



**TERMS AND CONDITIONS FOR WET AND DRY
HIRE OF EQUIPMENT**

PRO-FRM-09 (AUS)

Revision Date: 13 Nov 2018

PART A - CONTRACT PARTICULARS

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

OPERATIVE PROVISIONS:

The following documents comprise this Contract:

1. Part A - Contract Particulars;
2. Part B - Hire Schedule (and associated Purchase Order);
3. Part C - Standard Terms and Conditions; and
4. 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 **Supplier** by its duly authorised Representative:

Representative Signature

Representative Signature

Representative Name

Representative Name



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PART B - HIRE SCHEDULE

PURCHASE ORDER REF:		
EQUIPMENT		
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"]
HIRE DETAILS		
4.	Delivery Place	<input 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 Site address]
7.	Hire Start Date	[Insert start date when Equipment is required to be operational at Site]
8.	Hire End Date	[Insert]
9.	Hire Rates	[Insert] or [for multiple items of Equipment state "Refer to Schedule 1: Equipment & Rates"]
RESPONSIBILITIES		
10.	Fuel & Lubricants	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
11.	Daily/Minor servicing	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
12.	Interval/Major servicing	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
13.	Tyres	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
14.	Mobilisation	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
15.	Demobilisation	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
16.	Travel of Operator (Wet Hire only)	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
17.	Accommodation of Operator (Wet Hire only)	<input type="checkbox"/> RCR <input type="checkbox"/> Supplier
OTHER		
18.	Delay Damages	[Insert a daily rate payable (including under any head contract requirements or state "Not Applicable")]
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. If more than State/Territory applies, state "New South Wales".]
21.	Documentation	[Insert or state "Not Applicable"]



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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 or repair 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 RCR to the Supplier under this Contract, in accordance with clause 10;

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

Defect means any aspect or part of the Equipment that is damaged, deficient, faulty, inadequate or incomplete in design, materials, performance, quality or workmanship, is of unmerchantable quality or unfit for purpose, or otherwise not in accordance with this Contract, and Defective has the equivalent meaning;

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 Supplier is not responsible for the provision of an Operator for the Equipment;

Equipment means the item(s) of equipment provided by the Supplier 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 8.2;

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 for the Equipment, unless varied pursuant to clause 3.2;

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 and further detailed in Schedule 1: Equipment and Rates;

Hire Schedule means the details set out at Part B of this Contract in respect of the specified 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;

Market Value means, for an item of Equipment:

(a) the estimated amount for which that item of Equipment should exchange between a willing buyer and seller in an arm's length transaction after proper marketing wherein both Parties have acted knowledgeably, prudently and without compulsion; or

(b) where it is not possible to readily ascertain the amount in paragraph (a), the replacement cost of that Equipment, less due allowance for depreciation, taking into account the anticipated useful life of that Equipment and the nature of its usage;

Operator means any person supplied by the Supplier 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 Supplier, 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 Supplier and its Personnel;

Purchase Order means a purchase order issued by RCR to the Supplier in respect of the hire of Equipment, which will be subject to the terms of this Contract, to the exclusion of any standard purchase order terms and conditions;

Proportionate Liability Legislation means:

- if the Governing Law is the law of Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA);
- if the Governing Law is the law of New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- if the Governing Law is the law of Queensland, then Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- if the Governing Law is the law of Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas);
- if the Governing Law is the law of the Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- if the Governing Law is the law of Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
- 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, as specified in the Hire Schedule;

Supplier means the Party specified in the Contract Particulars and includes its related bodies corporate,



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successors, administrators and assigns;

Term means the duration of this Contract, as specified in the Contract Particulars, unless terminated earlier pursuant to clause 17; and

Wet Hire means where the Supplier is responsible for the provision of any Operators for the Equipment, in accordance with clause 14.

