

Plant Hire Order Terms and Conditions

1. DEFINITIONS

- 1.1 "Anti-Bribery and Anti-Corruption Legislation" means all laws in connection with the prohibition of bribery and corruption applicable to the performance of this Plant Hire Contract (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Financial Management and Accountability Act 1997* (Cth), the *Commonwealth Authorities and Companies Act 1997* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).
- 1.2 "Associated Person" means a person or entity that performs services for another, including as an employee, agent, contractor, representative or subsidiary of that other person or entity.
- 1.3 "Clean Energy Regulator" means the Clean Energy Regulator established in the *Clean Energy Regulator Act 2011* (Cth) or any future authority with similar functions.
- 1.4 "Code" means the *Building Code 2013* (Cth) (available at www.employment.gov.au/building-code) made under the *Fair Work (Building Industry) Act 2012*, and as amended or replaced from time to time.
- 1.5 "Code Monitoring Group" has the meaning given in the Supporting Guidelines.
- 1.6 "Collateral" means Collateral has the meaning given in the PPSA.
- 1.7 "COR Laws" means Laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' laws or 'Heavy Vehicle' laws.
- 1.8 "COR Systems" means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.
- 1.9 "Delivery Date" means the delivery date set out in the Plant Hire Order.
- 1.10 "FWBC" means the Fair Work Building Industry Inspectorate, which is known and operates as Fair Work Building and Construction, and including any Commonwealth agency or department that replaces it.
- 1.11 "Hire Charges" means the rates set out in the Plant Hire Order.
- 1.12 "Hire Period" means the period identified in the Plant Hire Order and defined in clause 3.
- 1.13 "Industrial Instrument" means an award or agreement, however designated, that:
(a) is made under or recognised by an industrial law (within the meaning of the *Fair Work Act 2009* (Cth)); and
(b) relates to the relationship between an employer and its employees.
- 1.14 "Inspector" means a person appointed as an inspector of the FWBC.
- 1.15 "Law", means all law, legislation, statutes, ordinances, orders, rules and regulations (whether Federal, State or Local) in which the work under the Plant Hire Contract (or any part) is being carried out, federal or State codes of practice including the Code, Building Code of Australia, Australian Standards or industry standards of Australia and approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences or waivers under any of those or the common law or equity.
- 1.16 "LORAC ABAC Policy" means the document available here: http://www.laingorourke.com/~media/or/files/annual-review-2014/or_abac_policy.pdf
- 1.17 "Minimum Hire Period" means any period specified in the Plant Hire Order to be the minimum period for which Select requires part or all of the Plant but does not include any hire periods described as expected, anticipated or estimated.
- 1.18 "Minimum Hire Period Fees" means the fee for the Minimum Hire Period specified in the Plant Hire Order, if any.
- 1.19 "NGER Legislation" means any statutory requirements, standards, codes and guidelines related to greenhouse gas and energy emissions and energy consumption, including without limitation, the *National Greenhouse and Energy Reporting Act 2007* (Cth), the *National Greenhouse and Energy Reporting Regulations 2008* (Cth) and *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (Cth) and all related regulations and codes of practice.
- 1.20 "Off-hire Notice" means a notice issued by the Select Hire Desk which identifies the date on which the Hire Period is to end.
- 1.21 "Plant" means the plant or the equipment and ancillary parts and materials described in the Plant Hire Order or elsewhere in the Plant Hire Contract.
- 1.22 "Plant Hire Order" means the plant hire order form so entitled which incorporates these Plant Hire Terms and Conditions by reference.
- 1.23 "Plant Hire Contract" means:
(a) the Plant Hire Order;
(b) these Plant Hire Terms and Conditions;
(c) the Plant specification requirements set out in attachments (if any); and
(d) any other documents incorporated by reference in the Plant Hire Order or these Plant Hire Terms and Conditions.
- 1.24 "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- 1.25 "PPS Register" means the Personal Property Securities Register established under the PPSA
- 1.26 "Proportionate Liability Legislation" means if the governing law is:
(a) the Australian Capital Territory, then the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);
(b) New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
(c) Northern Territory, then the *Proportionate Liability Act 2005* (NT);
(d) South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
(e) Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas);
(f) Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
(g) Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA).
- 1.27 "Prohibited Act" means, in connection with this agreement, any act which would breach any applicable Anti-Bribery and Anti-Corruption Legislation and any other legal prohibitions on money laundering, trade control and sanctions, and the like.
- 1.28 "Privacy Act" means the *Privacy Act 1988* (Cth).
- 1.29 "Project Requirements" means any requirements of Select notified to the Supplier in writing and specific to the particular Site or project for which the Plant is ordered.
- 1.30 "Public Official" is any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a government controlled enterprise, or a public international organisation.
- 1.31 "Related Entity" has the same meaning as in the Code.

