

## • Terms and Conditions

We at PatAsh and Civil Group Pty Ltd are pleased to be working towards an ongoing relationship with you and provide these Contractor terms and forms to register that relationship and help ensure that it is mutually beneficial into the future, for us, you, and our clients.

When you have read the Contractor Agreement, Please:

Complete the details in the schedule

Sign the Agreement by completing the execution clause applicable to you (eg: company, sole trader)

Complete the forms attached to the Agreement and ensure that all required attachments are provided, and

Return signed Agreement, forms and required attachments to your PACG contact above, scanned and emailed to the email address for PACG noted in the Schedule, or posted to the address for PatAsh and Civil Group noted in the schedule.

Please forward any queries you have to the PatAsh and Civil Group contact.

Contractor agreement

### PARTIES

PatAsh and Civil Group Pty Ltd, trading as PatAsh and Civil Group, of PO Box 424, North Geelong VIC 3215

and

The Contractor named in the Schedule ('Contractor')

### RECITALS

A. PACG conducts a Civil Construction and Plant Hire business in Victoria. Its further details are in the schedule.

B. The Contractor owns and/or operates a Vehicle/s and/or Plant suitable for, and is experienced in, and to the extent necessary licensed for, the provision of Services. Its further details are in the Schedule.

C. The Contractor has agreed to provide the services to PACG on the terms and conditions set out in this agreement.

### DEFINITIONS and INTERPRETATION

Unless the opposite intention appears:

- a) 'Business Day' means a week day on which trading banks are open for banking business;
- b) 'Insolvency Event' means insolvency within the meaning of the Corporations Act 2001, failure to comply with a statutory demand, appointment of administrator or similar officer, being subject of an order or resolution for winding up or similar, being subject to bankruptcy proceedings or being subject to any similar event whether as a corporation or an individual;
- c) 'Law' means any statute, regulation, determination, code, ordinance, standard or similar that has the force of law, and guidelines of all relevant governments, authorities and bodies, including but not limited to those in relation to traffic, road safety and road management rules, occupational health and safety, environmental protection, mass and dimension limits, load restraint rules, loading and securing vehicles and plant, and 'chain of responsibility' rules in any relevant jurisdiction at any relevant time;
- d) 'Materials' means soil and other related materials;
- e) 'Proposal' means a proposal, as described in clause 2, for the Contractor to carry out Services;
- f) 'Representatives' means officers, employees, contractors or sub-contractors as the case may be, agents and consultants and the like;
- g) 'Services' means services in relation to transporting Materials;

- h) 'Term' means the period described in clause 1;
- i) a reference to any Law includes a reference to it as amended, supplemented or substituted from time to time;
- j) anything required to be done on a day that is not a Business Day where it is required to be done, must be done on the next Business Day;
- k) a reference to PACG includes a reference to any of its related or associated entities at any time and this agreement is for the benefit of PACG and any such entity;
- l) the singular includes the plural and vice versa;
- m) a reference to one gender includes a reference to any other;
- n) the Recitals form part of the terms of this agreement.

## OPERATIVE PROVISIONS

### 1 TERM

This agreement commences on the Commencement Date referred to in the Schedule, or on the date the last party signs if no date is inserted in the Schedule. This agreement will continue until terminated under its terms, and in any case, either party may terminate this agreement for any reason on 14 days written notice to the other party.

### 2 SERVICES

- 2.1.1 PACG may communicate a Proposal to the Contractor by providing it to the Contractor by any medium, and may make the same Proposal to any number of other independent contractors, in its complete discretion.
- 2.1.2 A Proposal remains open for acceptance until it has been accepted by the Contractor, or until it is withdrawn by PACG.
- 2.1.3 The Contractor acknowledges that it has no exclusive right in respect of Proposals, is not entitled to any minimum number or frequency of Proposals from PACG, or a minimum amount of fees or income through Services to PACG.
- 2.1.4 If there is any conflict between the terms of this agreement and those of a Proposal or any other documentation related to this agreement, this agreement will prevail to the extent of such conflict.

### 3 RELATIONSHIP OF PARTIES

- 3.1.1 Nothing in this agreement, whether express or implied, is intended or will be taken to create or suggest a partnership, joint venture, or agency or employment between PACG and the Contractor.
- 3.1.2 The Contractor is an independent contractor owning and conducting its own business. Subject to this agreement and the particular requirements and Services it provides under this agreement, the Contractor will determine its hours of work, processes and policies applicable to its business and its performance of the Services. There is no exclusive arrangement between the parties in any circumstance. The Contractor is free to provide its service to anyone at any time, and to accept or reject or reject Proposals from PACG in its absolute discretion.

### 4 CONTRACTOR OBLIGATIONS

- 4.1 The contractor must perform its obligations under this agreement and provide the Services :
  - 4.1.1 in a safe, efficient, professional, workmanlike and businesslike manner, and to the standard of quality expected of a contractor providing services the same or similar to the Services, including ensuring that nay person involved in the provision of the Services maintains a professional appearance, manner and conduct at all relevant times;
  - 4.1.2 with all reasonable and professional care appropriate in performing the Services, and in operating Vehicles or Plant for the purposes of this agreement, including carrying out all reasonable and lawful requirements in respect of loading, unloading, carriage and

delivery;

4.1.3 in compliance with all applicable Laws, licenses and permits; and

4.1.4 in accordance with all Proposals it has accepted and to the reasonable satisfaction of PACG.

