

GENERAL CONDITIONS OF PLANT HIRE

1. APPLICATION OF CONDITIONS

These conditions govern the rights and obligations of the Supplier and Watpac Civil Mining Pty Ltd under the Watpac Civil & Mining Pty Ltd Plant Hire Order Form (the Watpac Civil & Mining Pty Ltd Plant Hire Order Form and these General Conditions of Plant Hire are collectively referred to as the "Purchase Order"). Under the Purchase Order Watpac Civil & Mining Pty Ltd is the Hirer. No document or statement other than the Purchase Order shall form part of the contract between the Supplier and the Hirer unless otherwise agreed in writing by the Hirer. If there is a conflict between the General Conditions of Plant Hire (as varied with the Hirer's written agreement) and any other document or statement forming part of the contract between the Supplier and the Hirer, these General Conditions of Plant Hire (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any plant shall be deemed to be acceptance of the terms of the Purchase Order and shall constitute a binding contract between the Supplier and the Hirer.

These conditions are governed by the laws in force in the State or Territory identified in the Watpac Civil & Mining Pty Ltd **Plant Hire** Order Form.

2. ELECTRONIC TRANSACTIONS

The *Electronic Transactions Act 2001*(Qld) or the *Electronic Transactions Act 2000* (SA) or the *Electronic Transactions Act 2003* (WA) (as applies in the State or Territory identified in the Watpac Civil Mining Pty Ltd Plant Hire Order Form) applies to the Purchase Order. The Supplier has consented to the provision of these General Conditions of Plant Hire by means of electronic communication via the Hirer's website, <http://www.watpac.com.au> refer to trading Terms & Conditions

3. PRICE

The unit rates of hire indicated on the Purchase Order for the plant the subject of the contract ("the Plant") include, as appropriate, the cost of delivery to the address stated in the Purchase Order, unloading, erecting or assembling (if necessary), maintaining and any insurance, duty, taxes and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Plant.

4. DELAYS

If the Supplier fails to make deliveries within the time specified, the Hirer has the option to terminate this Purchase Order or such part or parts thereof to which there has been delay, without incurring cancellation or any other charges.

5. NON-WAIVER

Failure of the Hirer to insist upon strict performance of any of the terms of the Purchase Order shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any article under the Purchase Order shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of the conditions for the Purchase Order.

6. NO ASSIGNMENT

The Purchase Order shall not be assigned by the Supplier in whole or in part without prior written consent of the Hirer.

7. INFRINGEMENT

The Supplier warrants that the articles described in the Purchase Order and the hire or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend at its own cost and expense every action which may be brought against the Hirer or those using the Hirer's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the use of such articles and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.

8. COMPLIANCE

In performing its obligations under this Purchase Order the Supplier agrees to comply with all laws and regulations applying to the Purchase Order and the Plant.

9. CHANGES

The Hirer has the right at any time to make changes in quantities or duration ordered. If the Hirer forwards an amended order changing the quantity or duration so ordered and such changes cause an increase or decrease in the amount due then a variation shall be made to allow remuneration on the basis of the rates of hire stated on the Purchase Order for the work that has been completed but no cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of the amended order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the order that has been completed. If such changes result in an increase or decrease in the time required for performance a reasonable variation of the time shall be made. Any claim by the Supplier for adjustment under this provision must be made within two (2) weeks from the date when the change is made.

10. WARRANTY

Notwithstanding the Hirer's acceptance or right of inspection and/or other terms of the Purchase Order, the Supplier warrants that all articles furnished under the Purchase Order are free from any encumbrances, free from any defects in design, materials and workmanship, have been maintained in proper working order and that the articles fully comply with any supplied or referenced specifications and drawings ("Technical Requirements") and where not specified that the articles are suitable and fit for the use intended and comply with all regulatory requirements. The Hirer relies on this warranty by the Supplier in hiring the articles covered by the Purchase Order.

11. INSPECTION AND TESTING

On delivery, the Supplier and the Hirer shall jointly inspect the Plant and record the details of the inspection. Any approval of the Plant by the Hirer shall not relieve the Supplier of its obligations and liabilities under this Purchase Order. At the end of the Term, the Hirer will make the Plant available to the Supplier at the point of delivery. The Supplier and the Hirer shall jointly inspect the Plant and record the details of the inspection.

12. REJECTION

The Hirer may at any time whether before or after delivery reject any Plant found to be inferior or defective or damaged or not in accordance with the Purchase Order or any Technical Requirements and without limiting the liability of the Supplier, the Hirer may require, at its option, a refund of payment by the Supplier within seven (7) days, replacement of the Plant within two (2) days. The Supplier is liable for all loss or expenses incurred by the Hirer due to the rejection of the Plant. This condition shall apply notwithstanding that the Plant have been inspected or tested or that the Hirer has paid for the Plant.

