



**TERMS AND CONDITIONS FOR SUPPLY OF  
EQUIPMENT - WET & DRY HIRE**

**TEN-FRM-19 (AUS)**

Revision Date: 13 Nov 2018

**PART A - CONTRACT PARTICULARS**

<b>DETAILS</b>			
1.	<b>Contract No.</b>	[Insert]	
2.	<b>Commencement Date</b>	[Insert]	
3.	<b>Term</b>	[Insert]	
<b>PARTIES</b>			
4.	<b>RCR</b>	[Insert RCR entity name] ABN: [Insert] Address: [Insert]	
5.	<b>RCR's Representative</b>	Attention:	[Insert]
		Phone:	[Insert]
		Mobile:	[Insert]
		Email:	[Insert]
6.	<b>Hirer</b>	[Insert Hirer name] ABN: [Insert] Address: [Insert]	
7.	<b>Hirer's Representative</b>	Attention:	[Insert]
		Phone:	[Insert]
		Mobile:	[Insert]
		Email:	[Insert]

**OPERATIVE PROVISIONS:**

The following documents comprise this Contract:

- a) Part A - Contract Particulars;
- b) Part B - Hire Schedule;
- c) Part C - Standard Terms and Conditions; and
- d) Part D - Schedules.

**EXECUTED AS AN AGREEMENT:**

Executed for and on behalf of **RCR** by its duly authorised Representative.

Executed for and on behalf of the **Hirer** by its duly authorised Representative:

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Name



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PART B - HIRE SCHEDULE

<b>PURCHASE ORDER REF:</b>		
<b>EQUIPMENT</b>		
1.	Unit No.	[Insert] or [for multiple items of Equipment state "Refer to Schedule 1: Equipment & Rates"]
2.	Manufacturer / Model	[Insert] or [for multiple items of Equipment state "Refer to Schedule 1: Equipment & Rates"]
3.	Serial No.	[Insert] or [for multiple items of Equipment state "Refer to Schedule 1: Equipment & Rates"]
<b>HIRE DETAILS</b>		
4.	Delivery Place	<input checked="" type="checkbox"/> Site <input type="checkbox"/> [insert other location]
5.	Type of Hire	<input type="checkbox"/> Dry Hire <input type="checkbox"/> Wet Hire
6.	Site	[Insert]
7.	Hire Start Date	[Insert]
8.	Hire End Date	[Insert]
9.	Hire Rates	[Insert or delete as applicable: Wet Rate: Dry Rate: Overtime Rate: Standby Rate: ] or [for multiple items of Equipment state "Refer to Schedule 1: Equipment & Rates"]
<b>RESPONSIBILITIES</b>		
10.	Equipment Condition Report	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
11.	Fuel & Lubricants	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
12.	Daily/Minor servicing	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
13.	Interval/Major servicing	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
14.	Tyres	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
15.	Mobilisation	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
16.	Demobilisation	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
17.	Travel of Operator (Wet Hire only)	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
18.	Accommodation of Operator (Wet Hire only)	<input type="checkbox"/> RCR <input type="checkbox"/> Hirer
<b>OTHER</b>		
19.	Additional Insurance Requirements	[Insert if required or state "Not Applicable"]
20.	Governing Law	[Insert the State or Territory of Australia where Equipment is being used.]
21.	Documentation	[Insert or state "Not Applicable"]



## PART C – STANDARD TERMS & CONDITIONS

### 1. Definitions and Interpretation

1.1 In this Contract, unless a contrary intention appears, the following definitions apply:

**Approval** means all approvals, certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the Equipment or the carrying out of any work under this Contract (including the transportation, loading, unloading, delivery, operation, maintenance, repair or use of the Equipment), including all fees and charges payable in connection with such approvals;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the state in which the Site is located;

**Claim** means any means any claim, debt, cause of action, suit, proceeding or demand of any nature howsoever arising and whether direct or indirect, present or future, fixed or ascertained, actual or contingent, and whether in law, equity or otherwise;

**Commencement Date** means the date on which this Contract takes effect, as specified in the Contract Particulars;

**Contract Price** means the amount payable by the Hirer to RCR under this Contract, in accordance with clause 8;

**Contract Particulars** means the details set out at Part A of this Contract;

**Delivery Place** means the place the Equipment is to be delivered to and collected from, as specified in the Hire Schedule;

**Dry Hire** means where the RCR is not responsible for the provision of an Operator for the Equipment;

**Equipment** means the item(s) of equipment provided by RCR including all ancillary components and accessories, as specified in the Hire Schedule (and includes any replacement or substitute equipment);

**Equipment Condition Report** means a report detailing the condition of the Equipment in accordance with clause 6.1;

**Hire Start Date** means the date specified in the Hire Schedule, being the commencement of the Hire Period for the Equipment;

**Hire End Date** means the date specified in the Hire Schedule, subject to:

- (a) variation pursuant to clause 3.2; or
- (b) termination pursuant to clause 15.