4.2 The Contractor must :

4.2.1 notify PACG immediately it is aware of any :

(a) possible inability of the Contractor to perform any Services in compliance and accordance with this agreement;

(b) accident or damage affecting Vehicle, Plant or other material under the control of the Contractor;

(c) breach or potential breach of any road safety Laws;

4.2.2 at the completion of the Services relating to the relevant Proposal, or at any other time properly required, promptly submit to PACG and whoever else properly requires, all duly and accurately completed documents, records and receipts ('Dockets') issued by PACG or its client or customer in relation to provision of Services by the Contractor;

4.2.3 account to PACG for the use and storage of any equipment provided by PACG for the purposes of provision of Services, and use all reasonable care in respect of such use and storage.

4.2.4 ensure compliance with Laws and requirements in respect of site risk assessments and safety checks and ensure that all Vehicle and Plant are safe for the purposes of undertaking the Services;

4.2.5 keep Vehicle and Plant Properly maintained and serviced; registered and comprehensively insured at all times during the Term;

4.2.6 ensure compliance with all Laws and requirements in respect of statutory mass and load and dimensions, provide to PACG details of Vehicles that the contractor will use in the performance of the Services and all relevant risk assessments, and ensure all load and dimension markings on the vehicle and Plant are accurate;

4.2.7 ensure that any person operating Vehicle or Plant at any relevant time holds a current full licence of the relevant type, and operates such Vehicle or Plant in accordance with all relevant Laws;

4.2.8 not, and must ensure that each of its Representative does not, operate or allow any other person to operate Vehicle or Plant while :

(a) in breach of any statutory limit in relation to concentration of, or under the influence of, alcohol or any drug; or

(b) in excess of any applicable mass or loading limits or dimensions.

4.3 The Contractor :

4.3.1 is solely responsible and liable in respect of all day-to-day expenses including fuel, and for repairs and maintenance of Vehicle and Plant and for all costs of insurance, registration and licensing in relation to Vehicle and Plant and in relation to drivers; and

4.3.2 must keep accurate records of maintenance, repairs and servicing of Vehicle and Plant. And must provide a copy of such records to PACG upon its reasonable request.

## 5 CONTACTOR WARRANTIES

The Contractor warrants that :

5.1 it and all of its representatives are competent to properly and sagely carry out the Services;

5.2 it and all of its Representatives possess the necessary skills, qualifications and experience to properly and safely carry out the Services;

5.3 all the information provided by the Contractor to PACG for the purposes of this agreement is accurate and complete;

5.4 it and all its Representatives will comply with The Heavy Vehicle Driver Fatigue National Model legislation ensuring all requirements for work/rest are satisfied;

5.5 it will conduct itself and will ensure that its Representatives conduct themselves in a manner consistent with relevant industry codes of conduct and standards for professional drivers.

## 6 INTELLECTUAL PROPERTY

The Contractor will:

6.1 not use the brand name 'PACG' or any associated brand name, trade mark or logo,

registered or unregistered, other than during and as necessary and appropriate for the purposes of the provision of Services under this agreement: and  
6.2 immediately upon termination of this agreement cease to use any such brands, marks or logos and return to PACG, or deal with as directed by PACG, all and any documents and items bearing any such brands, marks and logos.

## 7 PAYMENT

7.1 PACG will pay the contractor in arrears in an amount according to the relevant Proposal, for Services completed 30 days EOM in receipt of the relevant Dockets and valid tax invoice, subject to :

7.1.1 Proper completion of the Services and the proper performance by the Contractor of its obligations under this agreement.

7.1.2 Any deductions which PACG may properly make against amounts owing to the Contractor under this agreement, which include but are not limited to fees, commissions and insurance contributions.

7.2 PACG will make payments by direct deposit into the bank account nominated by the Contractor and set out in the Schedule, or in such other manner as PACG may choose. The Contractor will provide bank account details upon signing this agreement, and authorises PACG to make direct payment into that account.

7.3 The Contractor acknowledges that PACG has no obligation to pay for any part of the Services for which a valid tax invoice has not been received.

7.3.1 PACG will treat any invoice dated a previous month but received after the 15<sup>th</sup> of current month, as the date received and this invoice will fall within the 30 day EOM payment terms from the date received.

7.4 The Contractor acknowledges that if it does not provide PACG with an ABN, PACG is obliged to deduct 46.5%, or other such percentage as required by law at any time, of amounts payable to the Contractor, and to remit that amount to the Australian Tax Office as PAYG tax.

7.5 The Contractor warrants that it is registered for GST purposes, and must advise PACG if it ceases to be registered for GST.

## 8 LAWS AND POLICIES

8.1 The Contractor must :

8.1.1 inform itself in relation to all applicable environmental, occupational health and safety ('OHS') and other Laws and PACG's OH & S policies, comply with such Laws and policies and ensure that its Representatives are so informed and comply;

8.1.2 notify PACG immediately if a breach of any such Laws or policies has occurred, or may occur, or if any notifiable incident occurs during the provision of Services, or if the Contractor is issued with any notice by a regulating authority in relation to matters governed by any such Laws.

8.1.3 comply with, and ensure that its Representatives comply with, any reasonable instructions by PACG, or any site controller or regulatory authority in relation to any such Laws or policies;

8.1.4 provide upon request by PACG evidence to the satisfaction of PACG that the Contractor and its Representatives comply with all such Laws and policies, including provision of copies of all and any relevant certificates, licences and permits;

8.2 If PACG reasonably believes that the Contractor or any of its Representatives are or may be breaching any applicable environmental, OHS or other Laws, PACG may give to the Contractor notice of termination of this agreement with immediate effect.

## 9 LIABILITY, INSURANCE, INDEMNITIES and ACKNOWLEDGEMENTS

9.1 The Contractor is and remains the sole employer or principal, of any person providing services to the Contractor for the Contractor to carry out the Services under this agreement. Accordingly, the Contractor alone is responsible for the payment of and will indemnify PACG against all and any costs, losses, demands, expenses or liabilities ('Claims') in respect of each such person, including but not limited to all WorkCover and other workers compensation insurance premiums, levies and excesses, taxation instalment

deductions, superannuation contributions and every other obligation under a relevant Law arising from the employment or engagement of such person. If and when PACG is required to pay any such amounts, the Contractor will reimburse it in full on demand.

