



GENERAL TERMS AND CONDITION FOR PLANT HIRE

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless a contrary intention appears:

Business Day means any day except Saturdays, Sundays, public holidays in the State or Territory where the Site is located and days between Christmas Day and New Year's Day.

Dispute means a dispute or controversy between the parties arising out of or in connection with this Plant Hire Agreement.

Dispute Notice means a written notice stating that it is issued under clause 19.1 and that outlines the nature of the Dispute.

Estimated Hire Period means, in relation to each item of Plant/Equipment, the period beginning on the Hire Start Date and ending on the estimated end date of hire, as specified in the Plant Order.

Hire Rates means the rates for each item of Plant/Equipment specified in the Plant Order.

National Code means the National Construction Code and Building Code of Australia as in force from time to time.

Plant/Equipment means the plant and/or equipment specified in the Plant Order to be provided by the Supplier in accordance with the terms of this Plant Hire Agreement.

Plant Hire Agreement and/ or Agreement means the agreement between the Contractor and the Supplier comprising the Plant Order and these general terms and conditions.

Plant Order means the written order for the supply of hire Plant/Equipment issued by the Contractor.

Site means the place specified in the Plant Order.

Standing Rate means the Standing Rate specified in the Plant Order and payable in accordance with clause 5.3.

Sum means the amount specified in the Plant Order.

Working Rate means the Working Rate specified in the Plant Order and payable in accordance with clause 5.2.

1.2 In this Plant Hire Agreement, unless the contrary intention appears:

1.2.1 the terms "including", "include" and "includes" mean including, include and includes (as applicable) without limitation;

1.2.2 a reference to a document or agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time; and

1.2.3 references in this Plant Hire Agreement to any legislation or laws shall include and refer to any replacements, amendments, modifications or supplements thereto, as well as to any delegated or subordinate laws relating to such legislation or laws that have legally binding effect including regulations and by-laws.

2. TERM AND TERMINATION

2.1 This Plant Hire Agreement commences on the

Date of the Plant Order.

2.2 The Supplier may accept these terms by written confirmation or compliance with the Plant Order and unless expressly agreed otherwise, these general conditions shall apply to each Plant Order.

2.3 The Supplier shall provide the Plant/Equipment on a "as required basis" and only after receipt of a written Plant Order issued by the Contractor. No obligations for either party shall arise from this Agreement unless a Plant Order has been issued.

2.4 The Plant Order shall specify the type of Plant/Equipment required, the Estimated Hire Period and the Rates.

3. SUPPLY AND MAINTENANCE

3.1 The Supplier shall hire to the Contractor the Plant/Equipment.

3.2 The Plant/Equipment shall, at the Supplier's cost except where otherwise stated in the Plant Order, be in accordance with the manufacturer's specification, shall be properly maintained, registered, in good repair and shall be fit for purpose and suitably licensed and registered for operation.

3.3 It shall be the responsibility of the Supplier to deliver the Plant/Equipment and to collect the Plant/Equipment from the Site. Loading and off-loading of the Plant/Equipment at the Site shall be the responsibility of the Supplier.

3.4 The Plant/Equipment shall be delivered to the Site and shall be fully operational as required by this Plant Hire Agreement at the Hire Start Date/Time stated in The Plant Order. The Supplier will be notified by the Contractor when the Plant/Equipment is no longer required whereupon the period of hire will be deemed terminated and the Plant/Equipment shall be promptly collected from the Site by the Supplier. The Estimated End of Hire Date is an estimate only.

3.5 The Supplier shall meet for the duration of the work performed, services provided or goods supplied under this Plant Hire Agreement, all requirements at law, including the holding of all necessary licences and approvals.

3.6 The Supplier shall comply with all statutory requirements, all authority requirements, all industrial agreements and any government code(s) that may apply to the Project, to the extent relevant to the hire of the Plant/Equipment.

3.7 The Supplier shall comply, and shall ensure that all Operators comply, with all directions given by or on behalf of the Contractor or the Principal, in relation to the Site.

3.8 The National Code, as revised from time to time, applies to the Project. The Supplier shall be taken to have read and agreed to comply with the National Code.

3.9 The Supplier shall produce to the Contractor any document requested by the Contractor or any person authorised by the Contractor (including an inspector) necessary to demonstrate compliance with the National Code, within the period directed by the Contractor.

