

MODEL CONTRACT FOR OWNER DRIVERS

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Accessibility

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PART 1 – PRELIMINARY MATTERS

Under the *Owner Drivers and Forestry Contractors Act 2005*, Hirers must give a Contractor an Information Booklet and a copy of the most recently published rates and costs schedule applicable to the Contractor's class of vehicle at least three business days before:

- the Contractor is engaged, if the Contractor will be engaged for a period of at least 30 days; or
- on the thirtieth day, if the Contractor is engaged for a total period of at least 30 days in any three month period.

1. PREAMBLE

The Parties to this contract are listed in the Schedule to this Contract. The Contractor carries on a business of providing a vehicle for hire, together with the services of driving the vehicle and related business activities, to transport goods. The Hirer engages the Contractor under this contract for services as an independent contractor (not as an employee) to supply services and a vehicle for the transportation of goods for either the Hirer directly, or for the benefit of the Hirer's customers.

2. DEFINITIONS

"Act" means the *Owner Drivers and Forestry Contractors Act 2005* (Vic).

"Approved Driver" means a driver listed in the Schedule as an approved driver or otherwise approved under clause 11 to drive the vehicle.

"Code of Practice" means the *Owners Drivers and Forestry Contractors Code of Practice 2006* made under Part 3 of the Act.

Note: The Code is available from business.vic.gov.au/ownerdrivershirers

"Confidential information" means commercial or technical information relating to the business of the Hirer or the Hirer's customer that:

- Is communicated to the Contractor with a written or verbal indication that the information is sensitive or confidential or not to be communicated, or
- Which is of its very nature is commercially sensitive or confidential, such as customer lists and contacts, pricing information or business plans

but does not include information which is or comes into the public domain otherwise than through a breach of this clause by the Contractor.

"Contract" means this contract and the Schedule, including any additional or varied terms specified in the Schedule.

"Contractor" means the party named in the Schedule to this contract as the Contractor. Where this contract is assigned, then Contractor means the assignee.

"Dangerous Goods" means dangerous goods as defined in the Australian Code for the Transport

of Dangerous Goods by Road or Rail available from ntc.gov.au.

“Dispute” means a dispute arising under or in relation to this contract.

“Goods” means anything the Hirer requires the Contractor to transport in or on a vehicle from time to time in accordance with this contract.

“Hirer” means the party to the contract named in the Schedule as the Hirer. Where this contract is assigned, then Hirer means the assignee.

“Laws” means any applicable law, whether Federal, State or local government, written or unwritten, including acts of parliament, ordinances, regulations, by-laws and any code of practice in so far as it imposes any mandatory requirement.

“Licence” means any Government or statutory licence, permit, approval or permission, however described.

“Livery” means any painting, decals, painted sides, logos, posters, stickers, trailer curtains or other material promoting or identifying the Hirer or the Hirer’s customer that the Hirer requires the Contractor to apply to a vehicle supplied under this contract.

“Negotiating Agent” means the person, if any, appointed by the Hirer or the Contractor as their negotiating agent in accordance with section 25 or 26 of the Act.

“Parties” means the Contractor and the Hirer as listed in the Schedule, or their respective assignees as applicable.

“Properly Completed Documents” and **“Properly Completed Invoices”** means any documents, including proof of delivery documents and invoices, that have been obtained or completed by the Contractor in the form, time and manner reasonably required by the Hirer from time to time as part of the Services provided.

“Services” means the work that the Hirer requires the Contractor to perform under this contract using the vehicle and specialised equipment, as specified in the Schedule.

“Small Business Commissioner” means the Victorian Small Business Commissioner established by the *Small Business Commissioner Act 2003* (Vic)

Note: The Victorian Small Business Commissioner can be contacted by telephone on 13 VSBC (13 8722), or via an online enquiry on the VSBC website at: www.vsbcc.vic.gov.au/contact/

“Specialised Equipment” means the equipment (if any) specified in clause 4.2 (specialised equipment) of the Schedule to be provided by the Contractor (eg refrigeration unit, hoist, tailgate, curtains, dog & chains).

“Transport Industry Council” means the Council established under section 55 of the Act.

“Vehicle” means the vehicle(s) specified in clause 4.1 (vehicle) of the Schedule to be supplied by the Contractor to the Hirer or any other vehicle that in accordance with this contract is used to perform the services.

