



MCS Civil (NSW) Pty Ltd
Civil - Rail - Plant - Labour

MCS CIVIL (NSW) PTY LTD
TERMS OF HIRE FOR LABOUR, PLANT AND
EQUIPMENT

Document No: MCS-FM-251
Document Owner: MCS Civil (NSW) P/L
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TERMS OF HIRE

This Agreement is made between: MCS Civil (NSW) Pty Ltd ACN 612 377 634 ("**MCS**") and MCS's client, namely, any legal entity that has engaged the services of MCS ("**Client**").

1. Introduction

1.1 MCS carries on a business whereby it provides: (a) labour hire services; and (b) plant and equipment hire services (including wet and dry hire) to its clients in the building and construction industry.

2. Definitions

2.1. In this Agreement, unless otherwise indicated by the context:

- (a) "**Allocator**" means the employee, agent, or contractor of MCS who is responsible for allocating Workers and/or Plant and Equipment to the Client and will be the Client's contact person at MCS in relation to the provision of the Services.
- (b) "**Agreement**" means these Terms of Hire including annexures, namely:
 - a. **Annexure A:** Terms and Conditions of Credit
 - b. **Annexure B:** Guarantee
 - c. **Annexure C:** Schedule of Rates
 - d. **Annexure D:** Labour Requisition Form
- (c) "**Commencement Date**" means the date on which the Services are to commence, being the date specified in the applicable Purchase Order and/or Labour Requisition Form submitted by the Client to MCS (once agreed by MCS), or as otherwise agreed in writing by the parties.
- (d) "**Completion Date**" means the date on which the Services are to be completed, being the date specified in the applicable Purchase Order and/or Labour Requisition Form submitted by the Client to MCS (once agreed by MCS), or as otherwise agreed in writing by the parties.
- (e) "**Credit Application**" means the MCS Credit Application, referenced as Annexure A, completed, and submitted by the Client to MCS.
- (f) "**Day**" means calendar day.
- (g) "**Dry Hire**" means the provision of plant and equipment for hire by MCS to the Client without Workers to operate the plant and equipment provided.
- (h) "**GST**" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (i) "**Guarantee**" means the Guarantee submitted by MCS to the Client which is Annexure B to this Agreement.
- (j) "**Hire**" means the provision of Worker(s) and/or Plant and Equipment (for Dry Hire or Wet Hire) by MCS to the Client for the purpose of performing the Role during the Hire Period.
- (k) "**Hire Charge**" is MCS's fees charged in relation to the Hire which will be calculated in accordance clause 6 or as otherwise agreed in writing between the parties.
- (l) "**Hire Period**" means the earlier of the following:
 - a. when the Client receives the Worker(s) or takes possession of the Plant and Equipment; or

b. In the case of Plant and Equipment, if the Client requests delivery of the Plant and Equipment, the time MCS delivers the Plant and Equipment to the address previously provided in writing by the Client.

The Hire Period is for an indefinite period and ends when the Worker(s) and/or Plant and Equipment are back in MCS's possession and control.

- (m) "**Introduction**" means the sharing of any information or documents about a Worker to the Client by MCS. "Introduce" has a corresponding meaning.
- (n) "**LTD Waiver**" means the Loss Theft Damage Waiver explained in clause 15.
- (o) "**MCS**" means MCS Civil (NSW) Pty Ltd
- (p) "**Payment Terms**" means the terms and conditions which relate to MCS's invoice(s) to the Client, including when MCS's fees and charges will fall due and payable.
- (q) "**Plant and Equipment**" means any plant and equipment provided by MCS to the Client for the purpose of performing the Role.
- (r) "**PPSA**" means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it.
- (s) "**Role**" means the role that a Worker and/or the Plant and Equipment is required to perform by the Client.
- (t) "**Services**" means any work performed, or services provided, by MCS or its servants, agents, employees, or contractors for the Client during the term of this Agreement.
- (u) "**Wet Hire**" means the provision of plant and equipment for hire by MCS to the Client with Workers to operate the said plant and equipment.
- (v) "**Worker**" means any person who is an employee, agent, or contractor of MCS who is introduced by MCS to the Client for the purpose of performing the Role.
- (w) "**Work Site**" means the location where the Services are to be carried out.