- 1.2 In this Contract unless the contrary intention appears:
- the singular includes the plural and vice versa;
 - the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - the words "include" and "including" are to be construed without limitation;
 - a reference to a clause or schedule is a reference to a clause or schedule in this Contract;
 - headings in this Contract are for convenience and will not affect interpretation of this Contract;
 - reference to a day or month means a calendar day or calendar month;
 - a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
 - all lump sums, rates and prices stated in this Contract will be deemed to include GST unless expressly stated otherwise;
 - 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;
 - where the Supplier is required to perform an obligation or discharge a liability, the Supplier must do so at its own cost, unless expressly provided otherwise;
 - 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 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 in respect of a Purchase Order on and from the Commencement Date or the Supplier's acceptance of a Purchase Order, whichever occurs first.
- 2.3 The supply 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 Supplier and RCR notwithstanding that this Contract may not have been executed by the Supplier.
- 2.4 The following documents comprise this Contract between the Parties:
- the Contract Particulars;
 - the Hire Schedule;
 - Schedule 2: Special Conditions;
 - the Standard Terms and Conditions;
 - Schedule 1: Equipment & Rates;
 - the Purchase Order(s); and
 - 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 Supplier's quote, offer, invoice, tender or other instrument are deemed to have been withdrawn in favour of the terms of this Contract. No term or condition contained in any tender, quote, order or invoice given by the Supplier will form part of this Contract.
- 2.8 Any Equipment hired by the Supplier to RCR prior to the Commencement Date is subject to the terms and conditions of this Contract.
- 2.9 The Parties acknowledge and agree that:
- this Contract in a non-exclusive arrangement and RCR may engage other suppliers to provide the same or similar equipment as the Supplier; and
 - the Supplier 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 or hire any minimum quantity or value of Equipment from the Supplier 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 RCR requires any Equipment from the Supplier during the Term, RCR's Representative will issue a Purchase Order for the Equipment to the Supplier which references this Contract and includes a completed Hire Schedule.
- 3.2 The Hire End Date is provided by RCR as an estimate only, which may be varied in respect of any item of Equipment, by written notice from RCR to the Supplier.
- 3.3 No Hire End Date or Hire Period can extend past the end of the Term.
- 4. Supplier Warranties**
- 4.1 The Supplier warrants that for the duration of the Term:
- it is entitled to hire the Equipment to RCR and holds the necessary Approvals required by the Legislative Requirements to do so;
 - it will do all things necessary and incidental for the proper performance of its obligations under this Contract;
 - it will promptly disclose all information that may reasonably be material to RCR in relation to the Equipment or this Contract; and
 - 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. Delivery & Collection**
- 5.1 The Supplier must:
- deliver the Equipment to the Delivery Place by the Hire Start Date; and
 - collect the Equipment from the Delivery Place on the Hire End Date.
- 5.2 Unless otherwise provided in the Hire Schedule, the Supplier 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.
- 5.3 If the Delivery Place is the Supplier's premises, the Supplier must:
- make the Equipment available for collection by RCR prior to the Hire Start Date, at the date and time requested by RCR; and
 - ensure that the Equipment is appropriately packed