**Hire Period** means the period commencing on the Hire Start Date and expiring on the Hire End Date, during which Hire Rates are payable for the Equipment;

**Hire Rates** means the rates specified in the Hire Schedule;

**Hire Schedule** means the details set out at Part B of this Contract in respect of an item(s) of Equipment;

**HSE Legislation** means all applicable Legislative Requirements in connection with health, safety and the environment;

**Governing Law** means of the laws of the State specified in the Hire Schedule;

**Legislative Requirements** means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licences, consents, permit, Approvals, codes, standards and requirements of government and statutory authorities;

**Loss** means any losses, liabilities, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of a Claim by any person;

**Manufacturer** means the original manufacturer of the Equipment;

**Operator** means any person supplied by the RCR to operate

the Equipment under this Contract;

**Operating Manual** means the manual published by the Manufacturer for the proper operation and maintenance of the Equipment;

**Party** means RCR or the Hirer, and **Parties** means both of them;

**Personnel** means any directors, officers, employees, agents, representatives, suppliers and subcontractors engaged by a Party (including any Operators), but a reference to RCR's Personnel excludes the Hirer and its Personnel;

**Purchase Order** means a purchase order issued by the Hirer to RCR in respect of a Hire Schedule, which will be subject to the terms of this Contract, to the exclusion of any of the Hirer's standard purchase order terms and conditions;

**Proportionate Liability Legislation** means:

- (a) if the Governing Law is the law of Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA);
- (b) if the Governing Law is the law of New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) if the Governing Law is the law of Queensland, then Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) if the Governing Law is the law of Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas);
- (e) if the Governing Law is the law of the Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- (f) if the Governing Law is the law of Victoria, then Part IVA of the *Wrongs Act 1958* (Vic); or
- (g) if the Governing Law is the law of South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);

**RCR** means the subsidiary of RCR Tomlinson Ltd (ABN 81 008 898 486) as specified in the Contract Particulars and includes its related bodies corporate, successors, administrators and assigns;

**Representative** means the representative of each Party, as specified in the Contract Particulars, and any replacement person nominated by a Party in writing from time to time;

**Schedule** means any schedule annexed to Part C of this Contract;

**Site** means the location where the Equipment is to be used and kept for the duration of the Hire Period, as specified in the Hire Schedule;

**Hirer** means the Party specified in the Contract Particulars and includes its related bodies corporate, successors, administrators and assigns;

**Term** means the duration of this Contract, as specified in the Contract Particulars, unless terminated earlier pursuant to clause 15; and

**Wet Hire** means where RCR is responsible for the provision of any Operators for the Equipment, in accordance with clause 12.

1.2 In this Contract unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the words "include" and "including" are to be construed without limitation;
- (d) a reference to a clause or schedule is a reference to a clause or schedule in this Contract;
- (e) headings in this Contract are for convenience and will not affect interpretation of this Contract;
- (f) reference to a day or month means a calendar day or calendar month;
- (g) a reference to "\$", "\$A", "dollar" or "\$" is a reference



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- (h) to Australian currency;
- (h) all lump sums, rates and prices stated in this Contract will be deemed to include GST unless expressly stated otherwise;
- (i) a reference to any Legislative Requirement includes all amendments, consolidations, re-enactments or replacements to or of it, and all regulations statutory instrument issued under it;
- (j) where the Hirer is required to perform an obligation or discharge a liability, the Hirer must do so at its own cost, unless expressly provided otherwise;
- (k) if the due date for anything to be done under this Contract falls on a day that is not a Business Day, then it must be done on the next Business Day; and
- (l) no provision of this Contract will be construed to the disadvantage of a Party because that Party was responsible for the preparation of this Contract.

## 2. Contract

- 2.1 This Contract commences on the Commencement Date and continues for the Term.
  - 2.2 The terms of this Contract become effective and binding on and from the Commencement Date or the RCR's acceptance of a Hire Schedule, whichever occurs first.
  - 2.3 The hire of the Equipment will be deemed to be acceptance of the terms and conditions of this Contract and will constitute a binding contract between the Hirer and RCR notwithstanding that this Contract may not have been executed by the Hirer.
  - 2.4 The following documents comprise this Contract between the Parties:
    - (a) the Contract Particulars;
    - (b) the Hire Schedule(s);
    - (c) the Schedule 2 –Special Conditions;
    - (d) the Standard Terms and Conditions;
    - (e) Schedule 1 – Equipment Rates; and
    - (f) any other Schedules.
  - 2.5 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents comprising this Contract, then unless otherwise agreed in writing by the Parties, the documents take precedence in the above order.
  - 2.6 This Contract contains the entire agreement between the Parties and supersedes any prior communications and negotiations between the Parties.
  - 2.7 Any terms or conditions that may have been attached or embodied in the Hirer's request for hire or other document is deemed to have been withdrawn in favour of the terms of this Contract. No term or condition contained in any Purchase Order will form part of this Contract.
  - 2.8 Any Equipment hired by the Hirer from RCR prior to the Commencement Date, is subject to the terms and conditions of this Contract.
  - 2.9 The Parties acknowledge and agree that:
    - (a) this Contract in a non-exclusive arrangement and RCR may hire equipment to any third party; and
    - (b) the Hirer is an independent contractor and neither it, nor its Personnel, will act or be regarded as an agent or employee of RCR; and
  - 2.10 RCR does not guarantee and is not obliged to provide any minimum quantity or value of Equipment to the Hirer under this Contract.
  - 2.11 The Parties will each appoint and at all times have available a Representative duly authorised to carry out that Party's obligations under this Contract. RCR's Representative may appoint a delegate at any time to exercise or perform any of its rights or duties.
- ## 3. Equipment Hire
- 3.1 If the Hirer wishes to hire any Equipment from RCR during the Term, and RCR's Representative agrees to supply such

Equipment, the Hirer must issue a Purchase Order for the Equipment to RCR, which references this Contract and includes a completed Hire Schedule.

