

UNIVERSAL CRANES PTY LTD – TERMS AND CONDITIONS OF HIRE

Part A – General

1 DEFINITIONS:


- (a) **Crane** means the Crane and/or transport and/or associated services including, in the case of a Wet Hire, provision of labour provided for hire by the Owner to the Hirer; and includes all accessories and other equipment of the Owner, attached to the Crane or to be used in connection therewith.
- (b) **Dry Hire** means hiring of the Crane without the provision of labour, maintenance and fuel by the Owner.
- (c) **Event of Default** means:
- (i) the Hirer is in breach of any of its payment obligations under the Hire Agreement or any other agreement with the Owner;
 - (ii) the Hirer fails to observe and perform any of its obligations in the Hire Agreement, other than a failure to pay money, and such failure continues for more than 3 days after the Owner has given the Hirer notice requiring the Hirer to remedy the breach;
 - (iii) if the Hirer becomes insolvent or is unable to pay its debts when they fall due;
 - (iv) the Hirer make any arrangement or enter into any compromise with any of the Hirer's creditors;
 - (v) the Hirer fails to operate and maintain the Crane in accordance with the terms of the hire;
 - (vi) (if the Hirer is a natural person) the Hirer commits an act of bankruptcy or the Hirer becomes bankrupt or die;
 - (vii) If the Hirer ceases to be carrying on business or substantially changes its business activities;
 - (viii) the Hirer does anything that, in the opinion of the Owner, prejudices the Owner's rights related to the Crane or the hire or Owner has reasonable grounds to believe that the Crane is in jeopardy; or
 - (ix) the Hirer goes into administration, receivership, provisional liquidation, liquidation (whether voluntary or otherwise), or if a winding up application is made against the Hirer or a resolution is passed to liquidate the Hirer.
- (d) **Hire Agreement** means the agreement between the Owner and the Hirer constituted by this document, and any quotation, purchase order (excluding terms and conditions thereof), annexure or other document agreed in writing between the parties.
- (e) **Hirer** means the company, firm, person, corporation or public authority taking the Owner's Crane on hire and includes the Hirer's successors or personal representatives.
- (f) **Owner** means Universal Cranes Pty Ltd (ACN 106 296 799) and it includes its successors and assigns.
- (g) **Site** means the location or locations at which the Crane will be deployed during the hire (including any premises of the Hirer).
- (h) **Wet Hire** means hiring of the Crane with the provision of labour, maintenance and fuel by the Owner.

2 EXCLUSION OF OTHER PROVISIONS

- (a) These terms and conditions apply irrespective of, and to the exclusion of, any other terms and conditions of the Hirer including those that may be contained in any purchase order of the Hirer.
- (b) To the extent permitted by law, all conditions, terms or warranties that would otherwise be implied by law in respect of the Hire Agreement, and the hire of the Crane are excluded.

3 CREDITWORTHINESS

The Hirer authorises the Owner to make any such enquiries as it deems necessary to investigate the credit worthiness of the Hirer from time to time including the making of enquiries of persons nominated

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as trade referees, the bankers of the Hirer or any other credit providers (the information sources) and the Hirer authorises the information source to disclose to the Owner such information concerning the Hirer which is requested by the Owner.

4 TERM

- (a) The term of the hire is as stated in the Hire Agreement.
- (b) Renewal or extension of the hire will require the issue of a new or supplementary order by the Hirer, and which is accepted by the Owner.

5 ACCEPTANCE OF QUOTES

The Hirer agrees that, without limitation, any of the following shall be evidence of the Hirer's acceptance of a quote and this document:

- (a) application for credit with the Owner;
- (b) a purchase order from the Hirer;
- (c) written communication of any kind including email or verbal communication from the Hirer to the effect that the Hirer wishes to proceed with the hire; or
- (d) acceptance of the Crane by the Hirer.