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- and fitted with all lifting and handling devices required to safely lift and handle the Equipment during transit.
- 5.4 Acceptance of the Equipment will be deemed to have occurred when:
- the Equipment has been delivered to the Delivery Place; and
 - RCR has inspected the Equipment and completed an Equipment Condition Report that states the Equipment is fully operational and free from Defects.
- 5.5 If acceptance of the Equipment by RCR pursuant to clause 5.4 has not occurred by the Hire Start Date due to any act or omission of the Supplier, RCR is entitled to claim the delay damages as specified in the Hire Schedule for each day of delay to the Hire Start Date and any Loss incurred by RCR for late delivery of Equipment to the Site, which will be due and payable by the Supplier to RCR.
- 5.6 At the Hire End Date, RCR will make the Equipment available to the Supplier for collection at the Delivery Place.
- 6. Risk & Title**
- 6.1 Risk in the Equipment will remain with the Supplier until the Equipment is delivered to the Delivery Place and accepted by RCR following inspection of the Equipment, in accordance with clause 5.
- 6.2 If RCR determines that the Equipment is Defective or otherwise not in accordance with this Contract, RCR may reject the Equipment and direct the Supplier to (at its sole discretion) promptly rectify the Defect or replace the rejected Equipment, at the Supplier's cost. The Supplier must comply with such direction and any Loss incurred by RCR in connection with any such replacement or rectification will be a debt due and payable by the Supplier to RCR.
- 6.3 The Supplier will:
- provide RCR exclusive use of the Equipment during the Hire Period; and
 - retain title to the Equipment during the Hire Period.
- 7. Condition of Equipment**
- 7.1 The Supplier warrants that upon delivery and for the duration of the Hire Period, the Equipment:
- is free from any Defects;
 - is clean, in good repair and working order and is in a safe and serviceable condition;
 - is suitable and fit for the intended purpose and use;
 - is suitably registered and licensed for operation, including in accordance with all Approvals and Legislative Requirements;
 - is free from any charges, liens or encumbrances that would affect the performance of this Contract;
 - has been serviced and maintained in accordance with the Manufacturer's specifications and Operating Manual;
 - will continue to be serviced and maintained in accordance with the Manufacturer's specifications and Operating Manual by the Supplier unless otherwise in the Hire Schedule; and
 - complies with all Legislative Requirements and any technical specifications provided by RCR; and
 - is fitted with all appropriate and necessary safety devices including seat belts, roll over protection structures and falling object protection structures as required by RCR, any Legislative Requirements and any relevant Australian Standards.
- 7.2 The Supplier acknowledges and agrees that RCR enters into this Contract in reliance on the warranties provided by the Supplier in this Contract (including in clause 7.1).
- 7.3 If requested by RCR, the Supplier 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.
- 8. Maintenance and Repair**
- 8.1 Prior to the delivery of the Equipment, the Supplier must perform all necessary, statutory and prudent checks, inspections and major services in respect of the Equipment.
- 8.2 Upon receipt of the Equipment at the Delivery Place, RCR will conduct an inspection of the Equipment and record the result of that inspection in an Equipment Condition Report.
- 8.3 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 Supplier's liabilities and obligations arising out of, or in connection with, this Contract.
- 8.4 During the Hire Period, RCR will:
- keep the Equipment clean and in good working order;
 - operate the Equipment safely and in accordance with all Legislative Requirements; and
 - perform maintenance and servicing as specified in the Hire Schedule, in accordance with the Manufacturer's Operating Manual.
- 8.5 At the Hire End Date, RCR will return the Equipment in a state consistent with RCR having complied with its obligations under this Contract (with reference to the Equipment Condition Report and with allowance for reasonable fair wear and tear).
- 8.6 Unless otherwise provided in the Hire Schedule, the Supplier is responsible for all other 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.
- 8.7 If the Hire Schedule provides that RCR is responsible for servicing or maintenance of the Equipment, the Supplier must provide all documentation necessary to conduct such servicing or maintenance. If such documentation is not provided, RCR is not liable in any way for any Defect, damage or Loss suffered as a result of RCR servicing the Equipment.
- 8.8 RCR will make the Equipment available to the Supplier at the Site for servicing and maintenance during ordinary business hours, unless otherwise agreed by the Parties.
- 8.9 RCR will not be liable for fair wear and tear of the Equipment.
- 9. Damage or Breakdown**
- 9.1 RCR will, as soon as practicable, notify the Supplier of any Defect in, damage to, or breakdown of, the Equipment.
- 9.2 Subject to clause 9.4:
- the Supplier must repair the Equipment as soon as possible and in any event no later than two Business Days after being notified by RCR;
 - if the Equipment is unable to be repaired within the time required by RCR, deliver appropriate replacement Equipment to RCR, if requested to do so by RCR;
 - if the Equipment is to be removed from the Site for repairs, the Supplier will be solely responsible for the necessary transport and costs incurred with the Equipment's removal and return; and
 - no Hire Rates will be payable for the period that the



