect that the Charges under this Agreement shall be paid by the Third Party Payor shall be deemed to include a stipulation that if the Third Party Payor does not pay the Charges within thirty (30) calendar days of the Due Date for Payment, then the Customer shall pay the said Charges to Sterling.
- 2.4 Sterling shall be entitled to charge an extra fee for all delays caused as a result of Sterling obeying any instructions given by the Customer or the Customer not fulfilling the Customer's Covenants.
- 2.5 Requests for credit or an extension of time to pay the Charges will not be considered by Sterling unless requested by the Customer or the Third Party Payor within the earlier of seven (7) calendar days from the date of invoice or the provision of the Services, as the case may be.
- 2.6 The Customer shall pay to Sterling all costs incurred by Sterling in enforcing payment of any amount due, including all fees payable by Sterling to:
  - (a) Sterling's employees for their time spent enforcing payment, such time to be charged per hour or part thereof at \$90.00 per hour;
  - (b) a bank for overdraft or bounced check fees;
  - (c) any debt collecting agency appointed by Sterling from time to time; and
  - (d) any legal representative engaged by Sterling from time to time on a full indemnity basis.
- 2.7 The Customer must pay to Sterling on demand all costs and expenses (including reasonable legal costs) which:
  - (a) Sterling pays or is liable to pay to make good any failure by the Customer to comply with any obligation under this Agreement; or
  - (b) Sterling may incur in the enforcement or protection or attempted enforcement or protection of Sterling's rights under this Agreement or in the Crane and Equipment, including money paid by Sterling in releasing any lien or other encumbrance claimed on the Crane and Equipment and in dismantling and removing the Crane and Equipment from any premises.
- 2.8 Unless otherwise specified the Charges are exclusive of any sales tax including, but not limited to, Federal, GST, HST or any Provincial Sales Tax and the Customer must pay Sterling an amount equal to the Federal, GST, HST or any Provincial Sales Tax payable on any supply made by Sterling., and the Customer agrees to indemnify, defend and hold harmless Sterling against any liability for any and all taxes, fees, permit and license expenses, and charges assessed on Sterling by any governmental authority arising out of, in connection with, or incident to the Services and/or this Agreement.
- 2.9 A notice or demand given or made to any person under this Agreement must be in writing, may be served by delivering it to that person personally or addressing it to that person and leaving it or posting it by pre-paid or certified post to the address of that person appearing in this Agreement or any other address nominated by that person by notice to the person giving the notice, and will be deemed to be given or made in the case of personal delivery, when delivered, and in the case of service by leaving the notice at an address specified above, when left at that address, and in the case of service by post, on the second business day following the date of posting.

## **3. TERMINATION**

- 3.1 Sterling may terminate this Agreement immediately via written notice upon an Event of Default.
- 3.2 On the occurrence of an Event of Default, Sterling may:
  - (a) immediately cease performance of the Services; and
  - (b) take possession of the Crane and Equipment with or without notice to the Customer and for this purpose the Customer authorises irrevocable access to enter the Site to remove the Crane and Equipment and the Customer indemnifies Sterling in respect of any loss arising from any act done under or by virtue of this sub clause.
- 3.3 Upon termination of this Agreement following the occurrence of an Event of Default, the Customer must pay to Sterling by way of liquidated damages, in addition to and without prejudice to any other right or remedy of Sterling, an amount equal to the total of:
  - (a) the unpaid balance of the Charges for the Term which would have been payable until the expiration of the Term had the Agreement not been terminated;
  - (b) Sterling's costs and expenses incurred in repossessing the Crane and Equipment and in entering on and removing the Crane and Equipment from the Site or other premises on which the Crane and Equipment was situated, and making good any injury or damage caused to the Site or premises;
  - (c) the interest calculated in accordance with clause 2.1; and
  - (d) any extra fees and costs paid or payable pursuant to clauses 2.4, 2.6 and 2.7.
- 3.4 The Customer shall not do any act or thing to impede the removal of the Crane and Equipment at the end of the period of hire or the earlier seizure of the Crane and Equipment by Sterling pursuant to the terms of this Agreement.
- 3.5 Notwithstanding anything contained in this Agreement to the contrary, Sterling reserves the right to recall the Crane and Equipment at any time and without notice to the Customer when in Sterling's opinion the Crane and Equipment is endangered or imperilled by any reason or cause whatsoever. The Customer indemnifies Sterling in respect of any and all loss arising from any act done under or by virtue of this subclause.
- 3.6 If any part of this Agreement is, or becomes void or unenforceable, such part will be severed from this Agreement without affecting the validity of the remainder of this Agreement.
  - (a) Failure to exercise or delay in exercising any right, power or privilege in this Agreement by a party does not operate as a waiver of that right, power or privilege.
  - (b) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege, or the exercise of any other right, power or privilege.