3. Term

- 3.1. MCS's engagement will commence on the Client's acceptance of the terms and conditions of this Agreement.
- 3.2. The Client's acceptance of the terms and conditions of this Agreement can be given to MCS by:
 - (a) returning a signed copy of the Agreement to MCS; and/or
 - (b) continuing to instruct or engage MCS following receipt of this Agreement,
- 3.3. Subject to any prior termination by either party under this Agreement, and unless otherwise agreed in writing between the parties, MCS's engagement will be proceed on an ongoing basis.



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- 3.4. To qualify for monthly hire, minimum monthly utilisation is 160 hours per month.
- 3.5. Should hire cease prior to the minimum hire period being reached, MCS reserves the right to recover rates at the applicable tiered schedule.

4. Engagement

- 4.1. By either:
- (a) returning a signed copy of the Agreement to MCS; or
 - (b) continuing to instruct or engage MCS following receipt of this Agreement,
- the Client engages MCS to perform the Services and agrees to be bound by this Agreement.
- 4.2. Upon receipt of a signed copy of the Agreement by the Client, MCS has the option to reject any part of the signed Agreement, including, but not limited to, the Credit Application and/or the Guarantee, which is Annexures B, at any time. However, MCS's refusal or failure to either approve or reject any part of the Agreement signed by the Client including, but not limited, the Credit Application and/or Guarantee, will not relieve the Client of its obligations under this Agreement.

5. Provision of Services

- 5.1. Upon engaging the Services of MCS, the Client will advise MCS, by way of submitting a Purchase Order or otherwise in writing (or electronically), of:
- (a) the proposed period of hire;
 - (b) the number of Workers required;
 - (c) the type of Plant or Equipment required (specifying whether such plant or equipment is required for Wet Hire or Dry Hire);
 - (d) the nature of the Role;
 - (e) any training requirements of the Worker(s); and,
 - (f) any other requirements.
- 5.2. In respect of labour hire, the Client must also complete and return to MCS a Labour Requisition Form in the same form shown at Annexure D.
- 5.3. MCS may accept the Client's request referred to in clause 5.1 and 5.2 in writing at its discretion.

6. Rates

- 6.1. In respect of each Worker and/or each item of Plant and Equipment for hire, the Client will pay MCS the rates set out in the Schedule of Rates which is Annexure C, unless otherwise agreed in writing between the parties.
- 6.2. In the event that a rate has not been agreed between the parties by the Commencement Date, the rate will be determined by MCS at its discretion.
- 6.3. Other charges in connection with the Hire may also apply including by not limited to:
- (a) the LTD Waiver Fee described in clause 15; and
 - (b) all costs reasonably incurred by MCS in connection with the Hire including, but not limited to, delivery and collection costs; trade materials supplied by MCS to the Client; credit card processing fees etc.
- 6.4. MCS reserves the right to increase the Hire Charges annually to recover any increases to its costs or arising from changes to the law.

7. Invoicing and payment

- 7.1. MCS will issue an invoice to the Client on a monthly basis.
- 7.2. Invoices may be submitted by MCS to the Client by email.
- 7.3. Upon accepting the Client's Credit Application, MCS will advise the Client of its Payment Terms in writing.
- 7.4. The Client must pay MCS's invoices in accordance with the Payment Terms and, within 7 days of payment, send a Remittance Advice to MCS evidencing payment of same.
- 7.5. In respect of labour hire:
- (a) MCS's fees will be based on the hours worked by the Worker whilst on hire to the Client. Timesheets will be used as a record for hours worked.
 - (b) Timesheets are to be completed by the Worker, or on behalf of the Worker, and then signed by the Client and submitted back to MCS no later than the next Monday after the previous week end.
 - (c) The signature of the Client, or the Client's representative, on the presented timesheet is confirmation by the Client that the recorded hours are correct. Any timesheets not signed by the Client within seven (7) days of being submitted by the Worker to the Client will be deemed to be confirmed by the Client as correct.
 - (d) MCS's invoices will be based upon the timesheets provided and will be billed at rates described in clause 6.
 - (e) A minimum of eight (8) hours will be billed to the Client for each Day that the Worker is engaged. Hours worked in excess of eight (8) hours in any Day cannot be offset against any Day when the Worker is engaged for less than eight (8) hours.
 - (f) A minimum notice period of two (2) hours is required to be given to the Allocator in the event that an allocated Worker will not be required to work for the Client.
 - (g) The Client is to provide all flights, accommodation, meals, travel expenses, drug and alcohol testing, inductions and training, and medicals. Should the client request these services to be paid by MCS, MCS will bill the Client on a cost plus 10% basis, exclusive of GST.
- 7.6. In respect of Plant and Equipment hire:
- (a) For Wet Hire:
 - a. MCS's fees will be based on the number of hours the Plant and Equipment is on hire to the Client.
 - b. a Plant Hire Docket is to be completed by the Worker operating the Plant and Equipment, or on behalf of the Worker operator, and then signed by the Client and submitted back to MCS no later than the next Monday after the previous week end.
 - c. The signature of the Client, or the Client's representative, on the presented Plant Hire Docket is confirmation by the Client that the recorded hours are correct. Any Plant Hire Dockets not signed by the Client within seven (7) days of being presented by the Worker operator will be deemed to be confirmed by the Client as correct.
 - d. MCS's invoices will be based upon the Plant Hire Docket provided and will be billed at the rates described in clause 6.
 - (b) For Dry Hire:



