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QUEENSLAND RAIL LIMITED  
CONDITIONS OF HIRE

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**1. DEFINITIONS**

In these Conditions:-

“Claim(s)” means any action, proceeding, claim, demand, damage, loss (including personal injury), cost, liability or expense including the cost and expense of defending or settling any action, proceeding, claim or demand.

“Contract” means this agreement under which the Equipment is hired to Queensland Rail.

“Contractor” means the entity hiring the Equipment to Queensland Rail.

“Hire Charge(s)” means those charges payable by Queensland Rail to the Contractor for the Period of Hire.

“Equipment” means all plant, mobile plant, cranes, tools, accessories, articles, machinery, or motor vehicles stated in the attached Order supplied to Queensland Rail by the Contractor pursuant to this Contract.

“Period of Hire” means that period stated in the attached Order from the time the Equipment is delivered to Queensland Rail until the Equipment is returned to the Contractor.

“Queensland Rail” means Queensland Rail Limited (ACN 132 181 090) a Company registered in Australia carrying on business in accordance with the Corporations Act 2001, having its Registered Office at Floor 15, 295 Ann Street, Brisbane, in the State of Queensland and includes its employees, servants and agents.

“Representative” means the officer of Queensland Rail nominated as such under this contract.

“Site” shall mean the location at which the Equipment is to be used by Queensland Rail.

“Tax Saving” means the amount of any savings obtained by the Contractor during the New Tax System transition period as a result of the New Tax System changes in respect of any supplies under the Contract.

Any expression used in this Contract which is defined in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* or in the *Competition and Consumer Act 2010 (Cth)* has the same meaning in this Contract as so defined.

**2. USE AND DELIVERY OF EQUIPMENT**

1) Queensland Rail shall:-

a) use the Equipment in accordance with these Conditions; and

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- b) maintain the Equipment in reasonable repair and condition for the Period of Hire, except where an Operator is supplied with the Equipment (reasonable wear and tear excepted); and
  - c) not permit the Equipment to be used outside of Queensland; and
- 2) The Contractor shall:-
- a) allow Queensland Rail to examine, inspect and test the Equipment prior to it being used; and
  - b) if the Equipment is defective or unsuitable for Queensland Rail's purpose immediately, at the request of Queensland Rail, replace the Equipment with an equivalent item of Equipment suitable for Queensland Rail's purpose.
- 3) Should the Equipment the subject of this contract not be delivered to Queensland Rail within the time specified for delivery of same, Queensland Rail shall be entitled to claim from the Contractor damages for the late delivery of such Equipment. Any damages incurred by Queensland Rail for late delivery of Equipment to the Site may be deducted by Queensland Rail from any moneys owing to the Contractor.
- 4) The Contractor shall deliver to Site the Equipment hired by Queensland Rail and when the Period of Hire ends remove the equipment from Site.

### **3. PAYMENT**

- 1) The Contractor shall forward to Queensland Rail invoices for payment at the end of each month of the Period of Hire. Queensland Rail shall pay the Contractor those Hire Charges due and owing to the Contractor within thirty (30) days of receipt of the Contractor's invoice.
- 2) The Contractor agrees and acknowledges the Hire Charges shall not during the term of this Contract be increased or varied without the consent of Queensland Rail first being obtained in writing.
- 3) The Contractor acknowledges the Hire Charges include all Government charges, levies, duties, fees, freight, accommodation and any other charges incurred by the Contractor in respect of delivery and return and operation of the Equipment. The Contractor shall be responsible for freight and other charges in respect of any Equipment returned to the Contractor by Queensland Rail due to breakdown or failure or other causes beyond the control of Queensland Rail.
- 4) Queensland Rail shall be entitled to deduct from any monies due and owing to the Contractor any costs or loss incurred by Queensland Rail due to breakdown, failure or unsuitability of the Equipment during the Period of Hire.
- 5) Hire charges at the rates specified in the attached Order shall commence from the commencement of the Period of Hire and shall continue until the Period of Hire ceases.
- 6) Hire charges shall not be payable by Queensland Rail to the Contractor for any period during the Period of Hire when Queensland Rail cannot operate the Equipment due to inclement weather, industrial disputation, Equipment failure or any other reason beyond the control of Queensland Rail.
- 7) During the Period of Hire the cost of moving the Equipment from Site to Site shall be paid by Queensland Rail.