## **4. INDEMNITIES AND LIABILITY**

- 4.1 The Customer agrees to INDEMNIFY AND HOLD HARMLESS Sterling against:

- (a) any loss, damage, injury or death to any person (including the Operator) arising out of or in connection with the act, omission or negligence or otherwise of the Customer, the Customer's employees, servants and agents or any other third party present at the Site whilst Sterling performs the Services at the Site (including, without limitation, any drawings or Site conditions provided to Sterling);
  - (b) any loss or damage of any kind whatsoever caused to the Customer, the Crane and Equipment or to the property of the Customer unless such loss or damage was caused by the sole negligence of Sterling; and
  - (c) notwithstanding clause 4.1(a) above, any consequential loss or damage sustained by the Customer or any other person howsoever caused and regardless of whether or not the Customer had advised Sterling of the potential for such loss or damage.
- 4.2 The Customer agrees to assist and co-operate with Sterling in relation to Sterling exercising any and all of its rights in respect to the Crane and Equipment, including without limitation Sterling instituting, carrying on and enforcing, compromising or completing any legal proceedings which Sterling thinks desirable to protect its rights in respect of the Plant and Equipment.
- 4.3 IN NO EVENT, WILL STERLING BE RESPONSIBLE FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. IN NO EVENT SHALL STERLING BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE VALUE OF THE WORK, GOODS OR SERVICES PURCHASED HEREUNDER WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

## 5. FORCE MAJEURE

- 5.1 If a party becomes unable wholly or in part by Force Majeure to carry out any of its duties or obligations under this Agreement:
- (a) that party must give to the other party prompt written notice of
    - (i) the detailed particulars of the Force Majeure and (ii) so far as is known, the probable extent to which the party will be unable to perform or will be delayed in performing the duty or obligation;
    - (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
    - (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible.

## 6. INTELLECTUAL PROPERTY

- 6.1 The following definitions apply to this Section 6:
- (a) "Intellectual Property" means all registered and unregistered rights in relation to present and future copyright, trademarks, designs, know-how, inventions, discoveries, patents, confidential information, trade secret, trade or business or company name or other proprietary right or right of registration of such rights.
  - (b) "Background IP" means any Intellectual Property owned or controlled by a party prior to this Agreement.
  - (c) "Project IP" means any Intellectual Property in results, data, deliverables, conclusions, observations, procedures, improvements, or related material or concepts generated or conceived in the course of performing Services.
- 6.2 Background IP:
- (a) Each party retains all right, title and interest in and to its Background IP.
  - (b) Customer grants to Sterling a non-exclusive, revocable, royalty-free licence to use its Background IP in the course of performing Services, solely for the purpose of performing Services and in accordance with the terms of this Agreement.
  - (c) Nothing in this Agreement prevents a party from using or otherwise exploiting its Background IP for any purpose.
- 6.3 Project IP:
- (a) Sterling owns all right, title and interest in any Project IP.
  - (b) To the extent necessary to give effect to Section 6.3(a), Customer hereby assigns to Sterling all right, title and interest it may have now or in the future in any Project IP effective immediately on the date such Project IP is created. Customer will execute any such agreements, deeds, or documents and do or cause to do anything that may be reasonable to give effect to the assignment (including ensuring that any employees or contractors assign the Project IP to Sterling).

## SECTION B BARE RENTALS

7. PLEASE SEE STERLING BARE RENTAL TERMS AND CONDITIONS FOR CONDITIONS SPECIFIC TO BARE RENTAL AGREEMENTS. THIS AGREEMENT SHALL NOT APPLY TO ANY BARE RENTALS.

## SECTION C FULLY OPERATED AND MAINTAINED HIRES

### 8. CONDITIONS SPECIFIC TO FULLY OPERATED AND MAINTAINED HIRES

- 8.1 Sterling shall:
- (a) arrange for delivery to and the return from the Site of the Crane and Equipment;
  - (b) at its own expense keep and maintain the Crane and Equipment in a proper working order and condition and in good and substantial repair; and
  - (c) arrange for the Crane and Equipment to be operated by an Operator who is a properly trained and competent person to operate the Crane and Equipment.
- 8.2 Sterling shall:
- (a) be responsible to pay the Operator's remuneration (inclusive of all other benefits required either under the applicable collective agreement, contract or at law to be paid to the Operator);
  - (b) effect a policy of employers' liability insurance including workers' compensation insurance in respect of the Operator;
  - (c) pay the costs of fuel (unless Customer agrees to pay for), safety inspections, servicing, maintenance repair and operation in respect of the Crane and Equipment and
  - (d) Arrange for insurance in respect of the Crane and Equipment, commercial general liability and riggers liability.
- 8.3 The Customer shall:
- (a) specify the Site on which the Crane and Equipment is to be operated;
  - (b) specify the route on the Site for the Crane and Equipment to arrive at the area on which it will be used;
  - (c) warrant that they are entitled to grant Sterling free legal access to the Site;
  - (d) provide suitable site conditions including proper site access and ground conditions to Sterling free of charge in order to perform the Services;
  - (e) identify to Sterling any subsurface or non-visible site conditions that could impact the performance of the Services;

- (f) ensure that there is sufficient space and amenities for the use of the Crane and Equipment on the Site;
  - (g) not do or omit to do any out or thing which might in any way invalidate or prejudice any insurance effected by Sterling; and
  - (h) not interfere with the Crane and Equipment or with the Operator's operation of the Crane and Equipment.
- 8.4 Sterling will not be held responsible for damage to the ground or any underground structures or utilities except to the extent caused by the negligence of Sterling.
- 8.5 STERLING MAKES NO WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO THE SERVICES, CRANE AND EQUIPMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, STERLING DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES AND/OR THE CRANE AND EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**9. Special Conditions**

- 9.1 The special conditions (if any) set out in a schedule attached hereto shall form part of this Agreement.
- 9.2 In the event of any inconsistency between the special conditions and any other term of this Agreement, the special conditions shall prevail to the extent of the inconsistency.