3. PERIOD OF CONTRACT

The period of this contract is the period between the date specified in clause 2 (period of contract) of the Schedule as the date the contract is to commence, and:

- a) The date (if any) specified in the Schedule as the expiry date; or
- b) If no date is specified, the date the contract is terminated in accordance with the terms of this contract.

4. PREVIOUS CONTRACTS REPLACED

This contract replaces all previous contracts or understandings made between the Parties, but entering this contract does not affect any rights, obligations or liabilities incurred or accrued under previous contracts or arrangements, unless there is express agreement to the contrary.

This contract includes all terms contained in the Schedule, including any variations, deletions or additions specified in clause 10 (variations to standard terms) of the Schedule.

5. LEGAL RELATIONSHIP OF THE PARTIES

This contract is a contract for services, and not a contract of employment, and the Contractor must not hold him, her or itself out to be an employee of the Hirer. Unless authorised by the Hirer in writing to do so, the Contractor must not:

- a) At any time bind or purport to bind the Hirer to any other contract, agreement or transaction;
- b) Pledge the credit of the Hirer in any manner whatsoever; or
- c) Permit the creation of any lien over any property of the Hirer that may be in their possession or under their control.

PART 2 – CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

6. THE SERVICES

- a) The Contractor will provide a vehicle or vehicles and specialised equipment, and will perform the services as specified in clauses 3 (services) and 4 (vehicle and equipment) of the Schedule during the times (if any) specified in clause 3.4 (hours of work) of the Schedule.
- b) Unless specified otherwise in clause 3.7 (whether contract is for exclusive service) of the Schedule, the Contractor may perform services for persons other than the Hirer during the period of the contract.
- c) The Contractor will ensure that all persons acting on behalf of the Contractor, including officers, employees, subcontractors or agents of the Contractor, comply with the terms of this contract.

7. SAFETY AND COMPLIANCE WITH LAWS

7.1 Condition of the Vehicle

The Contractor will maintain the vehicle in a mechanically sound, properly painted and clean condition, fit for the purpose of providing the services. The Contractor will provide evidence of the roadworthiness of the vehicle upon request.

7.2 Compliance with Laws

The Contractor will comply at all times in the performance of the services with all laws which are applicable to the services, including but not limited to laws dealing with:

- a) Registration of the vehicle and compulsory third party insurance.
- b) Heavy vehicle safety, mass and load regulations, including the lawful use of particular roads and routes.
- c) Environmental requirements, emission controls and noise standards.
- d) Mandatory Australian design standards.
- e) Road safety and traffic management laws.
- f) Occupational health and safety.
- g) Dangerous goods including any signage and compulsory insurance requirements.
- h) Chain of responsibility.
- i) Food transport and hygiene.
- j) Security and anti-terrorism laws, including port identification requirements.
- k) Driving hours and fatigue management.
- l) Livestock carriage.

Note: for information on laws that may apply to transport services see the Owner Drivers Information Booklet.

Codes and Licences

The Contractor warrants that the relevant servants or agents of the Contractor will at all relevant times hold the licences and comply with any codes listed in clause 3.5 (codes and licences) of the Schedule and any other licences required for the performance of the services, including but not limited to licences required:

- a) to operate the vehicle or vehicles or other machinery or equipment supplied or operated by the Contractor under this contract;
- b) to carry particular kinds of goods, including dangerous goods;
- c) to enter certain premises (such as Ports); or
- d) to operate the vehicle supplied under this contract to the carrying capacity specified in clause 4.1 (vehicle) of the Schedule on the routes specified in the Schedule.

The Contractor will inform the Hirer immediately of the cancellation or suspension of any such licence. The Contractor will comply with the conditions of such licences at all times.

7.3 Contractor to Manage Fatigue and Take Breaks

- a) The Contractor will comply with all applicable laws concerning fatigue, fatigue management, rest breaks and record keeping applicable to the services. Where the Contractor is obliged to take mandatory rest or meal breaks under a law, such rest breaks will not be paid for as time worked.
- b) Where the Contractor is not obliged to take rest breaks under a law, then the Contractor may take meal and rest breaks as specified in clause 3.6 (meal and rest breaks) of the Schedule. The Contractor is entitled to refuse to perform any work during a meal or rest break that is not paid.

