

PLANT HIRE AGREEMENT

GF-05

To Purchase Order No.: <PO Number>

<Project Name>

<Supplier Name>

There is to be NO contract between the parties until such time that the *Plant Hire Agreement* has been signed and executed OR the Purchase Order has been issued.

This note is to be removed by the Purchasing Manager ONLY on issue of the final Plant Hire Agreement when accompanied by an approved Purchase Order.

INDEX

CLAUSE NO.	OPERATIVE PROVISION	PAGE
1.	Definitions and Interpretations	3
2.	Parties.....	3
3.	Basis of Contract	3
4.	Supply and Maintenance	3
5.	Delivery and Collection	4
6.	Plant Operation	4
7.	Responsibility for Equipment	4
8.	Occupational Health & Safety and Environment Protection	4
9.	Damage to Persons and Property	4
10.	Public Liability Insurance	5
11.	Warranties, Indemnities and Risks	5
12.	Right of CATCON to Recover Money.....	5
13.	Registration and Insurance of Equipment.....	5
14.	Insurance of Employees.....	5
15.	Proof of Insurance	6
16.	Period of Hire	6
17.	Hire Rates.....	6
18.	Taxes and Duties	6
19.	Times to be Agreed	6
20.	Progress Claims and Payment.....	7
21.	Goods and Services Tax (GST)	7
22.	Default	8
23.	Termination	8
24.	Assignment and Subcontracting.....	8
25.	Final Inspection and Return of Equipment	8
26.	Release	8
27.	Confidentiality	9
28.	Non Waiver and Amendment.....	9
29.	Severability.....	9
30.	Security of Payment Legislation	9
31.	Proportionate Liability Legislation.....	10
32.	Arbitration	11
33.	Special Conditions.....	11
ANNEXURE A	Contract Particulars.....	12
ANNEXURE B	Schedule of Plant Hire Rates	13
ANNEXURE C	Release Form	14
ANNEXURE D	Special Conditions.....	15

CONTRACT CONDITIONS
1. Definitions and Interpretations

1.1 In the Plant hire Agreement the following words and expressions have the meaning hereby assigned to them except where the context otherwise requires:

- **'CATCON'** means the person named in Annexure A.
- **'Supplier'** means the person named in Annexure A.
- **'Day'** means calendar day.
- **'Defect'** means any defect or omission in the Equipment or any other aspect of the Equipment which is not in accordance with the requirements of the Plant Hire Agreement.
- **'Direction'** means any agreement, approval, acceptance, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which CATCON may make, give or issue pursuant to the Plant Hire Agreement.
- **'Environment'** means any aspect of the surroundings of human beings including:
 - (a) The physical characteristics of those surroundings such as the land, the waters and the atmosphere;
 - (b) The biological characteristics of those surroundings such as the animals, plants and other forms of life; and
 - (c) The aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.
- **'Equipment'** means the equipment described in Annexure B and every part and component of it including ancillary and incidental parts and components that are reasonable inferred as being part of the Equipment.
- **'GST'** has the same meaning as in the GST Act.
- **'GST Act'** means A New System (Goods & Services Tax) Act 1999 as amended.
- **'Law'** is:
 - (a) National, federal (including Commonwealth), state, territory, or local government legislation, statutes, ordinances and other laws including regulations, by-laws and other subordinate legislation or law;
 - (b) Common law;
 - (c) Approvals (including any condition or requirement under them).
- **'Month'** means calendar month.
- **'Plant'** has the same meaning as 'Equipment'.
- **'Plant Hire Agreement'** means the legally binding and enforceable contract between the Parties as constituted by this Plant Hire Agreement, the purchase order cover sheet, the *Terms and Conditions* (Form GF-08) and any enclosed documents.
- **'Pollution'** includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or thing which makes or may make the Environment:
 - (a) Unsafe or unfit for habitation or occupation by humans or animals;
 - (b) Degraded in its capacity to support plant life;
 - (c) Contaminated, or
 - (d) Otherwise environmentally degraded.

1.2 In the Plant hire Agreement:

- 1.2.1 Headings and sub-headings are for the convenience only and are not to be used in interpretation or construction.
- 1.2.2 References to the singular include the plural.
- 1.2.3 'include', 'includes' and 'including' are to be read as if followed by 'without limitation'.

2. Parties

- 2.1 This Plant Hire Contract (Contract) is made on the date stated in the Annexure.
- 2.2 The addresses of the parties are stated in the Annexure.

3. Basis of Contract

- 3.1 Each party to this Contract shall remain an independent contractor and shall be exclusively responsible for its employees and its subcontractors, suppliers and consultants.

4. Supply and Maintenance

- 4.1 The Supplier shall supply on hire to CATCON the Equipment identified in the Annexure.
- 4.2 The Equipment shall be in accordance with the manufacturer's specification, shall be in good repair and shall be fit for purpose and suitably licensed for operation.
- 4.3 If the Equipment requires the Operator to be positioned upon the machine, it shall be fitted with appropriate devices including but not limited to seat belts, Roll Over Protection Structures, (ROPS), and Falling Object Protection Structures, (FOPS), as required by CATCON, legislation and the relevant Australian Standards. The Supplier shall produce on demand by CATCON appropriate documentation to confirm that the Equipment has been inspected within the past 12 months by a competent person and is in a safe, serviceable condition and complies with the relevant legislation and Australian Standards.
- 4.4 The Equipment shall be properly maintained and/or repaired by the Supplier throughout the period of hire such that the Equipment shall be available to operate in an efficient, effective and safe manner at all times during the Working Hours stated in the Annexure. The rates are reflective of any maintenance requirements and no separate charges for maintenance apply to this agreement.