- 1.32 "Relevant Collateral" means Collateral which is the subject of a Security Interest granted under this Plant Hire Contract.
- 1.33 "Replacement Value" means the reasonable market replacement cost of the Equipment which is commensurate with the age and fair wear and tear of the particular Plant (as agreed between the parties)
- 1.34 "Security Interest" has the meaning given in the PPSA.
- 1.35 "Select Hire Desk" means the individual(s) authorised by Select to give and receive instructions to and from the Supplier in respect of the Plant Hire Order.
- 1.36 "Select" means Laing O'Rourke Australia Construction Pty Limited t/as Select Plant Hire.
- 1.37 "Site" means the location nominated in the Plant Hire Order.
- 1.38 "Supplier" means the person, firm or corporation recorded on the Plant Hire Order.
- 1.39 "WHS Act" means the principal work health and safety Act in the State or Territory in which the Project is situated, and, if any work under Plant Hire Contract is being carried out in a different State or Territory to the location of the Project, the Act in that State or Territory. For clarity, the term WHS Act may include two or more Acts.
- 1.40 "WHS Legislation" means the WHS Act and the WHS Regulation.
- 1.41 "WHS Regulations" means the Regulations associated with the WHS Act.
- 1.42 Terms defined or otherwise given meaning in the Plant Hire Order have the same meaning in these Plant Hire Terms and Conditions.
2. **OBLIGATIONS OF THE SUPPLIER**
- 2.1 The Supplier must:
(a) provide Plant that complies with all applicable Laws, is in good working order, supported by evidence that it has been maintained strictly in accordance with the Plant manufacturer's recommendations (and at recommended service intervals) throughout its life;
(b) deliver the Plant to the Site and (where the Plant Hire Order includes assembly) assemble and erect the Plant ready for use by Select by the Delivery Date;
(c) comply with all applicable Laws in the performance of its obligations under the Plant Hire Contract (and provide such evidence of compliance as may be reasonably required by Select from time to time);
(d) have the right to hire the Plant to Select;
(e) prior to Plant mobilisation provide to the Select Hire Desk a completed pre-mobilisation checklist, service history and any documents required under the Project Requirements;
(f) supply the Plant in accordance with the Plant Hire Contract and any Project Requirements;
(g) ensure that the Plant is suitable for the purposes reasonably anticipated from the Plant Hire Contract; and
(h) subject to clause 2.2, ensure that the Plant will perform in accordance with any documentation provided by the Supplier for the Plant.
- 2.2 To the extent of any ambiguity, discrepancy or inconsistency between the documentation provided by the Supplier under clause 2.1(h) and the documents referred to in clause 2.1(f), the documents referred to in clause 2.1(f) will take precedence.
- 2.3 Should the Supplier not own any part of the Plant, the Supplier must disclose in writing to Select for approval prior to supply. Select in its sole discretion reserves the right to refuse Plant supplied by third party companies.
3. **HIRE PERIOD**
- 3.1 The Hire Period shall exclude all time in transporting the Plant to the Site and (where the Plant Hire Order includes assembly) the assembly or erection of the Plant and shall begin when the Plant is on the Site and available to Select and shall continue for the Hire Period. Any advice from the Select Hire Desk that the Hire Period is to end will have an Off-hire Notice reference number, which must be confirmed by the Supplier with the Select Hire Desk.
- 3.2 Should Select retain the Plant beyond any Minimum Hire Period, the terms of this Plant Hire Contract shall be extended at rates to be agreed which shall not exceed the rates set out in the Plant Hire Order.
4. **HIRE CHARGE**
- 4.1 Select shall pay the Hire Charges for Plant provided for the Hire Period subject to any entitlement Select has under this Plant Hire Contract or at Law to deduct or set-off amounts.
- 4.2 The Supplier will stand down the Plant during Christmas shut down periods and while the Plant is not available for use including but not limited to mechanical breakdown, wet weather and industrial action, and at other times when the Plant is not in use as agreed between the parties or directed by Select. There shall be no cost to Select during periods of stand down that are not directly caused by Select or its client.
- 4.3 For Plant that is supplied with personnel, it is a condition precedent to payment that the Supplier provides:
(a) an accurate and completed emissions report up to the date for which the Supplier is claiming payment;
(b) weekly timesheets to be signed by a Select representative when Plant is supplied by the Supplier to substantiate the hire charges up to the date for which the Supplier is claiming payment; and
(c) a signed declaration that:
(i) all plant operators' wages due in connection with the Plant Hire Contract have been duly paid;
(ii) it is a registered employer in accordance with the applicable Income Tax Assessment Act, as amended from time to time, and that all deductions from employees' wages in compliance with that registration have been remitted to the Taxation Commissioner by the due date; and
(iii) provision has been made for all other employee entitlements in accordance with clause 8.
5. **INVOICING AND PAYMENT**
- 5.1 The Supplier shall issue invoices monthly for Plant supplied in accordance with the Plant Hire Contract and calculated by the rates set out in the Plant Hire Order. Included with any invoice must be any evidence of the amount claimed which may be reasonably required by Select and the Select Plant Hire Order Number.
- 5.2 Select shall pay the Supplier for Plant provided in accordance with this Plant Hire Contract within 30 days of receipt of an invoice for Hire Charges that complies with this Plant Hire Contract, provided that such invoice is received no later than 30 days after the date that the invoice was due.