- 3.2 The terms of a Hire Schedule may only be varied by agreement of both Parties in writing. Any request by the Hirer to extend the Hire End Date must be provided in writing to RCR at least 5 Business Days prior to the Hire End Date.
- 3.3 No Hire End Date or Hire Period can extend past the end of the Term.

## 4. Delivery & Collection

- 4.1 The Hirer must:
  - (a) collect the Equipment from the Delivery Place on the Hire Start Date; and
  - (b) deliver the Equipment to the Delivery Place on the Hire End Date.
- 4.2 Unless otherwise provided in the Hire Schedule, the Hirer is responsible for mobilisation and demobilisation of the Equipment to and from the Delivery Place, including by providing transportation, delivery, loading and unloading of the Equipment and all associated costs.
- 4.3 On the Hire End Date, the Hirer must:
  - (a) make the Equipment available for collection by RCR, at time requested by RCR; and
  - (b) ensure that the Equipment is appropriately packed and fitted with all lifting and handling devices required to safely lift and handle the Equipment during transit.
- 4.4 Risk in the Equipment transfers to the Hirer upon the Hirer's collection of the Equipment at the Delivery Place and remains with solely with the Hirer for the duration of the Hire Period, until RCR's acceptance of the Equipment on the Hire End Date.
- 4.5 RCR retains title to the Equipment at all times during the Hire Period.

## 5. Hirer Warranties

- 5.1 The Hirer warrants that for the duration of the Term:
  - (a) it is authorised to hire the Equipment from RCR and holds the necessary Approvals required by the Legislative Requirements to do so;
  - (b) it will do all things necessary and incidental for the proper performance of its obligations under this Contract;
  - (c) it will promptly disclose all information that may reasonably be material to RCR in relation to the Equipment or this Contract; and
  - (d) all information and advice it provides RCR in relation to the Equipment or this Contract will be true and correct in every respect, and not misleading or deceptive.
- 5.2 The Hirer warrants that at all times during the Hire Period, that it:
  - (a) will keep the Equipment clean, free from damage, and in good condition and working order;
  - (b) perform all necessary, statutory and prudent checks, inspections, maintenance and services in respect of the Equipment (at the times recommended by the Manufacturer, the Operating Manual and as required by the Legislative Requirements;
  - (c) will use, operate, service and maintain the Equipment in accordance with the Manufacturer's specifications, Operating Manual, Legislative Requirements and any specifications provided by RCR;
  - (d) will only use the Equipment for the purpose for which it was designed, in suitable terrain, conditions and in a manner that has regard to the capacity, capabilities and limitation of the Equipment;
  - (e) will provide adequate training to ensure that its Personnel use or operate the Equipment in a manner that minimises the risk to their own health and safety