6 PAYMENT

- (a) The Hirer must pay all hire charges and other related costs in accordance with the Hire Agreement.
- (b) The Owner may invoice the Hirer for the hire charges and costs under the Hire Agreement by providing a tax invoice on a weekly basis or as otherwise set out in the Hire Agreement.
- (c) Unless otherwise specified in the Hire Agreement, the Hirer agrees to pay each tax invoice in full on the 30th of the month following the date of the invoice. No claims for credit will be recognised by the Owner after 7 days following the date of the tax invoice.
- (d) The base cash rate published from time to time by the Reserve Bank of Australia plus 5% per annum will be charged on overdue accounts.
- (e) Any costs incurred by the Owner in the recovery of overdue accounts will be paid or reimbursed by the Hirer.
- (f) Rates and conditions may be subject to change without notice.

7 SITE CONDITIONS


The Hirer is responsible for ensuring the ground at the Site, and the access to the Site, is adequate to support the Crane under its wheels, tracks, or outriggers. There will be no reductions to the hire period or charge for lost time caused by the ground conditions.

8 ACCESS

The Hirer is responsible for access to the Site. If the Owner is to provide assistance of the Crane into or out of a Site, the cost shall be additional to the rate quoted and will be for the Hirer's account or payable directly by the Hirer. There will be no reductions to the hire period or charge for time lost associated with poor access. Where access is required through private property all arrangements and costs associated with that access are the sole responsibility of the Hirer.

9 DAMAGE TO PROPERTY

The Hirer is responsible for any damage or costs of any repairs necessary to access ways, footpaths, kerbs, channels, underground services, overhead services, structures or property (public or private) associated with the Crane hire. All matters and costs are to be dealt with directly by the Hirer without involvement by the Owner.

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10 RESPONSIBILITY FOR LOSS, INCLUDING CONSEQUENTIAL LOSS

Under no circumstances whatsoever will the Owner be liable, whether in contract or tort or otherwise, for any direct, indirect or consequential, loss or damage arising out of any breakdown or stoppage of the Crane (including loss or damage resulting in the delayed arrival or non-arrival of the Crane at the Site) or otherwise arising out of, or in connection with the hiring of the Crane to the Hirer.

11 TRANSPORT, DELIVERY AND RISK OF THE CRANE

- (a) Costs of transportation of the Crane to and from the Site shall be met by the Hirer on an hourly basis. Where the Crane is already on a site and another party hires the machine on that site, that person will pay travel costs back to the depot.
- (b) If the Hirer has elected for the Owner to transport the Crane from the Owner's depot to the Site, risk will transfer to the Hirer at the time that the Crane is delivered to the Site.
- (c) If the Hirer has elected to transport the Crane to the Site, risk transfers to the Hirer from the time that possession of the Crane is given to the Hirer, its employees, agents, contractors or subcontractors.

12 SLINGS AND RIGGING

Rigging including, but not limited to, synthetic slings, FSWR slings, spreader beams, blocks and tackle, man cages, concrete skips, may be supplied at charges quoted if requested. In any case if any slings or lifting equipment – the property of the Owner – are destroyed or damaged, the Hirer shall pay to the Owner the cost of replacement or repair (as the case may be) resulting from such destruction or damage.

13 BREAKDOWNS OR DAMAGES TO THE CRANE


- (a) The Hirer must notify the Owner immediately of any mechanical breakdown.
- (b) Upon notifying the Owner of a breakdown, the Hirer must secure and safeguard the Crane, comply with all applicable laws, cease using the Crane in any way and take all reasonable steps to prevent injury to any persons or damage to any property as a result of the condition of the Crane. The Owner does not accept liability for expenses incurred in such prevention or safeguarding activities. The Hirer remains responsible for the security of the Crane until such time as the Crane is returned to the Owner's physical possession or depot.
- (c) The Hirer shall be responsible for any loss or damage whatsoever, including the cost of repairs, suffered or incurred by the Owner as a consequence of any breakdown or damage to the Crane where such breakdown or damage is caused by any act, omission, misdirection or misuse of the Crane on the part of the Hirer or the Hirer's employees, agents, contractors or subcontractors. In particular, the Hirer shall be responsible for the payment of hire at the appropriate standby rate, charged by the Owner from time to time, during the period the Crane is necessarily idle as a result of any such act, omission, misdirection or misuse of the Crane.