Plant Hire Order Terms and Conditions

- 5.3 If the Plant Hire Contract does not include the supply of fuel for the Hire Period, the Plant must be delivered full of fuel and any invoice for fuel upon completion of the Hire Period must be provided at the same time as any claim for payment under this clause .
- 5.4 Notwithstanding anything else in this Plant Hire Contract, Select shall not be liable for any claim by the Supplier for loss, damage, cost or expense (whether in contract, tort, under statute or in equity) received later than 30 days after the expiration of the Hire Period.
- 6. TRANSPORTATION**
Unless otherwise specified in the Plant Hire Contract or otherwise directed by Select (in its absolute discretion), the Supplier shall be responsible for all transportation costs for the Plant including but not limited to, loading and unloading costs, insurance, storage, carriage, towage, salvage, waiting, detention and demurrage costs, including all damage or loss, direct or indirect and consequential however caused while the Plant is in transit and during the entire period of the Plant Hire Contract.
- 7. PLANT TO BE IN GOOD REPAIR**
The Supplier shall provide written certification prior to transportation in the format required by Select that the Plant has been serviced and maintained before it is used on Site. Select may at any time inspect the Plant for deficiencies. The Supplier shall, at its own cost, maintain the Plant in good, safe and operating condition and in strictly in accordance with the Plant manufacturer's recommendations (and at recommended service intervals) including protection against freezing, corrosion and all other exposures. All equipment, accessories and attachments not listed in the Plant Hire Contract that are necessary for the Supplier to perform the Plant Hire Contract shall be furnished by the Supplier at its own expense.
- 8. SUPPLYING PERSONNEL TO SITE**
The following clause 8 applies only if the Plant Hire Contract includes for personnel to be deployed by the Supplier to the Site.
- 8.1 If the Supplier is required by the Plant Hire Contract to provide plant operators it shall employ only competent, experienced, properly licensed and reliable personnel who are adequately trained, hold current certificates of competence to operate the Plant and will operate the Plant. The Supplier is responsible for site inductions of its company representatives and employees, training, skill assessment or reclassification as required during the Hire Period, including any associated costs. Any personnel of the Supplier must carry any site identification or induction cards issued when on Site and comply with all Site access requirements. The Hire Rate stated in the Plant Hire Order shall be inclusive of such labour including any overtime unless specifically stated otherwise.
- 8.2 The Supplier shall be responsible for, and will ensure that it and any subcontractors comply with its obligations under any applicable Industrial Instrument or Laws relating to employee entitlements, including:
- paying all wages, workers' compensation insurance, fringe benefits tax, all payroll taxes and other employee entitlements including in respect of any superannuation fund, scheme or arrangement for the benefit of workers;
 - complying with all applicable Laws with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees; and
 - observing all terms and conditions of employment under any applicable Industrial Instrument. The Supplier must not engage in any unlawful arrangements or practices which may avoid award, Industrial Instrument or Laws including treating a genuine employee as an independent contractor or allow an inappropriate application of the Pay As You Go (PAYG) system of taxation. Upon request from Select, the Supplier must make available all records required to demonstrate that it and any subcontractors are complying with the above requirements and applicable Industrial Instruments, Federal and State codes of practice and Laws.
- 8.3 If Select makes any payment in respect of the Supplier's employees or suppliers or subcontractors of the Supplier in any circumstances, the amount thereof shall be deemed to be a debt due by the Supplier to Select and may be recovered, including pursuant to clause 9.1.
- 8.4 The Code
- Select:
 - must comply with the Code on the Project; and
 - is required by the Code to ensure that its subcontractors on the Project comply with the Code.
 - The Supplier warrants that,
 - at the time it lodged an expression or interest or tender for work under the Subcontract or, if there was no tender or expression of interest, on the date it received the Plant Hire Order, its work practices and the Industrial Instruments to which the Supplier is a party complied with the Code.
 - The Supplier must:
 - comply with the Code, require compliance with the Code by its Related Entities, employees, agents and others performing works or services and ensure compliance with the Code by all subcontractors or consultants it engages including by confirming compliance at all site and project meetings;
 - provide Select with information and documents which it reasonably requires to monitor the Supplier's compliance with the Code;
 - comply with any reasonable directions of Select in relation to the rectification of behaviour or any circumstance related to the Supplier's industrial arrangements which is non-compliant with the Code;
 - notify Select and the FWBC of any alleged breach, voluntary remedial action taken or other matters relating to the Code as soon as practicable after becoming aware of the alleged breach, the remedial action being taken or matter arising;
 - notify Select of any order arising from an adverse Court or Tribunal decision made against it for a breach of workplace relations law, work health and safety law, or workers' compensation law as soon as practicable after becoming aware of the order being made;
 - comply and ensure compliance by its employees, Related Entities and subcontractors or consultants with Select's Work Health and Safety Plan, any work health safety and rehabilitation plan or workplace relations management plan which applies to the Project; and
