

Tally Ho Industries Ltd

Terms & Conditions of Trade



1. DEFINITIONS

1.1 "Tally Ho Industries " shall mean Tally Ho, as the context requires, or any agents or employees thereof. "Crane" and/or "Truck Mounted Crane" is classified as a Hiab for the purpose of this agreement and continual operations.

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 Tally Ho.

1.3 "Equipment and Services" shall mean all equipment and services, materials or advice provided by Tally Ho to the Customer including without limitation the hire of truck mounted cranes (with operators), carriage of goods, transport, transporters, 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 Tally Ho to the Customer.

1.4 "Price" shall mean the cost of the equipment and services as agreed between Tally Ho and the Customer subject to clause 4 of this contract.

1.5 "Site" shall mean the place or area where the Equipment and Services is to be used for the purposes of this contract.

1.6 "Crane" shall mean crane as defined in the Pressure Equipment, Cranes and Passenger Ropeway Regulations 2017.

1.7 Fuel Adjustment Factor, shall mean "FAF"; a surcharge added to agreed rates. This is based on the average pump price, which is calculated from an independent source.

2. ACCEPTANCE

2.1 Any instructions received by Tally Ho from the Customer for the supply of equipment and services including equipment and services that Tally Ho have ordered or are required to order from overseas shall constitute a binding contract and acceptance of the terms and conditions contained in these Terms and Conditions of Trade.

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer authorizes Tally Ho 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 Tally Ho to any other party.

3.2 The Customer authorizes Tally Ho 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.

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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 Tally Ho 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 Tally Ho between the date of the contract and delivery of the equipment and services.

4.3 Tally Ho may require the payment of a deposit, the sum of which will be determined by Tally Ho in its sole discretion.

4.4 Tally Ho reserves the right to revise its rates of hire and related charges without notice.

4.5 FAF will be added at Tally Ho's discretion to the account.

5. PAYMENT

5.1 No Retentions.

5.2 Unless otherwise agreed all equipment and services must be paid in full on the 20th of the Month.

5.3 Interest may be charged on any amount owing after the due date at the rate of 10% compounding, per month or part month.

5.4 Any expenses, disbursements and legal costs incurred by Tally Ho 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.

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

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

6. QUOTATION

6.1 Where a written quotation is given by Tally Ho for equipment and services:

6.1.1 The quotation shall be valid for thirty (30) days 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 Tally Ho to the Customer which are to be read in addition to these terms and conditions of trade. Only written quotations are binding on Tally Ho.

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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 or erection.

7.2 In the event of any dispute or difference arising between the parties in respect of any matter concerning these Terms and Conditions, the parties shall in good faith in the first instance use their best endeavors to resolve the matter themselves.

7.3 In the event that the parties are not able to resolve the matter themselves, the parties may agree upon a formal mediation to be conducted by a mediator acceptable to both parties.

7.4 The Customer and Tally Ho shall bear the costs of the mediator equally.

7.5 In the event that: (a) the parties do not agree upon the appointment of a mediator within a reasonable period; or (b) the parties are unable to resolve the dispute by mediation, the dispute shall be referred to arbitration under and in accordance with the Arbitration Act 1996.

8. ORAL AGREEMENTS AND STIPULATIONS

8.1 No oral agreement, promise, collateral stipulation, representation, condition or warranty given or entered into by Tally Ho or by Tally Ho and not in conformity with the Tally Ho Terms and Conditions of Trade shall be binding upon Tally Ho unless confirmed in writing by Tally Ho.

9. LIABILITY

9.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986, Carriage of Goods Act 1979 and other statutes may imply warranties or conditions or impose obligations upon Tally Ho 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 on Tally Ho, Tally Ho 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.

9.2 Except as otherwise provided by clause 9.1 Tally Ho shall not be liable for:

9.2.1 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 or damage arises directly or indirectly from equipment and services provided by Tally Ho to the Customer; and

9.2.2 The Customer shall indemnify Tally Ho 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 Tally Ho or otherwise), brought by any person in connection with any matter, act, omission, or error by Tally Ho its agents or employees in connection with the equipment and services.

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9.3 Tally Ho will not be liable for any loss or damage of any kind whatsoever arising from equipment hired not arriving on time or from deficiencies in the performance or reliability of equipment hired.

9.4 Unless otherwise agreed in writing, all contracts of carriage shall be "at limited carriers risk" pursuant to the Carriage of Goods Act 1979.

9.5 Unless otherwise agreed in writing, for all contracts of carriage Tally Ho will not be insuring the goods. Insurance of the goods is the sole responsibility of the Customer and all goods shall be deemed to have been delivered when they are physically delivered to the delivery address specified on the consignment note or verbally by the customer.