4. INSPECTIONS

4.1 The Contractor shall inspect each item of

- Plant/Equipment upon delivery to Site. The Contractor may, in its sole and absolute discretion, reject any item of Plant/Equipment that does not comply with the standards set out in this Plant Hire Agreement. The Supplier shall, at its own cost and without delay, supply a replacement for any item of Plant/Equipment rejected by the Contractor.
- 4.2 The Supplier shall inspect each item of Plant/Equipment upon collection from Site. The Supplier shall notify the Contractor of any damage (fair wear and tear excluded). If the Supplier does not give a notice required by this clause 4.2 within 5 Business Days after the collection of that item of Plant/Equipment, the Plant/Equipment shall be deemed not to be damaged and the Contractor shall not be liable for any claim in respect of damage.
- 5. HIRE RATES**
- 5.1 The Hire Rates for the Plant/Equipment shall be as stated in The Plant Order and such rates shall not be subject to price escalation.
- 5.2 The Working Rate shall apply at such times as the Plant/Equipment is fully operational as required by this Plant Hire Agreement and the Plant/Equipment is operating as directed by and to the satisfaction of the Contractor.
- 5.3 The Standing Rate shall apply when the Plant/Equipment is in full operating condition as required by this Plant Hire Agreement and the Plant/Equipment is available for use on the Project but the Contractor does not require the use of the Plant/Equipment at that time, provided however that the Standing Rate shall not apply on Public Holidays, rostered days off, Christmas/New Year shutdown and times that work on the Project cannot proceed for reasons beyond the Contractor's reasonable control.
- 5.4 No Hire Rate shall be payable during any time that the Plant/Equipment is not in full operating condition or is not available for hire to the Contractor.
- 5.5 Mobilisation is a lump sum payable in respect of the initial delivery of the Plant/Equipment and unloading at the Site.
- 5.6 Demobilisation is a lump sum payable in respect of the final removal of the Plant/Equipment from the Site including the removal of all rubbish and other things belonging to the Supplier.
- 6. DAMAGE TO PERSONS AND PROPERTY**
- 6.1 The Supplier shall indemnify and keep indemnified the Contractor against all physical loss or damage to property, including the Contractor's and/or the Principal's works, and all loss or damage resulting from death or personal injury arising out of or resulting from:
- 6.1.1 the Plant/Equipment not complying with the requirements of clause 3.2 or clause 12;
- 6.1.2 the use or operation of the Plant/Equipment where the Supplier is responsible for the supply of an Operator for the Plant/Equipment; and/or
- 6.1.3 the Supplier failing to comply with its obligations.
- 6.2 The indemnity in clause 6.1 shall be reduced to the extent that any loss or damage was caused or contributed to by any act or omission of the Contractor.

- 7. QUALITY**
- 7.1 The Supplier shall maintain a quality system in accordance with the standard stated in the Plant Order
- 8. SAFETY, HEALTH AND ENVIRONMENT**
- 8.1 The Supplier shall immediately report to the Contractor any injury to or death of any person or any environmental damage, using any form approved by the Contractor. The Supplier shall permit and procure such further permissions as may be necessary for the Contractor or any person nominated by the Contractor to make inspections, conduct interviews or take statements from any person engaged by the Supplier in relation to such injury, death or damage.
- 8.2 The Supplier shall carry out the work under this Plant Hire Agreement in a manner which does not cause or threaten to cause pollution, contamination or environmental harm of, under or outside the Site.
- 9. INSURANCE**
- 9.1 If required, the Supplier shall take out and maintain the following insurance for the duration of this Plant Hire Agreement and any extension of it:
- 9.1.1 public liability (and, where relevant, product liability) insurance to cover its liability and its subcontractors' liability to third parties for loss of or damage to property (including loss of use thereof) and the death of or injury to any person. The insurance shall:
- (a) be for an amount not less than \$20,000,000 per occurrence and unlimited (or \$20,000,000, in the case of product liability cover) in the annual aggregate;
- (b) waive all express or implied rights of subrogation against the Contractor and the Principal and their respective directors, officers and employees; and
- 9.1.2 mobile plant insurance in respect of all registered and unregistered mobile plant owned, leased, hired or used by the Supplier. The insurance shall:
- (a) include gap cover for liability arising out of personal injury, death or damage to property claims;
- (b) have a limit of liability of not less than the full market value of the mobile plant against loss or damage and unlimited in the annual aggregate; and
- (c) contain a waiver of subrogation in favour of the Contractor and the Principal and their respective directors, officers and employees;
- 9.2 The Supplier shall notify the Contractor immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected under this clause, or if any claim is made, and shall keep the Contractor fully