**3.1. GOODS AND SERVICES TAX**

- 1) In this clause "GST" and "Tax Invoice" have the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999 (Cwth)*.
- 2) If GST is payable on any supply made under this Contract then:
  - a) The consideration to be paid or provided under this Contract will increase to include GST;
  - b) The Contractor will provide a GST Tax Invoice stating the amount of GST payable by the Contractor for that supply and evidence it is a registered supplier for the purposes of GST.
  - c) Queensland Rail must pay the GST to the Contractor for the supply together with and at the same time as the consideration payable for the supply is paid;
  - d) The Contractor shall ensure any tax savings, at the time of rendering the GST Tax Invoice, are passed on to Queensland Rail;
  - e) The Contractor shall do all things necessary to enable Queensland Rail to claim an input tax credit under GST law for any cost or outgoing under the Contract.

**4. DAMAGE TO EQUIPMENT**

- 1) During the Period of Hire Queensland Rail shall be responsible for any damage to the Equipment due to the negligence of Queensland Rail, its servants or agents (reasonable wear and tear excepted).
- 2) Where Queensland Rail is responsible for damage to the Equipment, it shall pay to the Contractor the reasonable cost of repair of the Equipment. The reasonable cost of repair of the Equipment shall be the Contractor's total compensation for any loss (including consequential loss) caused due to the Equipment being damaged by Queensland Rail during the Contract and the Contractor acknowledges it shall not be entitled to claim from Queensland Rail for additional loss or costs resulting from damage caused to the Equipment during the Contract.

**5. BREAKDOWN**

- 1) If Queensland Rail notifies the Contractor of any Equipment breakdown, the Contractor shall not charge Queensland Rail Hire Charges during the time in which the Equipment is unavailable for use by Queensland Rail unless the breakdown is due to the negligence or misuse of the Equipment by Queensland Rail, its servants or agents.
- 2) In the event of a breakdown, failure or defect in the Equipment, Queensland Rail shall not repair or attempt to repair any cause of breakdown, failure or defect in the Equipment without the prior consent of the Contractor first being obtained.
- 3) Upon failure or breakdown of the Equipment not caused by Queensland Rail, its servants or agents, the Period of Hire shall cease immediately upon such breakdown or failure in the Equipment.

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- 4) In the event of the Equipment becoming bogged or otherwise inoperable during the Period of Hire, then the responsibility and cost of recovering the Equipment and/or restoring same to operation shall be determined as follows:-
  - a) where the Equipment is operated by a servant, employee or agent of the Contractor then the Contractor shall bear such responsibility and expense; or
  - b) where the Equipment is operated by a servant, employee or agent of Queensland Rail then Queensland Rail shall bear such responsibility and expense.

### 6. CONTRACTOR'S OBLIGATIONS

- 1) The Contractor shall ensure the Equipment supplied to Queensland Rail is in good working order and remains in good working order and suitable for the purpose specified by Queensland Rail and complies with the *Workplace Health and Safety Act 1995* as amended; and  
  
if the Equipment is to be operated by an operator supplied by the Contractor, ensure:
  - a) the operator supplied is suitably certified, trained, licensed and instructed to use the Equipment in accordance with the instructions of Queensland Rail, its servants or agents and Queensland Rail's safety requirements;
  - b) its operators in using the Equipment comply with the *Workplace Health and Safety Act 1995* as amended;
  - c) all fuel, greases, oils, tyres and spare parts are supplied on a day-to-day basis as part of the Hire Charge;
  - d) at its own expense service, clean, lubricate, service and maintain the Equipment in good and substantial repair and condition;
  - e) accept full responsibility for all flat or damaged tyres not caused by Queensland Rail, its servants or agents during the Contract;
  - f) ensure that all safety information pertaining to the safe operation of the Equipment is conveyed to Queensland Rail;
  - g) attach to the Equipment and maintain all appropriate safety signs;
  - h) ensure that operator is wearing suitable clothing, including Safety Boots and protective equipment required or recommended for the safe operation of the Equipment at the Site;
  - i) co-operate with Queensland Rail in respect of any investigation into any accident on the Site.
- 2) The Contractor acknowledges that its employees, agents or subcontractors must not be affected by alcohol or drugs when they:
  - a) sign on for work; or
  - b) are on duty; or
  - c) are on call or are required to provide professional safety related advice and give safety related instructions when not on duty; or