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- and the health and safety of others, and do not undertake any tasks for which they have not received adequate training; and
- (f) will keep the Equipment stored safely and protected from theft, loss, damage or severe weather conditions; and
- (g) will keep the Equipment free from any charges, liens or encumbrances, subject to clause 17.2.
- 5.3 The Hirer warrants that the Equipment will only be used or operated by Personnel who:
- (a) are experienced, competent and are fit to use and operate the Equipment;
- (b) hold the necessary Approvals;
- (c) fully comply with all relevant Legislative Requirements;
- (d) are provided with all necessary safety equipment (including PPE) to operate the Equipment;
- (e) abide by and fully comply with all relevant HSE Legislation in their use or operation of the Equipment;
- (f) exercise reasonable and necessary precautions appropriate to the nature of the Equipment, the work to be performed and the conditions under which the work is carried out;
- 5.4 The Hirer acknowledges and agrees that RCR enters into this Contract in reliance on the warranties provided by the Hirer in this Contract.
- 5.5 If requested by RCR, the Hirer must provide RCR with documentation confirming that the Equipment has been inspected within the past 12 months by a competent person, is in a safe, serviceable condition, and complies with all relevant Legislative Requirements and all relevant Australian Standards.
- 6. Equipment Condition**
- 6.1 Upon mobilisation of the Equipment to the Delivery Place, the Party specified in the Hire Schedule must conduct an inspection of the Equipment and record the result of that inspection in an Equipment Condition Report.
- 6.2 No review, inspection, acceptance or approval by RCR of, or failure by RCR to review, inspect, accept or approve the Equipment limits or otherwise affects the Hirer's liabilities and obligations arising out of, or in connection with, this Contract.
- 6.3 Unless otherwise provided in the Hire Schedule, the Hirer is responsible for all servicing or maintenance of the Equipment during the Hire Period, at its cost, in accordance with the Manufacturer's Operating Manual and the Legislative Requirements, which includes:
- (a) performing all routine servicing and repairs of the Equipment (including the cost of provision of all parts, labour, tools, plant, equipment and lubricants and consumables); and
- (b) keeping detailed records of all maintenance, service or repairs performed on the Equipment, which demonstrated that the Equipment is being maintained and operated in accordance with this Contract.
- 6.4 If the Hire Schedule provides that RCR is responsible for servicing or maintenance of the Equipment, the Hirer must make the Equipment available to RCR's Personnel as required for servicing and maintenance during ordinary business hours.
- 6.5 At the Hire End Date, the Hirer must return the Equipment to RCR clean, in good working order, free from damage and defects, and in a state consistent with the Hirer having complied with its obligations under this Contract (subject to fair wear and tear).
- 6.6 If RCR determines that any rectification, repair, maintenance or service is necessary for the Equipment to:
- (a) repair or rectify any defect or damage;
- (b) improve the condition of the Equipment such that it matches its initial condition recorded in the Equipment Condition Report; or
- (c) reflect the level of service or maintenance consistent with the Hirer having complied with its obligations under this Contract,
- RCR will, by notice to the Hirer in writing, either:
- (d) require the Hirer to perform the additional rectification, repair, maintenance or service required; or
- (e) perform the additional rectification, repair, maintenance or service itself, and the cost of such will be a debt due and payable by the Hirer to RCR.
- 7. Damage or Breakdown**
- 7.1 The Hirer must immediately notify the RCR in writing of any defect in, damage to, or breakdown of, the Equipment.
- 7.2 Subject to clause 7.2(h):
- (a) the Hirer is responsible for any loss or breakdown of, or damage to, the Equipment whilst it is in the Hirer's possession or control;
- (b) the Hirer must repair the Equipment or arrange for the Equipment to be repaired as soon as possible and in any event no later than two Business Days after being directed by RCR;
- (c) if the Equipment is to be removed from the Site for repairs, the Hirer will be solely responsible for the necessary transport and costs incurred with the Equipment's removal and return; and
- (d) Hire Rates will continue to be during any period of non-use or repair.
- (e) If the Hirer fails to comply with its obligations under clause 7.2 within the time required by RCR, or in the case emergency repairs required to protect the Equipment, people or property;
- (f) RCR may repair the Equipment and/or remove the Equipment from Site; and
- (g) all Loss incurred by RCR in respect of repairing and/or removing the Equipment will be a debt due and payable by the Hirer to RCR.
- (h) If the defect, damage or breakdown is a direct result of negligence or wilful misconduct by RCR or its Personnel, RCR will be responsible for the necessary repair or replacement of the Equipment (at RCR's election).
- 8. Contract Price**
- 8.1 The Hirer must pay RCR the Contract Price in consideration for the Equipment.
- 8.2 The Contract Price for each item of Equipment will be payable:
- (a) for the duration of the Hire Period; and
- (b) in accordance with the Hire Rates.
- 8.3 RCR will have no liability to the Hirer for any amounts not included in the Contract Price.
- 8.4 The Hirer acknowledges and agrees that the Contract Price makes allowance for all the Hirer's obligations under this Contract, including:
- (a) obtaining and maintaining all Approvals;
- (b) compliance with all Legislative Requirements;
- (c) all insurances required by the Legislative Requirements and this Contract;
- (d) the costs of complying with its obligations to repair, service and maintain the Equipment in accordance with this Contract.
- 8.5 Where the Term of this Contract is longer than 1 year, RCR may review the Hire Rates annually, prior to the anniversary of the Commencement Date. Where RCR intends to adjust any Hire Rates, RCR will notify the Hirer's Representative of the new Hire Rates prior to the anniversary of the