9.6 No party shall have any claim against Tally Ho nor shall Tally Ho be liable for any matter arising from or relating to these Terms and Conditions generally.

10. CUSTOMER'S HEALTH & SAFETY OBLIGATIONS

10.1 Tally Ho Standard Operating Procedures sets out certain responsibilities relating to the health and safety responsibilities of the Customer.

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

10.3 The Customer shall comply with its obligations under the Health and Safety at Work Act 2017 (and any applicable regulations or codes of practice made pursuant to that Act including, but not limited to, the HSE (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999) to ensure that, in performing its obligations under this contract, a safe working environment exists for:

- (a) employees and contractors of Tally Ho and the Customer; and
- (b) third parties entering or on the site

11. HIRE OF EQUIPMENT

11.1 Where equipment is hired from Tally Ho:

11.1.1 Slings:

Tally Ho 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. Tally Ho does not accept responsibility for the correct use of slings or lifting equipment or for the method of slinging. If any slings or lifting equipment belonging to Tally Ho is destroyed or damaged, the customer shall pay to Tally Ho the cost of replacement or repair (as the case may be) resulting from that destruction or damage.

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11.1.4 Site Conditions and Access:

(a) The customer will ensure:

(i) that the ground at the site is adequate to support the crane or transporter under its wheels, tracks, outriggers or Hiab Trucks;

(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 any vehicles or other equipment need to be towed into or out of the site, as well as on non-public roads the cost shall be additional to the rate quoted and will be added to the Customer's account.

11.1.5 Use and Handling of Crane:

(a) The Hiab operator shall be under the direction and control of the Customer and shall for all purposes of this contract be regarded as the servant or agent of the Customer. The Customer alone shall be responsible for all claims arising in connection with the operation of the Hiab by the operator.

(b) The Customer shall not:

(i) require, permit or suffer the equipment operator to do anything contrary to any act, regulation, by-law, requirement, code of practice or recognized convention, e.g. Exceed Log Book work hours as stated by NZTA.

(ii) allow any other person to operate the Hiab without first obtaining the written consent of Tally Ho;

(iii) permit or suffer the operation or direction of the plant 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 any Truck mounted crane to lift any load which is beyond the rated lifting capacity of the crane or for any purpose other than for which it is hired pursuant to this agreement;

(c) Tally Ho reserves the right to provide a supervisor to the site if Tally Ho in its sole discretion considers it necessary. If Tally Ho 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 Truck mounted crane's safe load indicator, the Tally Ho 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.

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(e) Where the Customer has understated the weight or dimensions of the goods to be lifted by the Hiab and Tally Ho has relied on the weight, dimensions or working radius stated, the Customer shall be responsible for all extra cost and risk incurred by Tally Ho by reason of Tally Ho reliance upon such stated weight, dimensions or working radius.

(f) The Customer shall be responsible for all loss or damage whatsoever caused while any vehicles are entering, leaving or on the Site, including the cost of repairs suffered or incurred by Tally Ho in consequence of any breakdown or damage to the equipment where such breakdown or damage is caused by any negligent act or omission or misdirection of misuse of the equipment 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 equipment is necessarily idle as a result of any such negligent act or omission or misdirection or misuse of the equipment.

11.1.6 Damage to Goods:

Tally Ho 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 Tally Ho.

11.1.7 Damage to Services and Property:

The Customer is responsible for providing legal, clear and unrestricted access to the Site and ensuring that the access and Site are adequate to support the Hiab, transporter and or vehicles. The Customer shall be solely responsible for all damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, equipment, transporters and or vehicles or any other property caused by any equipment or vehicles whilst entering, leaving Site, or maneuvering whether on or off Site or otherwise.

11.1.8 Stoppages:

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

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11.1.9 Site Security:

It is the Customers responsibility to ensure the security of the Crane, Transporters or Equipment whilst the Crane, Transporters or equipment is on Site. The Customer shall be responsible for all losses or damage whatsoever caused while the Crane, Transporters or Equipment is left on the Site, including the cost of repairing damage suffered or incurred by Tally Ho as a consequence of any damage caused by any act- or omission on the part of the Customer or the Customer's servants, agents, contractors, sub-contractors or members of the public and in particular shall be responsible for the payment of hire at the appropriate Price during the period the Crane, Transporter or Equipment is idle as a result of any such act or omission.

11.1.10 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, Transporter or Equipment to the Customer at Tally Ho depot to the time of re-delivery of the Crane, Hiab, Transporter or Equipment by the Customer to Tally Ho depot on that or any other day. Hire shall be charged accordingly and may include a minimum of one hour of elapsed time on site. Tally Ho may opt for a Km rate on a depot to depot basis plus a time rate.

11.1.11 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.

