

## TERMS AND CONDITIONS OF DRY HIRE

### INTRODUCTION

- A. These Terms and Conditions states the terms and conditions on which **LCR Group Pty Ltd** ABN 78 095 626 798 (herein "**LCR Group**") will, subject to being available for hire at the commencement of the Hire Period, offer to hire the Equipment to the Hirer for the Hire Period.
- B. The Hirer hereby accepts the hire of Equipment by LCR Group for the Hire Period on the terms and conditions of these Terms and Conditions.
- C. Unless a formal written agreement has been executed by LCR Group and the Hirer to govern the Hirer's hire of the Equipment, these Terms and Conditions will be the sole authority for governing the Hirer's hire of the Equipment to the exclusion of all others.

### 1. EQUIPMENT HIRE

- 1.1 Subject to being available for hire at the commencement of the Hire Period, LCR Group agrees to hire the Equipment to the Hirer for the Hire Period on the terms and conditions of these Terms and Conditions.
- 1.2 Unless otherwise agreed in writing between the parties, the Hire Period will commence when the Equipment leaves the Originating Location on the Commencement Date, or if applicable, the On Hire Date.
- 1.3 The Hire Period will cease when the Equipment is returned to the Receiving Location, subject to acceptance in accordance with clause 9.3 of these Terms and Conditions.
- 1.4 The Hirer is responsible for payment of the full Hire Charges until the Equipment is returned to and accepted by LCR Group or an alternative arrangement is agreed by LCR Group. In the event that LCR Group replaces the Equipment during the Hire Period, the Hire Period will be deemed unbroken as though the replacement equipment was the original Equipment.
- 1.5 The Hirer acknowledges and agrees that the Hirer will be liable for the full Hire Charges for the whole of the Hire Period and will continue to be applied during periods of inclement weather, industrial dispute, and if the crane remains at the Site Location during public holidays, RDO's, Easter and Christmas Shutdown.
- 1.6 The Hirer further acknowledges and agrees that the Hirer will be liable for the full Hire Charges where the Equipment is not operational due to any loss or damage to the Equipment (including any major component failure) that is directly or indirectly caused or contributed to by the Hirer or the Site Location conditions.
- 1.7 The Hire Charges will be used for the purposes of calculating the minimum charge during the period to which an invoice relates, unless clause 1.8(b) applies.
- 1.8 In the event that the hire terminates at any time:
- during the Minimum Hire Period, the Hirer must pay all remaining Hire Charges for full Minimum Hire Period; or
  - after the Minimum Hire Period and ceases part way through an invoice period, where Hirer is not in default of these Terms and Conditions, the minimum charge will be calculated on a pro rata basis.

- 1.9 The Hire Period may be extended by the Hirer by a written variation notice agreed to by LCR Group.

### 2. DELIVERY AND REMOVAL EQUIPMENT

- 2.1 Unless otherwise agreed between LCR Group and the Hirer, the Hirer will collect the Equipment from the Originating Location nominated by LCR Group at the commencement of the Hire Period and return the Equipment to the Receiving Location at the end of the Hire Period.
- 2.2 If the Hirer requires LCR Group to deliver or remove the Equipment the Hirer must:
- pay to LCR Group any and all Mobilisation Charges, which include all costs and expenses incurred by LCR Group in delivering, rigging, installing and/or assembling the Equipment at the Site Location in addition to the Hire Charges; and
  - pay to LCR Group any and all Demobilisation Charges, which include all costs and expenses incurred by LCR Group in disassembling, de-rigging and/or collecting the Equipment from the Site Location in addition to the Hire Charges; and
  - pay to LCR Group any and all Delay Charges for any Labour Personnel for delays outside of LCR Group control during Mobilisation and Demobilisation; and
  - do all that is practicable to facilitate the delivery or removal, including ensuring that the Equipment is in an appropriate state and position for removal.
- 2.3 Unless expressly stated to be otherwise, the Hirer acknowledges and agrees that Mobilisation and Demobilisation Charges are based on trucks and trailers being unloaded and loaded (as the case may be) within two (2) hours of their arrival at the Site Location. Delay Charges will apply for every subsequent hour (to be calculated pro rata) over the two (2) hour limit for the unloading and loading (as the case may be) of the Equipment at the Site Location.
- 2.4 LCR Group will not be liable to the Hirer for any late delivery, non-delivery, pick up or any Loss or damage occasioned to the Hirer for such late delivery or pick up or non-delivery of the Equipment.