 - if required to by Select, require its employees, consultants or any persons engaged by any of its subcontractors to undergo training relating to compliance with the Code.
 - Compliance with the Code will not relieve the Supplier from responsibility to perform the Plant Hire Contract, or from liability for any defect in the performance of the Plant Hire Contract arising from compliance with the Code.
- Where a change in the Plant Hire Contract is proposed and that change would affect compliance with the Code, the Supplier must submit a report to Select specifying the extent to which the Supplier's compliance with the Code will be affected.
 - The Supplier must maintain adequate records of the compliance with the Code by itself, its employees, its agents, its subcontractors, its consultants and its Related Entities.
 - If the Supplier does not comply with the requirements of the Code in the performance of this Plant Hire Contract such that a sanction is applied by the Minister for Employment or the Commonwealth, without prejudice to any rights that would otherwise accrue, Select will may record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or a Related Entity.
 - The Supplier must not appoint a subcontractor or consultant in relation to the Project where:
 - there are reasonable grounds to believe the subcontractor or consultant is covered by an Industrial Instrument that is inconsistent with the Code; or
 - there are reasonable grounds to believe that the subcontractor or consultant is a party to an agreement of a kind described in subsection 10(1) of the Code; or
 - an exclusion sanction applies to the subcontractor or consultant;
 - an adverse decision, direction or order of a court or tribunal has been made in relation to the subcontractor or consultant and a contravention of any of the following in respect of building work:
 - a designated building law; or
 - the Work Health and Safety Act 2011 or a corresponding WHS law; or
 - the Competition and Consumer Act 2010; and,
 there are reasonable grounds to believe that the subcontractor or consultant has failed to comply with the decision, direction or order.
 - The Supplier agrees to require that it and its subcontractors or consultants and Related Entities provide Select, the Commonwealth or any person authorised by Select or the Commonwealth, including an Inspector, with access to:
 - inspect any work, material, machinery, appliance, article or facility;
 - inspect and copy any record relevant to the Project the subject of this Subcontract; and
 - interview or speak with any person, including on a confidential basis, as is necessary to ensure or demonstrate the Supplier's compliance with the Code.
 - The Supplier and its Related Entities will comply with a request from Select, the Commonwealth or any person authorised by Select or the Commonwealth, including an Inspector, to produce a specified document within a specified period, in person, by fax or by electronic means or by post.
- 8.5 The Supplier must avoid and mitigate consequences of any industrial disputes affecting the work under the Plant Hire Contract and the Project and must inform Select within 24 hours of any actual or threatened industrial action, or demands made by its workforce or any representative of its workforce (on or off the Site) and of anything which could lead to industrial action affecting the Project. During any industrial action the Supplier must maintain all resources on Site.
- 8.6 The Supplier must attend meetings to discuss industrial matters from time to time as requested by Select.
- 8.7 The Supplier consents, and must ensure that its subcontractors and Related Entities consent, to disclosure:
- by Select to the Commonwealth, the Director of FWBC and Minister for Employment; and
 - by the Commonwealth, the Director of FWBC and Minister for Employment; of information concerning its and its Related Entities' compliance with the Code and whether or not an exclusion sanction has been imposed on it and/or its Related Entities.
- 8.8 The Supplier must:
- notify Select of the nominal expiry of any Industrial Instrument that applies to the Supplier, its Related Entities or subcontractors, or of the commencement of bargaining for a new Industrial Instrument that the Supplier, its Related Entities or subcontractors propose to make;
 - notify Select of the making of any new Industrial Instrument that applies to the Supplier, its Related Entities or subcontractors within three business days of its making, and prior to the approval of the Industrial Instrument by the Fair Work Commission;
 - if requested by Select, provide Select with a confirmation from the FWBC that any Industrial Instrument drafted or made by the Supplier, its Related Entities or subcontractors complies with the Code.
- 8.9 To avoid doubt the Supplier:
- agrees that Select, or a person authorised by Select, may access and audit the Supplier's records in relation to industrial matters from time to time, including to assess whether the Supplier is complying with the terms and conditions of any Industrial Instrument that applies to it; and
 - must ensure that it complies with any variations to or replacements of the Code.
- 8.10 The Supplier will not be entitled to any Claim arising out of or in connection with it entering into a new Industrial Instrument or any Claim arising out of or in connection with its compliance with its obligations under this clause 8.
- 8.11 The Supplier must ensure that all of its subcontracts impose obligations on subcontractors and consultants equivalent to the obligations under this clause 8.
- 9. SET OFF**
The Supplier agrees that Select may set off, deduct or withhold from any monies due to the Supplier pursuant to the Plant Hire Contract, any debt, amount, claim for damages or any other entitlement Select may have against the Supplier arising from or incidental to:
- the execution of the Plant Hire Contract or the terms and conditions of the Plant Hire Contract; or
 - the execution of any other work by the Supplier for Select or the terms of any other agreement between Select and the Supplier,
- and if such monies are insufficient for this purpose then the deficiency may be recovered as a debt due and owing by the Supplier to Select.