- informed of all subsequent developments regarding the claim.
- 9.3 The Supplier shall ensure that at all times during the period of hire, the Plant/Equipment and all vehicles used by the Supplier is insured as may be required at law and is insured against loss or damage for not less than its market value.
- 9.4 Each of the insurance policies required to be effected by the Supplier by this clause 9 shall be effected:
- 9.4.1 prior to the commencement of the hire of the Plant/Equipment; and
- 9.4.2 with a reputable insurer with a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better and otherwise in terms approved by the Contractor in writing.
- 9.5 Whenever requested by the Contractor, the Supplier shall produce evidence that it has satisfied all of its insurance obligations under this Plant Hire Agreement.
- 9.6 If the Supplier does not provide the proof of insurance required under this clause 9, the Contractor may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to the Contractor.
- 9.7 Insurance does not limit the Supplier's liability under this Plant Hire Agreement or otherwise.
- 10. PAYMENT**
- 10.1 Payment claims shall be submitted monthly on or before the 25th day of each month in which Plant/Equipment is hired to the Contractor.
- 10.2 The Supplier shall submit payment claims in the form required by the Contractor and containing the following information:
- 10.2.1 the number of the Plant Order;
- 10.2.2 a schedule of the items of Plant/Equipment and Operators supplied in the period covered by the progress claim; and
- 10.2.3 such supporting information regarding the progress claim as the Contractor may require.
- 10.3 The Contractor may at any time:
- 10.3.1 request any additional information from the Supplier in respect of a payment claim; and
- 10.3.2 direct the Supplier to provide documentary evidence that at the date of the direction all persons who have been engaged by the Supplier have been paid all moneys due and payable to them in respect of their engagement on the work under this Plant Hire Agreement.
- 10.4 If the Contractor disputes any amount claimed in a payment claim, the Contractor shall within 10 Business Days
- 10.4.1 make a determination of the amount payable and provide a payment certificate to the Supplier:
- (a) identifying the payment claim to which the certificate relates;
- (b) stating that determination, including, for each item of the payment claim:
- (i) the amount which is not disputed and therefore payable; and
- (ii) if applicable, the amount which is disputed and the reason(s) it is disputed; and
- 10.4.2 pay any amounts not in dispute in accordance with clause 10.8.
- 10.5 The Supplier shall at all times maintain complete true and accurate records to enable the calculation and verification of Hire Rates. No amount shall be payable by the Contractor in respect of Hire Rates not substantiated by such records.
- 10.6 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid.
- 10.7 Without prejudice to any other rights, the Contractor may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to the Contractor, or which the Contractor has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with this Plant Hire Agreement or any other contract between the Contractor and the Supplier.
- 10.8 Payment of the amount due in respect of each progress claim shall be made by (at the Contractor's discretion) electronic funds transfer or cheque within 30 Business Days from the end of the month in which the payment claim was submitted.
- 11. GOODS AND SERVICES TAX (GST)**
- 11.1 Terms used in this clause 11 which are defined in the GST Act have the same meaning in this clause 11. The GST Act means *A New Tax System (Goods & Services) Act 1999 (Cth)*.
- 11.2 Each party acknowledges and agrees that:
- 11.2.1 it is registered for GST; and
- 11.2.2 it shall indemnify the other party against any loss that may arise from it not being registered for GST.
- 11.3 For each supply made by a party (**Provider**) under or in connection with this Plant Hire Agreement on which GST is imposed: the consideration payable or to be provided for that supply under this Plant Hire Agreement but for the application of this clause (**GST exclusive consideration**) shall be increased by, and the recipient of the supply (**Recipient**) shall also pay to the Provider, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
- 11.3.1 the amount by which the GST exclusive consideration is increased shall be paid to the Provider by the Recipient without set off or deduction, at the same time as the GST exclusive consideration is payable or to be provided,
- subject to a valid tax invoice (**Tax Invoice**) being provided in respect of the GST exclusive consideration.
- 12. WARRANTIES**
- 12.1 In addition to any other warranties set out in this Plant Hire Agreement, the Supplier warrants

that:
12.2 each item of Plant/Equipment is free from defects, fit for its intended purpose and capable of continuous safe operation at its full name plate capacity for a period of six months from the Hire Start Date;

12.2.1 any emissions caused by the operation of the Plant/Equipment by the Contractor or the Supplier (as the case may be) when used for the purpose for which the Plant/Equipment is hired will comply with all laws related to pollution; and

12.2.2 if any of the Plant/Equipment does not comply with clauses 12.1 or 12.2.1, and the reason for the failure is attributable to the Plant/Equipment's design, material or workmanship or maintenance or repair work performed by the Supplier, the Supplier shall:

- (a) provide the Contractor with recommendations for any necessary alterations or repairs; and
- (b) provide any required parts at its own cost; and
- (c) carry out any required repairs at its own cost; or
- (d) pay to the Contractor the cost of any repairs carried out by the Contractor or a third party.