### 3. OWNERSHIP

- 3.1 Notwithstanding LCR Group's interest in the Equipment (whether an owner or otherwise) LCR Group retains its interest in the Equipment at all times notwithstanding:
- the delivery of the Equipment to the Hirer;
  - the possession and use of the Equipment by the Hirer; and
  - any temporary attachment of the Equipment to any land or buildings to facilitate use of the Equipment,
- subject only to the rights of the Hirer as a mere bailee of the Equipment with a right only to use them in accordance with, and under these Terms and Conditions.
- 3.2 The Hirer must protect LCR Group's interest in the Equipment at all times, including making clear to others that LCR Group has an interest in the Equipment (as owner or otherwise) as directed by LCR Group.
- 3.3 The Hirer must not place or allow to be placed on the Equipment any plates or marks that is inconsistent with LCR Group's interest in the Equipment. If requested by LCR Group, the Hirer must put plates on the Equipment noting the owner of the Equipment.

### 4. USE OF EQUIPMENT

- 4.1 The Hirer acknowledges and agrees that the Hire Charges for the hire of the Equipment in accordance with these Terms and Conditions is the minimum charge on a single shift basis and is subject to a limit of maximum hours of usage which, unless otherwise set out in writing, shall be 50 hours of operational use over a continuous 7 day period.
- 4.2 The Hirer will be liable to pay to LCR Group the Excess Charges for every additional hour of operational use over the maximum hours of usage per any one period as set out in clause 4.1 and unless specified in writing to be otherwise, the Excess Charges will be applied on a pro rata basis at the Hire Charge.

### 5. FEES AND CHARGES

- 5.1 The Hire Charge will be applied for the whole of the Hire Period notwithstanding that the Equipment may be returned and accepted by LCR Group prior to the expiration of the Hire Period.
- 5.2 Unless expressly agreed to the contrary, LCR Group will issue invoices to the Hirer monthly during the Hire Period.
- 5.3 The Hirer must pay to LCR Group the Hire Charges together with all other amounts referred to in these Terms and Conditions including (but not limited to):
- any Mobilisation Charges, Demobilisation Charges and or Delay Charges in accordance with clause 2.2;
  - any Excess Charges in accordance with clause 4;
  - the cost of any Labour Personnel, including any operational guidance or training on the use of the Equipment (Labour Charges);
  - the Servicing Charges (if applicable);
  - the cost of any consumables, fuel or trade materials relating to the Equipment;
  - the cost of replacing any of the Equipment which is beyond repair due to an act or omission by the Hirer;
  - the costs incurred by LCR Group to ensure the Equipment and any provisional supply of Labour Personnel meet all Site Location requirements, including but not limited to safety modifications, medicals, training and inductions, plus a ten (10) per cent margin for administration costs; and
  - any and all government charges and taxes (including any and all future government charges and taxes levied after the Commencement Date) relating to these Terms and Conditions or the payments to be made under it, including stamp duty, financial institutions duty and GST.
- 5.4 The Hirer must pay to LCR Group:
- all Hire Charges and other amounts stated in an invoice within thirty (30) days from the date of the invoice; and
  - costs and expenses incurred in the exercise or attempted exercise by LCR Group of LCR Group's rights under these Terms and Conditions, including collection agency fees (if permissible) and legal fees (calculated on a solicitor and own client basis).
- 5.5 The Hirer must not withhold, or make deduction from, any payment under these Terms and Conditions without the prior written consent of LCR Group.

### 6. GST

- 6.1 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
- 6.2 Unless otherwise specified, all amounts payable under these Terms and Conditions are exclusive of GST and must be calculated without regard to GST.
- 6.3 If a supply made under these Terms and Conditions is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the Party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- 6.4 The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- 6.5 If there is an adjustment to a taxable supply made under these Terms and Conditions then the Supplier must provide an adjustment note to the Recipient.
- 6.6 The amount of a Party's entitlement under these Terms and Conditions to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that Party is entitled in respect of those costs, expenses or liabilities.

### 7. PERSONAL PROPERTY SECURITIES ACT

- 7.1 In this clause 7, the terms 'Register', 'Purchase Money Security Interest', 'Proceeds', 'Security Agreement', 'Security Interest' and 'Verification Statement', will have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- 7.2 LCR Group and the Hirer acknowledge and agree that:
- any agreement incorporating these Terms and Conditions (or a transaction in connection with it) constitutes a Security Agreement covering the Equipment supplied or to be supplied to the Hirer under these Terms and Conditions and all Proceeds of any kind for the purposes of the PPSA; and
  - the rights of LCR Group under these Terms and Conditions are in addition to and not a substitution for LCR Group's rights under other law (including the PPSA) and LCR Group may choose whether to exercise its rights under these Terms and Conditions, or under such other law, as it chooses.