7.4 Safe Loading

- a) The Contractor will ensure the safe and proper loading of their vehicle, including the securing and appropriate weather protection of the load.
- b) The Contractor is responsible so far as is practicable for checking that the loading of pre-loaded vehicles is safe and satisfactory.

7.5 Induction processes

The Contractor will satisfactorily complete any site induction processes required by the Hirer's customers as a condition of entry to the customer's site. This work will be subject to the payment arrangements (if any) set out in clause 8.7 (induction processes) of the Schedule.

7.6 Safety Equipment

The Contractor will supply and wear appropriate standard safety equipment including safety boots and a safety vest as directed by the Hirer or the Hirer's customers, or as required by any law.

7.7 Right to Refuse Unsafe or Unlawful Work

- a) The Contractor may at any time refuse to carry any goods or to perform any act if in the genuine view of the Contractor, if the act was performed, it may be negligent, unsafe or unlawful, or in breach of any law.
- b) The Contractor will advise the Hirer of any such refusal and the reasons for the refusal, as soon as practicable.
- c) A refusal of work under this clause does not constitute a breach of any term of this Contract.

8. ABSENCE AND PUBLIC HOLIDAYS

8.1 Absence

The Contractor will not provide services during the periods, if any, specified in clause 6.1 (absences) of the Schedule.

Note: the Contractor may provide the services at any time using an approved driver: See clause 11

8.1 Public Holidays

Unless otherwise specified in clause 6.2 (public holidays) of the Schedule, the Contractor will not provide services on any day declared in the State of Victoria to be a public holiday.

8.2 Illness or incapacity, family responsibilities or a similar reason

Where the Contractor is unable to provide services due to temporary illness or incapacity, family responsibilities or other unavoidable absence of an approved driver, then:

- a) The Contractor will advise the Hirer of the situation as soon as practicable.
- b) The Contractor is not obliged to provide the services for the shorter of:
 - The period of the illness or incapacity; or
 - The period of time reasonably sufficient to allow the Contractor to supply an alternative approved driver.

The Parties may agree that for the period of the illness or incapacity, the Hirer contracts for the supply of the vehicle only.

8.3 No payment during absence under this clause

The Contractor is not entitled to any payment from the Hirer during any period of non-performance of services described in this clause.

9. CONTRACTOR'S INSURANCES

Subject to any variations specified in clause 7 (insurance) of the Schedule, the Contractor will arrange and keep current insurance policies meeting the requirements described in clauses 9.1 to 9.5 below. Such policies must be arranged with an authorised Australian insurer and holder of a financial services licence in accordance with the *Financial Services Reform Act 2001* (Cth).

9.1 Comprehensive Motor Vehicle Insurance

- a) Own damage to vehicle – for no less than market value.
- b) Third party property damage – \$20,000,000.
- c) Dangerous goods liability – as specified in the Schedule.
- d) Non-owned trailer liability (where the Contractor tows a trailer/s that is not owned by the Contractor) – \$100,000 any one trailer.
- e) Coverage to be Australia wide.

9.2 Public Liability Insurance

Legal liability in respect to third party property damage or bodily injury for an amount no less than \$10,000,000 for any one occurrence.

9.3 Goods in Transit Insurance

Where clause 7.1 (goods in transit insurance) of the Schedule indicates that the Contractor will take out goods in transit insurance then the following requirements for the policy apply:

- a) Limit any one loss: \$150,000
- b) The Policy will cover at least the following insured events:
 - Fire, hail, explosion, lightning, or flood.
 - Collision of the conveying vehicle with any external object other than the road, gutter, or similar surrounding surfaces.
 - Overturning, jackknifing or derailment of the land conveyance.
 - Collision, crashing or forced landing of the conveying aircraft.
 - Impact of the goods with something that is not on or part of the conveying vehicle (but not impact with the road or surrounding areas caused by the Goods dropping or falling from the conveying vehicle, unless caused by one of the above events).
 - Loss of profit/consequential Loss to \$100,000.
 - Theft, pilferage and non-delivery.
 - Debris removal following loss – \$25,000 limit.
 - Shedding of load.
 - Damage caused by strikers, locked out workers or persons taking part in labour disturbances, riots or civil commotions.
 - The willful act of a third party which was committed without the knowledge or connivance of the Contractor or the owner of the goods.
 - Where refrigerated goods are carried, cost of deterioration of refrigerated goods caused by any of the above events or by mismanagement or malfunction of refrigerating equipment.