Plant Hire Order Terms and Conditions

10. DAMAGE TO EQUIPMENT

10.1 If the Plant is defective or damaged or made inoperable in any way during the Hire Period, including as a result of normal wear and tear (and without limiting any other rights Select may have):

- (a) if discovered by Select (or a related company), Select will notify the Supplier of a reasonable time within which the defect or damage must be repaired; and
- (b) whether or not discovered by Select or the Supplier, the Supplier shall immediately notify Select of the defect or damage, specifying the extent and nature of the defect or damage and the steps taken to rectify the problem such that delays or interruptions to Select's use of the Plant will be prevented; and
- (c) if the Plant is inoperable and cannot be repaired within a reasonable time specified by Select, remove the Plant from Site within the time identified by Select in a written notice and (at Select's option):
 - (i) at its own cost replace it with Plant that complies with this Plant Hire Contract; or
 - (ii) pay to Select the cost to Select of replacing the inoperable or defective Plant.

10.2 Any loss, damage, expense or other costs incurred by Select due to the Plant failing to conform with the requirements of the Plant Hire Contract including where the Plant is unfit for purpose, defective, damaged or inoperable (including as a result of fair wear and tear) during the Hire Period may be recovered as a debt due and owing from the Supplier to Select, save to the extent that such loss damage, expense or costs were incurred as a result of Select's negligence or breach of the Plant Hire Contract

10.3 To the extent the Plant Hire Contract permit the Supplier to recover payment for any damaged Plant (whether during or after the Hire Period), the Supplier may be entitled to payment to the extent only that:

- (a) prior to effecting the repairs:
 - (i) the Supplier notifies Select of the specific parts damaged and provides Select a reasonable opportunity to inspect the damage, not less than:
 - (A) 3 days, where the value of the damage claimed is <\$1000; and
 - (B) 5 days, where the value of the damage claimed is >\$1000; and
 - (ii) provides to Select images of the particular damage and details of the proposed repairs;
- (b) after effecting the repairs, the Supplier provides evidence of the repairs including any parts used and a claim for payment which itemises parts and labour and is itemised in accordance with the Hire Charges (to the extent relevant); and
- (c) if the damage is identified after the Hire Period, the Supplier notifies Select of the matters identified in clause 10.3(a) within 72 hours of the relevant Plant arriving at the Supplier's depot.

10.4 In the event of total loss of any Plant caused by Select during a Hire Period, Select's liability to the Supplier whether under the Plant Hire Contract or otherwise shall in no event exceed the Replacement Value.

11. INDEMNITY

11.1 The Supplier shall be liable for, indemnify and keep indemnified Select against any loss, damage, expense or other costs arising out of any liability, claim, demand or proceedings in respect of any personal injury (including death) or damage to any real or personal property, including the Plant, or arising under any Law arising in any manner out of or in connection with the operation or use of the Plant (whether by Select or the Supplier) during the Hire Period or out of or in connection with the Plant Hire Contract, however the Supplier's liability to indemnify will be reduced to the extent that such loss, damage expenses or costs are caused or contributed to by any negligent acts or omissions of Select or breach of this Plant Hire Contract by Select.

11.2 Notwithstanding any other provision in this Plant Hire Contract, Select shall not be liable to the Supplier for any indirect or consequential loss, including but not limited to loss of goodwill, loss of business, loss of profits (anticipated, actual or otherwise), loss of savings, loss of hire or any and all other pure economic loss arising, out of or in connection with this Plant Hire Contract.

12. INSURANCE

12.1 The Supplier shall provide and maintain:

- (a) insurance to cover its liabilities under the Plant Hire Contract throughout the term of the Plant Hire Contract and such insurance, where permitted by law, shall include Select as a joint insured; and
- (b) workers compensation insurance to comply with laws.

12.2 When requested by Select, the Supplier shall furnish evidence that such insurances have been effected and the premium paid. Maintaining this insurance does not relieve the Supplier of its obligations defined in clause 11. Despite anything in the Plant Hire Order or otherwise, the Supplier may not claim any payment from Select associated with a Plant damage waiver.