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- Equipment is unable to be used by RCR (unless replacement Equipment been provided pursuant to clause 9.2(b)).
- 9.3 If the Supplier fails to comply with its obligations under clause 8.3 within the time required by RCR, or in the case emergency repairs required to protect the Equipment, people or property;
- RCR may repair the Equipment or hire replacement equipment from another supplier; and
 - all Loss incurred by RCR in respect of repairing the Equipment or hiring replacement equipment will be a debt due and payable by the Supplier to RCR.
- 9.4 If the damage or breakdown is a direct result of negligence or wilful misconduct by RCR or its Personnel, RCR will be responsible for the necessary reasonable repairs to the Equipment.
- 10. Contract Price**
- 10.1 Subject to clause 11 and the Supplier's provision of all documentation required pursuant to clause 12, RCR will pay the Supplier the Contract Price in consideration for the Equipment.
- 10.2 The Contract Price for each item of Equipment will be payable:
- for the duration of the Hire Period;
 - as stated in the Purchase Order; and
 - in accordance with the Hire Rates, which are fixed and firm, and will not subject to any adjustment during the Term other than in accordance with Schedule 1: Equipment & Rates.
- 10.3 RCR will have no liability to the Supplier for any amounts not included in the Contract Price.
- 10.4 The Supplier acknowledges and agrees that the Contract Price makes allowance for all the Supplier's obligations under this Contract, including:
- obtaining and maintaining all Approvals;
 - compliance with all Legislative Requirements;
 - all insurances required by the Legislative Requirements and this Contract;
 - the costs of complying with its obligations to repair, service and maintain the Equipment in accordance with this Contract.
- 11. Payment**
- 11.1 The Supplier must submit a tax invoice for RCR within 5 Business Days of the end of each calendar month during the Hire Period. The invoice must reference the applicable Purchase Order and set out the Hire Rates payable for each item of Equipment hired by RCR during the preceding month.
- 11.2 Subject to clauses 11.3 to 11.6, RCR will pay Supplier the invoice amount, within 30 days from the end of the month in which the invoice is received by RCR.
- 11.3 If the Supplier's invoice is submitted after the date specified in clause 11.1, then the invoice will be deemed to be received the following month.
- 11.4 If RCR disputes any portion of an invoice, RCR will notify the Supplier of the amount in dispute and pay the undisputed portion (if any).
- 11.5 Payment by RCR is on account only and does not constitute approval of the Equipment, or any other matter in connection with this Contract, in respect of which the payment is made.
- 11.6 RCR may deduct from, or set off against, any amount payable by RCR under this Contract, any Claim or Loss which is or may become, due and payable from the Supplier to RCR.
- 11.7 To the extent permitted by law, RCR will not be liable for any Claim by the Supplier for payment of any amount not included in the Contract Price, unless the Supplier has given written notice to RCR within 30 days of the day that the Supplier became aware or reasonable should have been aware of the matters giving rise to the Claim. The written notice must set out the full legal or contractual basis for the Claim and a detailed breakdown of any amount claimed.
- 11.8 Strict compliance by the Supplier with clause 11.7 is a contractual pre-condition to an entitlement to any Claim under this Contract.
- 12. Insurance & Registration**
- 12.1 The Supplier must effect and maintain the following insurances for the duration of the Term:
- 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;
 - insurance (including transit insurance) covering loss of or damage to the Equipment for its full replacement value;
 - loss or damage to any Equipment (for a minimum of the Market Value of such Equipment) which has a Market Value of more than \$20,000,000;
 - 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;
 - 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 Supplier, and where permitted by Legislative Requirements, extended to provide indemnity for RCR's statutory and common law liability to the Supplier's employees (including a waiver of subrogation to the Supplier's employees); and
 - any additional insurance(s) specified in the Hire Schedule.
- 12.2 The Supplier must ensure that, at all times during the Hire Period, all Equipment is registered as required by Legislative Requirements, and that registered Equipment is insured as required by Legislative Requirements.
- 12.3 The Supplier must, in respect of each insurance under clause 12.1:
- provide RCR with a certificate of currency prior to the Commencement Date and otherwise within three Business Days of any subsequent request by RCR;
 - give written notice to RCR immediately of any lapse in or cancellation of any policy;
 - not do anything which prejudices any insurance held by it; and
 - give written notice to RCR of any Claims made under a policy, in connection with the Equipment or this Contract.
- 12.4 The Supplier 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.
- 12.5 The Supplier's compliance with this clause 12, is a precondition to the Supplier's entitlement to payment pursuant to clause 11.
- 13. Health, Environment and Safety**
- 13.1 The Supplier must carry out its obligations under this Contract safely and so as to protect persons and property.