14 PROPERTY RIGHTS

- (a) The Hirer is entitled to use of the Crane for the term of the hire, unless the Owner becomes entitled under the Hire Agreement to repossess the Crane (for example, where the Hirer breaches the terms of the Hire Agreement).
- (b) The Owner retains ownership of the Crane at all times and nothing in the Hire Agreement will give any form of ownership of the Crane to the Hirer.
- (c) The Hirer must not sell, lend, lease, transfer, grant any security interest in, modify or otherwise deal with the Crane (or attempt to do so).

15 EVENT OF DEFAULT


- (a) If an Event of Default occurs, then without prejudice to the Owner's other rights, the Owner may without notice to the Hirer enter any premises occupied by the Hirer, or any other place where the Crane may be, and recover possession of the Crane.

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- (b) Recovery of the Crane under clause 15(a) does not relieve the Hirer of its obligations to pay the Owner any monies payable to the Owner under the Hire Agreement.

16 PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

- (a) *Application of Clause*
 This clause 16 applies to:
- (i) any hire which is or which at any future time becomes a PPS Lease under section 13 of the PPSA; and
 - (ii) any other hire where the Owner notifies the Hirer that the clause is to apply .
- (b) *Purchase money security interest*
 The Hirer acknowledges that the Owner holds a purchase money security interest in the Crane supplied by the Owner and any proceeds from the Crane as security for all monies payable by the Hirer to the Owner at any time in respect of its hire of the Crane.
- (c) *Hirer to do all things necessary for “perfection”*
 If requested by the Owner, the Hirer shall promptly and without undue delay execute any documents (including any new contracts), provide all information required in order to complete a Financing Statement (as defined under the PPSA) and comply with any other reasonable requests by the Owner to ensure that the Owner’s purchase money security interest(s) and general security interest are perfected.
 The Hirer shall immediately notify the Owner in writing of any change in the Hirer’s name and shall also provide all information required in order to complete a financing change statement.
- (d) *Security interests*
 The Hirer shall not enter into any security agreement with another party that permits that party to register a security interest over the Crane.
- (e) *Allocation of payments*
 The Owner may, at its discretion and in such manner as it may determine, allocate any payments made by the Hirer to hire charges for the Crane or any other amount that may be due by the Hirer to the Owner.
- (f) *Hirer waives right to receive verification statement*
 The Hirer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Owner’s security interests.
- (g) *Hirer to pay all filing fees for financing statement*
 The Hirer shall be responsible for all costs, expenses and other charges incurred, expended or payable by the Owner in relation to the filing of a financing statement or a financing change statement.
- (h) *Opt-out of enforcement provisions*
 The Hirer waives its rights under sections 95 (notice of removal of accession) , 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to the Hire Agreement or any supply of the Crane pursuant to the Hire Agreement.
- (i) *Re-lease of Collateral*
 If the Owner repossesses the Crane, for the purpose of the PPSA it shall be permitted to re-hire the Crane in any manner and on terms that it sees fit.
- (j) *Confidentiality*

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Each party agrees that it will not disclose information of the kind referred to section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275 of the PPSA and other provisions of the PPSA.

The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to section 275(1) of the PPSA.