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- a. MCS's invoices will be based on the number of days or weeks for which the Plant and Equipment is on hire to the Client, as agreed in writing by the parties, and will be billed using the rates and charges described in clause 6.
- (c) A minimum of one day's fees will be billed to the Client for each week that the Plant and Equipment is on hire to the Client.
- (d) A minimum notice period of 24 hours is required to be given to the Allocator in the event that the requested Plant and Equipment is no longer required by the Client.
- 7.7. Consumables such as AdBlue and Fuel will be charged at \$3.50 per litre, pricing is subject to change when the Client is notified in writing by MCS.
- 7.8. Futile Pick-up fees will apply if the Plant and Equipment is not in a clean and transportable condition.
- 7.9. Futile delivery fees will apply where delivery cannot be completed where delivery address is incomplete or incorrect.
- 7.10. If the Client has a legitimate account dispute, only the disputed amount can be withheld, balance of invoice to be paid within allowed credit terms & conditions.
- 7.11. MCS may charge the Client for any costs or expenses relating to the recovery of overdue monies from the Client, including a 10% administration charge for debt recovery.
- 7.12. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per calendar month.
- 7.13. This hire contract is a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW).
- 8. Payment to Workers**
- 8.1. MCS is responsible for the following in relation to its Workers whilst on hire to the Client:
- (a) the payment of all amounts due to the Worker(s) under all applicable awards, industrial instrument, law, or contracts;
- (b) if the Worker(s) are employees of MCS, the payment of all leave entitlements, including, but not limited to annual leave, personal leave, parental leave and long service leave, and any other benefits, such as, superannuation, required to be provided to the Worker(s) by law;
- (c) the deduction and/or remittance of all applicable taxes, including, but not limited to, income tax, fringe benefits tax and payroll tax, as required by law; and
- (d) workers' compensation under the applicable legislation in the relevant jurisdiction unless the legislation imposes that obligation on the Client.
- 9. Dealings with Workers**
- 9.1. MCS will use its best endeavours to ensure that the Worker(s) introduced to the Client have the necessary education, training, and skills to be able to perform the Role and perform it safely, efficiently and to the best of their ability. However, the Client must satisfy themselves of the suitability of any Worker engaged prior to engagement.
- 9.2. In the event in that the Client revises the Role in a manner which affects a Worker's duties or responsibilities, the Client is required to give sufficient notice to MCS to allow MCS to consider the Worker's suitability for the revised Role. MCS will determine whether the Worker has sufficient experience, qualifications or training for the revised Role and may, in its absolute discretion, nominate a different Worker for the revised Role if it considers it necessary to do so.
- 9.3. If for any reason the Client is not satisfied with a Worker, the Client:
- (a) must contact MCS regarding a replacement; and
- (b) must not communicate anything to the Worker indicating that the Role has ceased.
- 9.4. The Client must not rehire or supply a Worker supplied by MCS to another party.
- 9.5. Where a Worker is an employee of MCS, MCS reserves the right to control the employment of the Worker, and this includes the right to terminate the Worker's employment.
- 9.6. Where a Worker is a contractor to MCS, MCS reserves the right to manage the contract with the Worker and this includes the right to terminate the contract with the Worker.
- 9.7. The Client will:
- (a) supervise, instruct, and direct the Worker whilst the Worker is on Hire to the Client;
- (b) provide notification to MCS immediately of a claim under any insurance policy or to any statutory authority in relation to a Worker where the claim is made by the Client.
- (c) provide written feedback in relation to any performance issues with a Worker and consent to MCS relaying such feedback to the relevant Worker.
- (d) maintain confidentiality and privacy of information regarding all Workers.
- (e) not make any payment to any Worker whilst they are on hire to the Client.
- (f) where a Worker is injured while performing the Role, co-operate by, if reasonably practicable, providing appropriate work, to assist with the Worker's return to work.
- 9.8. If the Client assists in a return-to-work program and the work performed by the Worker is at a lower classification, MCS and the Client agree to negotiate a discounted rate to apply during the return-to-work period.
- 10. Workplace Health and Safety**
- 10.1. The Client must:
- (a) provide a site induction for all Workers at the commencement of their Role;
- (b) make all reasonable attempts to ensure that all work carried out pursuant to this Agreement complies with all workplace health and safety requirements in accordance with the laws of the state or territory in which the work is carried out;
- (c) ensure that the Workers are not exposed to risks to their health or safety or hazards arising from the performance of their Role;