13. DEFAULT AND TERMINATION

13.1 If the Supplier:

13.1.1 breaches any provision of this Plant Hire Agreement and the breach has not been remedied 7 days after the Supplier has been requested by the Contractor to do so; or

13.1.2 becomes bankrupt or insolvent within the meaning set out in the *Corporations Act 2001(Cth)*,

then the Contractor may, at its sole discretion:

13.1.3 remedy that failure (including by taking possession of and using all or any part of the Supplier's materials, equipment, or other things used for the performance of the work under this Plant Hire Agreement) and the cost of doing so (after the Contractor has made due allowance for the use of, or consumption of, the Supplier's materials, equipment or other things) shall be set off in accordance with clause 10.7; or

13.1.4 terminate this Plant Hire Agreement.

13.2 Upon termination of this Plant Hire Agreement under clause 13.1.4:

13.2.1 the Contractor may take possession of and use all or any part of the Supplier's materials, equipment, or other things used for the performance of the work under this Plant Hire Agreement;

13.2.2 the Contractor shall be liable only for those amounts which would have been payable if this Plant Hire Agreement had not been terminated as at the date of termination; and

13.2.3 any cost, loss and/or damage that the Contractor has incurred or is likely to incur as a result of the Supplier's default (after the Contractor has made due allowance for the use of, or consumption of, the Supplier's materials, equipment or other things) will be determined by the Contractor and that amount will be set off in accordance with clause 10.7 or otherwise become a debt due and payable from the Supplier to the Contractor.

14. TERMINATION FOR CONVENIENCE

14.1 The Contractor may at any time for any reason, at the Contractor's sole and absolute discretion, terminate this Plant Hire Agreement or any part thereof for its convenience, by giving written notice to the Supplier.

14.2 Without prejudice to the Contractor's rights under this Plant Hire Agreement or otherwise, upon such termination the Supplier shall:

14.2.1 take the steps required under clause 13.2; and

14.2.2 subject to clause 13.2, be paid for the work under this Plant Hire Agreement performed prior to the date of termination and costs reasonably incurred by the Supplier in demobilisation; and

14.2.3 shall not be entitled to recover any loss of profits arising as a result of termination or make any other claim arising out of the termination.

14.3 If for any reason a purported termination by the Contractor under clause 13 is ineffective, the purported termination is not a breach or repudiation of this Plant Hire Agreement and is deemed to have been effected under clause 14.1.

15. ASSIGNMENT AND SUB-CONTRACTING

The Supplier shall not assign, novate, mortgage or encumber the whole or any part of this Plant Hire Agreement nor any payment, right or interest thereunder, or subcontract any of the work under this Plant Hire Agreement without the Contractor's prior written approval (which shall not be unreasonably withheld and may be conditional). The acts and omissions of any subcontractors are deemed to be the acts and omissions of the Supplier, for which the Supplier remains responsible under this Plant Hire Agreement.

16. LIABILITY

16.1 Notwithstanding any other provision of this Plant Hire Agreement, neither party shall be liable to the other for loss of revenue, loss of profit, loss of business opportunity or any other indirect, remote, consequential or special loss or damage.

17. REPRESENTATIVES

17.1 The Supplier shall have a competent, authorised representative acceptable to the Contractor on site at all times during the performance of the work (**Supplier's Representative**). The Supplier's Representative is named in the Plant Order.

17.2 The Supplier shall not deal with or comply with the directions of any person other than an authorised representative of the Contractor. The Contractor shall have no liability in respect of