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- Commencement Date.
- 8.6 The new Hire Rates will automatically apply to this Contract (including all Hire Schedules and Purchase Orders in effect) on and from the anniversary of the Commencement Date following RCR's notification.
- 9. Payment**
- 9.1 RCR will submit a tax invoice to the Hirer within 10 Business Days of the end of each calendar month during the Hire Period, for the Contract Price payable by the Hirer during the preceding month and any other Claims that RCR is entitled to make under this Contract.
- 9.2 The Hirer must pay RCR the invoice amount within 30 days of the date of the invoice (or such shorter period as required by the Legislative Requirements applicable to security of payment under the Governing Law).
- 9.3 If the Hirer reasonably disputes any portion of an invoice, the Hirer must notify RCR in writing of the amount in dispute in accordance with clause 18 and pay the undisputed portion in accordance with clause 9.2.
- 10. Insurance & Registration**
- 10.1 The Hirer must effect and maintain the following insurances for the duration of the Term:
- (a) public and product liability insurance, providing cover for an amount in respect of any one occurrence of not less than \$20,000,000.00 per claim, which notes the interest of RCR and includes a cross liability clause and waiver of subrogation in favour of RCR;
  - (b) insurance (including transit insurance) covering loss of or damage to the Equipment for its full replacement value;
  - (c) loss or damage to any Equipment (for a minimum of the replacement value of such Equipment) which has a replacement value;
  - (d) motor vehicle and third party liability insurance covering all liabilities in respect of any injury to or death of any person or any loss, damage or destruction to any property arising from the use of such vehicles;
  - (e) workers compensation or employee liability insurance as required by Legislative Requirements, providing cover against statutory and common law liability for death of or injury to persons employed by the Hirer, and where permitted by Legislative Requirements, extended to provide indemnity for RCR's statutory and common law liability to the Hirer's employees (including a waiver of subrogation to the Hirer's employees); and
  - (f) any additional insurance(s) specified in the Hire Schedule.
- 10.2 The Hirer must ensure that, at all times during the Hire Period, all Equipment is registered and insured as required by Legislative Requirements.
- 10.3 The Hirer must, in respect of each insurance under clause 10.1:
- (a) provide RCR with a certificate of currency prior to the Commencement Date and otherwise within three Business Days of any subsequent request by RCR;
  - (b) give written notice to RCR immediately of any lapse in or cancellation of any policy;
  - (c) not do anything which prejudices any insurance held by it; and
  - (d) give written notice to RCR of any Claims made under a policy, in connection with the Equipment or this Contract.
- 10.4 The Hirer is responsible for the payment of all excesses payable in respect of any insurance referred in this clause 10, to the extent such excess is payable in respect of a claim under such insurance in relation to RCR's Equipment. The Hirer's insurances will be exhausted first and RCR's insurances will only apply in excess of the Hirer's insured values under this Contract.
- 10.5 The Hirer is not relieved from, and remains fully responsible for, its obligations and liabilities under this Contract regardless of whether the insurances respond or fail to respond to any Claim and regardless of the reason any of the insurances respond or fail to respond.
- 11. Health, Environment and Safety**
- 11.1 The Hirer must carry out its obligations under this Contract safely and so as to protect persons and property. The Hirer must ensure that in carrying out its obligations under this Contract, the Hirer and its Personnel comply with all applicable HSE Legislation.
- 11.2 The Hirer must provide to RCR:
- (a) all current information on the conditions, requirements and recommendations for the safe use of the Equipment;
  - (b) all information in relation to such Equipment that the Hirer is required by HSE Legislation to provide; and
  - (c) all information regarding any notifiable or reportable incidents (as defined under the applicable HSE Legislation) and any HSE risks in connections with use of the Equipment.
- 11.3 Upon request by RCR, the Hirer must immediately provide RCR with access to all safety related information in respect of its use or operation of the Equipment and Operators, including:
- (a) relevant Approvals;
  - (b) work method statements;
  - (c) job hazard analyses, including risk assessments;
  - (d) induction and training records; and
  - (e) incident records and reports.
- 12. Wet Hire**
- 12.1 This clause 12 only applies where Wet Hire is specified in the Hire Schedule.
- 12.2 Where RCR is required to provide any Operator pursuant to this Contract, it will ensure that such Operators:
- (a) are experienced, competent and fit to operate the Equipment;
  - (b) hold the necessary Approvals; and
  - (c) comply with all relevant Legislative Requirements.
- 12.3 The Hirer must:
- (a) ensure that all Operators:
    - (i) are provided with the personal protective equipment necessary to operate the Equipment at the Site (unless otherwise agreed to be RCR's responsibility in writing);
    - (ii) are provided with all Site and HSE inductions and training necessary; and
    - (iii) are not instructed to undertake any unsafe tasks, or tasks for which they have not received adequate training;
  - (b) make all reasonable attempts to ensure that all work carried out by all Operators complies with applicable HSE requirements and Legislative Requirements;
  - (c) ensure that systems of work and the working environment are safe; and
  - (d) provide such information, instruction, training and supervision as may be necessary to ensure that the work performed by all Operators is performed without hazards or risks to health and safety.
- 12.4 The Hirer may direct an Operator:
- (a) in the performance of the work to be performed in utilising the Equipment;
  - (b) with respect to HSE matters arising under this Contract, Legislative Requirements or Site safety plans; and



