

## CLEARY BROS PLANT AND EQUIPMENT HIRE TERMS AND CONDITIONS

### SCHEDULE 1

1. SUPPLIER	2. HIRER
<i>Name:</i> <b>Cleary Bros (Bombo) Pty Ltd ("the Supplier")</b>	<i>Name:</i>
ABN: 28 000 157 808	ABN
<i>Address:</i> 39 Five Islands Road, Port Kembla NSW 2505	<i>Address:</i>
<i>Tel:</i> (02) 4275 1000 <i>Fax:</i> (02) 4276 1360	<i>Tel:</i> <i>Fax:</i>
<i>Contact Person:</i>	<i>Contact Person:</i>

3. Description of Services:	Equipment Description:	Dry Hire <input type="checkbox"/>
		Wet Hire <input type="checkbox"/>
4. Subcontract Documents:	Part A – Agreement Schedule Part B – Plant and Equipment Hire Terms and Conditions Part C – Pricing and Payment Part D –Special Conditions Part E – Related Documents	
5. Hire Price	Insert or see Part C	Rise and Fall Applicable Yes <input type="checkbox"/> No <input type="checkbox"/> Fuel Adjustment Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Hire Period:	Commencement Date:	Completion Date:
7. Insurances Required: (Clause 7)	<input checked="" type="checkbox"/> Workers Compensation (all employees) <input checked="" type="checkbox"/> Public Liability (\$20m if nothing stated) <input checked="" type="checkbox"/> Insurable value of the Plant and Equipment (\$20m if nothing stated) <input type="checkbox"/> Marine Insurance <input type="checkbox"/> Other (specify)	
8. Time for Payment	7 days after receipt of invoice by the Hirer	
9. Plant and Equipment		
[Insert further detail in Part E form if insufficient space]		

On behalf of the Hirer, I warrant by signing below that I have read, understood and accept all the terms and conditions contained in the Agreement Documents.

Executed as an Agreement:

**Signed by the Supplier  
by its authorised representative in the presence of**

Signature of Authorised Representative	Signature of Witness
Print Name:	Print Name:

**Signed by the Hirer  
By authorised representative in the presence of**

Signature of Authorised Representative	Signature of Witness
Print Name:	Print Name:

## CLEARY BROS (BOMBO) PTY LTD PLANT AND EQUIPMENT HIRE TERMS & CONDITIONS

### 1. Definitions and Interpretation

In the Agreement, except where the context otherwise requires:

*'Agreement'* means the agreement between the parties evidenced by the documents listed in Item 4;

*'Authority'* means any Commonwealth, State or local authority or organisation which has jurisdiction affecting the Works, the Site the Supplier's personnel, or with those systems, the Works will be connected.

*'Claim'* means any claim for any right or remedy whatsoever (including in tort) arising out of or in connection with the subject matter of this Agreement, including any claim for loss, costs, or an extension of time;

*'Confidential Information'* means confidential or commercially sensitive or valuable information belonging to the Supplier which the Hirer knows or ought reasonably to know would be commercially sensitive in nature including but not limited to customer lists, client information, financial information include the terms of this Agreement and Hire price, business and operational methods, Intellectual Property, trade secrets, technical information or any other documents produced in the context of the Services;

*'Consumables'* means all materials or other items which are consumed in the normal operation of the Plant and Equipment;

*'Dry Hire'* means where the Supplier is not responsible for the provision of an Operator or fuel costs for the Plant and Equipment;

*'Hire Period'* means the period between the Commencement Date and the Completion Date and includes any date after the Completion Date if the period of hire is extended;

*'Hirer'* means the entity at Item 2;

*'Hirer Damage'* means all damage to the Plant and Equipment caused or contributed to by the Hirer howsoever occurring, including but not limited to misuse, negligent acts or omissions, failure to carry out Maintenance, accidents, improper use, operation in abnormal conditions or failure to employ good use practice;

*'Item'* means an Item listed in Part A Agreement Schedule at its corresponding number;

*'Laws'* means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and includes any publication from recognised industry body, and includes all certificates, consents, permits, approvals and requirements of organisations having jurisdiction applicable to the Plant and Equipment and all applicable building codes of conduct or standards.