## TERMS AND CONDITIONS OF DRY HIRE

- 7.3 The Hirer grants a Security Interest to LCR Group for the Equipment supplied or to be supplied to the Hirer under these Terms and Conditions and all Proceeds of any kind for the purposes of the PPSA.
- 7.4 The Hirer hereby consents to LCR Group effecting a registration on the Register in relation to such Security Interest arising under or in connection with these Terms and Conditions.
- 7.5 The Hirer agrees to provide all reasonable assistance (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which is reasonably necessary for the purposes of:
- ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
  - enabling LCR Group, as Secured Party, to apply for any registration, or give any notification, in connection with the Security Interest in the Equipment supplied or to be supplied to the Hirer under these Terms and Conditions on the Register, so that the Security Interest has the priority required by LCR Group; or
  - enabling LCR Group to exercise rights in connection with the security interest.
- and to assure the performance of its obligations, the Hirer hereby gives LCR Group irrevocable power of attorney to do anything LCR Group considers necessary to give effect to the matters set out in this clause.
- 7.6 The Hirer waives its right to receive any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA and cannot be excluded.
- 7.7 Any money paid by the Hirer shall be applied by LCR Group to any and all monies owing by the Hirer to LCR Group as determined by LCR Group (in its sole discretion).
- 7.8 Where a person is a controller in relation to the Equipment, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Equipment by that controller.
- 7.9 The Parties agree that to the extent they may be excluded by law:
- sections 142 and 143 of the PPSA are excluded; and
  - LCR Group need not comply with the following provisions of the PPSA: sections 95, 96, 118, 121(4), 125, 130, 132(3)(d) and 132(4) and any other provision of the PPSA notified to the Hirer by LCR Group after the date of this Security Agreement; and
- 7.10 Solely for the purpose of allowing to LCR Group the benefit of section 275(6) of the PPSA, LCR Group and the Hirer agree that neither of them must disclose information of the kind that can be requested under section 275(1) of the PPSA.
- ### 8. WARRANTIES BY THE HIRER
- 8.1 The Equipment will, during and after the Hire Period, remain the exclusive property of LCR Group and nothing contained in these Terms and Conditions will confer on the Hirer any right or property or interest in and to the Equipment other than as bailee.
- 8.2 Except as provided in these Terms and Conditions, the Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with, the Equipment.
- 8.3 The Hirer warrants that the person signing these Terms and Conditions is properly authorised to bind the Hirer to these Terms and Conditions.
- 8.4 The Hirer agrees that:
- It has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment for the job the Hirer intends to use the Equipment for; and
  - LCR Group has made no representations or given any guarantee or warranty that the Equipment is suitable for the Hirer's intended purpose.
- ### 9. OBLIGATIONS OF THE HIRER
- #### 9.1 Hirer's Obligations
- The Hirer undertakes that it will:
- be responsible for the Equipment and the Associated Documentation provided with the Equipment and shall use and shall keep both the Equipment and Associated Documentation in good and substantial repair and condition;
  - only use the Equipment in accordance with the terms of these Terms and Conditions and the Associated Documentation;
  - operate the Equipment in a safe, skilful and proper manner and only as it was intended and designed within the constraints, design and capacity limitations as per the manufacturer's stated performance expectations when operated in accordance with the operating instructions issued by the manufacturer;
  - ensure persons operating the Equipment:
    - are suitably trained and competent on its safe and proposed use, qualified to use the Equipment and where necessary hold a current licence to use the Equipment;
    - are suitably trained, experienced and competent persons in accordance with Occupational Health and Safety legislation, regulations and industry requirements;
    - wear suitable clothing and protective equipment when operating the Equipment;
    - are not under the influence of drugs or alcohol; and
    - do not carry illegal, prohibited or dangerous substances in or on the Equipment;
  - accept full responsibility for any and all Loss and damage to the Equipment and or the Associated Documentation howsoever caused;
  - not deal with the title to the Equipment, on-hire the Equipment, or otherwise deal with the Equipment in a manner inconsistent with the Hirer's position as bailee of the Equipment, unless the Hirer obtains written consent from LCR Group;
  - not part in any way with possession of the Equipment without the prior written consent of LCR Group;
  - if it parts possession of the Equipment with or without the consent of LCR Group, effect and maintain valid Security Interest registrations in respect of the Equipment as are required to protect the interests of LCR Group in the Equipment;
  - advise LCR Group of the precise location of the Equipment, and promptly grant access to it, at the request of LCR Group;
- (j) the Hirer may only use the Equipment at the Site Location or as otherwise agreed upon in writing. Any attempt to relocate the Equipment from the Site Location without the express written consent of LCR Group shall constitute a material breach of these Terms and Conditions;