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- (c) in accordance with the requirements of it or its client's HSE plans or policies.
- 12.5 Notwithstanding anything else in this Contract, all Operators will remain Personnel of RCR.
- 12.6 If the Site is a remote location, the Party specified in the Hire Schedule is responsible for all travel and accommodation expenses incurred in respect of an Operator travelling to and from the Site and being accommodated at (or near) the Site
- 13. Confidentiality**
- 13.1 The Hirer acknowledges and agrees that any information provided by RCR under or in relation to this Contract, including but not limited to pricing, technical specifications and other information is commercial in confidence. Such information must at all times remain confidential and must not be disclosed to any third party without RCR's prior written consent.
- 13.2 The Hirer must not, and must ensure that its Personnel do not, disclose or use any confidential information relating to this Contract (including intellectual property), unless written consent has been given by RCR.
- 13.3 The Hirer agrees to comply with the *Privacy Act 1988* (Cth) in respect to the collection, management and disclosure of any personal information obtained or disclosed to them in the performance of this Contract.
- 13.4 The Hirer shall indemnify, and keep indemnified, RCR from and against all Claims arising from a breach of this clause 13 by the Hirer.
- 14. Liability & Indemnity**
- 14.1 The Hirer indemnifies and holds RCR harmless from and against all Claims and Losses in respect of:
- injury to (including illness or disability), or death, of any person;
  - any claim by third parties (including contractors and subcontractors) carrying out work on or in the vicinity of the Site for costs associated with any delay to the progress of their works; and
  - physical loss or destruction of or physical damage to or loss of use of any property, caused or contributed to by an act, omission or negligence of the Hirer or its Personnel, including the Hirer's failure to properly maintain, service and repair the Equipment in accordance with this Contract, or by any breach of this Contract by the Hirer (including any breach of a warranty), except to the extent that it has been caused or contributed to by the negligence of RCR.
- 14.2 The indemnities in this clause 14, are held by RCR for the benefit of, and will extend to protect, RCR's Personnel.
- 14.3 Insurances under this Contract are primary to the indemnities referred to in this Contract in respect of any Claim or Loss to which such indemnities apply. The Parties acknowledge to the other that if a claim is made under an insurance policy that extends protection to a relevant Party, it is their intention that the insurer cannot require a Party to exhaust any remedies referred to in this Contract before the insurer considers or meets the relevant claim.
- 14.4 Notwithstanding any other provision of this Contract and to the maximum extent permitted by law:
- RCR will not be liable to the Hirer for any indirect, special, contingent or consequential Loss, including any loss of actual or anticipated profits, loss of opportunity, loss of use, loss of goodwill, loss of revenue, loss or production, loss of plant or facility, wasted overheads or business interruption of any nature; and
  - RCR's maximum liability to the Hirer, howsoever arising, is limited to the Contract Price payable by RCR to the Hirer under the Purchase Order.
- 15. Default & Termination**
- 15.1 RCR may terminate any Hire Schedule or this Contract:
- if the Hirer is in breach of this Contract or has repudiated this Contract, and does not remedy such default within 3 Business Days of written notice from RCR requiring it to do so;
  - if the Hirer becomes insolvent, enters receivership or administration, has a winding up order made against it or ceases or threatens to cease carrying on business; or
  - in its absolute discretion, by giving the Hirer 10 Business Days prior written notice.
- 15.2 If RCR terminates a Hire Schedule pursuant to clause 15.1, the Hirer must immediately:
- stop using and return to RCR all Equipment in respect of that Hire Schedule;
  - pay all amounts due and payable to RCR up to the date of termination, including all costs associated with demobilising and returning the Equipment to RCR (subject to clause 15.3).
- 15.3 If the Hire Schedule or Contract is terminated pursuant to clause 15.1(c), the Party specified in the Hire Schedule will be responsible for demobilisation.
- 15.4 Termination of a Hire Schedule will not affect any of the Parties' obligations under any other existing Hire Schedules or this Contract, unless RCR advises the Hirer otherwise in writing.
- 15.5 Termination of this Contract will automatically terminate all Hire Schedules in effect at the date of termination and will be without prejudice to the rights of RCR.
- 16. Stand Down**
- 16.1 If the Hirer is in breach of this Contract and fails to remedy that breach within 48 hours of receiving notice from RCR, then the Hirer must, if directed by RCR in writing to do so, immediately stop using the Equipment unless and until the breach has been remedied (**Stand Down Period**). Nothing in this clause affects or negates the Hirer's obligations under this Contract during the Stand Down Period, including the Hirer's obligation to pay the Hire Rates.
- 17. Personal Properties Securities Act**
- 17.1 In this clause 17, terms used that have a defined meaning in the *Personal Property Securities Act 2009* (Cth) (**PPSA**), have the same meaning as in the PPSA.
- 17.2 Where the Site is owned by a third party, or a third party has (or may be deemed to have) possession or control of the Site or the Equipment, the Hirer must:
- register a security interest(s) in the Equipment against that third party;
  - ensure that any such security interest (and RCR's rights in relation to such security interest) are effective, enforceable and perfected against that third party;
  - obtain the best priority achievable for that security interest, including a PMSI where possible;
  - provide all documentation and information regarding that security interest to RCR; and
  - immediately discharge that security interest upon return of the Equipment to RCR at the end of the Hire Period.
- 17.3 The Hirer must keep the Equipment under its possession and control during the Hire Period, and must not attempt or purport to sell, dispose of, or encumber the Equipment or create any security interest in the Equipment (except pursuant to clause 17.3).
- 17.4 The Hirer acknowledges and agrees that RCR has a security interest in the Equipment and without limiting the generality of the foregoing, such security interest may be a PMSI arising out of a PPS Lease.
- 17.5 The Hirer must not, except with the prior written consent of



