

Contract management program

*Providing you with the best
fighting chance to prevail
when litigation is brought
against your company*

Key provisions of DUAL Specialty Construction & Transport preferred language

Maximum anticipated ground bearing pressure: The Federal Government under OSHA 1926.1402 places the responsibility for ground conditions on the Controlling Entity, likewise, the current volume of ASME B30.5 states that Site Supervisor and/or Lift Director are responsible for ensuring that the operating area for the crane is suitable for the crane with respect to levelness, surface conditions and support capability. Both Fed OSHA and the current volume of ASME B30.5 set a requirement for ground conditions that can adequately support the Equipment and place that responsibility on designated parties. This new wording in industry standards and Government regulations are a true benefit to our crane industry however, it is important to communicate what is required to the Contractor that uses the equipment and the support needed under the outrigger pads and matting to keep our cranes upright. It would be helpful by providing the Contractor with the maximum anticipated ground bearing pressure generated by the Equipment, although it is not stated in the standard or regulation to be our responsibility. In many claims we may have been more successful in transferring the ground condition liability if the required Maximum Anticipated Ground Bearing Pressure generated by the Equipment had been provided. In a lift plan or critical lift this is usually performed but not in taxi crane or concrete pumping service. We need to change the way we do business and use these tools to our advantage and work smarter.

Duration of contract terms and conditions: We have added to the Crane Rental Service Agreement a duration of project provision, that binds the Contractor to the terms and conditions for the duration of the project in the event the contract was not executed on a particular day. We have all seen situations where the Operator gets the rental ticket signed Monday through Thursday but fails to get the rental ticket signed on Friday. On Friday there is an incident and unfortunately the rental ticket wasn't signed by the Contractor, this scenario makes for an uphill battle when trying to get a reviewing Court to rule favorably on enforcement of the Rental Agreement Terms and Conditions. It is more probable that a reviewing Court could reasonably determine there is no binding Agreement in the absence of the signatures of the contracting parties on the day of the incident. This new addition extends the Terms and Conditions throughout the duration of the project.

Subcontractors: We have added a signatory line for Subcontractors to establish a contractual relationship between the Crane or Pump Company and any 3rd Party Subcontractor who has been hired by the Contractor to work in conjunction with Crane or Pump Company to perform their work. Specifically, we have modified the indemnity and insurance provisions to account for these situations and to protect the crane or pump company where you may have a relationship with the Contractor that rented the crane or pump but not the company that uses the equipment.

Indemnification: State specific indemnification is a key provision in any contractual agreement. It allows you to be protected against any anticipated loss or damage, for which your customer accepts responsibility.

Insurance: An insurance requirement provision in your agreement is the easiest way to shield your company from losses. If an insurance requirement provision is included in your contract and a loss occurs, the loss can be tendered to the customer's insurance carrier behind the scenes. By providing this, many times, your customer will not be involved in this process and business relationships will not be compromised.

Operation of equipment provision: This provision is vital, because it provides a strong "borrowed servant" argument for the actions taken by your operator. It is common in a crane rental situation

for the crane operator to be working under the direction and control of another party, whether it be the general contractor, another subcontractor, or your customer. Normally, your operator will be told by someone outside of your company where to set up, what to pick, and will be given signals by another party. Therefore, the operator is acting directly under the orders of another company besides yours. In addition to what is currently stated in your contract we have added a provision that will further protect the standard of care and responsibilities in accordance with the current volume of the ASME standard (American Society of Mechanical Engineers) that further defines the roles and responsibilities of each party at the jobsite based each parties performance of work involving the crane or pump.

Entire agreement clause: We have added a superseding clause to address situations wherein multiple contracts are in play; the superseding clause, added to your contract, will assist us in positioning the contract as the prevailing document, superseding all prior oral and written agreements.

Conditions - ground/power lines/rigging: This provision further outlines responsibilities of your customer. One of the responsibilities outlined in this provision is the responsibility for ground conditions and ground stability. Often, your operator will not be knowledgeable of the ground conditions where the crane will be operating, especially if this is the first day on a jobsite. The regulations require you, and therefore, your operator, to provide support under the outrigger pad that resists crushing, bending, and breaking. There can often be subsurface voids that affect the stability of the ground in which the crane is located. Further, it is not uncommon to have water pipes culverts, tanks, etc. below the ground. These can break, causing ground problems which can eventually lead to crane overturns.

Another area of concern is energized power lines. Our recommended provision states that it is the responsibility of the customer leasing the equipment to keep the equipment away from power line hazards, and to get the power lines de-energized if the equipment will be working around power lines. We have seen claims in which a signalman signaled the equipment to boom down, and the operator boomed down directly into a power line.

The rigging provision basically states that the customer will take responsibility for the adequacy of the rigging and that it is the customer's duty to inspect the rigging. Further, this also addresses the problem of your company's involvement in the rigging. Many times, crane companies are only hired to provide a crane and an operator and are only paid for the crane and operator service. However, customers often expect that rigging is included with the service, even though it may not be. This can cause many problems when an accident occurs, because often the rigging responsibility is not outlined. This provision outlines that it is the customer's responsibility. Of course, if you are hired to do the rigging and paid to do the rigging, this part of the provision can be cut out for that particular job. Customer assumes the responsibility for the method of rigging and agrees that all persons involved in the rigging process are qualified according to OSHA's definition 1926.1401 and are under customer's direct supervision and control.

No reliance on load measure device: A load measuring device provision is an essential element that protects your company and further outlines the responsibility of your customer. It states that the customer will maintain the proper equipment requirements, as well as, agrees to take full responsibility for any and all measurements and weight of the load. The customer also acknowledges that the load measuring device is an operator aide and any dependence on such equipment is at their own risk. By including this in your agreement, it will further protect your company from decisions made on a jobsite regarding your equipment and holds your customer responsible for their actions.