9.2 The Contractor indemnifies and will keep indemnified PACG and its Representatives against any Claims that arise from any breach of this agreement by the Contractor or from any negligent act or omission of the Contractor or any of its Representatives in the carrying out of the Services.

9.3 The Contractor must at its own cost take out and keep current at all times during the Term all compulsory insurances with respect to Vehicle and Plant, WorkCover insurance, and public liability insurance for cover of at least \$20 million. The Contractor must, at the Commencement Date and at all other times when reasonably requested by PACG, provide written evidence that it is complying and has complied with its obligations under this clause.

9.4 The Contractor must, at the direction of PACG make good at its own cost any Services that do not conform to any of PACG's specifications or requirements or that are not done in accordance with the relevant requirements of this agreement.

9.5 The Contractor will indemnify PACG against any Claims (including all legal fees) arising from the provision of the Services, any breach of this agreement by it or its Representatives, or any unlawful or negligent act or omission of the Contractor or its Representatives

9.6 To the extent permitted by law, the Contractor releases PACG from all Claims or injury in connection with the Services, other than Claims or injury to the extent caused by PACG's negligence or breach of this agreement.

9.7 The Contractor acknowledges that in entering into this agreement and in providing Services it has not and will not rely on any statement or representation on the part of PACG or its Representatives in relation to any matter connected with this agreement.

9.8 To the fullest extent permitted by law PACG excludes all liability to the Contractor and to its Representatives in respect of any Claims arising directly or indirectly from any negligent act or omission of PACG or any of its Representatives.

9.9 Notwithstanding anything in this agreement, a party is not liable to the other party to make any payment (whether by way of indemnity, damages or otherwise) for any disputed invoice, breach of this agreement or for negligence unless a Claim is made in writing within six months after the circumstances giving rise to the claim were first known or ought to have been known by the party claiming. Any such Claim must include reasonable detail in respect of the nature of the Claim and the amount sought.

9.10 The Contractor acknowledges that PACG has no obligation to make any superannuation contribution in respect of the Contractor to any person employed or engaged by the Contractor.

9.11 Neither party will be liable to the other for any indirect or consequential loss of any kind, whether for breach or negligence. The parties agree that indirect or consequential loss includes loss of business opportunity, loss of profits, payment of liquidated sums, penalties or damages under any other agreement.

9.12 A party (first party) must notify the other party as soon as practicable of any third party claim is made that could, if satisfied, permit the first party to make a claim against the other party under this agreement. The first party will, if requested by and at the expense of the other party, take such action as the other party may direct to avoid, dispute, defend or settle

the claim. The other party will put the first party in sufficient and timely funds to enable it to pay all reasonable costs and expenses of any such directed action, and the first party will comply with the directions of the other party.

## 10 SUBCONTRACTING AND ASSIGNMENT

10.1 Subject to obtaining PACG's prior written consent, the Contractor may assign any of its rights or subcontract any of its obligations under this agreement, subject to demonstrating that :

10.1.1 the proposed assignee or subcontractor is a suitably qualified and experienced provider of services of the same kind as or similar to the Services; and

10.1.2 has sufficient resources to properly perform the Services.

In the event of any such assignment or subcontracting, the Contractor will remain responsible for its obligations to PACG under this agreement as though the assignment or subcontracting had not occurred.

10.2 PACG may at any time by notice in writing to the Contractor assign to any person the benefit of PACG's rights and remedies under this agreement.

## 11 CONFIDENTIALITY AND NON-SOLICITATION

11.1 Each party will use any of the other party's confidential information that it is provided or has access to by virtue of this agreement solely for the purposes of this agreement, and will keep such information confidential and not disclose it or allow it to be disclosed to any third party except with the consent of the party who owns it or to whom it relates, or otherwise for the purpose of seeking professional advice or as required by law.

11.2 The Contractor must not at any time during the Term and for a period of twelve months after termination of this agreement, whether on its own account or as an agent, officer or employee of any person, solicit (directly or indirectly) the provision of services the same or similar to the Services provided under this agreement to any person who was a customer of PACG during the Term.

## 12 TERMINATION FOR DEFAULT

12.1 The Contractor is in default for the purposes of this agreement if the Contractor :

12.1.1 fails to comply with any provision of this agreement;

12.1.2 commits an act or omission in the nature of serious and wilful misconduct;

12.1.3 becomes permanently incapacitated or of unsound mind; or

12.1.4 becomes subject of an Insolvency Event.

12.2 If the Contractor is in default under clause 12.1.1, PACG may serve a written notice on the Contractor specifying the default and the expenses associated with the default, and stating

that this agreement will be terminated within two Business Days without further notice unless the default is remedied and all the expenses are paid within that time.

12.3 If a notice served under clause 12.2 is not complied with then this agreement is immediately at an end, without affecting any accrued rights of any party.

12.4 If the Contractor is in default under clause 12.1.2, 12.1.3 or 12.1.4, PACG may immediately end this agreement by serving a written notice to that effect on the Contractor, without affecting any accrued rights of any party. The agreement ends if a Contractor dies.

12.5 Upon termination of this agreement :

12.5.1 the Contractor must immediately return to PACG, or deal with in accordance with its written directions, all equipment provided by PACG, all Dockets and all confidential information of PACG in the possession or control of the Contractor; and

12.5.2 the Contractor must immediately cease using and remove, as the case may be, all of PACG's names, marks, branding and other intellectual property.