*'Maintenance'* means the obligations of either party to maintain the Plant and Equipment as set out in clause 5 or reasonably required having regard to the Plant and Equipment;

*'Operator'* means the person(s) required to operate the Plant and Equipment;

*'Plant and Equipment'* means the plant and equipment referenced in Item 9;

*'PPS Law'* means the *Personal Properties Security Act 2009* (Cth) and its regulations, as amended from time to time;

*'Services'* means the services stated at Item 3 or as directed by the Supplier;

*'Supplier'* means the entity listed at Item 1;

*'Wet Hire'* means where the Supplier has agreed to supply the Plant and Equipment and an Operator for the Plant and Equipment.

*'WHS Laws'* means the *Work Health and Safety Act 2011* (NSW), and the *Work Health and Safety Regulation 2011* (NSW), as amended from time to time, and any Code of Practice approved under the *Work Health and Safety Act 2011* (NSW) and any other applicable Laws relating to work, health and safety.

Other terms of the Agreement have the meaning ascribed to them in Part A Agreement Schedule.

### 2. Title

The Hirer agrees and acknowledges:

- (a) The Supplier retains title to the Plant and Equipment at all times and the rights of the Hirer to use the Plant and Equipment are as bailee only.
- (b) The Hirer is not entitled to offer, sell, assign, sub-let, mortgage or otherwise deal with the Plant and Equipment and otherwise deal with the Plant and Equipment in any way that could affect the Supplier's rights as owner of the Plant and Equipment.
- (c) The Hirer must ensure the Plant and Equipment is clearly marked and identified as the property of the Supplier at all times.
- (d) The Hirer, throughout the Hire Period, will keep the Plant and Equipment in its possession and not remove the Plant and Equipment, or any part thereof, without the Supplier's consent in writing.

### 3. Payment

- (a) The Hirer must pay the Hire Price in accordance with Items 5 and 6 of Part A and Part C of this Agreement without setoff, for each item of Plant and Equipment hired during the period to the date of the invoice.
- (b) If stated in Item 5, the Hire Price shall be adjusted in accordance with any rise and fall mechanism and/or fuel price adjustment formula contained in Part C, or otherwise provided by the Supplier from time to time.
- (c) The Supplier is entitled to immediately suspend or terminate the Services or remove the Plant and

Equipment from site if the Hirer fails pay the Hire Price in accordance with this Agreement.

- (d) The Supplier may charge interest on all amounts not paid by the Hirer by the due date for payment at the rate of 10% per annum.

#### 4. Hire Period

- (a) The Hire Period will commence on the Commencement Date, or if no date is provided, on collection by the Hirer from the Supplier and expire on the Termination Date, or if no date is provided, on the return of the Plant and Equipment to the Supplier, whichever is the later.

#### 5. Hirer Obligations

The Hirer must;

- (a) prior to use of the Plant and Equipment, determine the suitability and condition of the Plant and Equipment for the Services;
- (b) use the Plant and Equipment in a proper and workmanlike manner at all times and use the Plant and Equipment for the sole purpose of the Services;
- (c) comply will all Laws and any reasonable direction from any Authority;
- (d) in relation to Dry Hire, ensure that the Plant and Equipment is operated by a suitably qualified, licensed or trained operator at all times;
- (e) in relation to Dry Hire, maintain the Plant and Equipment at all times including but not limited to performing all necessary servicing, inspections before and after use, pre-start checks;
- (f) in relation to Wet Hire;
  - (i) at all times ensure that the Operator is provided clear instructions and all instructions comply with all relevant Laws, rules and regulations;
  - (ii) provide a safe work environment and appropriate training to the Operator;
- (g) unless otherwise listed at Part C, at its own expense, service, clean, fuel, lubricate and do all things necessary to maintain the Plant and Equipment in good and substantial repair and condition, unless otherwise directed by the Supplier;
- (h) undertake at its own expense all repair work in respect of items of Plant and Equipment that fail due to Hirer Damage;
- (i) in relation to any maintenance and/or repairs undertaken by the Hirer, such maintenance and/or repairs is;
  - (i) undertaken by competent, suitably trained and qualified persons;
  - (ii) in compliance with all relevant Laws, rules and regulations;
  - (iii) done in such a way that it does not void or negate any warranties the Supplier may have in relation to that Plant and Equipment; and
  - (iv) carried out in accordance with any reasonable maintenance procedures or directions provided to or from the Supplier from time to time.