- directions by a person who is not an authorised representative of the Contractor.
- 18. SECURITY OF PAYMENT ACT**
- 18.1 For the purposes of this clause 18, "Security of Payment Act" means the *Construction Contracts Act 2004 (WA)* or the equivalent legislation as applicable in the relevant jurisdiction, each as amended from time to time.
- 18.2 The Contractor and the Supplier agree that the Chair for the time being of the Chapter of the Institute of Arbitrators and Mediators Australia in the jurisdiction of the law governing this Plant Hire Agreement, or if the law governing this Plant Hire Agreement is the law of Queensland then the Registrar appointed under the *Building and Construction Industry Payment Act 2004 (Qld)*, is the authorised nominating authority to which any adjudication application under the Security of Payment Act is to be made.
- 18.3 If the Supplier suspends the whole or part of the work under this Plant Hire Agreement pursuant to the Security of Payment Act: to the extent permitted by the Security of Payment Act, the Contractor is not liable for any cost, expense or liability including delay or disruption costs whatsoever suffered or incurred by the Supplier as a result of the suspension;
- 18.3.1 the Contractor may direct the Supplier to omit the whole or part of the suspended work and thereafter the Contractor may engage others to carry out the suspended work; and
- 18.3.2 the Contractor may terminate this Plant Hire Agreement by giving notice to the Supplier.
- 18.4 Failure by the Contractor to set out in a progress certificate or statement an amount which the Contractor is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Supplier by the Contractor shall not prejudice the Contractor's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under this Plant Hire Agreement.
- 18.5 The Supplier agrees that the amount set out in a progress certificate or statement given by the Contractor under clause 10.4 is, for the purposes of the Security of Payment Act, the amount of the 'progress payment' calculated in accordance with the terms of this Plant Hire Agreement to which the Supplier is entitled.
- 18.6 As appropriate under the relevant Security of Payment Act, the date on which the Supplier shall claim payment is, for the purposes of the Security of Payment Act, the 'reference date'.
- 19. NOTICES**
- 19.1 All notices or other formal communications between the Parties, shall be served in writing by post, courier services, hand or email to the address for service of each Party shown in the Plant Order.
- 19.2 Notices sent by email shall be deemed to be received by no later than 9.00am (local time) the following Business Day unless the recipient can demonstrate the email was not received by its server.
- 20. DISPUTE RESOLUTION**
- Dispute Notice**
- 20.1 If a Dispute arises then either party to this Plant Hire Agreement may serve the other party with a Dispute Notice.
- Conferral**
- 20.2 Within 5 Business Days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer in an attempt to resolve the Dispute, which conferral shall be confidential and on a 'without prejudice' basis.
- 20.3 If the dispute is not resolved within 35 days of the service of the Dispute Notice, then:
- 20.3.1 the Contractor may propose to the Supplier an alternative method of dispute resolution; and
- 20.3.2 save where an alternative method of dispute resolution has been agreed, either party may commence legal proceedings.
- 20.4 Neither party may commence legal proceedings (except for urgent interlocutory relief) in relation to any dispute unless the procedure referred to in this clause 20 has been strictly complied with.
- 20.5 Notwithstanding the existence of a dispute, the Supplier shall continue to carry out the work under the Plant Hire Agreement.
- 21. SUPPLIER AS TRUSTEE**
- 21.1 The following provisions apply if the Supplier enters into this Plant Hire Agreement as trustee of a trust (**Trust**).
- 21.2 The Supplier enters into this Plant Hire Agreement both:
- 21.2.1 as trustee of the Trust; and
- 21.2.2 in its own right.
- 21.3 The Supplier shall not, without the prior written consent of the Contractor:
- 21.3.1 resign as trustee of the Trust or cause or permit any other person to become an additional trustee; or
- 21.3.2 do, or fail to do, anything in breach of the terms of the constituent documents of the Trust.
- 22. MISCELLANEOUS**
- Status of Supplier**
- 22.1 The Supplier shall remain an independent contractor, shall not act as or be regarded as an agent or employee of the Contractor and shall be exclusively responsible for its own employees, subcontractors, suppliers and consultants.
- Entire Agreement**
- 22.2 This Agreement replaces and supersedes all other agreements (if any) between the parties covering the subject matter of the Agreement.
- Waiver**
- 22.3 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver by the Contractor is not effective unless it is in writing, signed by the Contractor. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- Confidentiality**
- 22.4 The Supplier shall keep the details of this Plant Hire Agreement and all information provided by the Principal or by the Contractor confidential for the duration of this Plant Hire Agreement and for a period of 5 years from the date of expiry or

termination of, this Plant Hire Agreement.

Audit

22.5 The Contractor shall be entitled at any time to arrange for an independent auditor to inspect the Supplier's Project related records to verify the information or evidence provided by the Supplier, including in relation to a progress claim. The cost of such an audit shall be borne by the Contractor unless the audit shows that the Supplier's information or evidence contains material errors in which case the cost of the audit shall be borne by the Supplier and shall be a debt due and payable by the Supplier to the Contractor.

Governing Law

22.6 This Plant Hire Agreement is governed by the laws in force in the State or Territory in which the work under the Plant Hire Agreement is performed.

No Merger

22.7 The warranties, undertakings and indemnities in this Plant Hire Agreement will continue in full force and effect until the respective rights and obligations of the Parties have been fully performed and satisfied.

Further Assurance

22.8 Each party shall promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Plant Hire Agreement.