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- d) are acting on behalf of Queensland Rail but executing functions or duties at the request of a principal contractor or Third Party Operator.
- 3) The Contractor agrees and acknowledges that Queensland Rail may:
  - a) by either breath or saliva sample, at any time, conduct random tests for alcohol and/or drugs on its personnel, agents or subcontractors who enter Queensland Rail land or sites; and
  - b) exclude from any Queensland Rail land or sites any Contractor's personnel, agents or subcontractors who test positive to drugs or whose alcohol reading exceeds 0.00%.
- 4) The Contractor shall ensure Queensland Rail is provided with all appropriate safety instruction in respect of the Equipment.
- 5) The Contractor shall have appropriate risk management systems and safety management systems in place and comply with the provisions of the Transport (Rail Safety) Act 2010.

### **7. QUEENSLAND RAIL'S OBLIGATIONS**

Where there is no Operator supplied by the Contractor to operate the Equipment Queensland Rail shall:-

- 1) accept responsibility for repair and replacement of hydraulic hoses broken under normal machinery operation and all flat and/or damaged tyres caused by Queensland Rail, its servants or agents during the Period of Hire;
- 2) take reasonable precautions for the safe keeping of the Equipment and to the best of its ability ensure the Equipment is not lost, stolen or damaged;
- 3) not alter, make any addition, deface or erase any identifying mark, plate or number on the Equipment or in any other manner interfere with the Equipment;
- 4) allow the Contractor to inspect and test the Equipment from time to time during the Period of Hire and upon being given reasonable notice by the Contractor allow admission of the Contractor or its representatives to premises or Sites on which the Equipment is situated for the purpose of inspection and testing of the Equipment; and
- 5) be responsible for daily service checks and maintaining records of daily usage of Equipment and the day-to-day provision of fuel, grease and oil to the Equipment as specified by the Contractor.

### **8. TERMINATION OF HIRE**

- 1) Queensland Rail may at any time during the Period of Hire terminate this Contract without cause and without being liable to the Contractor for any loss incurred due to such termination by giving fourteen (14) days notice to the Contractor and payment of all moneys owing to the Contractor up to the date of termination.
- 2) Without being liable to pay the Contractor any loss due to such termination, Queensland Rail may if the Contractor fails to observe any term of this Contract, has a winding up petition presented against it, be wound up, has a receiver, manager or administrator appointed to it, commits an act of bankruptcy, makes an assignment or compromise for the benefit of creditors ceases to carry on business, in the opinion of

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Queensland Rail fails to provide Equipment suitable for Queensland Rail's purpose or fails to deliver the Equipment by notice forthwith terminate this Contract.

- 3) If this Contract is terminated in accordance with this clause, Queensland Rail may require the Contractor to remove the Equipment from any Site where the Equipment is being used.
- 4) Any loss or costs recoverable by Queensland Rail from the Contractor as a consequence of the Contractor's default under this Contract may be deducted from moneys due to the Contractor and if that money is insufficient for that purpose the balance remaining unpaid shall be a debt due by the Contractor to Queensland Rail.

### **9. ASSIGNMENT**

Unless a party has obtained the prior written consent of the other, it may not (nor may it attempt to do so):

- 1) assign all or any part of its right, title or interest in this Contract; or
- 2) novate this Contract.

### **10. ENTIRE CONTRACT**

This Contract constitutes the entire agreement between the parties. All previous negotiations, understandings, representations and warranties in respect of the Equipment are superseded by this Contract and no amendment to this Contract shall bind the parties unless in writing and signed by both parties.