5. Delivery and Collection

It shall be the responsibility of the Supplier to deliver the Equipment to and to collect the Equipment from the Delivery Address stated in the Annexure. Loading and off-loading of the Equipment at the Delivery Address shall be the responsibility of the Supplier.

6. Plant Operation

- 6.1 Where the Supplier is responsible for the supply of an Operator for the Equipment, the operator shall at all times remain an employee of the Supplier. The Supplier shall ensure, to the satisfaction of CATCON, that all times the Operator;
- a) Is experienced, competent and fit to operate the Equipment;
 - b) Holds appropriate licenses and certificates;
 - c) Complies with legislation and Project site specific safety and environmental requirements;
 - d) Complies with legislative and Project site specific Industrial relations requirements;
 - e) Complies with relevant Australian Standards;
 - f) Complies with CATCON's directions;
 - g) Is paid in accordance with the payment conditions, and receives the working conditions, applicable to the Project site;
 - h) Includes all statutory requirements (i.e. Superannuation, Workcover, PAYG, etc.) are paid on behalf of the operator by the Supplier; and
 - i) Carries out and documents inspections of the Equipment prior to each shift.
- 6.2 The requirements of Clause 6.1(c) include, but are not limited to, site inductions, supply and use of appropriate personal protective equipment, safe working procedures, inspections of the Equipment prior to each shift and compliance with CATCON drug and alcohol procedures (including zero BAC and random testing).
- 6.3 Supplier is to submit documentary evidence of compliance with Clause 6.1 (b) prior to commencement of the contract.
- 6.4 Supplier is to submit documentary evidence of compliance with Clause 6.1 (g) and (h) on request.
- 6.5 Supplier is to submit copies of daily inspection forms in compliance with Clause 6.1. (i) on daily basis during contract.

7. Responsibility for Equipment

- 7.1 The Equipment shall at all times remain the property of the Supplier.
- 7.2 The safekeeping of the Equipment shall be the responsibility of:
- a) CATCON other than in the circumstances described in paragraph (b) below; and
 - b) The Supplier: at all times outside of the period of hire by CATCON; and at all times during the period of hire by CATCON where the Supplier is responsible for the supply of an Operator for the Equipment.

8. Occupational Health & Safety and Environment Protection

- 8.1 The Supplier must ensure that their staffs complies with all Laws in connection with occupational health and safety and the environment and all occupational health and safety and environment management systems and guidelines applied by CATCON and the client at the site.
- 8.2 CATCON will not be liable for any loss or damage suffered by the Supplier resulting from a breach by personnel employed by the Supplier, or of any Law in connection with occupational health and safety or the environment or any workplace health and safety or environment management systems or guidelines.
- 8.3 While they are on site, the Supplier must ensure that its officers, employees, agents, subcontractors and suppliers comply with any direction given by CATCON.
- 8.4 The Subcontractor shall comply with the control measures listed in the CATCON Project Risk Register and Statement of Environmental Aspects and Impacts. The Subcontractor shall prepare, submit for review and implement control measures for the works identified as the Subcontractor's responsibility.
- 8.5 Methods used to store and maintain the plant or equipment shall comply with CATCON safety and Environmental requirements.

9. Damage to Persons and Property

- 9.1 The Supplier shall Indemnify and keep Indemnified CATCON and the Principal against all loss or damage including but not limited to all physical loss or damage to property, including CATCON's and/or the Principal's works, and loss or damage resulting from death or personal injury arising out of or resulting from;
- a) The Equipment not complying with the requirements of Clause 4;
 - b) The Equipment not being properly maintained in accordance with Clause 4 or clause 6;
 - c) Where the Supplier is responsible for the supply of an Operator for the Equipment;
 - (i) The Supplier failing to comply with its obligations under Clause 6; and/or
 - (ii) The operation of the Equipment, other than to the extent that the loss, damage, injury or death is due to the Operator's compliance with a specific direction from CATCON; and /or
 - d) Any other act, error, omission or neglect of the Supplier.
 - e) Breach of or non-compliance with any legislation, statute, ordinance, regulation, by-law or order there under or unlawful requirement of any Authority.
 - f) A breach of or non-compliance with a provision of the Plant Hire Agreement by the Supplier.
- 9.2 The Supplier shall promptly, at its own expense, make good any loss or damage for which the Supplier is liable in accordance with this Plant Hire Agreement.

10. Public Liability Insurance

- 10.1 The Supplier shall affect Public Liability insurance to cover its liability to third parties for loss or damage to property (including loss of use thereof) and death of or injury to any person arising out of or resulting from an act, default or omission of the Supplier or others for whom the Supplier is responsible.
- 10.2 With respect to Public Liability Insurance required under this Plant Hire Agreement:
- a) The policy shall be for not less than the limit of cover stated in this Contract; and
 - b) The insurer and terms of the policy shall be subject to CATCON's approval and shall be maintained during the period of hire.