9.4 Additional insurance

The Contractor will arrange and keep any additional insurance coverage specified in clause 7.2 (variations to insurance arrangements) of the Schedule.

9.5 WorkCover

The Contractor will comply with any obligations to take out a worker's compensation policy for the Contractor, and any employees or agents of the Contractor under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Note: For information on which party is obliged to take out a Workcover policy, contact your insurance agent, workcover agent or go to worksafe.vic.gov.au for more information.

10. INSTALLING THE HIRER'S EQUIPMENT

10.1 Communications Equipment

- a) Unless specified to the contrary in clause 4.3 (hirer's communications equipment and livery) of the Schedule, the Hirer may install, at its cost:
 - vehicle communications equipment or other devices used for communicating with the driver in the Contractor's vehicle;
 - any other communications or monitoring equipment specified in the Schedule.
- b) Any communications equipment provided by the Hirer will remain the Hirer's property and may be removed by the Hirer at any time, including on termination of the contract, at the Hirer's expense.
- c) Contractors will use communications equipment in the manner directed by the Hirer and will indemnify the Hirer for the cost of repair or replacement of communications equipment damaged by their negligent or wilful conduct.
- d) The Contractor will refund to the Hirer the installation costs if this contract is terminated either at the initiative of the Contractor, or for reason of fundamental breach of this contract by the Contractor, where the termination occurs within twelve months of installation of such equipment. Such costs may be deducted from monies owed to the Contractor, provided that it is properly accounted for.
- e) In this clause "installation costs" means the costs of the labour and incidental parts for installing the equipment, and does not include the capital costs of the equipment.

10.1 Livery

- a) Unless specified to the contrary in clause 4.3 (hirer's communications equipment and livery) of the Schedule, the Hirer may apply at its cost livery to the Contractor's vehicle in the manner as the Hirer from time to time may require.
- b) Any livery that was provided by the Hirer (and that can be removed in a usable form) will remain the Hirer's property, and may be removed by the Hirer at any time at the Hirer's expense.
- c) The Contractor will care for the livery in the manner directed by the Hirer and will indemnify the Hirer for any cost of repair or replacement of the livery damaged by the Contractor's negligent or wilful conduct.
- d) The Hirer will arrange for the removal of the livery at the conclusion or termination of the contract, at the Hirer's expense.
- e) Where livery is removed or replaced under this clause, the Hirer will do so as soon as reasonably practicable at a time agreed with the Contractor and will ensure that the arrangements do not unduly prevent the Contractor from earning income.
- f) The Contractor will refund to the Hirer fifty per cent of the installation costs if this contract is terminated either at the initiative of the Contractor, or for reason of fundamental breach of this contract by the Contractor, where the termination occurs within twelve months of installation of the livery. Such costs may be deducted from monies owed to the Contractor, provided that it is properly accounted for.
- g) In this clause, "**installation costs**" means the costs of the labour and of incidental and non-recoverable materials (such as paint and decals) of installing the livery, but does not include costs of any materials which can be recovered and re-used (such as tarpaulins).

11. APPROVED DRIVERS

- a) The Contractor will provide the services by using only a driver who is:
 - specified in clause 5 (approved drivers) of the Schedule as an approved driver or
 - approved in advance by the Hirer to drive the vehicle.
- b) The Hirer may withhold approval of a particular driver, or withdraw approval that has been given, but only if the Hirer believes that the driver or proposed driver:
 - is not qualified, properly licensed or capable of performing the services as required under this contract, or
 - is not a fit or proper person to perform the services; or
 - the driver is not acceptable to the Hirer's customer on reasonable and lawful grounds.
- c) Any approval of a driver given by the Hirer under this clause may be withdrawn if:
 - the driver engages in misconduct;
 - the driver fails to comply with a provision of this contract.

12. SUBSTITUTE VEHICLE

The Contractor may substitute an alternative vehicle for that specified in clause 4.1 (vehicle) of the Schedule, but only if:

- a) The vehicle so specified is unable to be used due to breakdown or accident; and
- b) The alternative vehicle is fit for the purpose of providing the services; and
- c) The Hirer agrees that the Contractor may use the alternative vehicle.