## 13 DISPUTE RESOLUTION

13.1 A party may not commence Court proceedings in relation to a dispute relating to this agreement until it has exhausted the procedures in this clause 13, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

13.2 If there is a dispute between the parties relating to this agreement, then within five Business Days of a party notifying the other party of a dispute, senior representatives from each party

will meet and must use reasonable endeavours and act in good faith to resolve the dispute through discussions.

13.3 If the dispute is not resolved within five Business Days of notification of the dispute under clause 13.2, the parties will submit the dispute to mediation, administered by a reputable alternative dispute resolution organisation. The parties will share the cost of mediation equally, and if the parties cannot agree on a decision relevant to the conduct of the mediation, then such decision will be referred to the head for the time being of the Law Institute of Victoria.

## 14 GENERAL

14.1 Each party will pay its own costs in connection with the negotiation, preparation and execution of this agreement.

14.2 Any notice given under this agreement must be in writing and must be hand delivered or sent by pre-paid post to the recipient's address specified in the Schedule, or sent by facsimile transmission to the recipient at the fax number (if any) specified in the Schedule.

14.3 Each party will do all things and execute all documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

14.4 Nothing in this agreement will be interpreted to exclude the application of any relevant Law.

14.5 This agreement is governed by and will be construed in accordance with the laws of the

state or territory in which the Services are provided.

14.6 This agreement may only be amended in writing signed by each party, or assigned in writing signed by each party and in accordance with this agreement.

14.7 No failure or delay by a party in exercising any right or remedy operates as a waiver. A single or partial exercise of any right or remedy does not preclude the valid further or other exercise of that or any other right or remedy. A waiver is not valid or binding unless made in writing.

14.8 Clauses 8.1.2 and 12.5.1 and those aspects of clause 9 that are capable of it, will continue to apply notwithstanding termination of this agreement for any reason.

14.9 This agreement may be executed in any number of counterparts and all the counterparts together will constitute one and the same instrument.

14.10 Time is of the essence as regards all dates, periods of time and time specified as one with which the Contractor must comply.

14.11 This agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all and any previous agreements, contracts, arrangements or understandings made between the parties.

**PATASH AND CIVIL GROUP – GENERAL TERMS OF HIRE FOR  
EQUIPMENT**

**Effective 15th June 2024**

**1. DEFINITIONS**

**Owner** - means Patash and Civil Group ABN 161 151 663 875.

**Customer** - means the person or entity hiring the Equipment as named in the Hire Schedule.

**Equipment** - means the items for hire listed in the Hire Schedule.

**Fees** - means the fees and charges payable by the Customer under these Terms for the hire of the Equipment.

**Hire Contract** - means the Terms together with the Hire Schedule, the credit account application, and any Special Conditions.

**Hire Period** - means the period described in clause 3.

**Hire Schedule** - means the document provided by the Owner to the Customer which includes details of the Equipment hired, the Fees, the Hire Period, and other administrative details.

**Off-Hire** - means when the Customer no longer requires the Equipment, and it is available for collection by the Owner.

**Reduced Liability Cover (RLC)** - has the meaning set out in clause 11.

**Operator** - means an employee or agent of the Owner supplied to the Customer to install, operate or maintain the Equipment.

**PPSA** - means the Personal Property Securities Act 2009 (as amended) and any other legislation and regulations in respect of it.

**Related Body Corporate** - has the same meaning as in the Corporations Act 2001.

**Special Conditions** - means any special conditions applicable to certain items of Equipment as determined by the Owner.

**Terms**: means these General Terms of Hire, as amended from time to time.

**2. HIRE OF EQUIPMENT**

2.1 The Owner agrees to hire the Equipment to the Customer subject to the Hire Contract.

2.2 The Hire Contract sets out the terms of the hire agreement between the Owner and the Customer. The provision or acceptance of a Hire Schedule shall not form a separate agreement but shall constitute part of this Hire Contract.

2.3 Unless expressly agreed otherwise by the Owner in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including, without limitation, any terms and conditions contained in a purchase order.

**3. HIRE PERIOD**

3.1 The Customer is entitled to use the Equipment for the period of time specified in the Hire Schedule. Any variation to this period must be agreed by the Owner.

3.2 The Hire Period commences at the earlier of when the Customer collects or takes possession of the Equipment or when the Owner delivers the Equipment in accordance with the Customer's instructions.

3.3 The Hire Period includes weekends and public holidays.

3.4 The Hire Period ends when the Equipment is in the Owner's possession.

**4. TITLE TO EQUIPMENT**

4.1 The Customer acknowledges that in all circumstances the Owner owns the Equipment and in all circumstances the Owner retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period). The rights of the Customer to use the Equipment are as a bailee only. In no circumstances will the Equipment become, or be deemed to be, a fixture.

4.2 The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Owner as owner of the Equipment.

4.3 The Customer must not, without the Owner's written permission, move the Equipment out of position or move the Equipment to another site. Any expense of moving will be an additional charge to the Customer.

4.4 The Customer acknowledges that the Owner may hire or lease Equipment from a third party (Third Party Owner), and if this occurs, title in the Equipment remains with the Third-Party Owner.

**5. PPSA**

5.1 Despite anything else in this Hire Contract, without the express written consent of the Owner, the Hire Period (including any option or extension of it) must be less than 2 years.

5.2 This clause applies only to the extent that this Hire Contract provides for a 'security interest' for the purposes of the PPSA.

5.3 The Customer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purpose of ensuring that the Owner's security interest is enforceable, perfected, first priority and otherwise effective under the PPSA.

5.4 The Owner may register any actual or impending security interest in any manner it considers appropriate.

5.5 The Owner may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.

5.6 The rights of the Owner under this Hire Contract are in addition to and not in substitution for the Owner's rights under other law (including the PPSA) and the Owner may choose whether to exercise rights under this Hire Contract, and/or under any other law, as it sees fit.