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- RCR:
- (a) remove the Equipment from the Site;
  - (b) allow or permit any accession or co-mingling of the Equipment (or parts thereof); or
  - (c) grant any security interest over the Equipment to any third party or part with possession of the Equipment or do anything that prejudices the security interest RCR may have in the Equipment.
- 17.6 In the event the Hirer becomes aware of any third party's assertion of any claim of a security interest in the Equipment the Hirer will, as soon as it is reasonably practicable for it to do so, notify RCR and further, will cooperate with RCR, including by:
- (a) providing all relevant details within the Hirer's knowledge of such third party's claim; and
  - (b) do all things necessary, desirable or requested by RCR to ensure the security interest of RCR in the Equipment has priority to all other claims of security interest in the Equipment.
- 17.7 Each Party agrees that it will not disclose information of any kind referred to in section 275(1) of the PPSA and will not authorise and will ensure that no other person authorises the disclosure of such information.
- 17.8 Nothing in clause 17.6 prevents disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 17.9 The Parties agree that the following provisions of the PPSA are contracted out of by them and shall have no application:
- (a) sections 95, 118 and 130, to the extent that they require RCR to give a notice to the Hirer; and
  - (b) sections 121(4), 125, 128, 129, 132(3)(d), 132(4), 134(1), 135, 142 and 143.
- 18. Dispute Resolution**
- 18.1 If a difference or dispute between the Parties arises under or in connection with this Contract (**Dispute**), either Party may give the other Party a written notice of the dispute pursuant to this clause 18.1, identifying and providing details of the dispute (**Dispute Notice**).
- 18.2 Within 5 Business Days of receipt of the Dispute Notice, the Parties' Representatives must confer to seek to resolve the Dispute.
- 18.3 If the Dispute has not been resolved within 15 Business Days of the receipt of the Dispute Notice, a representative from each Parties' senior management must confer to seek to resolve the dispute or agree a method of doing so. All aspects of such conference(s) will be privileged and without prejudice.
- 18.4 If the Dispute is not resolved within 10 Business Days of the conferral pursuant to clause 18.3, then either Party may commence legal proceedings in the applicable court to resolve the matter.
- 18.5 During the existence of any Dispute, the Parties must continue to perform all of their obligations under this Contract, unless otherwise agreed by the Parties in writing.
- 18.6 Clauses 18.1 to 18.4 must be satisfied prior to either Party commencing any legal action. Notwithstanding, nothing in this clause 18 prevents a Party from seeking any urgent interlocutory relief in relation to this Contract.
- 19. Notices**
- 19.1 Any notice (including a notice in respect of any Claim) given in relation to this Contract must be in writing, signed, and given or sent by delivery, pre-paid mail or in an attachment to an email, to the Representative's address as specified in the Contract Particulars, or as last communicated in writing to the Party giving the notice.
- 19.2 A notice will be deemed to be received:
- 19.3 if delivered, on that day if it is before 5:00pm (WST) on a Business Day, otherwise on the next Business Day;
- (a) if sent by pre-paid mail, on the second Business Day after posting; or
  - (b) if emailed, on that day if it is before 5:00pm (WST) on a Business Day, otherwise on the next Business Day (unless the sender knows, or ought reasonably to suspect, that that the email or the attachment was delayed or not received by the recipient that day).
- 20. GST**
- 20.1 The Parties confirm that they are both registered for goods and services tax (**GST**) pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and should either Party cease to be so registered, it will inform the other Party at the earliest opportunity.
- 20.2 If a Party makes a supply under or in connection with this Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 20.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 20.3 If a Party must reimburse or indemnify another Party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the Loss, and then increased in accordance with clause 20.2.
- 20.4 A Party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.
- 21. Proportionate Liability Legislation**
- 21.1 The Parties agree that the Proportionate Liability Legislation, is excluded from operation with respect to any Claim brought by one Party against the other Party arising out of or in connection with this Contract or any of the Hirer's subcontracts.
- 22. Anti-Bribery and Anti-Corruption Legislation**
- 22.1 In this clause 22, "Anti-Bribery and Anti-Corruption Legislation" means any Legislative Requirement in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile of RCR or the Hirer or members of their corporation group), including the *United States Foreign Corrupt Practices Act*, the *United Kingdom Bribery Act 2010* and the *Australian Criminal Code 1995* (Cth).
- 22.2 The Hirer represents and warrants that it complies with Anti-Bribery and Anti-Corruption Legislation and maintains reasonable and effective policies and procedures in relation to the same which will be provided to RCR upon request.
- 22.3 If RCR reasonably considers that the Hirer has breached Anti-Bribery and Anti-Corruption Legislation, it will give the Hirer written notice to show cause as to why this Contract (or the relevant Purchase Order) should not be terminated. If the Hirer is unable to show that no breach has occurred then RCR may terminate this Contract in accordance with clause 15.1(a).
- 23. Building Code Legislation**
- 23.1 In this clause 23:
- (a) "Building Code" means the *Code for the Tendering and Performance of Building Work 2016* and any amendment or replacement of this code; and
  - (b) "State Code" means:
    - (i) if the Governing Law is the law of New South Wales, then *New South Wales Code of Practice for Procurement* and the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction*;
    - (ii) if the Governing Law is the law of Queensland, then the *Queensland Code of Practice for the Building and Construction Industry* and the