### **11. WARRANTIES AND ACKNOWLEDGMENTS**

The Contractor acknowledges it is subject to any condition or warranty implied by the *Competition and Consumer Act 2010* or the *Fair Trading Act 1989* if and to the extent that such Acts are applicable to this Contract.

### **12. NOTICES**

A Notice required or permitted to be given under this Contract should be in writing, addressed to the party to be notified and delivered to that party's address, sent by pre-paid mail to that party's address or transmitted by facsimile to that party's address.

### **13. INDEMNITY AND INSURANCE**

- 1) The Contractor releases and indemnifies Queensland Rail, its servants and agents from all Claims whatsoever which may be made or brought against them or any of them by any person in respect of or arising out of any negligence or other wrongful act or omission of the Contractor, its servants, employees, sub-contractors or agents or any other persons and Claims of or to the Contractor, its sub-contractor or their respective servants, employees, agents or visitors.
- 2) The Contractor shall, on or before entering into this Contract, at its own expense, effect and maintain current at all times during the term of the Contract insurance policies with a Company licensed to carry on business in the State of Queensland in those amounts and the type specified by Queensland Rail to cover the legal liability of the insured, arising out of or in connection with either directly or indirectly the performance of this Contract for:

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- a) Public Liability Insurance for injury to or death of any person whatsoever to a sum insured of not less than \$10,000,000 (ten million dollars), and for loss of or damage to any property whatsoever (including property in which Queensland Rail has a proprietary interest) to a sum insured of not less than \$10,000,000 (ten million dollars); but only where such liability occurs as the result of a negligent act by the Contractor.
  - b) Material Damage for loss or damage to the equipment provided under this Contract.
  - c) Workers' Compensation Insurance for such liability as may arise at common law or by virtue of any relevant Workers' Compensation legislation in respect of any person employed by or sub-contracted by the Contractor; and
  - d) Motor Vehicle Insurance for liability for death of or injury to any person or for any loss or damage to property caused by or arising from the use, whether on public roads or otherwise of all vehicles to be used in accordance with the terms and conditions of this Contract.
- 3) Any excess provisions contained within any policy of insurance will be satisfied by the Contractor.
  - 4) Where required by Queensland Rail all policies of insurance shall note the interests of Queensland Rail as an insured and include a cross waiver of liability clause insofar as any such personal injury, loss or damage arises out of the indemnity provisions in this Contract. Where required by Queensland Rail the Contractor shall allow Queensland Rail to inspect the said policies of insurance and provide to Queensland Rail copies of the said insurances and any renewal certificates in respect of those insurances.
  - 5) The Contractor agrees that if it makes any claim against Queensland Rail for loss as a result of breach of these Conditions and that loss is contributed to by the Contractor's own actions, then liability for the Contractor's loss will be apportioned as is appropriate having regard to the respective responsibility for the loss and the amount the Contractor may recover from Queensland Rail will be reduced to the extent of the Contractor's contribution to that loss.

### **14. CONTRACTOR'S EMPLOYEES**

The Contractor shall be responsible and liable to Queensland Rail for matters arising out of or by virtue of the acts or omissions of its servants, agents or employees in the use of the equipment and hereby indemnifies Queensland Rail against any such acts or omissions that occurred during the Period of Hire.

### **15. INDUSTRIAL RELATIONS**

- 1) If an operator is provided the Contractor shall comply with and ensure that all persons employed or engaged by it are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be entitled to as a result of any appropriate statute, ordinance, subordinate legislation, award, industry agreement, contract of employment, determination, judgement, order of any competent Court, board, commission or other industrial tribunal in force in relation to the service.
- 2) Should a dispute occur as a result of any breach of this clause which causes Queensland Rail to incur loss or cost, the Contractor shall be responsible for such loss or cost, including interest charges. Such loss or cost may be recovered from the Contractor by Queensland Rail as a debt due.

**16. WAIVER**

- 1) None of the conditions of this Contract will be waived, varied, discharged or released, except in writing by the parties hereto.
- 2) A waiver by Queensland Rail in respect of any clause of this Contract will not be deemed to be a waiver in respect of any other subsequent breach by the Contractor in respect of this Contract.