13. TERMINATION

13.1 If the Supplier is in breach of any term of Plant Hire Contract, commits a negligent act or omission or in any way acts so as to endanger any property or any person, Select shall be entitled to immediately terminate the Plant Hire Contract by written notice effective immediately, whereupon Select, without limiting any other of its entitlements under the Plant Hire Contract or at law, shall be entitled to recover damages from the Supplier. The Supplier shall have no recourse or claim against Select for termination pursuant to this clause.

13.2 Without limiting clause 13.1, Select may by written notice terminate this Plant Hire Contract:

- (a) if the Supplier fails to rectify a default under this Plant Hire Contract within the time specified by Select in a written notice of default, effective immediately;
- (b) for its sole convenience, effective from the date stated in the notice; or
- (c) on insolvency or threatened insolvency of the Supplier, effective immediately.

13.3 On receiving a notice of termination Supplier must:

- (a) immediately off-hire the Plant;
- (b) make arrangements for collection of Plant; and
- (c) use all reasonable endeavours to minimise the costs of termination to Select.

If the Plant Hire Contract is terminated under clause 13.2(b) the Supplier must send to Select within 30 days of the date of termination a tax invoice for the value of any Hire Charges in accordance with clause 4.

13.4 In the case of a fixed term or Minimum Hire Period, Select may for its convenience, by written notice to the Supplier terminate this Plant Hire Contract at any time. On receiving the notice of termination the Supplier may be entitled to reimbursable costs reasonably incurred by the Supplier, to the extent as set out below, and to the lesser amount of:

- (a) the difference in the Hire Charges between the long term hire rates and the normal, undiscounted hire rates for the hire period up to the date of termination as set out in the Plant Hire Order;
- (b) the actual direct out of pocket costs incurred by Supplier during the remainder of the Minimum Hire Period; or
- (c) 50% of the remaining Minimum Hire Period Fees.

14. DEFAULT

14.1 Without prejudice to any other rights or remedies of Select, if the Supplier:

- (a) commits an act of bankruptcy, enters into a scheme of arrangement with its creditors, is placed in official management, has a receiver appointed, has an application to wind it up presented to the Supreme Court (including any application to which the Supplier alleges a bona fide dispute exists), has a liquidator or provisional liquidator appointed, or is deemed to be insolvent as defined in the *Corporations Act 2001* (Cth); or
- (b) wholly or partly suspends performance of its obligations under the Plant Hire Contract;
- (c) fails to proceed with performance of the Plant Hire Contract in a reasonable, diligent or competent manner;
- (d) fails to comply with a written instruction of Select;
- (e) fails to comply with a notice from Select requiring the removal and replacement of defective Plant; or
- (f) commits any breach of the Plant Hire Contract,

then Select may terminate the Plant Hire Contract by written notice in writing to the Supplier effective immediately.

14.2 Without prejudice to any other rights or remedies of Select, the Supplier shall be liable to Select for any loss or expense incurred by Select as a result of determining the Plant Hire Contract and such amount shall be deemed to be a debt due and owing by the Supplier.

14.3 Upon such termination, Select may take possession of and permit other persons to use the Plant and other things on the Site which are owned by the Supplier for the purpose of completion of the Project. The Supplier shall:

- (a) have no right to any compensation or allowance for any action taken by Select pursuant to this clause; and shall
- (b) comply at its own cost with the reasonable directions of Select, which may include directions to:
 - (i) remove the Plant from Site within the time specified in a written notice from Select; or
 - (ii) not be entitled to the return of the Plant until such time as Select has completed the Project for which the Plant was hired.

15. TAXES

All taxes arising out of or in connection with the Plant Hire Contract or arising out of the use or possession of the Plant shall be paid by the Supplier and are deemed to be included in the Hire Charges.

16. ASSIGNMENT - TRANSFER - SUBLETTING

The Supplier shall not assign, sublet or otherwise transfer the Plant Hire Contract or any interest in it without Select's prior written consent. The Supplier shall not, in absence of Select's prior written consent, remove the Plant from the Site.

17. SUCCESSORS AND ASSIGNS

The Plant Hire Contract shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, administrators, executors, trustees and permitted assigns.

18. FORM OF PLANT HIRE CONTRACT

18.1 The Plant Hire Contract is a complete and exclusive statement of all the terms of the agreement between the parties and supersedes all other communications or representations either oral or written between the parties. The Supplier warrants that it has not relied upon any previous representations by Select or any one acting on behalf of or as agent for Select as an inducement to enter into the Plant Hire Contract. The Supplier acknowledges that any terms or conditions in the Supplier's hire schedule, delivery docket or the like do not apply to the Plant Hire Contract or in any way constitute an alternative offer.

18.2 The Plant Hire Contract may only be modified in writing signed by the parties.

19. DISPUTES

19.1 If a dispute arises in any way in connection with the Plant or the Plant Hire Contract, whether before or after the completion or determination of the Plant Hire Contract, then either party may give the other written notice of that dispute. Within 14 days of that notice, senior executives of the parties shall meet to negotiate in good faith a resolution of the dispute. If the dispute has not been resolved 7 days after the expiry of the 14 days period for negotiation, either party may refer it to arbitration for the President of The Institute of Arbitrators and Mediators Australia or its nominee.