11. Warranties, Indemnities and Risks

- 11.1 To the full extent permitted by law the Supplier releases CATCON its employees agents and Subcontractors from any liability howsoever arising directly or indirectly in relation to the state or condition of the Site, the execution of the Head Contract Works and the acts or omissions of any person or persons engaged by the Principal, the Principal's Representative or CATCON.
- 11.2 The Supplier shall indemnify CATCON from and against any liability, loss, damage, claim or proceedings whatsoever and howsoever rising whether under any statute or at common law or by contract for personal injury or death to any person caused or contributed to by the carrying out the works associated with this Plant Hire agreement or the failure to carry the works under this Plant hire Agreement save to the extent that the same is due to any negligence on the part of CATCON.
- 11.3 The Supplier shall indemnify CATCON from and against any liability to the Principal or any other person claiming through or under the Principal or the Head Contract for any loss or damage (including liquidated damages payable under the Head Contract) costs (including legal costs on a full indemnity basis) and expenses howsoever incurred by reason of any act or omission of the Supplier and its employees or agents.
- 11.4 The Supplier shall indemnify CATCON from and against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property including but without limitation improvements and fixtures to real property howsoever arising and which is on the Site or elsewhere caused or contributed by the carrying out the works associated with this Plant Hire Agreement.
- 11.5 The Supplier acknowledges that CATCON has no obligation to supervise or control the execution of this Plant Hire Agreement by the Supplier its employees or Subcontractors and that the indemnities given in this Plant Hire Agreement by the Supplier shall not be defeated or reduced by any failure on the part of CATCON its employees or Subcontractors to supervise or control the work of the Supplier or the conduct of its employees or Subcontractors.
- 11.6 The Supplier warrants that any emissions caused by the operation of the Equipment by CATCON or the Supplier (as the case may be) for the purpose for which it is hired by the CATCON, will comply with all laws in any way related to pollution.
- 11.7 The Supplier assumes all risks and liabilities (unless specifically assumed by CATCON under this Plant Hire Agreement) for:
- 11.7.1 the use, possession, transportation, maintenance, repair and servicing of the equipment by the Supplier and its respective officers, employees and agents; and
 - 11.7.2 defects of any kind in relation to the equipment and its spare parts, parts and components, including manufacturing, design, structural and mechanical defects, except to the extent that such liabilities are caused or contributed to by the intentional or negligent acts or omissions by CATCON.

12. Right of CATCON to Recover Money

Notwithstanding any other provision of the Plant hire Agreement and without limiting the CATCON's rights under any other provision of the Plant Hire Agreement or otherwise at law, CATCON shall be entitled to retain out of any payment (including payments due under other Purchase Orders) which would otherwise be payable to the Supplier such moneys as CATCON may reasonably require to meet any contingent claim, action, proceedings, loss, damages, costs or expenses arising from or in connection with the indemnities given by the Supplier or any breach by the Supplier of its obligations under this Plant Hire Agreement. Noting in this clause affects the right of CATCON to recover from the Supplier any balance that remains after deduction.

13. Registration and Insurance of Equipment

The Supplier shall ensure that at all times during the period of hire, the Equipment is registered and insured as may be required at law and is insured against loss or damage for not less than its market value.

14. Insurance of Employees

The Supplier shall insure during the period of hire against liability for death of or injury to persons employed by the Supplier including liability by statute and at common law. The Supplier shall ensure that every subcontractor to the Supplier is similarly insured.

15. Proof of Insurance

Before commencing the hire and whenever requested by CATCON, the Supplier shall produce evidence that it has satisfied all of its Insurance obligations under this Contract. Unless agreed otherwise, such evidence shall be in the form of an original certificate of currency from the relevant Insurance Company, or the Supplier's Insurance broker stating the name of the Insurance Company, the name of the insured party or parties, the policy number, the expiry date and the amount of cover for each policy of Insurance. Insurance does not limit the Supplier's liability under this Contract or otherwise.

16. Period of Hire

The Equipment shall be delivered to the Delivery Address and shall be fully operational as required by this Contract at the Hire Start Date and Time started in the Annexure. The Supplier will be notified by CATCON when the Equipment is no longer required whereupon the period of hire will be deemed terminated and the Equipment shall be promptly collected from the Delivery Address by the Supplier. The Estimated End of Hire Date is stated in the Annexure. The Estimated End of Hire Date is an estimate only and is not guaranteed.

17. Hire Rates

- 17.1 The Hire Rates for the Equipment shall be as stated in the Annexure and such rates shall not be subject to price escalation.
- 17.2 The Working Rate shall apply at such times as the Equipment is fully operational as required by this Contract and the Equipment is operational as directed and to the satisfaction of CATCON.
- 17.3 The Standing Rate shall apply during such Working Hours as the Equipment is in full operating condition as required by this Contract and the Equipment is available for use on the Project but CATCON does not require the use of the Equipment at that time, provided however that the Standing Rate shall not apply on Public Holidays, rostered days off, Christmas/New Year shutdown and times that work on the Project cannot proceed for reasons beyond CATCON's reasonable control.
- 17.4 Mobilisation is a lump sum payable in respect of the initial delivery of the Equipment and unloading at the Delivery Address.
- 17.5 Demobilisation is a lump sum payable in respect of the final removal of the Equipment from the Delivery Address including the removal of all rubbish and other things belonging to the Supplier.
- 17.6 CATCON will not pay for machine time while travelling to, from or between worksites.
- 17.7 CATCON will not pay for machine time while the Equipment is not fully operational.

18. Taxes and Duties

- 18.1 Unless otherwise provided in the Plant hire Agreement, the Supplier must pay, at its own expense, when due and payable:
 - 18.1.1 All rentals, royalties, fees, charges, taxes, imposts, rates, tariffs and other duties of whatever nature required to be paid in connection with the hire of the Equipment.
 - 18.1.2 All payments, taxes and contributions imposed by law or regulations of any state, territory or country or industrial agreements of any state, territory or country, with respect to or measured by the employment of or remuneration (wages, salaries or other) paid to employees of the Supplier, including superannuation, unemployment compensation insurance, old age benefits, welfare funds, pensions and annuities and must ensure that any suppliers or subcontractors of the Supplier make such payments in respect of their employees; and
 - 18.1.3 All import/export licences and fees, and import/export taxes, tariffs and duties for Equipment imported or exported by the Supplier
- 18.2 The Supplier must defend and indemnify the CATCON from any liability resulting from the Supplier's or any of its subcontractors', suppliers' or consultants' failure to make timely payment or to pay any of the above or any items similar to the above or failure to comply with reporting, return or other procedural requirements with respect to their payment. Any interest, penalties or other liabilities arising from such failure must be paid promptly by the Supplier. Any cost, loss, expense or damage incurred as a result of any such failure shall be a debt due to CATCON by the Supplier.
- 18.3 If CATCON is required by Law (including Laws which impose a withholding tax) to make withholdings or deductions from payment otherwise due to the Supplier, then notwithstanding any other provision of the Plant hire Agreement:
 - 18.3.1 The company may withhold such amounts or make such payments as are required by Law;
 - 18.3.2 The Supplier releases CATCON from all claims in respect of any sum of money lawfully withheld in accordance with the clause; and
 - 18.3.3 The Supplier indemnifies CATCON against any liability under or in connection with any such Law (including in respects of any amounts which the CATCON becomes liable to pay under such Law) whether or not arising from CATCON's failure to make such withholdings or deductions.
- 18.4 The provisions of this clause and subclauses will survive the expiration of the Plant Hire Agreement.