5.7 To the extent that Chapter 4 of the PPSA applies to the security interest under this Hire Contract, and the PPSA requires the Owner to give a notice or allow time or provide any account to the Customer, the parties agree that to the extent allowable under the PPSA that requirement does not apply and, for the purposes of s.115 of the PPSA it is "contracted out" of this Hire Contract in respect of all goods to which that section can be applied. Provisions of the PPSA confer rights on the Owner. The Customer agrees that in addition to those rights, the Owner will, if there is default by the Customer, have the right to seize, purchase, take possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this Hire Contract and the Customer agrees that the Owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.

5.8 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under s.157 of the PPSA. The parties agree not to disclose information of the kind that can be requested under s.275 (1) of the PPSA. The Customer must do everything necessary on its part to ensure that s.275 (6) (a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the Owner the benefit of s.275(6) (a) and the Owner will not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

5.9 The Customer must not create, purport to create or permit to be created any security interest in the Equipment other than with the express written consent



of the Owner.

5.10 The Customer must not lease, hire, bail or give possession (sub-hire) of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing.

## 6. FEES AND OTHER CHARGES

6.1 The Customer agrees to pay the following Fees to the Owner:

- (a) **HIRE:** The hire charges set out in the Hire Schedule. The Customer is not entitled to any discount or refund if the Equipment is not used by the Customer for any part of the Hire Period. Additional hire charges will apply if the Equipment is used in excess of 8 hours in any day. The Owner reserves the right to increase the Fees annually to recover any increases to its costs or arising from changes to the law.
- (b) When the Customer no longer requires the Equipment and it is available for collection by the Owner, it must contact the local branch by 5.00pm on the day before the Off-Hire date. The Owner will issue an Off-Hire number which must be recorded and kept by the Customer. Provided the Off-Hire number is allocated no later than 5.00pm on the day before the Off-Hire date and the Owner has access to collect the Equipment, hire charges will cease from the Off-Hire date. If the Owner is unable to collect the Equipment, or the Equipment is not ready to be collected, for whatever reason, hire charges will continue to apply until the Owner is able to collect the Equipment.
- (c) **CONSUMABLES:** Unless otherwise specified in the Hire Schedule, the reasonable cost of consumables and fuel provided by the Owner and/or used by the Customer during the Hire Period.
- (d) **TAX AND GOVERNMENT CHARGES:** GST and all other applicable taxes, duties, levies, penalties, road tolls, and any other government charges arising out of the Hire Contract. This includes any fines or penalties arising out of the Customer's use or transport of the Equipment.
- (e) **CREDIT CARD PAYMENTS:** Any charges for accepting payments by credit card.
- (f) **DELIVERY & INSTALLATION:** If the Customer requires the Owner to deliver, collect or install the Equipment, the Customer shall be liable for the cost of delivery, collection, installation, mobilisation, demobilisation, transport, packing, crating, changing out, site access costs, and any site induction charges. If the Owner incurs costs for the collection of the Equipment at the end of the Hire Period, and the Equipment is not ready for collection, or if the Owner incurs costs for the delivery of Equipment at the beginning of the Hire Period, and the Equipment can't be delivered in accordance with the Customer's instructions, the Customer shall be liable to the Owner for such collection and delivery costs.
- (g) **LATE RETURN OF EQUIPMENT:** If the Equipment is not in readiness for collection by the Owner, or has not been returned to the Owner, by the end of the Hire Period, the Customer will be charged a minimum of an additional full day's hire, plus any costs incurred under clause 6.1(b).
- (h) **REDUCED LIABILITY COVER:** If applicable, the RLC fee as set out in clause 11.
- (i) **CLEANING & REPAIRS:** If the Customer does not return the Equipment in clean and good working condition, or if the Equipment needs to be pumped out and/or cleaned at the end of the Hire Period, the Customer will be charged for the cleaning and repair of the Equipment.
- (j) **LABOUR:** Any additional labour charges for overtime, loadings, penalties, allowances, shift work, weekends, standby, public holidays, meals, travel and accommodation, payable to Operators in accordance with their terms of engagement.
- (k) **TRAINING** – If you request training on the use of Equipment which is provided by the Owner's employees, labour charges will be payable.
- (l) **ENVIRONMENTAL CHARGE:** May be payable where detailed in the Hire Schedule.
- (m) **LATE PAYMENT:** If a Customer does not pay the amount of invoiced Fees by the payment due date, an administrative fee of 2% per month on outstanding Fees may be imposed to cover the costs to the Owner from the late payment. In addition, the Customer will be liable to indemnify the Owner for all expenses and legal costs incurred by the Owner as a result of the Customer's failure to pay the Fees by the payment due date.

6.2 The Customer is required to pay all Fees within 30 days of the invoice date.

6.3 The Owner is entitled to set off any amount it owes the Customer, against any amount that the Customer, or any of the Customer's Related Bodies Corporate, owes the Owner.

6.4 If the Customer returns the Equipment to the Owner after the end of the Hire Period, the Customer will be charged a minimum of an additional full day's hire charge for every day that the Equipment is late.

## 7. OBLIGATIONS OF THE PARTIES

7.1 **POSSESSION AND USE BY CUSTOMER:** The Hire Contract is personal to the Customer and the Customer will not, without the express written consent of the Owner:

- (a) Allow any other person or entity to use or have possession of the Equipment at any time during the Hire Period. The customer must not create, purport to create, or permit to be created any "security interests" (as defined in the PPSA) in the Equipment.
- (b) Sub-hire or cross hire the Equipment to a third party.
- (c) Use the Equipment offshore, underground or in a mine, in an area where friable asbestos is present, or move the Equipment over water.
- (d) Remove the Equipment from the State or Territory in which it was hired.