- (k) take all required action to ensure that the Site Location is safe for the use and operation of the Equipment;
- (l) immediately give notice to LCR Group if the Equipment is lost, damaged or destroyed;
- (m) accept full responsibility for the safe keeping of the Equipment (including storing the Equipment safely, securely and protected from theft, seizure, Loss or damage);
- (n) comply with all the laws, regulations and instructions applicable to the use and operation of the Equipment;
- (o) prepare the Equipment for operation in accordance with any applicable Australian Standard, Code or statute where required or directed;
- (p) commission the testing and or certifying of mechanical, structural or electrical components where required or directed;
- (q) ensure that the Equipment is not contaminated with any hazardous substances. Where the Equipment may have been subjected to contamination the Hirer must effectively decontaminate the Equipment and provide LCR Group with written details of the decontamination processes applied;
- (r) not make any warranty to a third party about the performance of LCR Group's obligations under these Terms and Conditions, or make an undertaking to a third party which requires that LCR Group perform its obligations under these Terms and Conditions; and
- (s) at the end of the Hire Period:
  - have, subject to the terms of these Terms and Conditions, the Equipment in good working order and repair; and
  - promptly return the Equipment to LCR Group, or have it ready for removal by LCR Group, together with all Associated Documentation.
- #### 9.2 Servicing, Repair and Maintenance
- Unless expressly stated otherwise in these Terms and Conditions, the Hirer is responsible for and must at its own cost:
- service and maintain the Equipment to a standard of good repair and condition and will carry out:
    - any daily servicing and maintenance requirements of the Equipment in accordance with the manufacturer's specification and supply all oils, greases, spare parts, components and tyres necessary for the continued operation of the Equipment and includes the completion of LCR Group supplied service logs and other documents;
    - any servicing of the Equipment which is recommended by the manufacturer and is scheduled to take place during the Hire Period (at 250 hour intervals or as per the manufacturer specification for servicing); and
    - any basic maintenance or basic repairs to the Equipment in accordance with the manufacturer's requirements which are scheduled to take place during the Hire Period.
- the Hirer agrees to produce documentation upon request in evidence of compliance with this clause 9.2(a).
- repair and or replace any tyres on or otherwise provided with the Equipment due to reasons other than for normal wear and tear, including but not limited to puncture damage, sidewall cuts, fractures and the premature wear and damage resulting from excessive use, misuse, abuse and failure to maintain correct inflation pressures.
  - carry out the Daily Pre-Start Inspection Checklist (as provided by LCR Group) for the Equipment and forward all such reports to LCR Group on a weekly basis.
- #### 9.3 Condition of Equipment on Return and Acceptance
- At the expiration or termination of the Hire Period, the Hirer shall have the Equipment in good working condition and repair and promptly return the Equipment to LCR Group, with all Associated Documentation:
- For the purposes of assessing condition, LCR Group and the Hirer will complete an On-Hire Inspection Report before the commencement of the Hire Period and an Off-Hire Inspection Report when the Equipment is returned to LCR Group.
  - Any and all items of difference between the condition of the Equipment in the On-Hire Inspection Report and the Off-Hire Inspection Report shall be repaired, restored or replaced by the Hirer at the Hirer's expense before the Equipment is demobilised, decommissioned and returned LCR Group.
  - Upon return of the Equipment to LCR Group at the end of the Hire Period, LCR Group will accept the condition of the tyres provided they are within the crane safe and road worthy limits and are not less than 50% wear and in the event that the tyres are not in a satisfactory condition (to be reasonably judged by LCR Group) the Hirer agrees to the replacement of the tyres at its own expense.
  - If the Hirer fails to comply with clause 9.3(b) and 9.3(c) in a manner and time deemed reasonable by LCR Group and a final resolution is not reached with reference to clause 9 hereof, LCR Group may rectify, restore and or replace the Equipment or any part of it and recover its costs from the Hirer as a debt due.
  - LCR Group will not and must not be deemed to accept the return of the Equipment until clauses 9.3(b), 9.3(c) and 9.3(d) are satisfied. The Hire Period continues until notice of acceptance is given and the Hirer is liable for the Hire Charge for that portion of the Hire Period until the Equipment is returned and accepted by LCR Group in accordance with this clause.
- #### 9.4 Provision of Supply of Labour
- If, at the Hirer's request, LCR Group supplies any operator of the Equipment, rigger, dogman, supervisor, engineer or any other personnel (**Labour Personnel**):
- the Labour Personnel will be under the Hirer's direction and control during the Hire Period and will comply with the Hirer's reasonable directions;
  - LCR Group will not, while the Labour Personnel is working under the Hirer's direction and control, seek to direct or supervise any of the work undertaken by the Labour Personnel;

