

**Ordinary Scandinavian
contractual provisions for work involving cranes
ASKOM 09**

(Adjusted by the Norwegian Mobile Crane Association on 1 April 2015)

Drawn up by:

The Norwegian Mobile Crane Association and the Swedish Mobile Crane Association

These provisions apply to all deliveries, assignments and work covered by the agreement, including, but not limited to, the hire of cranes with operators, the hire of mobile cranes, concrete pumps, lifts and other equipment, or the hire of personnel in connection with hire of cranes or other equipment, the hire of crane without operator and the hire of operator without crane, in addition to all other work/deliveries covered by the assignment.

1. DEFINITIONS.

The following definitions apply under the provisions of this contract:

1.1 Work/Crane work:

Any type of work the assignment covers and all transport in connection with this.

1.2 Agreement/Contract:

An oral or written agreement (signed contract, minutes, order document, order confirmation, offer/acceptance) for the execution of work.

1.3 Contracting Authority:

The party that has placed an order for work.

1.4 Crane Lessor:

The party that upon receipt of order, submitted tender or on another basis shall perform the work at the workplace.

1.5 Work based on hourly rates:

A contract stipulating that the crane lessor shall receive payment based on an hourly rate.

1.6 Fixed price (binding tender):

A contract stipulating that the crane lessor shall perform work that has been clearly defined by the contracting authority, and that the crane lessor shall be paid an agreed total price.

1.7. Additional work:

Work in addition to the originally ordered work.

1.8 Price:

All stated prices are exclusive of value-added tax.

2. SPHERE OF APPLICATION OF THE CONTRACTUAL PROVISIONS:

2.1 The provisions apply to the contractual relationship between the contracting authority and the crane lessor. The provisions apply without amendments or additions, unless such amendments and additions are agreed in writing between the parties.

2.2 These provisions apply to the entire assignment that the agreement between the parties covers, including, but not limited to, the hire of cranes with operators, the hire of mobile cranes, concrete pumps, lifts and other equipment, or the hire of personnel in connection with hire of cranes or other equipment, the hire of crane without operator and the hire of operator without crane, in addition to all other work/deliveries covered by the assignment.

2.3 Offered prices and contractual terms and conditions, including tenders, are binding for 30 – thirty – days, unless otherwise specially agreed, or until it is withdrawn prior to being accepted.

2.4 If the assignment requires special training of staff, the contracting authority undertakes to cover all costs, including pay and additional costs to the crane lessor's employees and temporary staff, connected to the training.

3. PRICE PROVISIONS/WORK BASED ON HOURLY RATES

3.1 In respect of all orders for which no special agreement concerning fixed price has been made, the payment shall be calculated on an hourly basis according to the below provisions.

3.2 Hourly payment is calculated according to the crane lessor's price list, when such a price list is available and no other agreement has been made. The crane lessor is entitled to adjust prices in the event that, after entering into the agreement, it emerges that other/additional equipment/personnel than what the information suggested at the time of agreement is necessary, and that according to the agreement, it is the

contracting authority's responsibility to provide the crane lessor with the necessary information for the execution of the assignment.

3.3 The agreed hourly rate shall include:

- a) Performance of work with the ordered/agreed crane with ordinary equipment
- b) Wage costs for the crane operator
- c) Costs for ordinary fuels and lubricants
- d) Administrative expenses for profit
- e) Expenses for compulsory insurance

3.4 Costs not covered by point 3.3 are charged additionally in accordance with the crane lessor's price list or according to invoice if such a price list is not available, alternatively according to the price agreed between the parties.