19.2 The Plant Hire Contract and the rights and obligations of the parties shall be construed in accordance with the Laws of the State or Territory where the Site is situated. The parties submit to such jurisdiction.

20. INTERACTIONS WITH SELECT

In the performance of the Plant Hire Contract the Supplier shall take directions and instructions only from the Select Hire Desk. Despite any other provision of this Plant Hire Contract, the Supplier will have no entitlement or claim against Select for any cost, loss or damage associated with acts or omissions taken (or not taken) by it based on instructions from other sources.

21. EXCLUSION OF PROPORTIONATE LIABILITY LEGISLATION

To the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and liabilities under the Plant Hire Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

22. COMPLIANCE WITH NGER LEGISLATION

22.1 The Supplier acknowledges and agrees that:

- (a) its subcontractors, consultants, material suppliers, agents, representatives, employees and any related entity undertaking work in connection with Plant Hire Contract also do all things necessary to assist Select in complying with any reporting obligations Select may have under NGER Legislation, including in addition to the requirements of this clause and clause 4.1(a), providing Select with any further information or documents reasonably required by Select to allow Select to comply with any reporting obligations under NGER Legislation; and
- (b) it will provide the emissions report in accordance with clause 4.1(a) and allow for the emissions report and further information provided under clause 22.1(a) to be copied, audited, verified by any persons authorised by Select or the Clean

Plant Hire Order Terms and Conditions

Energy Regulator, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, production and access to relevant documents.

23. HEALTH AND SAFETY

23.1 The Supplier acknowledges that the Supplier has complete control in relation to, and will ensure, so far as is reasonably practicable, the health and safety of any plant operators that it is required to provide under the Plant Hire Contract including on Select's premises and that Select does not control or influence the Supplier's activities in relation to health and safety matters other than as set out in this clause 23.

23.2 The Supplier must:

- (a) comply with its statutory work health and safety obligations as a supplier, designer, manufacturer, importer, installer, constructor or commissioner of any plant, or structure (as applicable) under WHS Legislation;
- (b) ensure so far as is reasonably practicable, that the Plant is without risks to the health and safety of persons who may use, handle, store, construct, assemble or carry out any reasonably foreseeable activity including the proper storage, decommissioning, dismantling, demolition or disposal of the Plant;
- (c) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by sub-clause 23.2(b);
- (d) give adequate information to Select concerning each purpose for which the Plant were designed or manufactured, the results of testing referred to in sub-clause 23.2(b) and any conditions necessary (including any written assurances) to ensure that the Plant are without risks to health and safety when used, including a description of the Plant and any faults in Plant that has been previously used; and
- (e) comply with its obligation under WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.

24. ANTI-BRIBERY AND ANTI-CORRUPTION

24.1 Select is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including Anti-Bribery and Anti-Corruption Legislation.

24.2 (Anti-Corruption Obligations): The Supplier must not, and must take reasonable steps to ensure that any of its Associated Persons do not, commit a Prohibited Act (the Anti-Corruption Obligations) and:

- (a) must implement adequate policies and procedures to ensure compliance with its Anti-Corruption Obligations, and disclose those policies and procedures to Select upon request; and
- (b) where the Supplier does not have a written policy required by clause 24.2 (a), it agrees that it has read and understands the LORAC ABAC Policy and will comply with the principles of the LORAC ABAC Policy in all respects as if it were its own policy; and
- (c) must use reasonable endeavours to require its Associated Persons to implement adequate policies and procedures to ensure they will not commit a Prohibited Act and, if no such promise is forthcoming, will inform Select and seek alternative person(s) to perform those services.

24.3 (Public Officials): The Supplier represents and warrants that except as otherwise disclosed in writing to Select, no Public Official:

- (a) is or will become an Associated Person of the Supplier;
- (b) is or will become involved in the management of, including as part of its board or other governing authority, or holds or will hold a controlling or significant interest the Supplier; or
- (c) is an immediate family member of a member of the board or other governing authority or senior management.

24.4 (Notification obligations): The Supplier will immediately notify Select in writing (including details and proposed steps to investigate and address the issue) if:

- (a) it becomes aware that any representations or warranties in clause 24.3 are false;
- (b) it, or any of its Associated Persons breaches the Anti-Corruption Obligations; or
- (c) it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of Anti-Bribery and Anti-Corruption Legislation by it or an Associated Person.

24.5 (Investigation and audit rights): If the Supplier notifies under clause 24.4, or if Select reasonably believes that there has been a breach of the Anti-Corruption Obligations, the Supplier must, for up to 3 years after completion or expiry of the Plant Hire Contract:

- (a) respond promptly to Select's reasonable enquiries and cooperate with Select in connection with its investigation; and
- (b) allow Select access to any relevant documentation, books or records to assess or verify compliance with this clause 24.