7.2 **OPERATION OF EQUIPMENT BY CUSTOMER:** The Customer agrees that at all times it will, at its own cost:

- (a) Operate the Equipment safely, strictly in accordance with all laws, including environmental laws, only for the purpose for which it was designed by the manufacturer, and in accordance with the manufacturer's instructions and manuals.
- (b) Ensure persons operating the Equipment are deemed competent, suitably trained, or instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use it.
- (c) Display, maintain and draw attention to safety signs and instructions (as required by law), ensure that instructions are observed, and signs are not removed or defaced.
- (d) Maintain appropriate records of any servicing or maintenance carried out on the Equipment and a weekly running sheet of the Equipment in a form acceptable to the Owner which shows the level of usage by the Customer. The Customer is responsible for performing daily pre-starts on the Equipment and reporting any faults to the Owner prior to using the Equipment and in any event within 24 hours.
- (e) Ensure all persons operating the Equipment wear suitable clothing and protective equipment and are not under the influence of drugs or alcohol.
- (f) Conduct a site hazard assessment prior to using the Equipment at a site.
- (g) Check and maintain all fuel, fuel additives, fluid and lubrication requirements for the Equipment on a daily basis, and in accordance with the manufacturer's instructions, and the adhesive signage on the Equipment.
- (h) Use only fuel, oil, coolant and lubricants specified by the Owner or the manufacturer.

7.2 **INSTALLATION AND OPERATION OF EQUIPMENT BY OWNER:** If the Owner installs the Equipment, or supplies an Operator with the Equipment, then for that relevant part of the Hire Period:

- (a) The Operator will work in co-operation with the Customer who must consult with and fully brief the Operator on the proposed task, the site, site conditions, matters affecting the health and safety of the Operator and other relevant matters including information requested by the Owner.
- (b) The Customer will not allow any other person to operate the Equipment without the Owner's prior written consent.

- (c) The Owner will ensure that its Operators are appropriately trained and possess all required licences to operate the Equipment.
- (d) The Owner will not be liable to the Customer for any acts or omissions of the Operator where they are acting under the Customer's direction or control.

- 7.3 **SAFEKEEPING & CLEANING:** The Customer must, at its own cost, ensure that during the Hire Period (and until the Equipment is collected by the Owner) the Equipment is:
- (a) Stored safely and securely and is protected from theft or seizure.
  - (b) Not contaminated with any hazardous substances (including asbestos). The Customer must advise the Owner of any risks of hazardous substance contamination to the Equipment as soon as it becomes apparent. Where Equipment may have been subjected to contamination, Customer must effectively decontaminate the Equipment, as well as provide Owner with written details of decontamination processes applied. If, in the Owner's reasonable opinion, the Equipment is not capable of being decontaminated, the Customer agrees to pay for the replacement cost of the Equipment.
  - (c) Emptied of waste.
- 7.4 **ALTERATION AND IDENTIFYING MARKS:** The Customer must not:
- (a) Alter, modify, or tamper with the Equipment without the Owner's prior written consent;
  - (b) Alter, remove, deface or erase any identifying mark, plate, number, notices or safety information on the Equipment.
  - (c) Remove fuel or oil tank caps, bund plugs or seals from the Equipment.
- 7.5 **SUITABILITY:** The Customer is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment unless the Owner is otherwise notified within 24 hours of the commencement of the Hire Period.
- 7.6 **INSPECTIONS:** The Customer consents to the Owner inspecting the Equipment from time to time during the Hire Period. In addition, the Customer may arrange a joint inspection with the Owner at the end of the Hire Period.
- 7.7 **SAFE LOADING:**
- (a) The Customer will safely secure all Equipment (or items loaded in or on the Equipment) loaded in or on the Customer's vehicle.
  - (b) Any specifications, dimensions or weights of the Equipment provided by the Company are indicative in nature only and may not be specific to the actual Equipment delivered to the Customer. The Customer is responsible for ensuring that any machines used to lift the Equipment, or any surfaces where the Equipment is placed, can tolerate the specification, weight and dimensions of the Equipment. The Customer indemnifies the Company for any loss or damage that may occur from a failure to comply with this sub-clause.
- 7.8 **ELECTRICAL TESTING & TAGGING:** Any electrical Equipment will be tested and tagged before it is hired to the Customer. During the Hire Period, the Customer is responsible, at its own expense, for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. The Customer will be liable for any damage caused to the Equipment resulting from incorrect testing or tagging during the Hire Period.

## **8. DELIVERY, RECOVERY AND RETURN OF EQUIPMENT**

- 8.1 Equipment will be delivered, or deemed to be delivered, when it is delivered to the delivery place nominated by the Customer. If no such address is nominated, then delivery will be deemed to occur at the time when the Equipment is ready for collection at the Owner's premises.
- 8.2 The Customer authorises the Owner to deliver the Equipment to the place nominated by the Customer and to leave it at such place whether or not any person is present to accept delivery. The Owner shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- 8.3 The Owner will not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by the Owner to be authorised by the Customer to take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Equipment delivered.
- 8.4 Any notified times for delivery are estimates only and the Owner shall not be liable to the Customer for any loss or damage from any failure by the Owner to deliver, or for delay in delivery of, Equipment whether or not beyond the control of the Owner.
- 8.5 The Customer will not be relieved of any obligation to accept or pay for the Equipment by reason of any delay in delivery.
- 8.6 Where the Owner cannot access the Customer's address for delivery, the Equipment shall be delivered and left as close as practicable to the Customer's nominated delivery address. Where the Customer requests the Owner to enter a property to deliver the Equipment, the Owner accepts no responsibility for any damage caused in doing so.
- 8.7 The Customer recognises that the Owner is not a common carrier and does not accept the obligation as such. The Owner may refuse the handling, lifting and/or carriage of the Equipment, for any person in its sole discretion and without being bound to give reasons to the Customer for such refusal.
- 8.8 If the Customer is in breach of the Hire Contract, or if the Owner has terminated the Hire Contract with the Customer pursuant to clause 13, the Owner may take all steps necessary (including legal action) to recover the Equipment, including entering the Customer's premises to do so.
- 8.9 The Customer must return the Equipment to the Owner in the same clean condition and working order it was in at the start of the Hire Period, ordinary fair wear and tear excepted.
- 8.10 If the Customer has collected the Equipment, it is required to return the Equipment to the same location it was collected from during normal business hours.