This applies to costs including, but not limited to:

- a) transport, loading/unloading of necessary equipment in addition to what is transported on the crane, including, but not limited to, separate transport of counterweights,
- b) specially ordered equipment, or necessary special equipment to execute the assignment, and the transport thereof,
- c) potential escort and additional staff
- d) additional wages for staff, e.g. overtime pay, shift premiums, board and lodging and travel expenses
- e) rigging expenses,
- f) necessary permits and/or inspections

3.5 The lease is calculated from the moment the crane leaves the crane lessor's depot or another agreed place, up to the moment the crane is returned to the same place or another agreed place. The crane lessor is entitled to remuneration for waiting time due to delays and hindrances that he has not caused. A commenced hour is counted as a whole hour. The minimum lease is 3 hours.

4. PRICE PROVISIONS – BINDING TENDER

4.1 Upon agreement that the assignment shall be performed at a fixed price, the crane lessor is entitled to remuneration in addition to the agreed price if, after entering into the agreement, it emerges that other/additional equipment and/or personnel and/or consumption of time than what the information suggested at the time of agreement is necessary, and that according to the agreement, it is the contracting authority's responsibility to provide the crane lessor with the necessary information for the execution of the assignment.

- 4.2 The crane lessor is furthermore entitled to demand payment for expenses incurred due to hindrances, waiting time or other disruptions of the work, when this is beyond the control of the crane operator. This includes, but is not limited to, the additional time and the additional costs incurred in the event that the contracting authority demands other HSE documentation than what the Crane Lessor has in its own routines, and which will satisfy requirements for work on public property.
- 4.3. Payment for additional work beyond what the fixed price covers is calculated according to the rules in point 3.

5. THE CONTRACTING AUTHORITY'S RESPONSIBILITY AND DUTY OF DISCLOSURE

- 5.1 The contracting authority is responsible for ensuring that the information provided to the crane lessor, and which forms the basis for the contract, is complete and correct.
- 5.2 The contracting authority shall in plenty of time before the commencement of the work provide the crane lessor with all information that is necessary for planning and implementation of the work. The following information must always be provided by the contracting authority:
- a) The contracting authority's name, address, telephone number, fax number, e-mail address, potentially the project number and other information about the assignment which the contracting authority believes the crane lessor needs. If the invoice address is different from the contracting authority's address, the invoice address shall be stated separately.
 - b) The place where the work is to be performed, the loading place, space for placement of crane(s) and unloading place.
 - c) The nature, value, weight, dimensions, anchor points, centre of gravity, potential lift sketches, and lift height of the goods, and anything else he considers significant to the performance of the work.
 - d) The time for the performance of the work.
 - e) Whether special insurance is required.
 - f) Whether there are impediments, risks or other special matters such as wires (included overhead wires/power lines), cables, barriers, bridges or narrow passages.
 - g) Whether there is a need for special equipment, assistants, signalling assistant or other additional work.
 - h) The person responsible for co-ordination and regulations applicable to the workplace.
- 5.3 Unless otherwise is confirmed in writing by the crane lessor, the contracting authority is responsible for ensuring that roads, lifting, rigging and installation points are accessible and have sufficient load-bearing capacity and are otherwise safe,

serviceable, and usable for the execution of the assignment. At the request of the contracting authority, the crane lessor shall provide information about the crane's working range, axle loads (pressure), support leg pressure, (outriggers ground pressure), total weight, height, and maximum lift height.