13. CANCELLATION

The Hirer may by notice in writing to the Supplier cancel the Purchase Order in whole or in part if the Supplier fails to complete supply of the Plant by the date and time specified in the Purchase Order; fails to replace defective Plant in accordance with the Purchase Order; breaches any provision contained in the Purchase Order; becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. If the Hirer cancels the Purchase Order, then the Hirer may also cease payment, recover from the Supplier all monies paid for undelivered Plant and hire similar Plant from an alternative supplier and the Supplier must indemnify the Hirer for any additional cost it may incur in doing so.

The Hirer may by notice in writing to the Supplier cancel the Purchase Order in whole or in part at any time for any reason and the Hirer may then hire similar Plant from an alternative supplier. Subject to and without prejudice to any other rights of the Hirer, the Hirer must pay the Supplier for Plant supplied before the date of termination, being the amount which would have been payable if this Purchase Order had not been terminated and the Supplier had issued an invoice on the date of termination. The Supplier must make a claim for payment for any amount due to it within twenty eight (28) days after receiving the Hirer's written notice of cancellation. The Supplier's entitlement to payment under this paragraph is its sole right in connection with the Hirer's exercise of its rights under this paragraph. Following the Hirer's exercise of this right, the Supplier releases the Hirer from any claim by it for any cost, expense, loss or damage on any basis whatsoever including under the Purchase Order, in tort (including negligence), under any statute, on a quantum meruit, under quasi contract, for unjust enrichment, for frustration or under any other principle of law, to the maximum extent permitted by law. If the Hirer terminates the Purchase Order, the Supplier must take all steps necessary to mitigate any expense, cost or loss incurred by it as a result of the termination.

14. DELIVERY OF PLANT

Delivery shall occur when the Plant has been delivered in good condition at the address stated in the Purchase Order at a point stipulated by the Hirer's representative and receipt of the Plant has been given by the Hirer's representative. All the Plant shall remain at the Supplier's risk.

15. OPERATOR

If the Purchase Order provides that the Supplier will provide an operator, then a competent and qualified machine operator ("Operator") will be provided by the Supplier. If provided, the Supplier shall ensure the Operator complies with all applicable environmental and safety laws in the performance of the work and, where required by the Hirer, the Supplier must ensure each of its employees who will be working on or near the Hirer's premises holds a current and valid Blue Card for the purpose of the *Commission for Children and Young People and Child Guardian Act 2000* (Qld) or a current and valid Criminal History Report for the purpose of the *Children's Protection Act 1993* (SA) or a current assessment notice for the purpose of the *Working with Children (Criminal Record Checking) Act 2004* (WA) (as applies in the State or Territory identified in the Watpac Civil & Mining Pty Ltd Plant Hire Order Form).

16.INSURANCE

Unless the Hirer has provided evidence in writing to the Supplier of insurance cover for:

- (1) damage to the Plant supplied under the Purchase Order, including liability cover for property damage and death or bodily injury ("Plant Insurance");
- (2) liability at common law in accordance with statutory requirements for the Supplier's employees ("Worker's Compensation Insurance"); or
- (3) the Supplier's liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person ("Public Liability Insurance").

The Supplier shall have in place its own Plant Insurance, Worker's Compensation Insurance and Public Liability Insurance. If requested by the Purchaser, the Supplier shall produce evidence of the currency of the Supplier's Worker's Compensation, Public Liability and Plant Insurance Policies.

17.TERMS OF PAYMENT

Unless otherwise specified, payment shall be due to the Supplier within thirty (30) days of the end of the month in which the Supplier's invoice for the Plant is received by the Hirer, provided that all other terms of the Purchase Order have been observed.

18.GST

Unless this Purchase Order provides otherwise, and subject to this clause, any consideration that may be provided for under the Purchase Order is exclusive of GST. If a party makes a taxable supply in connection with this Purchase Order for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

19.PRICE VARIATION

Unless stated in the body of the Purchase Order the cost of the Plant shall be fixed and not subject to escalation.

20.HEALTH AND SAFETY

The Supplier must ensure that the Plant is supplied in accordance with safe practices applicable in the relevant industry and as required by all applicable laws, including the provisions of the *Workplace Safety and Health Act 1995* (Qld) or the *Occupational Health, Safety and Welfare Act 1986* (SA) or the *Occupational Safety and Health Act 1984* (WA) (as applies in the State or Territory identified in the Watpac Civil & Mining Pty Ltd Plant Hire Order Form) and any regulations and/or relevant codes of practice prescribed there under.