17 TERMINATION OF HIRE

- (a) The hire may be terminated immediately by notice from the Owner to the Hirer in any of the following instances:
 - (i) any breach of the Hire Agreement by the Hirer;
 - (ii) occurrence of an Event of Default; or
 - (iii) in any other case where justified by job conditions or job management.
- (b) On termination of the Hire Agreement, the Owner is entitled to immediate possession of the Crane and where such possession is not obtained, the Hirer:
 - (i) irrevocably appoints the Owner and its officers, employees or contractors as its agent and authorised attorney to enter upon any land or premises on behalf of the Hirer to recover the Crane; and
 - (ii) indemnifies the Owner in respect of any claims, damages or expenses arising out of any action taken under this clause.

18 GST

All quoted rates and charges are exclusive of GST unless otherwise stated specifically in the Special Terms and Conditions.

19 OVERHEAD POWER WIRES

The Hirer must allow a four metre clearance to all overhead power wires.

20 ORAL AGREEMENT AND STIPULATION'S

No oral agreement, promise, collateral, stipulation, representation, condition or warranty given or entered into by the Owner or by any agent or employee of the Owner and not in conformity with the Hire Agreement will bind the Owner unless confirmed in writing by the Owner.

21 VALIDITY OF QUOTATIONS

Crane hire quotations are valid for up to 30 days from the date of issue. However, all quotations are subject to availability as all Cranes are constantly being offered to other potential hirers.

22 ORDER OF PRECEDENCE


The documents comprising the Hire Agreement apply in the following order of precedence:

- (a) any quote (as amended) provided by the Owner from time to time;
- (b) any other document agreed in writing between the parties;
- (c) this document; and
- (d) the purchase order.

If there is any inconsistency between the documents comprising the Hire Agreement, then the document that is higher in the order of precedence prevails to the extent of any inconsistency.

23 FORCE MAJEURE

- (a) A **"Force Majeure Event"** is an event which is beyond the reasonable control of the Hirer or the Owner and includes the following types of events or occurrences:
 - (i) an act of God (such as fires, explosions, earthquakes, landslides, droughts, tidal waves and floods);
 - (ii) epidemic or pandemic;

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- (iii) war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or martial law;
 - (iv) weather conditions causing inundation or flood that prevents access to the Crane;
 - (v) action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgement despite timely endeavours to obtain same).
- (b) Where either the Hirer or the Owner cannot perform their obligations under the Hire Agreement by virtue of a Force Majeure Event, it must immediately notify the other party of the Force Majeure Event and shall be temporarily relieved of its respective obligations under the Hire Agreement whilst the Force Majeure Event continues. Regardless of such relief, the party making the notification of the Force Majeure Event shall do everything within its power to minimise the duration of the Force Majeure Event and shall notify the other party immediately upon cessation of the circumstances relating to the Force Majeure Event.
 - (c) Without limiting the parties rights under the Hire Agreement, if the Force Majeure Event continues for a period in excess of 30 days, the Hirer or the Owner may terminate the Hire Agreement at their discretion without penalty, subject to clause 17(b).
 - (d) Despite any Force Majeure Event, no party is relieved or excused from performance of its obligation to pay amounts due to the other under the Hire Agreement.

24 ASSIGNMENT/SUBLETTING


- (a) The Owner may assign all or any of the Owner's rights and obligations under the Hire Agreement with any other person or company without the prior consent of the Hirer.
- (b) The Hirer can not sublet, assign, deal with or otherwise part with possession of the Crane or any part of it, to any third party without first obtaining the written consent of the Owner. The Hirer, at the Hirer's own expense, must protect and defend the Owner from all claims, liens and legal processes of creditors of the Hirer and shall keep the Crane and any part thereof free and clear of any such claims.

25 NOTICES

Either party may serve written notice on the other party via email, letter, or facsimile transmission to the address nominated by the receiving party, or if no address is nominated to that party's principal place of business or to the email address commonly used by the relevant party or to the email address otherwise advised by the relevant party.