13. OTHER REQUIREMENTS FOR PERFORMANCE OF THE SERVICES

13.1 Services to be professional and conscientious

- a) The Contractor will provide the services in a conscientious and professional manner.
- b) The Contractor will comply with any lawful conditions of entry to premises of the Hirer's customers, including any lawful requirement to submit to drug or alcohol testing.

13.2 Inability to Perform

The Contractor will promptly advise the Hirer if the Contractor is unable to perform the services or anticipates an unusual delay in the performance.

13.3 Cessation of Work

The Contractor will notify the Hirer in person, by radio or by telephone if the Contractor intends to cease providing services on any day prior to any agreed or scheduled time. The Contractor must not cease work earlier than the agreed time without reasonable excuse.

13.4 Paperwork

The Contractor will provide properly completed documents and invoices in the form, time and manner reasonably required by the Hirer from time to time.

13.5 Contractor will Carry Out Hirer's Reasonable Requirements

The Contractor will carry out all reasonable requirements of the Hirer, or customers of the Hirer, in connection with the loading or unloading and carriage of goods provided that:

- a) Such requirements do not place the health and safety of any individual in jeopardy, including by interfering in the driver's fatigue management obligations under this contract;
- b) The request does not require the Contractor to use any equipment (such as a forklift or pallet jack) that the relevant driver is not licensed, trained or competent to use; and
- c) Any such work is paid in accordance with this contract.

13.6 Care and Delivery of Goods

- a) The Contractor will promptly advise the Hirer if the vehicle or the goods are involved in any accident or suffer any damage.
- b) The Contractor will take all reasonable steps to ensure that the goods transported under this contract are received by the recipient complete, undamaged and as described by any accompanying documentation.
- c) The Contractor will accurately record any loss or damage to those goods on the delivery docket and obtain a signature from the recipient of the good acknowledging the loss or damage.

13.7 Business Interests of Hirer

- a) The Contractor will at all times use their best efforts to protect and advance the Hirer's business interests.
- b) The Contractor will not at any time during this contract, or for a period of six months after the termination of this contract, whether on the Contractor's own account or as an agent, officer or employee of any person, canvass or solicit (directly or indirectly) the carriage of goods on behalf of any person who was a permanent customer of the Hirer and for whom the Contractor has performed services under this contract.
- c) In this clause: "**Permanent customer**" is one that provides work to the Hirer on a regular basis, and "**Person**" includes a company or partnership or any other legal entity.

13.8 Confidential information

- a) The Contractor will not divulge any confidential information concerning the Hirer or the Hirer's customers to any person, either during the period of this contract or after its termination or expiry.

13.9 Accounting for Monies Received

- a) The Contractor will account for and pay to the Hirer any cheques or moneys received on behalf of the Hirer or the Hirer's customers as soon as is practicable.
- b) The Contractor is not responsible for fraudulent cheques collected by the Contractor in good faith on behalf of the Hirer.

13.10 Working Expenses and Statutory Charges

The Contractor is responsible for all working expenses and statutory charges (including tolls) incurred in the course of their business, unless these are specified in clause 8.4 of the Schedule as costs or expenses to be paid or reimbursed by the Hirer.

13.11 Pallet Control

The Contractor will keep properly completed documents for pallet control. Where pallets are lost because the Contractor has not kept properly completed documents, then the Contractor will provide replacement pallets and will reimburse the Hirer any amount that the Hirer must pay to the owner of the pallets as a result of any loss of pallets.

PART 3 – THE HIRER’S RIGHTS AND RESPONSIBILITIES

14. PAYMENT TO CONTRACTOR

The Hirer will pay to the contractor all remuneration due under this contract, less any authorised deductions as specified in clause 8.8 (deductions of the Schedule), in accordance with the terms of this contract.

15. NO DIRECTION IN BREACH OF LAW

The Hirer will not direct the Contractor to commit any act that will or is likely to result in a breach of any law.