19. Times to be Agreed

- 19.1 The authorised representatives of the Supplier and CATCON shall meet as stated below to agree in writing the times for which the Working Rate and Standing Rate shall apply. Such meetings shall be at the end of each day's work for hourly and daily hired Equipment and at the end of each week's work for weekly hired Equipment.
- 19.2 If the Supplier's representative fails to meet with CATCON's representative at the time stated, CATCON's representative shall determine the time for which the Working Rate and Standing Rate shall apply and CATCON's representative's determination shall be final and binding.

20. Progress Claims and Payment

- 20.1 The Hire Rates as stated in this Contract are deemed to include everything necessary for the Supplier to hire the Equipment to CATCON in accordance with this Contract and to fulfil its entire obligation under the Contract. Accordingly, the value of the hire performed shall be:
- a) an amount calculated by multiplying the relevant GST exclusive Hire Rates stated in the Annexure by the relevant times agreed or determined pursuant to Clause 17; less
 - b) the reasonable GST exclusive costs incurred by CATCON in remedying any default by the Supplier of its obligations under this Contract; and/or less
 - c) the amount of GST exclusive costs, losses or damage suffered by CATCON if the Supplier does not fulfil its obligations under this Contract or otherwise; plus
 - d) subject to Clause 20, the amount of GST relevant to the sum paragraphs (a), (b) and (c) above.
- 20.2 Claims for payment shall be submitted in a form acceptable to CATCON on or before the time for submission of claims stated in the Annexure.
 Progress payments shall be made for CATCON's determination of the value of hire performed less the amount paid in previous progress payments. Payments shall be made in accordance with the payment terms stated in the Annexure.
- 20.3 At CATCON's discretion, payment shall be made by electronic funds transfer or by cheque. The date of payment shall be regarded as the date on which the funds are cleared by CATCON for payment, the funds being available to the Supplier within 2 business days thereafter.
- 20.4 The Supplier shall not submit a claim for payment to CATCON unless its employees and subcontractors have been paid all amounts due and payable to them and it has complied with all statutory obligations in connection with the hire of the Equipment. CATCON may, at any time and as a condition precedent to payment, require the Supplier to provide it with evidence to CATCON's satisfaction of such payments and/or compliance.
- 20.5 The hire rates are fixed and not subject to adjustment for rise and fall costs or otherwise.
- 20.6 Any hire period shall be adjusted to allow for any time that the equipment is not operational or is otherwise unavailable for use by CATCON, unless such unavailability is due to a wrongful or negligent act or omission by CATCON. CATCON shall notify the Supplier of any period of Equipment unavailability for which a rent reduction will be made.
- 20.7 From the date of commencement of the hire until one (1) year after the expiration of the term CATCON may question any claim presented by the Supplier and may require correction of any error therein whether or not the claim relates to a payment which has already been made.

21. Goods and Services Tax (GST)

- 21.1 The following provisions shall apply with respect to GST on amounts payable by CATCON to the Supplier for supplies made by the Supplier under or in connection with this Contract;
- a) Unless the Supplier's Australian Business Number (ABN) is stated in this Contract or until the Supplier advises CATCON in writing of its ABN:
 - (i) Paragraphs (b), (c), (d) and (e) of this Clause 21.1 shall not apply;
 - (ii) The Supplier shall not be entitled to claim and CATCON shall not pay the Supplier any GST; and
 - (iii) CATCON shall deduct tax in accordance with relevant legislation from each payment to the Supplier at the prescribed rate and remit that tax to the Australian Tax Office.
 - b) Each party acknowledges and agrees that:
 - (i) At the time of entering into this Contract, it is registered for GST;
 - (ii) It shall promptly provide written evidence of its GST registration if so requested by the other party;
 - (iii) It shall indemnify the other party against any loss that may arise from it not being registered for GST;
 - (iv) It shall promptly notify the other party in writing if it ceases to be registered for GST; and
 - (v) If CATCON reasonably considers that the Supplier may not be registered for GST for any period, then for that period the provisions of paragraph (a) of this Clause 21.1 shall apply as if CATCON had not been advised of the Supplier's ABN.
 - c) The aggregate amount of all amounts paid and due for payment under this Contract must be covered by one or more tax invoices prepared in compliance with relevant GST legislation (Tax Invoice(s)). Tax Invoices(s) shall be provided either by:-
 - (i) If stated in the Annexure, CATCON providing the Supplier with a Recipient Created Tax Invoice (RCTI) at the times of each payment; or
 - (ii) If paragraph (I) does not apply, the Supplier providing CATCON with Tax Invoice(s) in an aggregate amount sufficient to comply with the requirements of this paragraph (c) or prior to the due date for each payment.
 - d) If paragraph (c) (I) applies, the parties acknowledge that:-
 - (i) The Supplier shall not provide CATCON with Tax Invoice(s) in respect of payment claims that it makes under this Contract; and
 - (ii) CATCON shall indemnify the Supplier against any liability for GST and penalty that may arise from an understatement of the GST payable in respect of each RCTI that it provides to the Supplier.
 - e) If paragraph (c) (II) applies, the Supplier acknowledges that:-
 - (i) If it fails to provide CATCON with Tax Invoice(s) that comply with paragraph (c) (II), CATCON may, at its sole discretion, either:-
 - a) Pay the Supplier, in aggregate terms, the lesser of the amount paid and due for payment or the amount of Tax Invoice(s) received from the Supplier; or
 - b) Make no further payment to the Supplier until the Supplier has provided CATCON with Tax Invoice(s) that comply with paragraph (c) (II); and