26 MISCELLANEOUS

- (a) The parties to the Hire Agreement are independent contractors and nothing will imply that they are in partnership, agency or legal representatives of the other.
- (b) The Owner reserves the right to revise this document at any time and any such revision will then be communicated and distributed to the Hirer in writing. The Hirer agrees that it will from the date of receipt of such communication be legally bound by such revised document and its sole remedy in the event it does not accept the terms will be to give the Owner immediate notice to terminate the Hire Agreement without penalty.
- (c) The terms and conditions of the Hire Agreement and information obtained by one party from the other party during the performance of the Hire Agreement are confidential and must not be disclosed to any third party except where required by law, stock exchange or regulator to do so.
- (d) The Hirer must not make public announcements or respond to media requests in relation to the subject matter of the Hire Agreement without the written consent of the Owner.

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- (e) If the Owner fails to or delays in exercising any right, power or remedy which it is entitled to under the Hire Agreement, such failure does not amount to a waiver of that right, power or remedy nor does it preclude any further exercise of such rights, powers or remedies as may be provided under the Hire Agreement.
- (f) Any waiver by the Owner must be in writing signed by the Owner and is only effective in relation to the particular obligation or breach in which it is given.
- (g) If any provision of the Hire Agreement is invalid or unenforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without effecting the remaining provisions of the Hire Agreement or effecting the validity or enforceability of that provision in any other jurisdiction.

27 GOVERNING LAW

The Hire Agreement is subject to the law of Queensland and the parties agree to be bound by the laws of that State and submit to the non-exclusive jurisdiction of the courts of that State.

Part B – Additional Terms applicable to Dry Hire

This Part B applies, in addition to Part A, where the Crane hire is a Dry Hire.

28 DRY HIRE


The Hirer provides all things necessary for the operation of the Crane (including the operator, the fuel and the oil) and will attend to everyday maintenance and running repairs during the period of the hire.

29 INSURANCE AND INDEMNITY

- (a) The Hirer is solely liable for and indemnifies the Owner from and against any actions, claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect of loss or damage to the Crane or to any property of the Hirer or third party and shall effect and maintain during the period of the hire insurance against any liability, loss, claim or proceedings, in respect of which it is required to indemnify the Owner, and shall on request produce to the Owner the relevant policy of insurance any receipt for the renewal of during the period of hire.
- (b) The Hirer acknowledges that the Owner does not hold insurance cover for the items being lifted, and will not accept any responsibility for any damage to them caused by any incident including Crane breakdown or operator error.

30 HANDLING OF CRANE

- (a) The Hirer must ensure that any operator of the Crane holds current and relevant licences to operate the Crane, and operates the Crane with due care and diligence.
- (b) The Hirer shall, before and during the period of the hire, produce for inspection by the Owner all the relevant licences.
- (c) The Hirer must provide all fuel, oil, lubricating oil and grease, cleaning and other materials, and labour required for the operation of the Crane. Only fuel and lubricating oils approved by the Owner shall be used for the same during the hire period.
- (d) The Hirer must ensure that only competent drivers or operators are given charge of the Crane while in the Hirers possession and the Hirer must be responsible for all cleaning, lubrication and maintenance adjustments and for any damage occurring due to overloading, mistakes or neglect in handling during the hire period.
- (e) The Owner reserves the right to inspect and test the Crane during the hire.
- (f) The Crane must be returned to the Owner in the same condition (fair wear and tear excepted) as it was provided by the Owner at the start of the hire term including a full tank of fuel, washed and clean.