- 5.4. The contracting authority is responsible for ensuring that all necessary permits and estimates for the implementation of the work are submitted prior to the commencement of the work, including loading of parts of the building and constructions otherwise, including, but not limited to, interferences with buildings and facilities that may result from the work.
- 5.5 The contracting authority is responsible for ensuring that any item that is to be lifted is adequately packaged, protected against weather and other factors such that it withstands the lift. Should the crane lessor find that these matters are not satisfactory, he is entitled, but not obliged, to perform the measures the crane lessor deems necessary, at the expense of the contracting authority.
- 5.6 All lifting tools and all lifting equipment shall be in accordance with public requirements. Unless otherwise is expressly agreed, the contracting authority vouches that fixed installations used for the lift, including lifting ears and lifting points, are satisfactory.
- 5.7 If the assignment necessitates use of assistants, assistance with strapping, securing of the load and signalling, the contracting authority undertakes to ensure such available personnel, and that they possess the necessary qualifications for the work they are to perform.
- 5.8 The contracting authority shall make available toilet, changing and washing facilities for the crane lessor's employees.
- 5.9 Unless otherwise is agreed in writing, the contracting authority is liable for compensation for any damage and any additional expense incurred as a result of defective, incorrect, incomplete or imprecise information which the contracting authority is obliged to furnish in accordance with the provisions in this chapter (5.1 – 5.8). Without liability, the crane lessor is entitled to suspend the work if he finds that the work cannot be performed in a responsible manner. The contracting authority shall in such circumstances cover the loss/costs the interruption inflicts upon the crane lessor, including that the crane is idle until it is put to other work, and for other damages inflicted upon equipment and/or personnel in this connection. In the event of significant deviations, the crane lessor can rescind the contract.

6. THE OBLIGATIONS OF THE CRANE LESSOR

6.1 Unless otherwise specially agreed, the crane lessor will make available the crane and operator, in addition to equipment for disposal, for the performance of the assignment.

6.2 The crane lessor is responsible for ensuring that:

- a) the work is carried out in an expert and workmanlike manner
- b) the crane, along with the accompanying equipment, are in good condition and conform to applicable safety requirements
- c) the crane is operated by competent personnel
- d) valid certificates for the crane have been obtained.

6.3 If, in the crane lessor's professional assessment, the assignment requires a larger crane or another type of crane than what is ordered or the information provided has suggested, the contracting authority is obliged to accept this and remunerate the crane lessor for all additional costs according to point 5.9, also including waiting time and loss of profit for the ordered crane. The crane lessor is obliged to perform the assignment if the applicable crane can be procured within a reasonable time.

7. PAYMENT TERMS

Payment shall occur in accordance with the agreed payment plan or against invoice after the work is completed. In the event of payment against invoice, the payment shall be made within 30 days of the invoice date, unless otherwise agreed.

The crane lessor can demand a guarantee for the settlement before the work commences up to 10 days before the agreement shall be executed, even if a guarantee requirement is not stated in the order confirmation or the agreement. The crane lessor is not obliged to perform the assignment if the contracting authority does not provide a guarantee for the work.

In the event of overdue payment, interest is charged in accordance with the Act relating to Interest on Overdue Payments, unless otherwise agreed.

8. CANCELLATION

8.1 In the event that the contracting authority cancels an agreed assignment before the crane has commenced the travel to the place of assignment, the crane lessor is entitled to compensation amounting to 10% of the assignment's size, albeit a minimum of NOK 5,000,00.

Either way, the crane lessor is entitled to compensation for all preparation work which he can document has been performed in the applicable time prior to the time of departure. If the assignment is based on an hourly rate, the crane lessor can demand a settlement for a minimum of 3 hours.

- 8.2** In the event that the assignment is cancelled and thereafter performed by another crane lessor or by the contracting authority itself, the crane lessor is entitled to full compensation, including also compensation for loss of profit. The compensation shall in all cases amount to no less than NOK 10,000,00.

9. RESCISSION

- 9.1** The contracting authority shall perform its duty of disclose in accordance with point 5, within 10 days prior to the commencement of the work, unless otherwise agreed. If the deadline is exceeded, the crane lessor is entitled to rescind the agreement with immediate effect, without liability. The same applies if the stated information is erroneous.

- 9.2** If, while the work is in progress, the contracting authority fails to perform its payment obligations, suspends its payments or otherwise experiences payment problems, initiates debt settlement proceedings, is declared bankrupt or otherwise neglects to perform its obligations according to this agreement, the crane lessor may rescind the agreement without liability, with immediate effect, unless the contracting authority immediately furnishes adequate security for its payment obligation according to the contract.