**17. APPLICABLE LAW**

This Contract will be governed and construed in accordance with the laws of Queensland.

**18. QUALITY ASSURANCE**

The Contractor shall maintain a Quality Management System in respect of the Equipment which complies with the Quality Assurance Standard stated in the attached order.

**19. COMPLIANCE WITH QUEENSLAND RAIL POLICIES**

The Contractor its employees and agents shall whilst operating Equipment for Queensland Rail comply with the requirements of all Queensland Rail policies standards and specifications including but not limited to the Queensland Rail Code of Conduct and B2B Agreement Design Specification in force, introduced or amended during the term or any extended term of the Contract.

**20. PAYMENT CLAIMS**

If the hire of Equipment the subject of this Contract are "Related goods or services" as defined in the Building and Construction Industry Payments Act 2004 and the Contractor serves a payment claim on Queensland Rail this Clause shall apply in lieu of Clause 3.1):

- 1) At the times stated in this Contract and if no time is stated monthly the Contractor shall give Queensland Rail a payment claim for the value of hire satisfactorily supplied to Queensland Rail.
- 2) Within 10 business days of receipt of the payment claim Queensland Rail may issue to the Contractor a payment schedule stating the amount of the payment it intends to make. If payment is to be less than the amount claimed by the Contractor in the payment claim the payment schedule shall state the reason/s why it is less.
- 3) Queensland Rail shall within 20 business days of being given a payment claim pay the Contractor the payment claim or if a payment schedule is issued the amount stated in the payment schedule. If requested by Queensland Rail the Contractor shall issue to Queensland Rail an amended payment claim/invoice in the amount stated in the payment schedule issued by Queensland Rail.
- 4) For the purposes of this Clause a business day is any day other than a Saturday, Sunday, Public Holiday in Queensland or 27, 28, 29, 30 and 31 December.

**21. PERFORMANCE**

- 1) If the Contractor fails to perform to an Acceptable Standard Queensland Rail may call upon the Contractor by notice in writing to show cause (Show Cause Notice) why Queensland Rail should not exercise the rights stated in this clause.

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- 2) If the Contractor fails within the period stated in the Show Cause Notice to satisfy Queensland Rail that the rights contained in this clause should not be exercised, Queensland Rail may without prejudice to any other rights it may have:
  - a) in respect of the first Show Cause Notice deduct from amounts due to the Contractor the amount/s stated in the attached order; or
  - b) in respect of the second or subsequent Show Cause Notices terminate this contract.
- 3) For the purposes of this clause, failure to perform to an Acceptable Standard means the Contractor is:
  - a) incorrectly or excessively invoicing Queensland Rail; or
  - b) failing to meet agreed KPIs; or
  - c) failing to obtain written approvals or Variations to the Contract from the Queensland Rail Representative or Representative's authorised delegate; or
  - d) charging Hire Charges for Equipment different to the agreed Hire Charges; or
  - e) failing to submit invoices within the time stated in Clause 3 i) hereof.
- 4) The Contractor agrees any sum deducted pursuant to Clause 21 ii) a) hereof is by way of Liquidated Damages and does not constitute a penalty.

### **22. PRICE ADJUSTMENT**

- 1) On completion of the period of Hire and before any extended period of Hire, Queensland Rail and the Contractor shall review and negotiate Hire Charges on the basis of but not limited to the following factors:
  - a) Consumer Price Indicator for Transport – Brisbane;
  - b) increase/decrease of volume of Hire;
  - c) market prices.
- 2) Until Hire Charges have been reviewed and agreed by Queensland Rail and the Contractor, the contract shall continue to be undertaken on the basis of the existing Hire Charges.
- 3) Should the parties not agree on new Hire Charges, then the contract may be terminated by Queensland Rail pursuant to Clause 8 i) hereof.

### **23. DISCLOSURE**

In order to comply with Queensland government legislation and policy requirements, Queensland Rail may disclose details of this Contract:

- 1) on the Queensland Government QGCPO e-Tender website; or
- 2) if required by the Right to Information Act 2009; or
- 3) to its shareholding ministers; or

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4) as otherwise required by law or Queensland Government policy.

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