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31 SAFETY


- (a) The Hirer must ensure that all relevant safety laws and standards related to the safe use and handling of the Crane are complied with during the term of the Hire Agreement, and that the public, the community and the environment are not placed at risk of injury, illness or damage.
- (b) The Hirer must ensure that:
 - (i) the Crane will only be used for a proper purpose and for which it has been designed, manufactured and supplied;
 - (ii) prior to first use, the commencement of each new activity and any daily pre-starts thereafter, the Hirer will fully inspect and walk around the Site and the Crane, complete necessary pre-start checks, review relevant safety and operating manuals, review safety alerts and inspection reports, and take such other steps required to determine the suitability of the Crane to undertake the proposed task. The Hirer will identify any foreseeable hazards or risks of harm in respect of the planned use of the Crane and implement appropriate controls to minimise or where possible, to eliminate the risks in accordance with all relevant laws;
 - (iii) all safety information supplied with the Crane is conveyed to the operator of the Crane and that any safety related signs, banners, flags or warnings supplied by the Owner in relation to the Crane are prominently displayed;
 - (iv) the Hirer's employees, personnel, agents, contractors, or subcontractors operating the Crane will:
 - (A) be fit for duty and not under the influence of drugs or alcohol;
 - (B) be appropriately briefed by the Hirer as to the Site, safe work systems, control and restricted zones, and any applicable lift plans or studies;
 - (C) wear suitable protective and high visibility clothing when working with, on or around the Crane; and
 - (D) operate the Crane to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all relevant laws;
 - (v) it will obtain and furnish to the Owner any necessary permits, consents, approvals or notices required for the use of the Crane; and
 - (vi) the Owner is immediately notified of any incident, near miss, safety breach, fine, penalty or investigation by a regulator during the term of the hire which involves the Hirer, its employees, agents or contractors, and the Owner's personnel or the Crane.
- (c) If the Crane is to be used to lift or transport materials that are noxious, inflammable, hazardous, dangerous or explosive in nature ("**Hazardous Materials**"), the Hirer acknowledges and agrees that it must comply with all relevant laws applicable to the Hazardous Materials and their lifting or transportation at all times during the Hire Agreement.

Part C – Additional Terms applicable to Wet Hire

This Part C applies, in addition to Part A, where the Crane hire is a Wet Hire.

32 WET HIRE

The Owner will provide the Crane, a crane operator, the crane fuel and the crane oil, and will attend to everyday running repairs during the period of hire, except where modified in the Hire Agreement.

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33 FURTHER PAYMENT TERMS

- (a) Any costs incurred by the Owner on behalf of the Hirer in contemplation of the Hire Agreement (e.g. towage, transport, etc) will be invoiced to the Hirer by the Owner at cost plus a margin of 10% to cover overhead, handling costs and profit.
- (b) An additional charge will be made for work performed outside normal working hours (being Monday to Friday, eight hours per day, 7:00am to 3:30pm) and on Saturdays, Sundays or public holidays. A minimum charge of four hours for the Owner supplied operator applies to work carried out on call back, Saturdays, Sundays or public holidays.

34 INSURANCE AND INDEMNITY


- (a) The Hirer shall be liable for and shall indemnify the Owner from and against any actions, claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect of loss or damage to the Crane or to any property of the Owner or third party (collectively, "**Claims**") except to the extent that such Claims arise out of or in connection with any act or omission of the Owner, its employees, consultants, agents or contractors.
- (b) The Hirer acknowledges that the Owner does not hold insurance cover for the items being lifted, and will not accept any responsibility for any damage to them caused by any incident including Crane breakdown or operator error.

35 HANDLING OF CRANE

- (a) The operator of the Crane will be under the direction and control of the Hirer and shall for all purposes in connection with the working of the Crane, be regarded as an agent of the Hirer who alone will be responsible for all claims arising in connection with the operation of the Crane by the operator.
- (b) The Hirer shall not allow any other person to operate the Crane without first obtaining the written consent of the Owner.

36 SAFETY

- (a) The Hirer must ensure that all relevant safety laws and standards related to the safe use and handling of the Crane are complied with during the term of the hire, and that the public, the community and the environment are not placed at risk of injury, illness or damage.
- (b) If the Crane is to be used to lift or transport materials that are noxious, inflammable, hazardous, dangerous or explosive in nature ("**Hazardous Materials**"), the Hirer acknowledges and agrees that it must comply with all relevant laws applicable to the Hazardous Materials and their lifting or transportation at all times during the Hire Agreement.

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