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- The Supplier must ensure that in carrying out its obligations under this Contract, the Supplier and its Personnel comply with all applicable HSE Legislation.
- 13.2 The Supplier 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 Supplier 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.
- 13.3 Upon request by RCR, the Supplier must immediately provide RCR with access to all safety related information in respect of the supply 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.
- 14. Wet Hire**
- 14.1 This clause 14 only applies where Wet Hire is specified in the Hire Schedule.
- 14.2 Where the Supplier is required to provide any Operator pursuant to this Contract, it must ensure that such Operators:
- (a) are acceptable to RCR;
 - (b) are experienced, competent and fit to operate the Equipment;
 - (c) hold the necessary Approvals;
 - (d) fully comply with all relevant Legislative Requirements;
 - (e) are paid by the Supplier in accordance with all Legislative Requirements;
 - (f) are provided with the necessary safety equipment to attend the Site and operate the Equipment;
 - (g) abide by and fully comply with all relevant HSE Legislation and procedures as required by RCR or RCR's client (including by submitting medical, drug and alcohol tests as and when directed by RCR);
 - (h) 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;
 - (i) receive adequate training to ensure that all Operators operate the Equipment in a manner that minimises the risk to their own health and safety and the health and safety of others; and
 - (j) will not undertake any tasks for which they have not received adequate training.
- 14.3 Where an Operator is required to be provided by the Supplier:
- (a) the Supplier must notify RCR in writing not less than 5 Business Days prior to mobilisation of an Operator to Site; and
 - (b) provide evidence in a form satisfactory to RCR that the Supplier and its Operators comply with all Legislative Requirements (including HSE Legislation).
- 14.4 The Supplier must not replace any Operator without the prior written consent of RCR. If any Operator is not acceptable to RCR for any reason, the Supplier must replace them with a suitably qualified replacement at its own expense.
- 14.5 RCR may direct an Operator:
- (a) in the performance of the work to be performed in utilising the Equipment; and
 - (b) with respect to HSE matters arising under this Contract, Legislative Requirements or Site safety plans; and
 - (c) in accordance with the requirements or RCR's or its client's HSE plans or policies.
- 14.6 RCR will:
- (a) provide Site induction training;
 - (b) make all reasonable attempts to ensure that all work carried out by all Operators complies with applicable HSE 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.
- 14.7 No Operator is an employee of RCR. Notwithstanding anything else in this Contract, all Operators will remain Personnel of the Supplier and, unless otherwise agreed in writing, will return to the Supplier after the Hire Period.
- 14.8 The Supplier acknowledges and agrees that:
- (a) the Hire Rates for Wet Hire are inclusive of payment for the Equipment and its respective Operator and no separate labour rates or amounts will be payable; and
 - (b) in the event that an Operator is unavailable at the start of a shift for any reason, RCR may procure an alternative operator to operate the relevant Equipment until the Operator becomes available to recommence the operation of the relevant Equipment. In this event, the Supplier will not be entitled to payment of the Hire Rates or otherwise in respect of that Operator for the shifts (or part thereof) for which the Operator was unavailable;
- 14.9 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.
- 15. Confidentiality**
- 15.1 The Supplier 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.
- 15.2 The Supplier 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.
- 15.3 The Supplier 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.
- 15.4 The Supplier shall indemnify, and keep indemnified, RCR from and against all Claims arising from a breach of this clause 15 by the Supplier.
- 16. Liability & Indemnity**
- 16.1 The Supplier indemnifies and holds RCR harmless from and against all Claims and Losses in respect of:
- (a) injury to (including illness or disability), or death, of any person;
 - (b) any claim by third parties (including contractors and