21.HEALTH AND SAFETY - MINING

Clause 20 does not apply to Plant being supplied to:

- (1) (in Queensland) a coal mine to which the *Coal Mining Safety and Health Act 1999* (Qld) applies, a mine to which the *Mining and Quarrying Safety and Health Act 1999* (Qld) applies, an operating plant to which the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) applies, or a facility or plant used for geothermal exploration within the meaning of the *Geothermal Exploration Act 2004* (Qld); or
- (2) (in Western Australia) a mine, petroleum well or petroleum pipeline to which the *Mining Act 1978* (WA), the *Mines Safety and Inspection Act 1994* (WA), the *Petroleum and Geothermal Energy Resources Act 1967* (WA), the *Petroleum (Submerged Lands) Act 1982* (WA) or the *Petroleum Pipelines Act 1969* (WA) applies.

Where these Acts apply the Subcontractor must ensure that the Subcontract Works are delivered in accordance with safe practices applicable to the relevant industry and as required by all applicable laws, including the provisions of the Acts listed above and any regulations and/or relevant codes of practice prescribed there under.

22.JURISDICTION AND NATIONAL CODE OF PRACTICE

Alternative 1 – Orders up to \$25,000

The National Code of Practice for the Construction Industry (the **Code**) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 or successor instrument (the Implementation Guidelines), apply to this project. By entering into the Purchase Order the Supplier is deemed to have read and agreed to comply with the Code and Implementation Guidelines.

Alternative 2 – Purchase Orders over \$25,000

22.1 The Supplier must, and must ensure that its Related Entities ("Related Entities" in this clause means as that term is defined in the Implementation Guidelines), employees, secondary subcontractors and agents comply with the Code and the Implementation Guidelines. Copies of the Code and the Implementation Guidelines are available at www.workplace.gov.au/building.

22.2 Compliance with the Code or the Implementation Guidelines shall not relieve the Supplier from responsibility to perform the Purchase Order, or from liability for any defect in the works arising from compliance with the Code or the Implementation Guidelines

22.3 Where a change in the Purchase Order is proposed and that change would affect compliance with the Code or the Implementation Guidelines, the Supplier shall submit a report to the Purchaser and the Commonwealth specifying the extent to which the Supplier's compliance with the Code or the Implementation Guidelines will be affected.

22.4 The Supplier shall maintain adequate records of the compliance with the Code and Implementation Guidelines by:

- (1) the Supplier;
- (2) its employees and agents;
- (3) its subcontractors; and
- (4) its Related Entities.

22.5 The Supplier shall permit the Commonwealth, or any person authorised by the Commonwealth including a person occupying a position in the Office of the Australian Building and Construction Commission (or any successor), full access to construction sites or places covered by the Code and Implementation Guidelines to:

- (1) inspect any work, material, machinery, appliance, article or facility;
- (2) inspect and copy any record relevant to the goods and works the subject of this Purchase Order;
- (3) interview any person; and
- (4) request a party to this Purchase Order to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post,

as is necessary to allow validation of its progress in complying with the Code and implementation Guidelines.

22.6 For the avoidance of doubt, Clause 22.5 applies in relation to the Supplier's work performed on privately funded construction site, and that of its Related Entities.

22.7 The Supplier agrees to require that its employees, agents, subcontractors and Related Entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (or any successor), with access to:

- (1) inspect any work, material, machinery, appliance, article or facility;
- (2) inspect and copy any record relevant to the goods and works the subject of this Purchase Order;
- (3) interview any person; and
- (4) request a party to this Purchase Order to produce a specified document within a specified period, being not less than 14 days, in person, by fax or by post, as is necessary to allow validation of its progress in complying with the Code and Implementation Guidelines.

22.8 The Supplier shall not appoint a subcontractor, consultant or supplier in relation to the Purchase Order where the appointment would breach a sanction imposed by the Code Monitoring Group as that term is defined in the Implementation Guidelines.

22.9 The Supplier shall ensure that all subcontracts impose obligation on its subcontractor's equivalent to the obligations under this clause.

23.TERM

The Supplier agrees to hire the Plant to the Hirer for the period indicated on the Purchase Order or any further period that the Hirer notifies the Supplier ("the Term").

24.MAINTENANCE

The Hirer is responsible for routine maintenance of the Plant only as listed in the Purchase Order. In all other respects the Supplier is responsible for all oiling, greasing and other maintenance of the Plant required to ensure its satisfactory performance.

25.CONSTRUCTION CONTRACTS ACT 2004 (WA)

This clause 23 applies in Western Australia only.

The parties agree that for the purposes of any adjudication under the *Construction Contracts Act 2004* (WA) in relation to the Purchase Order or the work to be done pursuant to the Purchase Order, the prescribed appointor shall be the Institute of Arbitrators and Mediators Australia.

26. CIVIL LIABILITY ACT 2002 (WA)

This clause 23 applies in Western Australia only.

The parties agree that Parts 1B to 1F of the *Civil Liability Act 2002* (WA) are excluded.