- (ii) If CATCON determines a different aggregate amount paid and due for payment to the Supplier than indicated on the Supplier's Tax Invoice(s):-
- (a) The Supplier shall be responsible for payment of the GST relevant to its Tax Invoice(s); and
 - (b) The Supplier may revise and resubmit its Tax Invoice(s) to CATCON or provide CATCON with an adjustment note prepared in compliance with relevant GST legislation adjusting its Tax Invoice(s) to correspond with the aggregate amount determined by CATCON, clearly identifying the Tax Invoice(s), replaced or adjusted and the relevant amounts(s).

21.2 Subject to CATCON providing the Supplier with its ABN and its Tax Invoices(s), the Supplier shall pay CATCON GST on any amount payable by the Supplier to CATCON for supplies made by CATCON under or in connection with this Contract.

22. Default

Without limiting CATCON's rights under this Plant Hire Agreement, if the Supplier fails:

- a) To promptly and properly make good any damage or loss for which the Supplier is responsible;
- b) To supply items to be supplied by the Supplier;
- c) To remove rubbish or other things belonging to the Supplier;
- d) To properly maintain and/or repair the Equipment; and/or
- e) To comply with any other requirement of this Contract, then;

CATCON may, at its sole discretion and without obligation, remedy that failure on behalf of the Supplier and the cost of doing so shall be deducted from the Supplier's account; and any cost, loss and/or damage that CATCON has incurred or is likely to incur as a result of the Supplier's default shall be valued and deducted from the Supplier's account.

23. Termination

23.1 Without prejudice to any of CATCON's other rights, entitlements or powers under this Plant hire agreement, CATCON may at any time by written notice to the Supplier, effective upon its receipt or such other time as stated therein, terminate the plant hire agreement for its sole convenience.

23.2 If the Supplier fails to comply with its obligations under this Contract in a timely manner or if the Supplier (being a person, or being a partnership, or a member thereof) becomes bankrupt or assigns his/her estate for the benefit of his/her Creditors or (being a company) goes into liquidation (other than for amalgamation or reconstruction) or has a Receiver or Official Liquidator or Provisional Liquidator appointed to its affairs, or enters into a Deed of Arrangement or composition with its creditors, then CATCON may, at its discretion terminate this Contract.

23.3 Upon termination;

- a) CATCON shall be liable only for those amounts which have become payable as at the date of termination; and
- b) Any cost, loss and/or damage that CATCON has incurred or is likely to incur as a result of the Supplier's default shall be valued and deducted from the Supplier's account.

24. Assignment and Subcontracting

24.1 The Supplier shall not assign the whole or any part of this Contract nor any payment, right or interest there under nor subcontract the performance of its obligations under this Contract or any part thereof, without the prior written approval of CATCON. Approval to subcontract shall be at the discretion of CATCON and may be conditional and shall not relieve the Supplier from any liability or obligation under this Contract.

24.2 Any subcontractor engaged by the Supplier in contravention of Clause 24.1 shall not be permitted to enter the Project site and CATCON shall not be liable to pay for any work performed by such subcontractor.

25. Final Inspection and Return of Equipment

25.1 Within 3 days after the first to occur of the expiry of the term or date of any prior termination of the Plant Hire Agreement and prior to the equipment being removed from site, the parties shall jointly undertake a final inspection of the equipment. CATCON shall not be liable to the Supplier in respect of any claim, demand, action, proceeding or suit which the Supplier may make or bring for any cost, loss expense or damage incurred by the Supplier arising out of or in connection with any loss or damage to the equipment (including wear and tear of any part of the equipment) and the Supplier waives all rights it may have in respect of any such claim, demand, action or suit, unless:

25.1.1 The Supplier undertakes a joint final inspection within the time set out above

25.1.2 Such loss or damage is identified to CATCON by the Supplier during such inspection and notified in writing by the Supplier to CATCON within 7 days of the final inspection on site.

25.2 The Supplier indemnifies CATCON against any cost, loss, expense or damage (including legal cost) that CATCON may incur in respect of any claim, demand, action, proceeding or suit which a third party that subsequently uses or hires the Equipment, may make or bring against CATCON arising out of or in connection with any loss or damage to the Equipment (including the availability or operational performance of the equipment). The provisions of this Clause survive the expiration or termination of the Plant Hire Agreement.

25.3 Unless it is expressly defined in this Plant Hire Agreement that CATCON is responsible for the return of the equipment, the Equipment must be collected by the Supplier at its cost from the site at the end of the term.

26. Release

Upon completion of the hire and prior to the final payment to the Supplier, the Supplier shall fully release and discharge CATCON and the Principal and their respective employees and agents from and against all claims, demands and causes of action and proceedings of every kind and nature which the Supplier may or might have

had or might assert to have. Acceptance of the final payment by the Supplier shall be deemed to include such release and discharge.