24.6 (Consequences of breach): Without limiting any other rights Select has under this Plant Hire Contract, if Select reasonably believes that the Supplier is in breach of clause 24 it may, by written notice effective immediately terminate the Plant Hire Contract.

25. PPSA

This clause applies where the Plant Hire Contract constitutes a PPS Lease.

25.1 If the Supplier believes that a Security Interest arises under this Plant Hire Contract it must notify Select at least 5 days before taking steps to register such Security Interest on the PPS Register.

25.2 Within 10 days of the earlier of:

- (a) the expiry or termination of this agreement; or
- (b) the issue by Select of an Off-Hire Notice,

the Supplier will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Plant, and must provide Select with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.

25.3 The parties agree that for the purposes of section 115 of the PPSA, sections 120 (enforcement of liquid assets), 126 (apparent possession) and 128 (secured party may dispose of collateral) of the PPSA will not apply to any Relevant Collateral.

25.4 Select and the Supplier each agree not to disclose any information of the kind described in section 275(1) of the PPSA, including:

- (a) information about this agreement (including a copy of it);
- (b) information about the amount or obligation secured by any Security Interest created by or under this Plant Hire Contract and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time,

without consent of the other party, to its offices, employees, legal and other advisors and auditors or, with prior notice to the other party to comply with any Law, the rules of any securities or stock exchange or an order of a court or tribunal.

25.5 If Select sub-leases any Plant valued individually by Select at greater than \$10,000, Select must register its Security Interest against the sub-lessee.

26. SUSPENSION

26.1 Select may at any time and for any reason suspend performance of all or any of the Supplier's obligations under this Plant Hire Contract by written notice effective upon receipt of the notice. The Supplier must suspend the performance of the obligations identified in the notice until Select directs the Supplier to resume performance of those obligations by further written notice. At such time, the Supplier must promptly recommence the performance of those obligations in accordance with this Plant Hire Contract.

26.2 If the suspension is not as a result of an act or omission of the Supplier or its personnel, the Supplier will only be entitled to be paid the costs reasonably, directly and actually incurred by the Supplier.

27. CHAIN OF RESPONSIBILITY LEGISLATION

27.1 The Supplier:

- (a) acknowledges that the Supplier or the Supplier's personnel is the primary duty holder (including as the operator, packer, loading manager, loader and unloader), under the COR Laws with responsibility for developing COR Systems applicable to the supply of the Plant and any plant operators including but not limited to ensuring that:
 - (i) the Plant is appropriately maintained;
 - (ii) loads do not exceed vehicle mass or dimension limits;
 - (iii) the Plant is appropriately secured;
 - (iv) operators carrying freight containers have a valid Container Weight Declaration;
 - (v) drivers do not:
 - (A) exceed the speed limits;
 - (B) exceed regulated driving hours;
 - (C) fail to meet the minimum rest requirements; or
 - (D) drive while impaired by fatigue.
- (b) must proactively provide reasonable assistance to LOR to enable LOR to satisfy its duties and responsibilities under all relevant COR Laws;
- (c) must obtain and maintain, and ensure that each of its personnel obtains and maintains all licences, approvals, notices and other legal requirements required to enable the applicable activity, function or task to be undertaken lawfully;
- (d) undertake any audits or monitoring as requested by LOR to demonstrate compliance with LOR's COR Systems, and relevant COR Laws;
- (e) warrants that it is familiar with and has the capability and resources to comply with all relevant COR Laws; and
- (f) must comply, and ensure that each of its personnel complies with, all applicable Laws and licences, approvals, notices and other legal requirements, including COR Laws.

28. CONFIDENTIALITY AND PRIVACY

28.1 The Supplier shall not reveal to any third party any information ("**Confidential Information**") provided by Select in relation to the subject matter of this Plant Hire Contract that may adversely affect the business of Select Plant Hire or be of value to a competitor of Select Plant Hire.

28.2 The provisions of this clause shall not apply to any Confidential Information that is:

- (a) in or comes into the public domain (except as a result of a breach of this Plant Hire Contract);
- (b) required to be disclosed by the Supplier under operation of law or in accordance with the requirement of any regulatory or supervisory authority to which the Supplier is subject; or
- (c) approved for disclosure by the Supplier in writing by Select and/or the related body corporate.

28.3 Upon termination of the Plant Hire Contract, the Supplier shall return all Confidential Information in its possession, custody or control obtained to Select within 7 days.

28.4 The obligations of the Supplier as to disclosure and confidentiality shall continue in force for a period of 3 years following the termination of this Plant Hire Contract.

28.5 The Supplier must comply with all Privacy Laws, whether or not it is an organisation bound by the Privacy Act.