11.1.12 Overtime:

Additional charges will be payable by the Customer in accordance with Tally Ho current hire price list for all work performed outside normal working hours and on Saturdays, Sundays or public holidays. A minimum charge of four hours for the operator applies to work carried out on Saturdays, Sundays or call back on Saturdays/Sundays. A minimum charge of eight hours for the operator applies to work carried out on public holidays or call back on public holidays.

11.1.13 Site Allowance:

Where site allowances are payable, there will be an additional charge to the Customer.

11.1.14 Operator's Accommodation:

Where the site is at a distance from the depot and overnight accommodation for the operator and any other accompanying personnel is necessary to meet the NZTA Log Book requirements. The cost of the accommodation and meals will be charged to the Customer's account.

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12. CONSUMER GUARANTEES ACT

12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires equipment and services from Tally Ho for the purposes of a business in terms of section 2 and 43 of that Act.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

13.1 If the Customer is a company or trust, the director(s) or trustee(s), in consideration for Tally Ho agreeing to supply equipment and services and grant credit to the Customer, also accept this contract in their personal capacity and jointly and severally personally guarantee and undertake to Tally Ho the payment of any and all other monies now or hereafter owed by the Customer to Tally Ho. Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and Customer shall be jointly and severally liable under the terms and conditions of this contract.

14. TERMINATION

14.1 Tally Ho may immediately and without notice terminate the supply of Equipment and Services if:

14.1.1 the Customer fails to pay any money due or to perform any of its obligations under these Terms and Conditions;

14.1.2 Tally Ho believes on reasonable grounds that the Customer is about to breach or has breached any of these Terms and Conditions and that such breach may endanger any person or property;

14.1.3 the Hiab or Transporter is destroyed or damaged to such an extent that it is inoperable or unsafe for use;

14.1.4 the Customer does anything that in Tally Ho opinion prejudices Tally Ho's rights in the Crane or Transporter under this contract;

14.1.5 the Customer, if it is a company, goes into liquidation or a petition to liquidate or a notice of intention to propose a resolution to liquidate is presented to the Customer; or

14.1.6 the Customer, if it is a person, becomes bankrupt or dies.

14.2 Any such termination shall be without prejudice to the rights of Tally Ho in respect of any breach of these Terms and Conditions.

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15. PERSONAL PROPERTY SECURITIES ACT 1999

15.1 The Customer acknowledges that:

15.1.1 these Terms and Conditions create a security interest (as defined in the Personal Property Securities Act 1999) in favor of Tally Ho in Equipment hired to the Customer by Tally Ho for a term of more than 1 year (within the meaning of the term “lease for a term of more than 1 year” as defined in the Personal Property Securities Act 1999);

15.1.2 the Customer undertakes to do such acts and provide such information as in the opinion of Tally Ho may be necessary or desirable to enable Tally Ho to perfect any security interest created or provided for by these Terms and Conditions, as a perfected security interest with first priority. The Customer shall act immediately when requested by Tally Ho; and

15.1.3 to the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to any security interest created or provided for by, or perfected in the manner contemplated by these Terms and Conditions.

15.2 In addition to the security interest referred to in clause 15.1.1, the Customer also grants a security interest in all present and after acquired Equipment as security for all moneys now and in the future owing by the Customer to Tally Ho.

16. INSURANCE

16.1 Subject to clause 9.5, Tally Ho may, at its own expense, arrange and maintain such insurance as it, in its discretion, considers is required in respect of any Equipment and Service, including (without limitation) public liability insurance for the goods being handled by any Equipment, to such an amount as Tally Ho considers appropriate in the circumstances.

16.2 During the course of the hire, the Customer shall not do, or omit to do, anything that may allow the insurance cover referred to in Clause 16.1 or claims under that insurance cover to be void, cancelled or refused or whereby the premiums thereon may be increased.

17. MAINTENANCE OF CRANE

17.1 The Customer shall be responsible for the day to day maintenance of a Crane where such Crane is in the possession of a Customer including, without limitation, the supply of fuel for the operation of the Crane.

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18. MISCELLANEOUS

18.1 Tally Ho shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

18.2 Failure by Tally Ho 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 obligations Tally Ho has under this contract.

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

18.4 These Terms and Conditions replace all earlier agreements, conditions and warranties, whether oral or written, between the parties relating to the supply of the Equipment and Services.

18.5 These Terms and Conditions take precedence over any other conflicting terms and conditions.

19. GOVERNING LAW

19.1 This contract shall be governed and interpreted in accordance with the laws of New Zealand. The Customer shall observe and comply with the provisions or all Acts, regulations, bylaws and codes of practice in force during the period of hire in relation to the work on which the Equipment and Services is to be employed and in the manner of performance of that work and in relation to the Site and with all orders and directions lawfully given by any competent authority.

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