27. Confidentiality

- 27.1 Except as provided in this clause, the Supplier must not without CATCON's prior written consent divulge or communicate to any person, any information:
- 27.1.1 In respect of the contents of this Plant hire Agreement;
 - 27.1.2 As to the existence, operation or performance of the Plant hire Agreement; or
 - 27.1.3 Which may come to its knowledge in the course of carrying out this Plant Hire Agreement as to the operations, business dealings or financial affairs of CATCON or the Client.
- 27.2 The restriction imposed in this clause does not apply to any disclosure of information;
- 27.2.1 Which at the time of the disclosure was in the public domain other than by breach of the Plant hire Agreement;
 - 27.2.2 Which is required by law to be communicated to a person who is authorised by law to receive that information;
 - 27.2.3 That is necessarily made to a court or an arbitrator or an administrative tribunal in the course of proceedings to which CATCON is a party provided that in the case of any arbitration proceedings the Supplier first obtains from each other party to those proceedings an undertaking, enforceable by CATCON, that each such party will similarly not divulge or communicate, without CATCON's prior written consent, any information referred to in this clause; or
 - 27.2.4 Which subject to this clause is made available to an officer, employee, agent subcontractor or supplier of the Supplier on a need-to-know basis only.
- 27.3 The Supplier must not disclose any information concerning the overall project or the facilities to be provided through any communications media without the prior written approval of CATCON, which may be granted or refused at the sole option and discretion of CATCON. The Supplier must refer to the company any enquiries from any media concerning such facilities, the project, the Plant Hire Agreement or the hire of the Equipment.
- 27.4 The Supplier must ensure that the provisions of this clause are extended to its officers, employees, agents, subcontractors and suppliers and that they comply with such provisions. The Supplier must not disclose any of the information referred to in this clause to such persons unless they have agreed to the extension of the provisions and give the Supplier an undertaking to comply with the provisions. Any breach of the undertakings in this clause by the Supplier and without in any way limiting CATCON's entitlements otherwise at law, at the direction of CATCON the Supplier must institute proceedings or do whatever CATCON reasonably directs to prevent or contain the breach.
- 27.5 The Supplier indemnifies CATCON, its officers, employees and agents against all claims, losses, actions, damages, cost (including legal cost) and expenses of any kind whatsoever that CATCON may incur either directly or indirectly, due to any breach (including any deemed breach in accordance with clause .4) of a provision of clause 9 by the Supplier, subcontractors, suppliers, or their respective officers, employees, representatives or agents. CATCON may recover from the Supplier as a debt due and owing to CATCON, any such costs, losses, expenses or damages.
- 27.6 Without in any way whatsoever limiting any other provisions of the Plant Hire Agreement, the provisions of this clause 9 continue for a period of six (6) years after the first to occur of the expiration or the termination of the Plant hire Agreement.

28. Non Waiver and Amendment

- 28.1 Any waiver or relaxation by CATCON partly or wholly of any term or condition of the Plant Hire Agreement is valid only if in writing and signed by CATCON. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only. Is not continuing and does not constitute a waiver or relaxation of any other term or condition.
- 28.2 The Plant hire Agreement can only be amended, modified, varied, released or discharged by written agreement of the parties.

29. Severability

If any provision in the Plant Hire Agreement is voidable or unenforceable that provision will be severed and the rest of the Plant hire Agreement will remain in full force and effect.

30. Security of Payment Legislation

- 30.1 For the purpose of this clause, a reference to:
- 30.1.1 A subcontractor: refers to any party engaged by the Supplier to carry out works which forms part of this Plant Hire Agreement; and
 - 30.1.2 The act means, as the case may be:
 1. The Building and Construction industry Security of Payment Act (NSW)
 2. The Construction Contracts (Security of Payment) Act (NT)
 3. The Building and Construction Industry payments Act (Qld)
 4. The Building and Construction industry Security of Payment Act (Vic)
 5. The Construction Contracts Act (WA)
 6. Analogous legislation enacted in any other state or territory of Australia

Claims by subcontractors of the Supplier

- 30.2 Notwithstanding any other provision of this Plant Hire Agreement, the Supplier must:
- 30.2.1 Immediately give CATCON a copy of any written communication of whatever nature in relation to the Act (including a copy of any adjudication application, notice judgement of debt) as may be amended from time to time, that the Supplier served on any party involved in the project associated with this Purchase Order or which it received from a subcontractor; and
 - 30.2.2 Ensure that each subcontractor gives CATCON a copy of any written communication of whatever nature in relation to the Act that the subcontractor receives from another party.
 - 30.2.3 The Supplier indemnifies CATCON against all claims, losses, actions, damages and cost (including legal cost) and expenses whatsoever arising out of or in connection with:
 - 30.2.3.1 A failure by the Supplier to comply with its obligations under clause 29.3.1
 - 30.2.3.2 A suspension pursuant to the Act by a subcontractor of work which forms part of the Plant Hire Agreement.
 - 30.2.4 The provisions under clause 29.3.2 will survive the expiration or termination of the Plant Hire Agreement.

Suspension of work by the Supplier under the Act

- 30.3 If the Supplier suspends the whole or any part of the hire of Equipment or work under the Plant Hire Agreement pursuant to the Act, then to the extent permitted by law:
- 30.3.1 CATCON shall not be liable for any cost, loss, expense or damage suffered or incurred by the Supplier as a result of such suspension; and
 - 30.3.2 CATCON may direct the Supplier to omit the whole or any part of the suspended hire of the Equipment or work under the Plant Hire Agreement and thereafter provide such Equipment and or undertake such work itself or engage others to carry out the omitted hire of the Equipment and or work.