16. HIRER’S INSURANCE

16.1 Goods in Transit Insurance

Where clause 7.1 (goods in transit insurance) of the Schedule indicates that the Hirer will take out Goods in Transit Insurance then the following requirements for the policy apply:

- a) The Hirer will arrange and keep goods in transit insurance that will indemnify both the Hirer and the Contractor against their respective legal liabilities for loss or damage to goods in transit, and equipment owned by the Hirer (such as a trailer) used by the Contractor in the performance of the services. The insurance will meet at least the specifications referred to in clause 9.3 of this contract.
- b) The Hirer may deduct the cost of the Hirer’s goods in transit insurance from money payable to the Contractor, provided that:
 - The deduction is a direct and proper reflection of the actual cost of the insurance policy;
 - The Hirer provides to the Contractor a copy of the insurance policy;
 - Where the policy covers multiple contractors or employee drivers, satisfactory written evidence that the amount to be deducted from the Contractor is proportional to the Contractor’s share of potential liability covered by the policy; and
 - If the Contractor has adequate goods in transit insurance meeting the standards as described in clause 9.3, the Hirer will not deduct monies for insurance under this clause.

Note: This clause complies with the requirements of sections 23 and 24 of the Act

16.2 WorkCover

The Hirer will comply with any obligations to take out a worker's compensation policy for the Contractor, and any employees or agents of the Contractor under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Note: For information on which party is obliged to take out a WorkCover policy, contact your insurance agent workcover agent or go to worksafe.vic.gov.au for more information.

17. SUPERANNUATION

The Hirer will make superannuation contributions to the Contractor's complying superannuation fund if it is obliged to do so under the *Superannuation (Guarantee) Administration Act 1992* (Cth).

Note: Some contractors are entitled to superannuation payments. For information contact the Australian Tax Office or go to ato.gov.au

18. UNIFORMS

- a) The Hirer will supply to the Contractor any uniform that the Hirer requires the Contractor to wear at no cost. Uniforms will remain the property of the Hirer.
- b) The Contractor will reimburse the Hirer for the full cost of the uniform if termination of this contact occurs at the initiative of the Contractor within three months of receipt of a uniform. Such amount may be deducted from the payments made to the Contractor.

19. DELAYS AND BREAKDOWNS

- a) The Hirer may transfer goods from the Contractor's vehicle in order to complete the delivery if the Contractor is unduly delayed or is unable to perform the services due to a vehicle breakdown or an unavoidable reason, and the delay would cause the Hirer to be in breach of its obligations to its customer.
- b) In this case the Contractor is entitled to be paid the amount that the Contractor would otherwise have received for the performance of the services, less an amount equal to the costs incurred by the Hirer in completing the delivery.

20. RIGHT TO SUSPEND ALLOCATION OF SERVICES

The Hirer may suspend the allocation of any services to the Contractor if:

- a) The Contractor's vehicle is declared un-roadworthy, or, in the reasonable opinion of the Hirer, is not in a safe or roadworthy condition;
- b) The Contractor ceases to hold any necessary licence as required by clause 7.3 of this contract;
- c) The Contractor's vehicle does not meet the Hirer's reasonable requirements concerning appearance, or;
- d) The Contractor is in breach of any term of this contract.

During any period of suspension, the Contractor is not entitled to any minimum payment under clause 21 of this contract. The Hirer will re-commence the allocation of services to the Contractor as soon as practicable after the Contractor has provided evidence to the Hirer that the breach has been remedied. Nothing in this clause removes the right of either party to terminate the contract in accordance with clause 27 or 30 of this contract.

Note: Any dispute over the suspension of the allocation of services is to be dealt with under clause 31 (disputes process)

PART 4 – RATES AND PAYMENT

21. MINIMUM PAYMENT

The Hirer will provide to the Contractor the minimum payment, or payment relevant to the minimum number of hours of work, as specified in clause 8.1 (minimum payment) of the Schedule. This minimum payment will be paid to the Contractor regardless of whether any work is allocated to or performed by the Contractor, provided the Contractor is available to perform the services.

Note: Section 20(b) of the Act provides that the contract must specify a guaranteed minimum number of hours or income level that the Contractor will receive. The amount is a matter for the Parties to agree.

22. PAYMENT TO CONTRACTOR

The Hirer will pay remuneration to the Contractor in accordance with the terms in clause 8 (payments) and clause 9 (waiting time) of the Schedule specifying:

- a) The rates to be paid for the services;
- b) Any variable fuel payment (fuel levy) to be paid;
- c) Any costs or expenses to be paid by the Hirer or to be reimbursed; and;
- d) situations in which waiting time will be paid and the rate for waiting time,

less any deductions permitted as specified in clause 8.8 (deductions of the Schedule) to be made under this contract and permitted by sections 23 and 24 of the Act, or any other deductions required by law.