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- (d) ensure that any equipment or facilities provided to the Workers for use in the performance of their Role are regularly inspected, properly maintained and safe for use;
- (e) ensure that the working environment and systems of work at the Work Site are safe; and
- (f) notify MCS of any injury sustained by any of the Workers on the Client's premises, or during the time in which their services are being supplied to the Client.

11. Retention of a Worker by the Client

- 11.1. If a current or former MCS Worker is retained, employed or engaged by the Client (or any entity related to the Client), within 6 months of the expiration of any Hire, either directly or indirectly, then MCS will charge a placement fee equivalent to 10% of the yearly remuneration package offer to the former MCS Worker by the Client, or 10% of an annual salary calculated in accordance with the industry average weekly earnings last published by the ABS, whichever is the greater, unless otherwise agreed between the parties.
- 11.2. The Client agrees that it will not offer to retain, employ, or engage any MCS Worker, whether directly or indirectly, or permit any other person to offer to retain, employ or engage any MCS Worker, whilst on hire to the Client without MCS's prior permission in writing.

12. Dealings with Plant and Equipment

- 12.1. Subject to the Client meeting their obligations under these Terms of Hire, MCS will provide the Plant and Equipment in good working order allow the Client use of the Plant and Equipment during the Hire period.
- 12.2. The Client is responsible for any loss, theft or damage to the Plant and Equipment in any circumstances during the Hire Period. This includes the security and storage GPS level equipment hardware, wiring, packaging/carry cases.
- 12.3. The Client must return the Plant and Equipment to MCS in a clean condition and in good working order, excluding ordinary fair wear and tear. MCS may charge the Client reasonable cleaning costs at its discretion.
- 12.4. In the event that the Plant and Equipment breaks down or becomes unsafe to use during the Hire Period, the Client must:
 - (a) immediately stop using the Plant and Equipment and notify MCS;
 - (b) take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Plant and Equipment;
 - (c) take all necessary steps to prevent any further damage to the Plant and Equipment itself; and
 - (d) not repair or attempt to repair the Plant and Equipment without MCS's express written consent.
- 12.5. Unless clause 12.5 applies, upon receiving notice from the Client under clause 12.3, MCS will:
 - (a) take all reasonable steps to repair the Plant and Equipment or provide suitable substitute Plant and Equipment as soon as reasonably practicable after being notified by the Client;
 - (b) not impose a hire charge for that portion of the Hire Period for which the Plant and Equipment was broken down or unsafe, nor the costs associated

with any repair or replacement of the Plant and Equipment.

- 12.6. If the Plant and Equipment has broken down or become unsafe to use as a result of the Client's acts or omissions (or that of its servants, agents, employees, contractors, or any of the Workers) or if the Plant and Equipment is lost, stolen or damaged beyond reasonable wear and tear during the Hire Period, the Client will be liable for:
 - (a) any costs incurred by MCS to recover or repair or replace the Plant and Equipment; and
 - (b) the hire charge for that portion of the Hire Period during which the Plant and Equipment is being recovered and repaired or replaced, except where the Client has paid an LTD Waiver Fee, in which case the Client's liability is subject to clause 15 below.
- 12.7. Provided that the Client pays the costs and charges described in this clause, MCS will return or replace the Plant and Equipment and the Client must continue to pay the hire charges for the remainder of the Hire Period.