Appointment of Adjudicator

- 30.4 If an application for adjudication is made under the Act, the authorised nominating authority or the prescribed appointer under the Act (as the case may be) in respect of the appointment of an adjudicator, shall be the institute of Arbitrators and Mediators Australia)

31. Proportionate Liability Legislation

- 31.1 For the purpose of this clause, a reference to proportionate Liability Acts means each of:
- 1) The Civil Law (wrongs) Act 2002 (ACT) and the Building Act 2004 (ACT);
 - 2) The Civil Liability Act 2002 (NSW);
 - 3) The proportionate Liability Act 2005 (NT) and the Building Act 1996 (NT);
 - 4) The Civil Liability Act 2003 (Qld);
 - 5) The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability) Amendment Act 2005 (SA);
 - 6) The Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (Tas) and, upon commencement, the Building Act 2000 (Tas)
 - 7) The Wrongs Act 1958 (Vic); and
 - 8) The Civil Liability Act 2002 (WA)
- 31.2 To the maximum extent permitted by law:
- 31.2.1 The parties agree that the proportionate Liability Acts will not have any application to the Plant Hire Agreement, the performance of the work or services under the Plant Hire Agreement, or any of the obligations of the Supplier under the Plant Hire Agreement or at law;
 - 31.2.2 Despite the provisions of the proportionate Liability Acts, the Supplier acknowledges that Supplier is solely responsible for and indemnifies CATCON in respect of any loss, damage, cost, claim, expense or proceeding CATCON suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Supplier, its officers, employees, agents and contractors, in performance of this Plant hire Agreement or on the part of any subcontractor, consultant or supplier engaged by the Supplier in performance of the relevant subcontract or consultancy or supply arrangement; and
 - 31.2.3 The parties agree that their rights, obligations and liabilities will be those which exist if the proportionate Liability Acts did not apply.
- 31.3 If despite the previous clause, one or more of the proportionate Liability Acts does apply then:
- 31.3.1 The Supplier acknowledges and agrees that, for the purpose of the Proportionate Liability Acts, the Supplier is entirely and solely responsible for any failure to take reasonable care on the part of any of its subcontractors, suppliers, consultants, officers, employees and agents; and
 - 31.3.2 The Supplier undertakes to CATCON, as a separate and independent obligation, to:
 - 1) Rectify or complete any of the work or services under the Plant hire Agreement:
 - a) Which is defective or incomplete or which is not in conformance with the requirements of the plant hire Agreement; and
 - b) Which would otherwise be a breach of the Supplier's obligations under the Plant Hire Agreement; or
 - 2) Compensate CATCON for any cost, loss or expense incurred as a result of having such work rectified or completed.
- 31.4 The provisions of Clause 30 will survive the expiration or any termination of the Plant hire Agreement.

32. Arbitration

- 32.1 The parties shall in good faith negotiate any dispute or difference of any kind whatsoever arising out of or in connection with this Subcontract or any part thereof) or the carrying out of the Subcontract Works.
- 32.2 If the parties are unable to resolve the dispute or difference within 28 days of the Matter being referred by one party to the other it shall be referred to arbitration by a single arbitrator to be appointed by agreement or (failing agreement within 14 days after receipt of notification by one party to the other of the intended reference) by an arbitrator to be appointed on the written request of either party by or on behalf of the President (the 'appointing authority') of:
- 32.2.1 the trade/institutional body, and in accordance with the provisions of the arbitral legislation/rules, specified in the Schedule; or
- 32.2.2 (if none is specified) by the Institute of Arbitrators or failing such appointment within 28 days after receipt of such written request, such person as may be appointed by the Court, in accordance with the provisions of the then current Commercial Arbitration Act (SA).
- 32.2.3 The place of arbitration shall be as specified in the Schedule or (if none is Specified) Adelaide. The decision of the arbitrator shall be final and binding upon CATCON and the Subcontractor.
- 32.3 Where an arbitrator has already been appointed under the Head Contract to deal with matters in dispute between the Principal and CATCON, then if some or all of such matters arise out of the same facts as matters in dispute under this Subcontract between CATCON and the Subcontractor, both parties shall use their best endeavours to secure the appointment of the same arbitrator to decide the dispute under this Subcontract, and either party shall be entitled to request the appointing authority of the Courts to appoint the same arbitrator to do so, if necessary in place of an arbitrator already appointed under this Subcontract, whose authority shall, to the extent of any common dispute only, be deemed to have been revoked upon any such new appointment. Any arbitrator with jurisdiction under both contracts shall have power to hear evidence of the dispute under this Subcontract either immediately before or immediately after or at the same time as the evidence of the matters in dispute under the Head Contract and generally to act as closely as possible in both arbitrations in accordance with the general principles of third party procedure in the Courts.
- 32.4 If for any reason in a case where a dispute under this Subcontract arises out of the same facts as a dispute under the Head Contract, the same arbitrator cannot be or is not appointed to hear both disputes, or if the Courts and not an arbitrator become seized of the dispute under the Head Contract, then in either event and in the absence of contrary agreement between the parties this arbitration clause, shall to that extent only, cease to have effect and any such dispute under this Subcontract shall be dealt with in the Courts. In any such case where an arbitrator has already been appointed under this Subcontract, his appointment shall be deemed to be revoked and shall lapse in regard to any such dispute.
- 32.5 None of the provisions of this clause 30 shall be construed so as to limit or prevent either party from exercising their right to request the Courts to exercise their discretion and either revoke the appointment of any arbitrator or refuse a stay of proceedings in any case where third parties (including in particular the Principal under the Head Contract) are also involved either directly or indirectly in a dispute between the parties to this Subcontract.
- 32.6 In any case where a dispute under this Subcontract is commenced by way of arbitration but is for any reason subsequently required to be dealt with in the Courts, or vice versa, the later proceedings shall be deemed to have been commenced for purposes of limitation of actions at the date when the earlier proceedings were commenced, provided that there has been no unreasonable delay by the claimant or plaintiff, as the case may be, in pursuing the later proceedings.
- 32.7 If, for any reason whatsoever, in a claim by the Subcontractor against CATCON which arises out of the same facts as a claim or dispute under the Head Contract, the Subcontractor does not wish to be, or is otherwise not, a party to the arbitration or litigation between CATCON and the Principal: -
- 31.7.1 The Subcontractor shall give CATCON all reasonable assistance in the prosecution of CATCON's claim or dispute and shall make available all relevant information, documents and evidence within its possession or control.
- 31.7.2 CATCON shall prosecute its claim or dispute with due diligence.
- 31.7.3 The Subcontractor shall be bound by the findings of fact and by the decision or decisions made in respect of CATCON's claim or dispute to the extent that the same involves any issue or issues which are the same or substantially the same as issues which are relevant to the Subcontractor's claim and the Subcontractor's claim shall be determined in a manner consistent with all such findings and decisions.