23. AGREED RATE FOR VEHICLE

Unless mutually agreed between the Parties, the Contractor will be paid by the Hirer at the rate specified in clause 8.2 (rates) of the Schedule for the vehicle specified in the Schedule, regardless of whether the services could have been performed using a vehicle with a lesser carrying capacity. The Hirer will not direct the Contractor to accept a reduced rate.

24. METHOD AND TIMING OF PAYMENTS

- a) The Hirer will pay all payments due to the Contractor under this contract after receipt by the Hirer of properly completed invoices, within the period specified in clause 8.5 (method and timing of payment) of the Schedule.
- b) The Hirer will make payment to the Contractor by electronic funds transfer to the Contractors nominated bank account, or by any other method specified in clause 8.5 (method and timing of payment) of the Schedule.
- c) The Hirer will provide to the Contractor a statement setting out the calculation of each payment made and accounting for any deductions made.

Note: sections 23 and 24 of the Act place restrictions on the making of deductions for insurance, services or equipment, including that if practicable, the Hirer has given the Contractor an opportunity to obtain services or equipment from another supplier.

25. INTEREST ON LATE PAYMENTS

If any amount of money that is properly due and owed by one party to the other party under this contract has not been paid after five business days after the date on which that amount was due have passed, then the following applies.

- a) The party who is owed the amount may send a written notice to the other party stating that the amount is due and that that party is claiming penalty interest under this contract.
- b) The party who owes the amount will be liable to pay penalty interest on that amount from the date the notice is given until payment is made, calculated on a daily basis at the interest rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

26. ANNUAL REVIEW

- a) The rates specified in clause 8.2 (rates) of the Schedule will be reviewed annually by the Parties at the times specified in clause 8.6 (rate review) of the Schedule. In reviewing the rates to be paid under this contract, the Parties will have regard to any principles for review of rates contained in the Code of Practice.
- b) The Contractor or the Hirer may seek a review of rates at any time in the event of significantly changed circumstances. Either party may involve its negotiating agent in a review.

PART 5 – TERMINATION

27. TERMINATION FOR FUNDAMENTAL BREACH OF CONTRACT

Either party may terminate this contract without notice or penalty where the other party commits a fundamental breach of the contract. Examples of a fundamental breach include, but are not limited to:

- a) Serious and wilful misconduct, including repeated failure to perform the services as directed in accordance with the contract;
- b) Falsification of documents;
- c) Disclosure of confidential information;
- d) Dishonesty or negligence;
- e) Conviction of or charge with any criminal offence involving a serious allegation of violence or dishonesty;
- f) Being unfit for performance of the contract due to the use or presence of intoxicating drugs or alcohol in connection with the services;
- g) Failure by the Hirer to provide guaranteed hours of work or level of income;
- h) Unauthorised withholding or late or non-payment of monies payable under this contract; and
- i) Committing any act of insolvency or bankruptcy or being declared bankrupt or insolvent.

28. FIXED TERM CONTRACTS

- a) Where clause 2 (period of contract) of the Schedule provides that this contract is to expire on a fixed date (that is, it is a fixed term contract), the contract will conclude on that date and may not be terminated during the period of the contract except in accordance with clause 27 or 30 of this contract.
- b) Where the period of the contract is for six months or more, then the Hirer will give the Contractor notice of its intention to seek to renew or extend the contract (or not to do so) of a period not less than the applicable period of notice set out in clause 29 of this contract below.

29. TERMINATION BY GIVING NOTICE

- a) Where the contract does not specify an expiry date, then either party may terminate this contract by the giving of written notice as follows:
 - Where the vehicle supplied under this contract is a heavy vehicle (in excess of 4.5 tonnes gross vehicle mass) – three months' notice;
 - Other vehicles – one month's notice.
- b) This requirement may be waived if the Contractor obtains a certificate from the Victorian Small Business Commissioner in accordance with section 21 of the Act. Such a certificate may be obtained prior to this contract being entered, during the contract or after the relevant party indicates an intention to terminate the contract.
- c) Alternatively, a Hirer seeking to terminate the contract may pay to the Contractor an amount in lieu of giving notice, calculated in accordance with section 22 of the Act.
- d) Written notice of termination is not required for ongoing engagements for a period of less than three months.