- (j) pay for, or reimburse the Supplier for, all Consumables;
- (k) immediately notify the Supplier in the event of any breakdown of the Plant and Equipment;
- (l) not alter the Plant and Equipment, including without limitation, making any additions to, defacing, erasing any identifying mark, plate or number on or in the Plant and Equipment, adding any identifying mark to suggest the Plant and Equipment is the property of the Hirer, or other damage the Plant or Equipment;
- (m) ensure that the Plant and Equipment at all times comply with all Laws, including but not limited rules and regulations pertaining to the Services and the use of the Plant and Equipment, and all WHS Laws and Environmental obligations;
- (n) safeguard the Plant and Equipment at all time when the Plant and Equipment is in its possession, including but not limited to against any damage, theft, fire and flood, and maintain appropriate insurance that covers loss of the Plant and Equipment.

#### 6. Supplier Obligations

The Supplier will;

- (a) supply the Plant and Equipment as specified at Item 9 of Part A, or if that Plant and Equipment is not available, plant and equipment of a similar standard and functionality;
- (b) where the agreement is for Wet Hire, provide an appropriately trained, qualified and licensed Operator to operate the Plant and Equipment;
- (c) provide, where possible, the relevant manuals required for the operation of the Plant and Equipment;
- (d) on request by the Hirer, at the Hirer's expense, appropriate training to the Hirer's employees, subcontractors or agents to operate the Plant and Equipment. Such training shall be paid for by the Hirer at the rates identified in Part C, or as advised by the Supplier from time to time.

#### 7. WHS and Environment Compliance

The Hirer, its employees and any subcontractors must:

- (a) Comply with the requirements set out in the WHS Laws, including the *Work Health and Safety (Mines) Act 2012* (NSW) and all associated regulations.
- (b) Comply with the any policies provided to it by the Supplier.
- (c) Ensure only trained, competent and experienced personnel perform the Services and use any Plant and Equipment.
- (d) Immediately report all hazards, unsafe conditions or incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects that relate in any way to the Services or Plant and Equipment. All verbal communication must be confirmed in writing by the Hirer within 12 hours of the verbal report.
- (e) Co-operate with the Supplier should it investigate any report made at clause (d), and do all things reasonably

or necessarily requested by the Supplier in relation to that investigation.

- (f) Prior to commencing the Works the Hirer and its subcontractors must provide to the Supplier:
- (i) evidence of all proper inductions being attained before Site induction; and
  - (ii) Safe Work Method Statements (SWMS) or Risk Assessments for the Works;

to the satisfaction of the Supplier.

- (g) The Supplier may direct the Hirer to attend to corrective action with respect to the Services. Corrective actions identified by the Supplier must be promptly attended to, if a time period is not provided. The Hirer must advise and provide evidence to the Supplier of compliance with and completion of the corrective action.

## 8. Warranty and Indemnity

- (a) The Hirer warrants that it has fully examined all information and Plant and Equipment provided to it and warrants that it is suitable, appropriate and adequate for the provision of the Services in accordance with this Agreement.
- (b) The Supplier gives no warranty in respect of the condition of the Plant and Equipment or its fitness for purpose.
- (c) The Hirer hereby indemnifies and shall keep indemnified the Supplier against;
- (i) any breach of warranty given by the Hirer;
  - (ii) any loss of or damage to property, equipment, vehicles caused by the provision of the Services;
  - (iii) any liability arising under clause 9;
  - (iv) any claims by any third party or loss caused to the Hirer with respect to any of the above.
- (d) The Hirer releases and indemnifies the Supplier from and against any costs, including legal costs on an indemnity basis, incurred by the Supplier, as a result of the Hirer failing to pay the Hire Price in accordance with this Agreement.
- (e) The indemnity at clause 8(c) and (d) is reduced to the extent that the damage or loss is caused by a breach of Contract or negligent act or omission of the Supplier.

## 9. Insurances

- (a) The Hirer shall obtain and maintain the insurance policies referred to in Item 7 of Part A for the duration of the Services.
- (b) The Supplier must be a nominated as an interested party in each policy of insurance relevant to the Services (excluding Workers Compensation).
- (c) The Hirer must before proceeding with the Services or on request, provide certificates of currency in respect of each of the insurances required.