13. Stand Downs

- 13.1. The Client may make a request for Stand Down of the Plant and Equipment. Requests must be made to MCS prior to 9am on the day the Stand Down is to take effect. MCS is under no obligation to accept a Stand Down request.
- 13.2. Upon receipt of a Stand Down request, MCS will issue a Stand Down Number acknowledging and documenting the Stand Down. Upon receipt of a Stand Down Number and for the duration of the Stand Down, the Hirer shall be liable to pay Hire Charges at 75% at agreed account rates prior to the Stand Down.
- 13.3. In the event of a Stand Down, MCS reserves the right to redeploy the Plant and Equipment. As such all Plant and Equipment on Stand Down is required to be in a clean and transportable condition, by the Client.
- 13.4. Plant and Equipment on Wet Hire, the operator must clean machine and prepare it for redeployment prior to Stand Down commencing.

14. Lost, Stolen or Damaged Plant and Equipment

- 14.1. If the Plant and Equipment is lost, stolen or damaged in any way, or by anyone (including third parties) during the Hire Period, the Client shall be liable for:
 - (a) any costs incurred by MCS in recovering, repairing, or replacing the Plant and Equipment;
 - (b) any other costs whatsoever incurred by MCS as a result of the loss, theft or damage to the Plant and Equipment;
 - (c) the Hire Charge for the balance of the Hire Period until such time that the Plant and Equipment has been repaired or replaced; and
 - (d) If the Plant and Equipment has not been repaired or replaced during the Hire Period, the Client will continue to pay MCS a Hire Charge as if the Plant and Equipment were on hire to the Client, until such time that the Plant and Equipment is repaired or replaced.



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15. Loss/Theft/Damage Waiver

- 15.1. The Client shall be liable for and indemnify MCS against, any theft, loss or damage to the Plant and Equipment during the Hire Period (including consequential losses suffered by MCS, such as loss of profits) save and to the extent any such theft, loss or damage is caused by MCS.
- 15.2. Notwithstanding clause 14.1, the Client's liability for theft, loss or damage to the Plant and Equipment may be limited where the Client has paid a Loss/Theft/Damage Waiver Fee (LTD Waiver) in accordance with the provisions of this clause 14.
- 15.3. Subject to clause 15.6, the LTD Waiver fee is compulsory and the amount of the LTD is as detailed in the Terms.
- 15.4. An LTD Waiver is an agreement between the parties to limit the liability of the Client in certain circumstances for loss, theft or damage to the Plant and Equipment to the amount of the LTD Waiver Excess, as explained below.
- 15.5. The LTD Waiver Fee is 10% of the Hire Charge` and will be charged to the Client (in addition to the Hire Charge) when MCS issues its invoice for the provision of the Services unless clause 15.6 applies.
- 15.6. The Client is not required to pay the LTD Waiver Fee if it produces a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Plant and Equipment during the Hire Period for an amount not less than the replacement value of the Plant and Equipment.
- 15.7. The Client is responsible for any shortfall in repair or replacement of the Plant and Equipment following payment of any amount received under insurance.
- 15.8. Where the Client has paid the LTD Waiver Fee, MCS will waive its right to claim against the Client for loss, theft or damage to the Plant and Equipment if:
- (a) for theft, the Client has promptly reported the incident to the police and provided MCS with a written police report;
 - (b) the Client has co-operated with MCS and provided MCS with the details of the incident, including any written or photographic requested by MCS;
 - (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.6; and
 - (d) the Client has paid MCS the LTD Waiver Excess.
- 15.9. The LTD Waiver Excess for each item of Plant and Equipment is the amount equal to:
- (a) \$500.00 of (if the replacement cost of the Plant and Equipment is less than \$500.00) the replacement cost of the Plant and Equipment; or
 - (b) The first \$5,000.00 of the cost of the repairs (if the Plant and Equipment is partially damaged and can be repaired) or
 - (c) The first \$5,000.00 of the full new replacement cost of the Plant and Equipment (if the Plant and Equipment is lost, stolen, or damaged beyond repair), whichever is greater.
- 15.10. Even if the Client has paid the LTD Waiver Fee, MCS will not waive its rights to claim against the Client for loss, theft or damage to the Plant and Equipment and the LTD Waiver will not apply if the loss, theft, or damage:
- (a) has arisen as a result of the Client's breach of a clause of this Agreement;
 - (b) has been caused by the Client's negligent act or omission;