## TERMS AND CONDITIONS OF DRY HIRE

- (c) LCR Group will not be liable to the Hirer for any act or omissions of the Labour Personnel where the Labour Personnel is acting under the Hirer's direction and control during the Hire Period; and
- (d) the Hirer will not allow any other person to operate the Equipment without LCR Group's written consent (which consent will not be unreasonably withheld).
- 10. OPTION FOR SERVICING AND MAINTENANCE**
- 10.1 LCR Group may, from time to time, in its own discretion or upon acceptance of the Hirer's invitation and at the Hirer's sole risk:
- (a) perform any servicing of the Equipment which is recommended by the manufacturer and is scheduled to take place during the Hire Period (at 250 hour intervals or as per the manufacturer specification for servicing); and or
- (b) perform any basic maintenance of or basic repairs to the Equipment in accordance with the manufacturer's requirements which are scheduled to take place during the Hire Period,
- in accordance with the terms and conditions in the Option for Servicing and Maintenance Schedule (as applicable).
- 10.2 Where LCR Group agrees to undertake any of the servicing or maintenance activities in accordance with 10.1, the Hirer acknowledges and agrees that it is liable to pay to LCR Group the Servicing Charges (as applicable).
- 10.3 The Hirer acknowledges and agrees that the Option for Servicing and Maintenance Schedule does not in any way relieve the Hirer of or limit the Hirer's responsibilities and obligations under clause 9 of these Terms and Conditions.
- 11. LIABILITY AND INDEMNITY**
- 11.1 The Hirer will be responsible for the cost of and will be liable for:
- (a) damage or loss caused to the Equipment or third party property as a result of a breach of these Terms and Conditions by the Hirer;
- (b) damage or loss arising from theft, where the Equipment is left either secured or unsecured;
- (c) damage or loss where the Equipment is totally or partially immersed in water;
- (d) overhead damage;
- (e) damage or loss to the Equipment or third party property caused by failing to secure properly any load or equipment;
- (f) damage or loss caused to the Equipment or third party property by loading or unloading to or from the Equipment;
- (g) damage or loss to the Equipment deliberately caused by using the Equipment in a dangerous or reckless manner;
- (h) the death or personal injury of any person except to the extent that it is directly caused by LCR Group's negligence;
- (i) damage, liability or cost caused by or to the Equipment during the Hire Period, or caused by any act or omission of the Hirer during the Hire Period, except to the extent directly caused by the negligence of LCR Group; and
- (j) damage or loss suffered by LCR Group as a direct or indirect result of the Hirer providing false information, or engaging in any unsafe or fraudulent activity, in respect of the hire of the Equipment or dealings with any law enforcement officer or other authority during the Hire Period, and LCR Group reserves the right to recover an amount from the Hirer in respect of such losses.
- 11.2 Subject to the Hirer's statutory rights and to the maximum extent permitted by law, LCR Group is not liable to the Hirer or any other person for and the Hirer releases and discharges LCR Group (including for legal costs) from any claim for any Loss, damage, costs, expenses, damages (including but not limited to loss of profits or loss of earnings; loss of use or enjoyment; direct, indirect, special, incidental or consequential loss or damage to persons or property including without limitation any personal property left in any Equipment or otherwise) or death or injury caused by or arising out of or relating in any matter or incidental to the Equipment, its condition, performance, use, operations, keeping, supply or non-supply, performance or non-performance or any defect or defects in or breakdown or any failure of or accident to the Equipment or any item thereof or anything or any service provided for contemplated by or in or pursuant to these Terms and Conditions or any other liabilities, whether direct or indirect, suffered by the Hirer or any other person due to any breach of these Terms and Conditions by LCR Group.
- 11.3 To the extent permitted by law:
- (a) all guarantees, terms, conditions, warranties, representations, undertakings, express or implied, statutory or otherwise, relating to these Terms and Conditions are excluded;
- (b) where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to these Terms and Conditions, LCR Group's liability is limited (at LCR Group's election) to:
- (i) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (c) LCR Group's maximum aggregate liability for all claims under or relating to these Terms and Conditions is limited to an amount equal to the Hire Charge paid by the Hirer under these Terms and Conditions.
- 11.4 The Hirer indemnifies LCR Group against any liability or loss arising from, and any costs charges and expenses incurred in connection with:
- (a) loss of or damage to or by the Equipment during the Hire Period, including property damage, injury or death caused directly or indirectly by the Equipment and specific consequential losses that LCR Group has made the Hirer aware of;
- (b) any act or omission of the Hirer during the Hire Period resulting in Loss or damage to LCR Group, except to the extent caused by the negligence of LCR Group;
- (c) a delay in payment of money under these Terms and Conditions; and
- (d) any breach by the Hirer of an obligation under these Terms and Conditions.
- 11.5 LCR Group will not be liable to the Hirer for any act or omission of any Labour Personnel supplied by LCR Group where that Labour Personnel is acting under the Hirer's direction and control during the Hire Period and the Hirer indemnifies LCR Group against all Liability, claims, damage, Loss, costs and expenses arising from or incurred in connection with such acts or omissions.