Authorized signature: The authorized signature provision ensures that the representative signing the agreement(s) understands and represents that they have full authority to sign the agreement on behalf of the business entities. This protects your company by expressly stating the person signing the contract has authority to enter into the contract. If a loss would occur, we would have a good argument against the company/contractor when they claim the contract is invalid because the person signing didn't have authority to do so.

Double protection: Your company should be providing a written quote in advance of a job. If there is no written quote, you should consider using quotes. DUAL Specialty Construction & Transport recommends including the exact Terms and Conditions, from your rental ticket, with the quote, or your rental ticket Terms and Conditions should be included on your company website by reference in the quote.

Disclaimer: The recommendations above provide your company relevant contractual language that can allow you to present your position in the event a liability claim has been brought against your company. DUAL Specialty Construction & Transport recommends your company consult with your own legal counsel to be sure it adequately and accurately protects your company.

After

XIZ Crane Rental, Inc.
122 Annapolis Rd Sava City, SC 29643
Ph: 722-436-7880 • Fax: 722-436-4367

CRANE RENTAL SERVICE AGREEMENT (CA)

DATE: _____ DAY OF MONTH, _____ YEAR: _____

CONTRACTOR'S NAME: _____

ADDRESS: _____

CITY & STATE: _____

JOB NUMBER: _____

CLASS OF: _____

WEIGHT: _____

OPERATOR: _____

ADDITIONAL EQUIPMENT: _____

HAVE SIGNED AT START OF JOB

CONTRACTOR: _____

OPERATOR: _____

CRANE COMPANY: _____

Item	Qty	Make	Eq. Type	Operator	Hour

HAVE SIGNED AT END OF DAY

CONTRACTOR: _____

OPERATOR: _____

CRANE COMPANY: _____

TERMS AND CONDITIONS OF CONTRACT (CA)

The Agreement of this Rental Contract, 1118 (CA) (REV. 01/17), 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 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Additional agreements

DUAL Specialty Construction & Transport policyholders have the following additional agreements available to them. Should your company need one of these agreements, please send an email to RiskManagement@nbis.com. Contract requests will be responded to in the order they are received. Turnaround time will be determined by the contract workload at the time the request is made.

Bare equipment rental agreement – This agreement is used when renting equipment, such as forklifts, aerial lifts, or scissor lifts, unmanned, without an operator.

Bare hoist rental agreement – This Agreement is used when renting a material hoist, unmanned, without an operator.

Bill of lading – This BOL should be used when hauling cargo for any customer.

Borrowed equipment use agreement – Anytime a Contractor allows a Subcontractor to utilize the leased equipment, this contract should be executed.

Homeowner's waiver of liability – When working on a residential property, this Agreement should be executed by the owner of the residential property. This Agreement offers protection to the equipment company against third-party claims arising from any damage to the property and/or utilities as a result of the equipment operations.

Leased employee agreement – This Agreement is used when the equipment rental company is providing the Customer with Employee(s) and the Employee(s) is being paid by the equipment rental company.

Lift plan disclaimer – This disclaimer acknowledges that Crane Company must be notified, and Crane Company must agree, should any changes in the Lift Plan occur.

Manned equipment rental agreement – This Agreement is used when renting equipment with an operator.

Master cargo hauling agreement – This Agreement is used when a third-party is hired to haul cargo for your company.

Mobile crane rental addendum for Master Service Agreement (MSA) – This agreement is used when signing an Upper Tier Contract (MSA). The GC renting the Crane is required to get all the subcontractors to sign this Addendum to protect both the GC and the Crane Company.

Owner operator agreement – This Agreement is used when a company desires to transport cargo utilizing an independent trucking contractor.

Purge certification – Containers – This Agreement is used when certification is required that a container has been purged or emptied of its contents prior to lifting.

Standard rigging agreement – This Agreement is used when the equipment company provides the rigging services.

Subcontractor agreement – This Agreement is used when an equipment company subcontracts some or all of the work to a third-party.

Tower crane erection and dismantling agreement – This Agreement is used when the customer hires a third-party subcontractor to perform the A/D of a Tower Crane.

Tower crane rental addendum for Master Service Agreement (MSA) – This agreement is used when signing an Upper Tier Contract (MSA). The GC renting the Crane, when educated, will be

able to add this into their contract and allows all the subcontractors to sign this Addendum to protect both the GC and the Crane Company.

Used equipment sales contract – This Agreement is used when facilitating a sale of used equipment.

Weekly manned crane rental agreement – This Agreement is used when the duration of a job is expected to last more than one day.

Yard/warehouse storage agreement – This Agreement is used when a customer requests to store its personal property/equipment at your yard.

Third party contract review – Upper tier/third-party contract reviews (contracts you are asked to sign by a third party) should be conducted by your own legal counsel. Review and/or recommendations of the language contained in an Upper tier/third party contract cannot be completed by DUAL Crane, Concrete, & Specialized Transport.

It is our sincere hope that your company will take advantage of this policy holder service. Together, by implementing the necessary changes in the contractual documents that govern the relationships on a jobsite, we can provide you with the best “fighting chance” if a claim is made. If your company hasn’t submitted your contracts to DUAL Specialty Construction & Transport yet, please send them to:

Risk Management Office:

Phone: (877)-720-7677

send via Email: RiskManagement@nbis.com

The materials presented herein are for reference only. Contract review will not and cannot determine all legal or compliance responsibilities for your company with all federal or state or local laws. Any materials delivered will be shared with the understanding that the DUAL Specialty Construction & Transport is not engaged in rendering legal advice.