33. Special Conditions

In the event that any of the provisions of Clause 1-32 (Inclusive) conflict with any Special Conditions stated in Appendix C then such Special Conditions shall take precedence to the extent of such conflict.

ANNEXURE A Contract Particulars
Parties

CATCON: Name: Civil & Allied Technical Construction Pty Ltd
 ABN: 78 077 924 120
 Address: 598-600 South Road, ANGLE PARK SA 5010
 Telephone: (08) 8347 1888
 Facsimile: (08) 8347 1877
 Email: _____

SUPPLIER: Name: _____
 ABN: _____
 Address: _____
 Telephone: _____
 Facsimile: _____
 Email: _____

Site location/delivery address:

Insurance:

- Public Liability: \$20,000,000.00 or greater
- Workers' Compensation: Amount as required by law
- Construction Plant: Supplier's responsibility
- Excess: Supplier's liability

Payment terms:

- Day for submission of claim: on or before the 7th day of the month.
- Period for making payment: the Friday following 45 days after end of month of invoice date, or of the month in which the works claimed were carried out (whichever is later).
- Interest on late payments: 0 percent.

Applicable law:

South Australia

Subcontract documents:

- (a) The Purchase Order
- (b) Plant Hire Agreement
- (c) The Annexures to this Plant Hire Agreement

ANNEXURE B Schedule of Plant Hire Rates

Description of Plant	Working Rate	Stand Down Rate	Mob Cost	Demob Cost	Start Date

RATE INCLUSIONS/EXCLUSIONS			
Item	Inclusion/Exclusion	Included in Hire Rates	By CATCON
Operator	Operator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Accommodation	Accommodation for Operator(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Daily service	Daily servicing of the equipment of a kind necessary for the day to day running and upkeep of the equipment supplied (inclusive top up of oils and greases)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tyres	Maintain and replace the tyres with respect to the equipment supplied:		
	▪ Fair wear and tear	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ Replacements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fuel	Supply all fuels/greases/lubrication oils/hydraulic oil	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ground engagement tools	Maintain and replace ground engaging tools and/or cleaner bars used for the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Minor maintenance of the equipment in accordance with the operation and maintenance requirements provided by the Suppliers and in accordance with CATCON's reasonable instructions from time to time	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Scheduled servicing and maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Minor repairs to the equipment such as repairs to hoses, belts, air-conditioning and electrical systems and other minor adjustments and repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Supply hoses, belts, filters for the operation of the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Maintain and replace the:		
	▪ undercarriage with respect to the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ buckets with respect to the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ compactor feet with respect to the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ cutting drum of the equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Provide transportation of spare parts and service consumable parts components to the site and back	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Carry out major repairs, breakdowns and maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Be responsible for the safe and secure storage of the equipment at the site	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	The Supplier's Service Technician:		
	▪ Travel expense	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ Hourly charge rate	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	▪ Accommodation and messing supply	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ANNEXURE C Release Form**CERTIFICATE OF RELEASE UPON FINAL PAYMENT (FINAL STATEMENT)**

Pursuant to the provisions of the Agreement between Civil & Allied Technical Construction Pty Ltd, hereinafter referred to as CATCON, and the undersigned, hereinafter referred to as the Supplier, this Release is executed.

IN CONSIDERATION of the payment of <AUD \$XXXXXX> to be paid to the Supplier by CATCON as full and final payment of all work required of and performed by the Supplier for CATCON on that certain project known as <Project Name> as set out in Purchase Order No <XXXXXX>.

The Supplier HEREBY WAIVES RELEASES AND FOREVER DISCHARGES CATCON, its heirs and successors, and the Principal from all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any and every kind name and nature and description whether known or unknown at this point in time, which the Supplier has or might have or might assert against CATCON arising under or by virtue of the Contract Agreement or out of its performance and the Supplier HEREBY INDEMNIFIES AND AGREE TO KEEP INDEMNIFIED AND HOLDS HARMLESS CATCON, its officers, servants and agents, and the Principal from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any and every kind name and nature and description whether known or unknown by any person corporation or firm arising from incidental to or by virtue of the Contract Agreement or out of its performance SAVE AND EXCEPT:

- (i) any moneys due upon execution of this Release Form.
- (ii) any claim, demand, debt, accounts, expenses, costs, liens, actions and proceedings which has asserted, commenced or notified prior to the date of this Release

I/We agree that on receipt of the sum shown in paragraph 2 above this Purchase Order has been paid in full and I/We have no further claims against the CATCON or the Principal.

The Signatory also warrants that he/she has the authority to sign this document.

Dated the _____ day of _____ 20 _____

Company Name: _____

Company Registration No.: _____

THE COMMON SEAL OF <Supplier Name> was affixed to this document in the presence of:

(Director/Secretary Name)

(Signature)

(Director Name)

(Signature)

ANNEXURE D Special Conditions

None applicable