## 10. PPS Law

- (a) The Hirer acknowledges and agrees that to the extent the Agreement creates a PPS Lease in accordance with section 13 or otherwise, of the PPS Law, the Supplier has a security interest in the Plant and Equipment for the

purposes of the PPS Law and to the extent applicable, the PPS Law applies.

- (b) The Hirer acknowledges and agrees that the Supplier may take all necessary steps, including but not limited registering a Security Interest which the Supplier has over the Plant and Equipment and the Hirer must do anything reasonably necessary to ensure the Supplier can perfect, register and enable its rights under that Security Interest.
- (c) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest, the Hirer agrees that sections 95, 96, 121(4), 125, 130, 132(3)(D), 132 (4), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest by the Supplier.
- (d) The parties agree that this instrument shall not be disclosed pursuant to clause 275 of the PPSA.

## 11. Liability

- (a) The Hirer is liable for any damage to the Supplier's Plant and Equipment, or personnel arising from the provision of the Services, including damage caused by material being carted (whether or not corrosive or hazardous in any way) or the surface conditions of any site or carriageway.
- (b) Should any loss or damage be caused by any act, default or omission of the Hirer, its agents or employees then such damage shall be made good by the Hirer at his own cost and expense.
- (c) In relation to Wet Hire, the Supplier shall not be liable for any actions that come about as a result of the Operator operating the Plant and Equipment under the instruction or direction of the Hirer.
- (d) In the event of the Hirer fails or neglects to make good such damage within 14 days from receipt of a notice from the Supplier, then the Supplier may make good such damage at the Supplier's expense as a debt due and immediately payable by the Hirer.
- (e) Any liability under this clause is reduced to the extent that such liability arises from a negligent act or omission of the Supplier.
- (f) It is agreed that to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded.

## 12. Default and Termination

- (a) The Supplier may terminate this Agreement for convenience in its absolute discretion on 7 days notice to the Hirer. Upon such termination, the Hirer must pay the Supplier for the Services to the date of termination, as well as any reasonable demobilisation costs. The Supplier will take all reasonable steps to minimise the demobilisation costs.
- (b) In the event that either party fails to rectify a breach of this agreement within 14 days of receipt of a written notice of that breach, then either party may by written notice terminate this agreement.

- (c) Either party may terminate this Contract on 14 days written notice if;
  - (i) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
  - (ii) the other party ceases or threatens to cease to carry on its business;
  - (iii) the other party is unable to pay its debts as and when they fall due;
  - (iv) the other party has a receiver or manager or provisional liquidator appointed or a creditor takes possession of the whole or substantial part of its assets or undertaking;
  - (v) the other party undergoes a change in control; or
  - (vi) the other party convenes a meeting for the purpose of, or enters or proposes to enter into, any arrangement or composition with its creditors.
- (d) Any termination is without prejudice to any other accrued rights or other rights at law.
- (e) In the event of termination the Supplier shall in addition to any other rights, have the right to claim for any loss or damage incurred as a result of such termination.

### **13. Recovery of Plant and Equipment**

- (a) If;
  - (i) this Agreement is terminated pursuant to clause 12 or otherwise;
  - (ii) the Supplier is entitled to terminate this Agreement; or
  - (iii) the Hirer is in breach of any obligation under this Agreement then;
  - (iv) the Hirer grants the Supplier an irrevocable license to enter at will the Hirer's premises or any site or part of any site controlled by the Hirer in order to recover the Plant and Equipment, and an irrevocable Power of Attorney for the purpose of recovering the Plant and Equipment from the premises of a third party.
- (b) Any such recovery shall be at the expense of the Hirer.

### **14. Disputes**

- (a) Any matters of dispute arising between the Hirer and the Supplier in connection with this Agreement shall be referred, in writing, to the Supplier within seven (7) days of the occurrence, for determination by the Supplier.
- (b) In the event that the dispute cannot be resolved within 14 days by direct negotiation between the parties, then either party may commence proceedings in accordance with either clause 14(c) or clause 14(d).
- (c) If the amount in dispute is equal to or less than \$100,000.00 then the proceedings must be commenced in the Local Court of New South Wales.
- (d) If the amount in dispute is greater than \$100,000.00 the dispute will be determined by expert determination. .
- (e) During any dispute procedure the parties shall continue to perform their obligations under this Agreement.