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- 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
- (c) physical loss or destruction of or physical damage to or loss of use of any property,
 - (d) caused or contributed to by an act, omission or negligence of the Supplier or its Personnel, or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the negligence of RCR.
- 16.2 The indemnities in this clause 16, are held by RCR for the benefit of, and will extend to protect, RCR's Personnel.
- 16.3 Notwithstanding any other provision of this Contract and to the maximum extent permitted by law:
- (a) RCR will not be liable to the Supplier 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
 - (b) RCR's maximum liability to the Supplier, howsoever arising, is limited to the Contract Price payable by RCR to the Supplier under the Purchase Order.
- 17. Default & Termination**
- 17.1 RCR may terminate any Purchase Order or this Contract:
- (a) if the Supplier 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;
 - (b) if the Supplier becomes insolvent, enters receivership or administration, has a winding up order made against it or ceases or threatens to cease carrying on business; or
 - (c) in its absolute discretion, by giving the Supplier 10 Business Days prior written notice.
- 17.2 If RCR terminates a Purchase Order or this Contract pursuant to clauses 17.1(a) or 17.1(b), the Supplier will not be entitled to any further payment of the Contract Price (including any payment for demobilisation of the Equipment).
- 17.3 If RCR terminates a Purchase Order pursuant to clause 17.1(c), RCR must pay the Supplier that part of the amount payable up to the date of termination that remains unpaid and the cost of demobilisation if specified in the Hire Schedule. The Supplier's entitlement to payment under this clause 17.3 is its sole entitlement in connection with RCR's exercise of its rights under this clause 17.
- 17.4 Termination of a Purchase Order will not affect any other Purchase Order or this Contract, unless RCR advises the Supplier otherwise in writing.
- 17.5 Termination of this Contract pursuant to this clause 17, will automatically terminate all Purchase Orders in effect at the date of termination and will be without prejudice to the rights of RCR.
- 18. Suspension under Head Contract**
- 18.1 Where RCR's works are suspended under any head contract in respect of a Site between RCR and its client, RCR may immediately suspend the hire of the Equipment and the services of any Operator (if applicable) under this Contract.
- 18.2 If the suspension under the head contract is not a result of any act or omission of the Supplier or any of its Personnel, RCR will (subject to the Standby Rate conditions stated in Schedule 1: Equipment & Rates) pay the Supplier in accordance with the Standby Rate for the Equipment for the period of the suspension. The Supplier acknowledges and agrees that the remedy set out in this clause 18.2 is its sole and exclusive remedy in respect of a suspension of a Hire Period arising out of or in connection with a suspension under the head contract.
- 19. Personal Properties Securities Act**
- 19.1 In this clause 19, terms used that have a defined meaning in the *Personal Property Securities Act 2009* (Cth) (PPSA), have the same meaning as in the PPSA.
- 19.2 RCR acknowledges that the Supplier has a security interest in the Equipment.
- 19.3 The Supplier may register a security interest on the PPSA register which is registered as commercial property for collateral type, other goods as collateral class and a detailed description of the Works.
- 19.4 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.
- 19.5 RCR must take any steps (including provide information) the Supplier reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 19.6 The Supplier will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 20. Dispute Resolution**
- 20.1 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 20.1, identifying and providing details of the dispute (**Dispute Notice**).
- 20.2 Within 5 Business Days of receipt of the Dispute Notice, the Parties' Representatives must confer to seek to resolve the Dispute.
- 20.3 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.
- 20.4 If the Dispute is not resolved within 10 Business Days of the conferral pursuant to clause 20.3, then either Party may commence legal proceedings in the applicable court to resolve the matter.
- 20.5 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.
- 20.6 Clauses 20.1 to 20.4 must be satisfied prior to either Party commencing any legal action. Notwithstanding, nothing in this clause 20 prevents a Party from seeking any urgent interlocutory relief in relation to this Contract.
- 21. Notices**
- 21.1 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.
- 21.2 A notice will be deemed to be received:
- (a) if delivered, on that day if it is before 5:00pm (WST) on a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the second Business Day after posting; or
 - (c) if emailed, on that day if it is before 5:00pm (WST)



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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).