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- Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry; or*
- (iii) if the Governing Law is the law of Western Australia, then the *Western Australia Building and Construction Industry Code of Conduct 2016*.
- 23.2 The Hirer must:
- (a) comply with all obligations under the Building Code and where State Code (as applicable);
  - (b) take all reasonable steps to ensure its Personnel also comply with each obligation under the Building Code and the State Code in connection with this Contract; and
  - (c) ensure that its acts or omissions do not cause RCR to contravene any of its obligations under the Building Code or the State Code.
- 23.3 Compliance with the Building Code and/or the State Code will not relieve the Hirer from responsibility to deliver its obligations in accordance with this Contract or from liability for any breach of this Contract.
- 23.4 The Hirer must ensure that it and its Personnel:
- (a) are not covered by an enterprise agreement that does not meet the requirements of section 11 of the Building Code;
  - (b) are not subject to an exclusion sanction;
  - (c) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
  - (d) will only use products in relation to this Contract and obligations that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
  - (e) unless approved otherwise by the ABC Commissioner, are not excluded from performing building work funded by a state or territory government.
- 24. General**
- 24.1 Jurisdiction: This Contract is governed by the Governing Law and the Parties agree to submit to the exclusive jurisdiction of the Governing Law's courts.
- 24.2 Entire Agreement: Any terms or conditions that may have been attached or embodied in the Hirer's Purchase Order are deemed to have been withdrawn in favour of the terms of this Contract.
- 24.3 Counterparts: This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together form the same Contract
- 24.4 Severability: If any provision of this Contract is determined to be unenforceable or void by a court, that determination will not affect any other provision of this Contract, which otherwise will remain in full force and effect.
- 24.5 Subcontracting and assignment: The Hirer must not subcontract, assign, novate, transfer this Contract or the Equipment or any of its rights or obligations under this Contract, without the prior written consent of RCR.
- 24.6 Variation: An amendment or variation to this Contract is not effective unless it is in writing and signed by of RCR's Representative.
- 24.7 Waiver: Any waiver of RCR's right under this Contract is not effective unless it is in writing and signed by RCR's Representative. No waiver by RCR of any breach of a provision of this Contract is a waiver of any subsequent breach of that provision, or any other provision.
- 24.8 Holding over: If the Hirer continues to use any or all of the Equipment after the expiry of the Hire Period with RCR's consent, then the Parties agree that the terms and conditions of this Contract will continue to apply.
- 24.9 Survival: Clauses 4, 6, 13, 16 and 20 survive the expiration or termination of this Contract.
- 24.10 Nothing in these conditions will be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.



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**PART D – SCHEDULES**

**Schedule 1: Equipment & Rates**

**1. EQUIPMENT DETAILS**

[If multiple items of Equipment insert the Equipment details and applicable Rates into table or delete this section]

Unit No.	Manufacturer / Model	Serial No.	[Dry/Wet] Working Rate (daily/weekly)	Standby Rate (daily/weekly)	Overtime Rate (hourly/daily)	Mobilisation/ Demobilisation (if applicable)
			\$	[\$[insert or "N/A"]]	[\$[insert or "N/A"]]	\$

**2. HIRE RATES**

2.1. Hire Rates may include one or more of the following (as applicable):

- (a) Dry Hire Working Rate;
- (b) Wet Hire Working Rate;
- (c) Standby Rates; or
- (d) Overtime Rates.

2.2. Each Working Rate (whether for Wet Hire or Dry Hire) will apply throughout the Hire Period as follows:

- (a) a daily Working Rate is payable by the Hirer for each item of Equipment for each day during the Hire Period, which covers use of the Equipment up to a maximum of 10 hours per day; and
- (b) a weekly Working Rate is payable by the Hirer for each item of Equipment for each week (or part thereof) during the Hire Period, which covers use of the Equipment up to a maximum of 10 hours per day, 6 days per calendar week.

2.3. The Wet Hire Working Rate includes cost of the Equipment’s Operator for each day or week (as applicable).

2.4. Where an Overtime Rate is specified in this Contract for any item of Equipment, this rate will be payable by the Hirer for each hour or day (as applicable) that the Equipment is used in excess of the Working Rate limits specified in section 2.2 of this Schedule.

2.5. Where a Standby Rate is specified in this Contract for any item of Equipment, this rate will be payable by the Hirer:

- (a) subject to the Hirer notifying RCR in writing of its intention to place the Equipment on Standby (**Standby Notice**); and
- (b) for each day/week (or part thereof) of the period that the Equipment is on Standby, commencing on the date specified in the Standby Notice (which must not be earlier than the date of the Standby Notice) and continuing until the Hirer commences use of the Equipment (which must be notified to RCR in writing).

2.6. For the purpose of section 2.5 of this Schedule, “Standby” means the period of time during which the Hirer does not use the Equipment due to a Site shut down or the Hirer being prevented from proceeding with its works for reasons beyond its control, but excluding any period of time where the Equipment is being maintained, serviced, repaired or stood down in accordance with this Contract (unless otherwise agreed by RCR in writing).

**3. ADDITIONAL COSTS & DISBURSEMENTS**

3.1. The Mobilisation Cost (if specified as the Hirer’s responsibility in the Hire Schedule) is a lump sum payable by the Hirer upon the delivery of the Equipment to the Delivery Place.



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- 3.2. The Demobilisation Cost (if specified as the Hirer's responsibility in the Hire Schedule) is a lump sum payable by the Hirer upon return of the Equipment to the Delivery Place.
- 3.3. Travel and Accommodation costs for Operators (if specified as the Hirer's responsibility in the Hire Schedule) are payable by the Hirer to RCR as reimbursement at cost for all expenses and disbursements associated with an Operator's travel and accommodation, which are reasonably incurred as a result of performing this Contract and are accompanied by supporting documentation (such as tax invoices).



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**Schedule 2: Special Conditions**

[Insert if any or state "Not Applicable".]