- 12. INSURANCE**
- 12.1 The Hirer is responsible for the Equipment for the Hire Period.
- 12.2 The Hirer must effect and maintain at all times during the Hire Period such insurances as LCR Group reasonably requires including but not limited to the following insurances:
- (a) insurance of the Equipment for its full insurable market value as nominated by LCR Group and otherwise as reasonably required by LCR Group;
- (b) insurance against all third party risks including Liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law by a policy inuring for the benefit of LCR Group and the Hirer; and
- (c) public risk insurance relating to the Equipment for an indemnity (including damage to property of any person) of not less than \$20,000,000 for any one accident.
- 12.3 Any insurance must be taken out in the name/s of the Hirer and note the interest of LCR Group for its respective right and interest and must be specifically endorsed accordingly if a dual or multi-lift is to be or in fact is performed.
- 12.4 Proof of insurance must be provided to LCR Group prior to the Equipment being released to the Hirer and at any other such time upon request.
- 12.5 Insurance which may have been effected by LCR Group will not be called to contribute to claims or losses required to be insured by the Hirer until such times as the indemnity available from the insurance policies effected by the Hirer is exhausted. This clause does not limit or otherwise affect the Hirer's liability under clause 11 of these Terms and Conditions.
- 12.6 The Hirer shall pay the amount of any policy excesses and deductibles (whichever is appropriate) in respect of any and all claims arising out of or resulting from the Hirer's hire of the Equipment and hereby indemnifies LCR Group for any excess or deductibles and any other costs incurred resulting from any claim made under any insurance policy effected by LCR Group due to:
- (a) any circumstance where the insurance effected by the Hirer in accordance with this clause 12 is null and void or exhausted; or
- (b) a failure to effect insurance in accordance with clause 12 of these Terms and Conditions.
- 13. EQUIPMENT LOST, STOLEN, DAMAGED**
- 13.1 LCR Group and the Hirer agree to allocate the costs to repair and maintain the Equipment in accordance with the attached Dry Hire Cost Responsibility Schedule.
- 13.2 Notwithstanding clause 13.1, the Hirer accepts that it is responsible for (including the costs of) commissioning the carrying out and for the cost of general repairs and maintenance as well as any repairs and maintenance required from any cause whatsoever, including but not limited, whether due wholly or in part, to:
- (a) the Hirer's or the Hirer's employees, sub-contractors, agents or representatives negligent acts or omissions or wilful misconduct, incompetence, and improper or infrequent maintenance;
- (b) the Hirer's or the Hirer's Representative's misuse, abuse, incorrect or improper operation of the Equipment or its carrying out of activities for which the Equipment is not specifically designed or rated by the manufacturer;
- (c) abnormal Site Location conditions including but not limited to environmental conditions, weather conditions and or any other conditions that cause or will cause damage to a component of the Equipment (to be determined by LCR Group in its sole discretion);
- (d) wear and tear of the Equipment arising out of excessive use of the Equipment;
- (e) any accidental or incidental damage;
- (f) any act of vandalism; and or
- (g) any breach of the terms and conditions set out in these Terms and Conditions, regardless of any contrary direction made in the Dry Hire Cost Responsibility Schedule.
- 13.3 The Hirer shall immediately notify LCR Group if the Equipment suffers any major breakdown during the Hire Period. In the event that the Equipment breaks down or becomes unsafe to use howsoever caused during the Hire Period the Hirer must:
- (a) immediately cease using the Equipment;
- (b) promptly notify LCR Group in writing as to the condition of the Equipment;
- (c) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (d) take all steps necessary to prevent any further damage to the Equipment;
- (e) comply with its obligations under clause 9; and
- (f) provide a written report to LCR Group of all relevant details of any break down or safety issue, the maintenance and/or repairs proposed to be undertaken to the Equipment, comply any reasonable direction of LCR Group in respect such maintenance or repair and provide a final report on the maintenance and repair undertaken to the Equipment.
- 13.4 If the Equipment has broken down or becomes unsafe to use due to any of the causes listed in clause 13.2 or if the Equipment is lost, stolen or damaged howsoever caused during the Hire Period, the Hirer will be liable for:
- (a) any costs incurred by LCR Group to recover and repair or replace the Equipment (where such cost is not met or undertaken by the Hirer); and
- (b) the full Hire Charge for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.
- 13.5 Where LCR Group has undertaken to effect repair and/or maintenance or replacement of the Equipment, the Hirer will pay the costs and charges described in clause 13.4, LCR Group will return the Equipment to the Hirer once it has been repaired or replaced, and the Hirer will continue to pay the Hire Charge for the remainder of the Hire Period.
- 13.6 In the event that the Equipment suffers a Constructive Total Loss, the Hire Period continues until LCR Group receives the full insurance value (in cleared funds) of the lost Equipment as nominated by LCR Group or until termination and discharge in writing by LCR Group.
- 14. TERMINATION**