30. FORCE MAJEURE

This contract will terminate automatically if either party is unable to perform the Contract due to a force majeure event (an **"act of God"**), such as a flood, fire, death or other circumstance completely outside of the Parties' control.

PART 6 – RESOLUTION OF DISPUTES

31. DISPUTES PROCESS

The Parties will engage in the following dispute resolution process if any dispute arises over the terms, performance or termination of this contract.

31.1 Stage 1 Initial Discussion

The aggrieved party will advise the other party of the concern or problem as soon as possible. The Parties will use their best efforts in good faith to resolve the issue. Before proceeding to the next stage, the aggrieved party must have:

- a) Notified the other party in writing of the dispute;
- b) Advised what they would like to occur to resolve the dispute;
- c) Provided a reasonable time period for resolution;
- d) Accepted any invitation to meet with the other party to attempt to resolve the dispute.

31.2 Stage 2 Board of Reference

- a) If the matter in dispute is not settled at the first stage, the Parties may agree to refer the dispute to a Disputes Board, being a person or persons they agree will endeavour to resolve the dispute through mediation or other alternative dispute resolution.
- b) The Disputes Board will have the functions and powers conferred on it by agreement of the Parties. The Parties will participate in good faith in any Disputes Board process and take all necessary steps to attempt to resolve their dispute as soon as practicable.
- c) Alternatively, the aggrieved party may proceed directly to Stage 3.

31.3 Stage 3 Victorian Small Business Commissioner

The aggrieved party will refer the dispute to the Small Business Commissioner in accordance with Part 5 of the Act.

31.4 Stage 4 Victorian Civil and Administrative Tribunal

If the Small Business Commissioner has issued a certificate in accordance with section 40 of the Act, either party may make an application to the Victorian Civil and Administrative Tribunal in accordance with Part 5 of the Act.

31.5 Negotiating agents

Either Party can seek the assistance of their negotiating agent at any stage during this process.

31.6 Parties to continue working during disputes process

Work will continue as normal while this process is being followed.

31.7 Urgent matters

Nothing in this clause will prevent either party from seeking an order in the nature of an injunction from the Victorian Civil and Administrative Tribunal in respect of genuinely urgent matters.

PART 7 – MISCELLANEOUS

32. ASSIGNMENT

Either party may, with the consent of the other party and the assignee, assign their rights and obligations under this contract to another person (the assignee) in which case this contract will continue as if there had been no termination of the contract.

33. GOODWILL

Under no circumstances may the Contractor:

- a) Dispose of the vehicle referred to in clause 4.1 (vehicle) of the Schedule to any other person and charge or receive goodwill;
- b) Sell, or offer to sell, the rights under or in connection with this or any future contract in consideration of receiving goodwill;
- c) Claim a right to introduce any new contractor to the work in question; or
- d) Make any representation to any person, whether written or verbal, implied or direct, that the Contractor has a right to do any of the above things.

“Goodwill” in this clause means any payment or benefit or a premium paid above the market price of the vehicle, however described, made or given with the express or implied representation of the payer obtaining rights under this contract or any contract for services with the Hirer.

34. ENTIRE AGREEMENT AND WAIVER

This contract (including the Schedule) constitutes the entire agreement between the Parties. None of the terms or conditions may be waived or varied unless the Parties agree in writing. A waiver of any right by a party on one occasion does not oblige the party to agree to any further waiver on a subsequent occasion.

35. LAWS OF VICTORIA APPLY

This contract is governed by the laws of Victoria. The parties agree to the exclusive jurisdiction of the courts and tribunals of that State.

36. SERVICE OF NOTICES

All notices to be given under this contract will be given by ordinary post, hand delivery or (where specified in the Schedule) by email to the relevant party's address for service of notices specified in clause 1 (parties to the contract) of the Schedule.

SIGNED BY THE PARTIES

Hirer

ABN

Signed for and
on behalf of the Hirer

Name (print)

Date

Contractor

ABN

Signed for and
on behalf of the Contractor

Name (print)

Date