- (f) Nothing in this clause will prevent either party applying to the courts to seek urgent relief.

### **15. Notices**

- (a) Any notice or instructions to be given or delivered by the Supplier to the Hirer under this Agreement shall be deemed to have been received when given, or delivered, to the Hirer, or its representative on site.
- (b) In the case of notices sent by post, the same shall be deemed to have been received two working days after being posted, save where the actual delivery date can be established.

### **16. Confidentiality and Intellectual Property**

- (a) The Hirer acknowledges the Hire, its employees, subcontractors and agents may be given access to Confidential Information in the course of performing the requirements of this Agreement.
- (b) Except as required by law, the Hirer must maintain the confidential nature of the Confidential Information by not disclosing it to third parties.
- (c) The obligation on the part of the Hirer under this clause shall survive termination of this Agreement.

### **17. Limitation of liability**

- (a) Notwithstanding anything else in this Agreement, to the extent permitted by law, the aggregate liability of the Supplier to the Hirer for any claim, including for invalid termination or repudiation will be limited to the Hire Price, whether in contract, tort (including negligence) or otherwise.

### **18. General**

- (a) This Agreement is governed by the law in force in NSW and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in NSW and the courts of appeal from them.
- (b) If any provision of this Agreement, or part thereof, is invalid or unenforceable, it shall be severed to the extent of the invalidity or unenforceability only and shall not affect the operation, construction or interpretation of the remaining provisions of this Agreement.
- (c) A single, partial or non-exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy.
- (d) The Agreement Documents shall take the order of precedence commencing with Part D Project Special Conditions (if any) and thereafter in the alphabetical order of Parts referred to in Item 4 of the Schedule (*'the Order'*).
- (e) Any conflict, inconsistency or ambiguity between the Agreement Documents shall be resolved firstly by reference to the Order. That is, those documents higher in the Order shall take precedence, override or negate a document lower in the Order.

- (f) This Agreement contains the entire understanding of the parties and, unless specifically referenced in the Agreement, supersedes any other agreement, representation, tender, quote, conditions of Agreement, standard terms or request between the parties made or dated prior to the date of this Agreement.
- (g) Any of the Hirer's terms and conditions that are not listed in this Agreement at Part E do not form part of this Agreement and where such a document is attached it is subject to the Order.
- (h) Where the Hirer includes one or more persons this agreement binds them jointly and severally.
- (i) No rule of construction applies against a party merely on the basis that that party prepared or completed this document. Headings are for convenience only and do not affect the interpretation of this Agreement.
- (j) The Hirer may engage the Supplier for specific works periodically verbally or by issue of Part A in isolation, and each case these terms will apply.
- (k) Terms defined in the GST Law (as defined under the *A New Tax System (Goods and Services Tax) Act 1999*) have the same meaning in this Agreement unless provided otherwise.
- (l) This Agreement may be executed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

## Part C - Pricing and Payment

Schedule of Rates:

<b>Hire Rates (GST exclusive)</b>				
	<b>Unit</b>	<b>Dry Hire</b>	<b>Wet Hire</b>	<b>Comments</b>
Working Rate				
Standby Rate				
Operator Rate		N/A		
Period of Hire				
Mobilisation				
Demobilisation				
Training/Induction				

### Price Adjustment

[If applicable]

5(g) –

Any maintenance or repairs must be performed by the Supplier, with such costs to be on-charged separately to the Hirer.

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## Part D - Special Conditions

(Insert if applicable)

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**Part E – Related Documents forming part of the Agreement**

The following documents are incorporated into the Agreement by way of reference. It is the Hirer’s responsibility to obtain the following documentation, whether they are attached to this schedule or not. The Hirer warrants that it has carefully reviewed and understood the following documentation prior to entering into the Agreement.

**[INSERT LIST OF DOCUMENTS]**

**1. Plant and Equipment**

Plant and Equipment (Item 9 of Part A)						
Type (Unit)	Make/Model	Asset Number	Serial number	Year	Odometer	Attachments