- (c) has arisen as a result of the Client's use of the Plant and Equipment in violation of any laws;
- (d) has been caused by the Client's failure to use the Plant and Equipment for its intended purpose or in accordance with MCS's instructions or the manufacturer's instructions;
- (e) occurs to the Plant and Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
- (f) has been caused by a failure to properly service or maintain the Plant and Equipment;
- (g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due insufficient clearance;
- (h) has been caused by the overloading of the Plant and Equipment or any components thereof;
- (i) is to motors or other electrical Plant and Equipment or components within the Plant and Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Plant and Equipment;
- (j) is caused by exposure to any corrosive or caustic substance, including but not limited to cyanide, salt water and acid;
- (k) is caused by vandalism;
- (l) is to tyres or tubes; or
- (m) is to windscreens, mirrors, glass, or Perspex.

16. Ownership of Plant and Equipment

- 16.1. The Client acknowledges that MCS owns and retains title in the Plant and Equipment in all circumstances, unless MCS has hired or leased the Plant and Equipment from a third party, in which case ownership and title remains with that third party.
- 16.2. The Client is not permitted to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over the Plant and Equipment in any way, subject to clause 16.

17. Chain of Responsibility Obligations

- 17.1. The Client must:
- (a) comply with all Chain of Responsibility legislation and must ensure that any activity relating to the Plant and Equipment (including scheduling, load restraint, Transport Movement) is undertaken in accordance with the Client's Chain of Responsibility obligations;
 - (b) ensure that any of the Client's subcontractors (where the Client subcontract any Transport Movement under this Hire Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 17.
- 17.2. The Client will allow MCS to audit the Clients Chain of Responsibility documents, procedures, policies, and records to ensure that the Client has proper processes in place to manage Chain of Responsibility obligations.

18. Force Majeure



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18.1. MCS shall not be in default or be liable for failure to observe or perform in accordance with these Terms for any reason or cause which is outside of the reasonable control of MCS, including without limitation, war, insurrection, riot, civil commotion, strikes, lockouts, industrial disputes, acts of god, act of governments, flood, storm, tempest, power shortages or power failure, or an inability to obtain sufficient labour, raw materials, fuel or utilities.

19. Telemetry Data

19.1. Notwithstanding the provisions contained in clause 23 of this Agreement, MCS are not liable with respect to the Client's use or reliance on any telemetry data MCS have provided to the Client in relation to the Plant and Equipment ("Data").

19.2. You acknowledge that:

- (a) We own all rights, title, and interest (including intellectual property rights) in the Data;
- (b) The Client must obtain MCS's prior written approval for the purposes for which the Client intends to use the Data and the Client must not disclose the Data to any third party;
- (c) MCS do not warrant the accuracy of any Data nor guarantee that such Data will be available to the Client throughout the Hire Period;
- (d) MCS are not required to retain any Data and such Data may not be available for retrieval after the Hire Period; and
- (e) MCS may disclose, from time to time, any Data to a third party who is not a party to this Hire Agreement (for example, location and utilisation data with respect to the Plant and Equipment) and we are not required to obtain the Client's prior permission with respect to such disclosure nor will such disclosure constitute a breach of this Agreement by MCS.

19.3. The Client will release and indemnify MCS with respect to all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against MCS and any environmental loss, costs, damage or expense) incurred in relation to the Client's use and reliance on any Data, arising with respect to the disclosure of Data to, and use of Data by, a third party (pursuant to clause 18.2(e)) or otherwise arising with respect to this clause 19.

20. PPSA

20.1. MCS may register any actual or impending security interest in the Plant and Equipment, or any proceeds arising in respect of any dealing in the Plant and Equipment, contemplated by this Agreement.