22. Fuel Tax Credits

- 22.1 All terms defined in the *Fuel Tax Act 2006* (Cth) have the same meaning when used in this clause 22, unless otherwise expressly stated.
- 22.2 Unless otherwise agreed, RCR (or its client) will retain all rights to fuel tax credits on fuel used by the Supplier in the performance of this contract.
- 22.3 If RCR or its client provides fuel to the Supplier free of charge for Wet Hire of Equipment under this Contract:
- the Supplier must:
 - maintain detailed records of all fuel usage;
 - provide a monthly report identifying the fuel usage, the type of fuel, the activities and the Equipment the fuel is used in, within 5 Business Days of the end of each month during the Hire Period;
 - only use the fuel in the provision of its services under this Contract; and
 - deliver back any unused quantity of fuel at the conclusion of this Contract or upon request of RCR;
 - RCR is entitled to recover from the Supplier any unauthorised use of fuel; and
 - the Supplier acknowledges that property in the fuel remains with RCR and does not pass to the Supplier, and accordingly it does not acquire, manufacture or import the fuel for the purposes of Fuel Tax Law.

23. GST

- 23.1 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.
- 23.2 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 23.2 (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.
- 23.3 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 23.2.
- 23.4 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.

24. Proportionate Liability Legislation

- 24.1 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 Supplier's subcontracts.

25. Anti-Bribery and Anti-Corruption Legislation

- 25.1 In this clause 25, "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 Supplier 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).

- 25.2 The Supplier 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.
- 25.3 If RCR reasonably considers that the Supplier has breached Anti-Bribery and Anti-Corruption Legislation, it will give the Supplier written notice to show cause as to why this Contract (or the relevant Purchase Order) should not be terminated. If the Supplier is unable to show that no breach has occurred then RCR may terminate this Contract in accordance with clause 17.1(a).

26. Building Code Legislation

- 26.1 In this clause 26,
- "Building Code" means the *Code for the Tendering and Performance of Building Work 2016* and any amendment or replacement of this code; and
 - "State Code" means:
 - 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*;
 - if the Governing Law is the law of Queensland, then the *Queensland Code of Practice for the Building and Construction Industry* and the *Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry*; or
 - if the Governing Law is the law of Western Australia, then the *Western Australia Building and Construction Industry Code of Conduct 2016*.
- 26.2 The Supplier must:
- comply with all obligations under the Building Code and where State Code (as applicable);
 - 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
 - ensure that its acts or omissions do not cause RCR to contravene any of its obligations under the Building Code or the State Code.
- 26.3 Compliance with the Building Code and/or the State Code will not relieve the Supplier from responsibility to deliver its obligations in accordance with this Contract or from liability for any breach of this Contract.
- 26.4 The Supplier must ensure that it and its Personnel:
- are not covered by an enterprise agreement that does not meet the requirements of section 11 of the Building Code;
 - are not subject to an exclusion sanction;
 - 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;
 - 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



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- (e) unless approved otherwise by the ABC Commissioner, are not excluded from performing building work funded by a state or territory government.

27. General

- 27.1 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.
- 27.2 Entire Agreement: Any terms or conditions that may have been attached or embodied in the Supplier's proposal, tender or offer, are deemed to have been withdrawn in favour of the terms of this Contract. Any terms and conditions included or referred to in a purchase order from RCR are excluded to the extent they are inconsistent with this Contract.
- 27.3 Counterparts: This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together form the same Contract
- 27.4 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.
- 27.5 Subcontracting and assignment: The Supplier must not

subcontract, assign, novate, transfer this Contract or any of its rights or obligations under it, without the prior written consent of RCR.

- 27.6 Variation: An amendment or variation to this Contract is not effective unless it is in writing and signed by of RCR's Representative.
- 27.7 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.
- 27.8 Holding over: If RCR continues to use any or all of the Equipment after the expiry of the Hire Period with the express or implied consent of the Supplier, then the Parties agree that the terms and conditions of this Contract will continue to apply.
- 27.9 Survival: Clauses 4, 6, 13, 16 and 20 survive the expiration or termination of this Contract.
- 27.10 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 state “Not Applicable”]

Unit No.	Manufacturer / Model	Serial No.	[Dry/Wet] Working Rate (daily/weekly)	Standby Rate (daily/weekly)	Mobilisation / Demobilisation (if applicable)
			\$	\$	\$

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; or
- (c) Standby Rates.