## TERMS AND CONDITIONS OF DRY HIRE

14.1 Without prejudice to any other remedies LCR Group may have against the Hirer and notwithstanding the Hire Period, these Terms and Conditions may be terminated by LCR Group:

- (a) immediately where the Hirer breaches a term of these Terms and Conditions and fails to remedy that breach within seven (7) days of notification by LCR Group;
- (b) upon giving the Hirer forty-eight (48) hours notice of termination at any time during the Hire Period;
- (c) immediately if the Hirer engages in conduct which would enable a court to make an order against it for winding-up (if a company) or grant a creditor's petition (if an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of its assets or any of them is appointed, or if any court order or process is made against it in relation to any of its assets or it is ceased to carry on business; or
- (d) immediately if the Hirer commits any material breach of these Terms and Conditions including failure to pay and failure to insure.

14.2 On breach of these Terms and Conditions or termination of these Terms and Conditions or on expiration of the Hire Period, LCR Group will take all steps necessary to recover the Equipment including entry to the premises where the Equipment is located. The Hirer expressly consents to LCR Group entering such premises for the purpose of recovering the Equipment pursuant to this clause.

14.3 Where termination of these Terms and Conditions occurs during the Minimum Hire Period, the Hirer must pay all remaining Hire Charges for the full Minimum Hire Period together with any other amount due and owing under the terms of these Terms and Conditions.

14.4 Where the Hire Period continues beyond the Minimum Hire Period and unless agreed otherwise in writing, LCR Group requires thirty (30) days written notice from the Hirer for the off-hire of the Equipment. The Hire Charges will continue to apply during this notice period.

14.5 On termination of these Terms and Conditions for any reason whatsoever should LCR Group be unable to gain access to the Equipment for any reason, the Hire Period will continue at the agreed Hire Charges until access to the Equipment is available to LCR Group.

### 15. NOTICE

15.1 Any notice, demand, termination procedure or other communication relating to these Terms and Conditions must be either personally served on a Party, left at the Party's current address or sent to a Party's current address by pre-paid ordinary mail, or by facsimile to the Party's current number for service.

### 16. GENERAL

16.1 The parties will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other Party to carry out and effect the intent and purpose of these Terms and Conditions.

16.2 These Terms and Conditions shall be governed and construed in accordance with the laws of the State of Queensland and any proceedings with respect of any matter of things against these Terms and Conditions shall be instituted or carried on in the State of Queensland only.

16.3 Neither Party will be responsible for any act or thing due to an event the cause of which is beyond that Party's control.

16.4 Any variation of or to these Terms and Conditions will not have any effect whatsoever unless such variation is reduced to writing and signed by LCR Group and the Hirer.

16.5 Failure of a Party to exercise any or all of its rights or powers under these Terms and Conditions at any time and for any period of time shall not constitute a waiver of any of that Party's rights or powers arising pursuant to these Terms and Conditions.

16.6 The terms and conditions listed in these Terms and Conditions shall apply equally and fully to any replacement or substituted Equipment supplied during the Hire Period.

16.7 These Terms and Conditions may be executed in any number of counterparts, all of which taken together constitute one and the same document.

16.8 The Hirer consents to the assignment of these Terms and Conditions by LCR Group upon written notice to the Hirer.

### 17. DEFINITIONS

17.1 In this document, unless the context indicates a contrary intention:

**Associated Documentation** means the documents, books and other paperwork that may be provided with the Equipment including but not limited to log books, manuals, user guides and safety notices;

**Constructive Total Loss** occurs when a partial Loss of the Equipment has occurred to an extent that the Equipment is beyond economic repair where the cost of such repair exceeds its insured value;

**Delay Charges** means the amount charged for the Labour Personnel for any delays during Mobilisation and Demobilisation outside of LCR Group's control;

**Demobilisation Charges** means the amount charged for the loading of the Equipment onto its means of transport at the Site Location and the transport from the Site Location to the Receiving Location and; and where applicable to the supply of Labour Personnel, means the disengagement and return of the Labour Personnel from the Site Location;

**Dry Hire Cost Responsibility Schedule** means the document titled "Dry Hire Cost Responsibility Schedule" containing the agreed cost responsibilities between LCR Group and the Hirer in relation to the repairs and maintenance of the Equipment;

**Equipment** includes but is not limited to any item of plant, equipment, machinery or vehicle, any tools, accessories, parts items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle, and the means to transport the Equipment and any other items or any replacement therefore provided by LCR Group to the Hirer during the Hire Period;