In the event of a payment default of one invoice, all issued invoices are immediately due for payment, even if, at the time, the due date has not arrived.

- 9.3** The crane lessor is entitled to rescind the contract with immediate effect if the contracting authority seriously breaches its obligations according to these provisions, breaches safety and security regulations or otherwise takes action, or neglects to take action, such as would entail risk to persons or equipment.
- 9.4** In the event of rescission due to matters attributable to the contracting authority in accordance with points 9.2, 9.3 or otherwise, the crane lessor can demand compensation, including also compensation for loss of profit.
- 9.5** For rescission due to matters outside the contracting authority's control, the crane lessor can demand full compensation for all incurred costs in connection with the assignment. Performed work shall be paid in accordance with the agreed price.

10. LIABILITY

- 10.1** The crane lessor is not liable for losses due to delays, unless this is specially agreed.
- 10.2** The crane lessor is also not liable for any consequential loss, damage due to loss of contract or pure pecuniary loss.
- 10.3** Unless specially agreed, the crane lessor is not liable for damages inflicted upon the contracting authority unless he or someone acting on his behalf has displayed intent or negligence giving rise to entailing liability and this is the cause of the damage.
- 10.4** Without a special agreement, any liability for damages is in any case limited to NOK 500,000,00 per tortious act. In the event that several cases of damage are attributable to the same cause, they shall be considered as one single case.
- 10.5** In the event that the assignment is dependent on a signalling assistant and/or other assistants from the contracting authority, the crane lessor is not liable for damages arising as a result of defective securing of the load, incorrect strapping, or incorrect, incomplete and/or unclear signalling. The crane lessor is also not liable for other damages caused by the acts of such persons.
- 10.6** The crane lessor is not liable for damages according to the Pollution Control Act, unless the damage is due to intentional or negligent conduct giving rise to entailing liability on the part of the crane lessor or one of his employees. In the event that a claim is nonetheless made against the crane lessor by a third party, the crane lessor is entitled to have full recourse against the contracting authority. This also applies to potential consequential damages.

11. GROUNDS FOR EXEMPTION – FORCE MAJEURE

- 11.1** In the event that the performance of the contract is impeded or unreasonably hampered as a result of circumstances beyond the control of the crane lessor, e.g. industrial dispute, breakdown, technical damage, weather, fire, accident, war, act of terrorism, natural catastrophe, public restrictions, omissions or orders, exchange rate restriction, insurrection or civil commotion, shortage of goods, reduction in the supply of fuels, defective or delayed delivery, errors in description, performance, material, equipment etc. and generally other circumstances that are grounds for exemption according to the rules concerning force majeure, the crane lessor will be entitled to claim compensation for additional expenses/waiting time, and/or rescind the contract.

The above circumstances are grounds for exemption if their effect on the performance of the agreement were not known when the agreement was made.

- 11.2** A party that seeks to invoke grounds for exemption in accordance with point 11.1 must, without delay, inform the other party of the occurrence thereof, as well as when it has ceased.
- 11.3** In the event of a situation arising in accordance with point 11.1, and this is invoked by the crane lessor, both parties are entitled to rescind the contract. Such rescission shall be made in writing.

12. INSURANCES

- 12.1** At its own expense, the crane lessor is obliged to have insurance as required in law or public regulations.
- 12.2** In the event that the contracting authority requires special insurance be taken out by the crane lessor, this must be agreed separately. In such case, the terms and conditions of the insurance form part of the agreement between the parties. The costs associated with such insurance are charged to the contracting authority in addition to the price based on points 3 and 4.

13. DISPUTES

- 13.1** Potential disputes concerning these contractual provisions shall be resolved before the ordinary courts, unless both parties agree in writing to arbitration proceedings.
- 13.2** Disputes are resolved according to applicable domestic legislation in the country in which crane lessor has its head office and the crane lessor's legal venue is adopted as the place for proceedings.