2.2. Each Working Rate (whether for Wet Hire or Dry Hire) will only apply at such times when the Equipment is fully operational as required by this Contract. The Working Rates will apply as follows:

- (a) a daily Working Rate is payable for a minimum of 10 hours per day, excluding Sundays and public holidays applicable at the Site; and
- (b) a weekly Working Rate is for 6 days (or part thereof) per calendar week commencing on Mondays, excluding Sundays and public holidays applicable at the Site.

2.3. The Mobilisation Cost (if specified as RCR’s responsibility in the Hire Schedule) is a lump sum payable by RCR in respect of the initial delivery of the Equipment and unloading at the Delivery Place.

2.4. The Demobilisation Cost (if specified as RCR’s responsibility in the Hire Schedule) is a lump sum payable by RCR in respect of the final removal of the Equipment from the Delivery Place including the removal of all rubbish and other items and materials belonging to the Supplier.

2.5. The Supplier agrees that the Hire Rates, Mobilisation Cost and Demobilisation Cost together include an allowance for the cost of complying with its obligations under this Contract including:

- (a) the cost of delivery to, and collection from, the Delivery Place;
- (b) unloading, erecting or assembling and maintaining the Equipment (as applicable);
- (c) where applicable, fuel costs; and
- (d) all amounts due in respect of insurance, duties, taxes and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Equipment.

2.6. The Supplier will be entitled to reimbursement at cost for expenses and disbursements which have been prior approved by RCR, are reasonably and properly incurred as a result of performing this Contract and are accompanied by sufficiently detailed supporting evidence to the satisfaction of RCR (such as third party tax invoices).

3. WET HIRE RATES

3.1. Wet Hire rates includes cost of all Operators and no additional amount is payable for any Operator.



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- 3.2. Working time of Operators on Site must be recorded on a time sheet which must be signed by an authorised RCR representative at the completion of each shift.
- 3.3. Operator Rates only apply to working/operational hours spent on Site. Lunch breaks shall be deducted from total billable hours and noted on timesheets as a 'lunch break'. No payment shall be made for travel, or travel time, between accommodation or Supplier's premises to Site.

4. STANDBY RATES

- 4.1. Standby Rates only apply during such times as the Equipment is in full operating condition as required by this Contract and the Equipment is available for use on RCR's works but RCR does not require the use of the Equipment at that time.
- 4.2. Standby Rates are only payable in such circumstances up to a maximum of the minimum hours per day, as specified in this Schedule 1. Standby Rates do not apply on public holidays, rostered days off, Christmas/New Year shut downs or at times that RCR cannot proceed with its works for reasons beyond its reasonable control.
- 4.3. RCR may, by written notice to the Supplier, place the Equipment on Standby. If the Equipment is placed on Standby, then RCR must pay the Standby Rate in this Schedule to the Supplier for the period of the Standby. RCR may end the Standby period by written notice to the Supplier.

5. RATE ADJUSTMENTS

- 5.1. The Hire Rates under this Contract are not subject to price escalation for the initial 12 months of the Term.
- 5.2. Hire Rates may be reviewed once annually on the anniversary of the Commencement Date and will remain fixed for each 12 month period thereafter.
- 5.3. Where the Supplier intends to increase any Hire Rates, it must make a request in writing to the RCR Representative at least 30 days prior to the anniversary of the Commencement Date.
- 5.4. If RCR does not agree with the proposed increase to the Hire Rates and the Parties are unable to negotiate agreed Hire Rates within 2 months of the proposed increase, then RCR is entitled to terminate this Contract in accordance with clause 17.1(c).
- 5.5. Notwithstanding any adjustment to the Hire Rates under this Contract, all pricing for Purchase Orders already in effect for Hire Periods are fixed for the term of the Hire Period, unless a variation is agreed in writing between the Parties.



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Schedule 2: Special Conditions

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