## **9. EQUIPMENT BREAKDOWN**

- 9.1 **OBLIGATIONS OF CUSTOMER:** if the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer shall:
- (a) Immediately stop using the Equipment and notify the Owner;
  - (b) Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - (c) Take all steps necessary to prevent any further damage to the Equipment;
  - (d) Not repair or attempt to repair the Equipment without the Owner's written consent;
  - (e) If the breakdown was caused by the Customer, be responsible for all costs incurred by the Owner in repairing the Equipment, and continue to pay the Owner a hire fee until such time that the Equipment is repaired or replaced.
- 9.2 **OBLIGATIONS OF THE OWNER:** if the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner:
- (a) Will take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Customer; and
  - (b) Will not impose a hire fee for that portion of the Hire Period for which the Equipment was broken down or unsafe.

## 10. LOST, STOLEN OR DAMAGED EQUIPMENT

- 10.1 If the Equipment is lost, stolen or damaged in any way, or by anyone (including third parties) during the Hire Period, the Customer shall be liable for:
- Any costs incurred by the Owner in recovering, repairing or replacing the Equipment;
  - Any other costs whatsoever incurred by the Owner as a result of the loss, theft or damage to the Equipment;
  - The Fees for the balance of the Hire Period until such time that the Equipment has been repaired or replaced; and
  - If the Equipment has not been repaired or replaced during the Hire Period, the Customer will continue to pay the Owner a hire fee as if the Equipment were on hire to the Customer, until such time that the Equipment is repaired or replaced.

## 11. REDUCED LIABILITY COVER (RLC)

- 11.1 RLC is an agreement by the Owner to reduce the Customer's liability in certain circumstances for loss, theft or damage to the Equipment <sup>to the RLC excess.</sup>
- 11.2 The Customer must pay a RLC fee unless the Customer obtains insurance that covers the loss, theft or damage to the Equipment during the Hire Period for the full replacement value of the Equipment.
- 11.3 Subject to clause 11.5, where the Customer pays the RLC fee, Owner agrees to reduce the Customer's liability for loss, theft or damage to the Equipment during the Hire Period if:
- The Customer submits to Owner within 5 business days:
    - a written Police report of the loss, theft or damage to the Equipment (unless Owner provides written confirmation that such report is not required); and
    - any other written or photographic evidence requested by Owner (which may include sworn statements and statutory declarations); and
  - The Customer pays to Owner the RLC excess, which is the greater of:
    - \$500 per individual item of Equipment (or the actual cost of replacement or repair if less than \$500). For the avoidance of doubt, an individual item of Equipment includes separate components; or
    - the amount equal to 15% of the cost of the repairs (if the Equipment can be repaired); or
    - the amount equal to 15% of the new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair).
- 11.4 The RLC fee will be automatically added to the hire charges and will appear on the Hire Schedule as RLC.
- 11.5 Even if the Customer pays the RLC fee the Customer is liable for and indemnifies Owner for all loss, theft and damage to the Equipment if:
- The Customer was negligent;
  - The Customer has paid the RLC fee after the loss, theft or damage occurred;
  - Owner reasonably believes that the Customer failed to take reasonable precautions to protect, lockup and secure the Equipment;
  - The Equipment is, or is ordinarily, used off-shore, over water or in underground mines or is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - The loss or damage is:
    - to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
    - to mirrors or glass, including breakage;
    - caused by vandalism, including graffiti on the Equipment;
    - to Equipment paintwork; and/or
    - due to wrongful conversion of the Equipment or any components of the Equipment;
  - The loss or damage was caused, or contributed to, by:
    - a breach of the Terms;
    - an act or omission of the Customer;
    - the use of the Equipment in violation of any relevant laws or regulations or contrary to Owner's or the manufacturer's instructions;
    - a lack of, or faulty lubrication, or general servicing by the Customer without Owner authorisation, of the Equipment;
    - collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
    - the use or operation of the Equipment by a person under the influence of alcohol or any drug;
    - the misuse, abuse, overloading of, or incorrect loading of, the Equipment or any of its components;
    - the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
    - an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.; and
    - the transport of the Equipment, except where transported by Owner. This sub clause will not apply to Motor Vehicles, trailers or trailerised Equipment.

## 12. INSURANCE

- 12.1 If the Customer does not pay the RLC fee, it must take out and maintain a policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for not less than the full replacement cost of the Equipment (Insurance).
- 12.2 A certificate of currency for the Insurance must be provided to the Owner prior to hiring the Equipment.
- 12.3 Evidence in the form of a certificate of currency of any renewal or change of Insurance must be given to the Owner at its request and in any event prior to the expiry date of the previous certificate of currency.
- 12.4 The Customer is responsible for any excess and any other costs associated with any Insurance. The Customer is responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under Insurance.
- 12.5 If required by the Owner, the Customer must also take out and maintain, for the duration of the Hire Period, Insurance for any Equipment which will be used off-shore, over water or in underground mines. Such Insurance must:
- Include the Owner as an insured so that the Owner is deemed a separate insured under the Insurance. Any non-disclosure or misrepresentation by one insured must not prejudice the right of the other insured to claim under any Insurance.
  - Cover the Owner's liability as a principal in connection with the performance of the Hire Contract; and
  - contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.