20.2. The Client undertakes to:

- (a) do anything that is required by MCS:
 - a. so that MCS may acquire and maintain one or more perfected security interests under the PPSA in respect of the Plant and Equipment and its proceeds;
 - b. to register a financing statement of financing charge statement; and

c. to ensure that MCS's security position, and rights and obligations, are not adversely affected by the PPSA;

(b) not register a financing charge statement in respect of a security interest contemplated by this Agreement without MCS's prior written consent; and

(c) not create, or purport to create, any security interest in the Plant and Equipment, nor register, or permit to be registered, a financing statement or a financing charge statement in relation to the Plant and Equipment in favour of a third party without MCS's prior written consent.

20.3. The Client:

(a) waives its rights under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under this Agreement;

(b) agrees that, to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96, section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(c) agrees that the following provisions of the PPSA will not apply and the Client will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

20.4. Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Client waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

20.5. For the purposes of section 20(2) of the PPSA, the collateral is the Plant and Equipment. This Agreement is a security agreement for the purposes of the PPSA.

20.6. The Client agrees to notify MCS in writing of any change to its details set out in the Credit Application, within 5 business days from the date of such change.

21. Insurances

21.1. The Client and any entity related to the Client must have adequate insurance to cover:

(a) loss or damage to the Client's property, MCS's property or the property of any third party, caused or contributed to by any Worker(s) whilst on Hire to the Client or, caused or contributed to by the operation of the Plant and Equipment by any person whilst on Hire to the Client.

(b) death or personal injury to any person caused or contributed to by any Worker(s) whilst on Hire to the Client or, caused or contributed to by the operation of the Plant and Equipment by any person whilst on hire to the Client.

(c) any other insurance that either party considers necessary to ensure that MCS and its directors, officers, servants, employees, agents, and



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- contractors are protected against any liability incurred through the performance of this Agreement.
- 21.2. The insurances that the Client is required to effect under this clause must cover MCS and its directors, officers, servants, employees, agents, and contractors and state such entities as "Named Insureds" on the applicable policies of insurance.
- 21.3. If requested by MCS, the Client must provide MCS with evidence of the policies of insurance required to be effected by the Client.
- 22. Indemnity and release**
- 22.1. The Client agrees to indemnify MCS and its directors, officers, employees, servants, agents and contractors against all claims, debts, costs, expenses, losses, damages, causes of action, actions, suits, arbitrations, demands, liabilities, or legal proceedings whatsoever which arise out of, or are in any way connected with:
- (a) any breach of this Agreement by the Client;
 - (b) the termination of this Agreement because of a breach by the Client;
 - (c) any willful, unlawful, or negligent act or omission of the Client, its directors, officers, employees, servants, or agents, or any of the Workers.
 - (d) any injury to, or death of, any person:
 - a. caused or contributed to by any act or omission of the Client or any of the Workers; or
 - b. in any way connected with the use or hire of Plant or Equipment;
 - (e) any loss or damage to the Client's property, MCS's property or any third party's property:
 - a. caused or contributed to by any act or omission of the Client or any of the Workers; or
 - b. in any way connected with the use or hire of Plant or Equipment;
- 22.2. The indemnity provided by the Client to MCS in this clause will not be defeated or reduced by reason of any negligent act, breach of duty, default, or omission by MCS or its directors, officers, employees, servants, agents, or contractors.
- 22.3. The Client agrees to release MCS and its directors, officers, employees, servants, agents and contractors from and against all claims, debts, costs, expenses, losses, damages, causes of action, actions, suits, arbitrations, demands, liabilities or legal proceedings whatsoever, both present and future, which arise out of, or are in any way connected with, any liability incurred by MCS or its directors, officers, employees, servants, agents or contractors for any injury, loss or damage in connection with the Services.
- 22.4. The release provided by the Client to MCS in this clause will apply regardless of how the injury, loss or damage occurs and whether or not the injury, loss or damage is in any way caused by, or connected with, a negligent act, breach of duty, default, or omission by MCS or its directors, officers, employees, servants or agents.
- 23. Limitation of liability**
- 23.1. MCS is not liable for any personal injury or death of any person, or any loss or damage to any property, caused or contributed to by a Worker, whether by negligence or otherwise, or in any way connected with the Plant and Equipment, during period of Hire to the Client (This includes service strikes and damage to property). MCS Labour Hire and Plant and Equipment Hire is undertaken at the direction and Supervision of the Client.
- 23.2. Whilst MCS will use all reasonable endeavours to meet the Client's reasonable requirements to ensure the quality of the Workers and/or the Plant and Equipment, MCS is not liable for any injury, loss, or damage:
- (a) if MCS is unable to supply Workers and/or Plant and Equipment required by the Client at any time; or
 - (b) arising from any negligence, lack of skill, recklessness, or dishonesty of any Worker.
- 23.3. To the extent that MCS's liability cannot be limited as provided in this clause, MCS's liability is limited to:
- (a) MCS supplying the Hire again; or
 - (b) MCS paying the actual market value cost of supplying the Hire again.
- 24. No liability for consequential loss**
- 24.1. In no circumstances will MCS be liable to the Client for loss of profit, loss of revenue, loss of opportunities, loss of contract or any other form of consequential loss, or indirect loss arising out of, or in connection to, this Agreement or the provision of the Services.
- 25. GST**
- 25.1. Unless expressly included, MCS's fees will be exclusive of goods and services tax (GST).
- 26. Intellectual Property**
- 26.1. The Client acknowledges that intellectual property rights in any material developed or improved during MCS's provision of the Services, or in any way connected with the Services, vest or will vest with MCS. MCS grants the Client a revocable, non-assignable and royalty-free license to use such material.
- 27. Confidential Information**
- 27.1. The Client will treat all confidential information concerning the business and affairs of MCS which it acquires after entry into this Agreement as confidential. The Client will not make public or disclose to any other person that information unless it has firstly obtained the written consent of MCS.
- 27.2. Each party will keep the terms of this Agreement as confidential.
- 28. Waiver**
- 28.1. The failure of either party at any time to require performance by the other party of any provision of this Agreement does not affect the party's right to require the performance at any time.
- 28.2. The waiver by either party of a breach of any provision must not be held to be a waiver of any succeeding breach of the provision or a waiver of the provision itself.
- 29. Survival**
- 29.1. Clauses 15, 16, 18, 19, 20, 22 and 23 will survive the termination of this Agreement.