**Excess Charges** includes any charges payable to LCR Group for any excess engine hours or any additional shifts or any excess hours of labour over the prescribed limit as set out in these Terms and Conditions;

**GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under these Terms and Conditions;

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Hire Charges** means the rates and charges that are payable by the Hirer to LCR Group for the Hire of the Equipment under the terms of these Terms and Conditions;

**Hire Period** means the Minimum Hire Period for hire of the Equipment as set out in clause 1 herein and includes the period up until the Equipment is returned to LCR Group;

**Hirer** means any person, organisation, business, company or body corporate who requests the hire of the Equipment from LCR Group together with any subsidiary or associated company as defined by the *Corporations Act 2001* (Cth) and with whom LCR Group contract and includes its officers, employees, servants, agents, Contractors or sub-contractors and their employees and any person tendering the Equipment for handling, lifting and/or carriage by the Equipment;

**LCR Group** means LCR Group Pty Ltd (ABN 78 095 626 798) of 494 Nudgee Road, Hendra, Queensland and includes its employees, agents or any sub-contractors and their employees;

**Labour Charges** means the amount charged for the hire of the Labour Personnel and any excess labour charges during the Hire Period under these Terms and Conditions;

**Labour Personnel** means any operator of the Equipment, rigger, dogman, supervisor, engineer or other personnel expressly specified in these Terms and Conditions which LCR Group agrees to supply to the Hirer;

**Liability** means any Liability (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the Liability occurred including Liability for any consequential or indirect losses, economic losses or loss of profit;

**Loss** means all damage, loss, cost, and expense (including legal costs and expenses of whatsoever nature or description) howsoever arising including in contract, tort (including negligence), indemnity, under statute including any consequential or indirect losses, economic losses, loss of profits, loss of use, loss of contracts, business interruption, loss of revenue, financing costs or anticipated savings;

**Minimum Hire Period** means the minimum period for which the Equipment may be hired by the Hirer as set out in these Terms and Conditions;

**Mobilisation Charges** means the amount charged for the loading of the Equipment onto its means of transport at the Originating Location and the transport from the Originating Location to the Site Location; and where applicable to the supply of Labour Personnel, means the deployment of the Labour Personnel to the Site Location;

**On Hire Date** means the date when the Hire Charges will commence for the Hire Period and as stipulated by LCR Group (if different from the commencement date);

**Option for Servicing and Maintenance Schedule** means the document titled "Option for Servicing and Maintenance Schedule" containing the terms on which LCR Group may carry out the servicing and maintenance activities for the Equipment as described in clause 10 in accordance with the manufacturer's requirements during the Hire Period (as applicable);

**Originating Location** means, immediately prior to the Hire, the nominated place from which the Equipment will be mobilised to Site Location, and if no location is nominated means LCR Group's main storage depot;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it;

**Party** means a party to these Terms and Conditions;

**Receiving Location** means, immediately after the hire of the Equipment, the nominated place from which the Equipment will be demobilised from the Site Location, and if no location is nominated means LCR Group's main storage depot;

**Security Interest** has the same meaning as in the PPSA;

**Servicing Charges** means the amount charged for the servicing and maintenance activities undertaken by LCR Group in relation to the Equipment in accordance with clause 10 and as set out in the Option for Servicing and Maintenance Schedule;

**Site Location** means the land or workplace at which the Equipment and where applicable, the Labour Personnel, will operate and be utilised by the Hirer and any other land and workplaces made available to LCR Group by the Hirer; and

**Terms and Conditions** means these Terms and Conditions of Dry Hire which give effect to the hire by LCR Group and includes any other document incorporated by reference herein, including but not limited to the Dry Hire Cost Responsibility Schedule and or the Option for Servicing and Maintenance Schedule. In the event of any inconsistency, any document to which specify the terms to these Terms and Conditions of Dry Hire are attached or incorporated by reference therein shall take precedence.

### 18. INTERPRETATION

18.1 In these Terms and Conditions, unless the context indicates a contrary intention:

- (a) no rule of construction applies to the disadvantage of a party on the basis that the party put forward these Terms and Conditions or any part of it;
- (b) words denoting the singular number include the plural and vice versa;
- (c) words denoting individuals include corporations and vice versa;
- (d) a reference to any Party to these Terms and Conditions includes their executors, administrators, successors and permitted assigns including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) these Terms and Conditions will, if the Hirer comprises more than one person, bind such persons jointly and severally;
- (f) headings are for convenience only, and do not affect interpretation;
- (g) references to clauses and sub-clauses are references to clauses and sub-clauses in these Terms and Conditions;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) the word **includes** in any form is not a word of limitation;
- (j) a reference to these Terms and Conditions includes any subsequent variation of these Terms and Conditions; and
- (k) time is of the essence.