## 13. TERMINATION

- 13.1 Either party may terminate the Hire Contract immediately by giving notice to the other party if:

- (a) A party breaches any term of the Hire Contract and fails to remedy that breach within 7 days of written notification of it; or

(b) A party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

13.2 The Owner may terminate the Hire Contract for any other reason by 48 hours' notice.

13.3 These rights of termination are in addition to any other rights either party has under the Hire Contract and do not exclude any other right or remedy.

#### **14. LIABILITY AND INDEMNITY**

14.1 Subject to clause 14.2 and except as expressly provided to the contrary in the Hire Contract all guarantees, terms, conditions, warranties, undertakings, inducements or representations, whether express or implied, statutory or otherwise, relating to the Owner's obligations under the Hire Contract are excluded, to the maximum extent permissible by law.

14.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Contract and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty shall be deemed to be included in these Terms provided that the liability of the Owner for breach of the term, condition or warranty is limited to (at the Owner's election):

(a) In the case of goods, repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or

(b) In the case of services, supplying of the services again, or payment of the cost of having the services supplied again.

14.3 The Customer agrees that the use of the Equipment during the Hire Period shall be at the Customer's sole risk and the Owner will not be liable for any damage, loss, or injury that the Customer may incur, or that may arise from any cause whatsoever except the negligence of the Owner, including any fault or other defect in the Equipment.

14.4 Subject to the Owner's obligations under clause 14.2, and to the maximum extent permitted by law, the Owner's maximum aggregate liability for all claims under or relating to this Hire Contract or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, or under an indemnity, is limited to an amount equal to the Fees paid by the Customer under this Hire Contract.

14.5 The Owner shall not be under any liability whatsoever to the Customer for consequential, indirect or special loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Contract, whether or not such loss or damage was foreseeable.

14.6 Except to the extent caused by the negligence of the Owner, the Customer is liable for and indemnifies the Owner, and its directors and employees against all liability, damage, loss (including without limitation loss or damage to any property, or death or injury to any person), costs and expenses (including legal fees and on the higher of a full indemnity basis and a solicitor/client basis, and whether incurred or awarded against the Owner) arising from, or incurred in connection with, the Customer's hire and use of the Equipment or its breach of the Hire Contract.

14.7 Each indemnity in this Hire Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Contract. The Customer must pay on demand to the Owner any amount it must pay under an indemnity in this Hire Contract.

14.8 The Customer indemnifies the Owner for any damage or break down caused by its failure to operate or maintain the Equipment in accordance with clause 7.2 or 7.3, or in accordance with the manufacturer's or Owner's instructions.

14.9 Where the Owner gives advice, information, assistance and/or service to the Customer regarding the suitability or purpose of the Equipment, or in connection with the design, delivery times, dimensions, installation or use of the Equipment, then it is given in good faith and the Owner shall not be liable in any way for any damages, losses or costs however arising resulting from the Customer relying on any such advice, information, assistance and/or service.

#### **15. TRUST AND TRUSTEES**

15.1 Where the Customer is a trustee:

(a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Owner;

(b) The Customer warrants that it has full power and authority to enter into this agreement on behalf of the trust and that it shall be bound by these Terms both personally and in their capacity as trustee irrespective of whether or not it discloses to the Owner that it is a trustee at the time of entering into any credit agreement with the Owner;

(c) The Customer warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to this Hire Contract;

(d) The trustee of the trust acknowledges that it has entered into this agreement in its capacity as trustee of the trust and also in its own capacity;

(e) The trustee warrants that it will advise the Owner in writing of any change to the trustee within 7 days.

#### **16. SECURITY**

16.1 As security for the Customer's obligations and liabilities under this Hire Contract, the Customer hereby charges in favour of the Owner all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Owner to lodge and maintain a caveat upon title of the Owner's real property;

16.2 The Customer shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from a state land titles officer register;

16.3 At Customer's cost, the Customer shall from time to time at the written request of the Owner execute any deed, dealing, or other document which the Owner shall in its absolute discretion require the Customer to execute and do all such other acts and things as the Owner shall consider reasonable for the purpose of preserving, perfecting or protecting the caveat;

16.4 The Customer indemnifies the Owner from and against all of the Owner's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Owner's rights under this clause.

#### **17. GENERAL**

17.1 If any part of this Hire Contract becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

17.2 This Hire Contract is governed by the laws of VIC and each party submits to the exclusive jurisdiction of the courts of VIC.

17.3 The Hire Contract issued to the Customer comprises the entire agreement of the parties.

17.4 The Customer acknowledges that neither the Owner, nor any person acting on the Owner's behalf, has made any representation or other inducement to it to enter into this Hire Contract and that it has not entered into this Hire Contract in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained in the Hire Contract.

17.5 The Owner may assign this Hire Contract to any third party or related body corporate without the Customer's consent.

**18. CLAIM FOR PAYMENT**

This Hire Contract is a claim for payment under the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (VIC), the *Building Industry Fairness (Security of Payment) Act 2017* (QLD), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), the *Building and Construction Industry Security of Payment Act 2009* (TAS), and/or the *Construction Contracts (Security of Payments) Act 2004* (NT).

**19. VARIATION AND PREVIOUS EDITIONS**

- (a) The Owner may vary these Terms from time to time by giving the Customer 28 days' written notice of the varied Terms. If the Customer has reasonable grounds to believe that the variation will be detrimental to their rights, the Customer may terminate this Hire Contract without penalty by giving the Owner written notice within 28 days of receiving the Owner's written notice.
- (b) This edition of the Terms replaces all previous versions of terms and conditions of hire that the Owner has issued.