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30. Variation

30.1. This Agreement may only be varied as agreed in writing by authorised officers of the parties.

31. Severance

31.1. If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

32. Assignment

32.1. The Client must not assign, or attempt to assign, any rights under this Agreement without MCS's prior written consent.

32.2. Any approval given by MCS to the Client to assign all or part of this Agreement shall not relieve the Client from any of its obligations under this Agreement.

33. Dispute Resolution

33.1. If a dispute arises under this Agreement, the parties agree to first attempt to resolve the dispute with the assistance of a mutually agreed-upon mediator in New South Wales, before resorting to any other forms of dispute resolution, such as, litigation. Any costs and fees other than solicitor's or barrister's fees associated with the mediation will be shared equally between the parties.

34. Entire Agreement

34.1. This Agreement constitutes the entire Agreement between MCS and the Client and replaces all previous contracts, representations, and agreements.

34.2. Unless expressly agreed otherwise by MCS in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including, without limitation, any terms and conditions contained in a purchase order or works contract.

35. Jurisdiction

35.1. This Agreement is governed by the laws of New South Wales and applicable laws of the Commonwealth of Australia.

35.2. Each party submits to the jurisdiction of the courts of New South Wales.

36. Termination

36.1. MCS may terminate the Hire and/or the Agreement immediately without prior notice if the Client:

- (a) fails or refuses to pay the fee invoiced to the Client within 30 business days of payment being due;
- (b) the Client breaches any clause of this Agreement;
- (c) there is any change which prevents MCS from effecting the Hire, or which causes a material change to the effecting of the Hire; or
- (d) the Client becomes insolvent and/or steps are taken for the winding up or dissolution of the Client or for the appointment of any administrator, receiver, or liquidator to the Client or any of its assets.

36.2. Termination of the Hire and/or the Agreement will not prejudice any claim by MCS against the Client as a result of any event which gives rise to a right of termination under this clause.

MCS Civil (NSW) Pty Ltd (ACN 612 377 634)

Client

Signed by: _____ Date: _____

Authorised officer of the Client

Name: _____ Position: _____

Note: The Client will be deemed to have accepted this Agreement by continuing to instruct or engage MCS following receipt of this Agreement.