

## **DIVERSE GROUP AUSTRALIA PTY LTD**

### **STANDARD TERMS AND CONDITIONS OF EQUIPMENT HIRE**

#### **1. DEFINITIONS**

In these conditions:

**Hirer** means Diverse Group Australia Pty Ltd (DGA) (ABN 33 146 840 780);

**Owner** means the legal owner of the equipment being hired by the “Hirer”;

**Site** means the Site where the equipment to be hired under the Request for Supply is to be mainly utilised.

**SMU** means that part of the equipment which records the time of operation;

**Request for Supply** means the Request to which these conditions are attached.

#### **2. LEGALLY BINDING AGREEMENT**

2.1 The acceptance by the Owner of the request by DGA in the Request for Supply will create a legally binding contract between the Owner and DGA to supply the equipment for the rate and period of hire set out in the Request for Supply and set out in these conditions.

2.2 The contract created pursuant to clause 2.1 does not incorporate any terms or conditions submitted by the Owner and it is agreed that the Owner’s terms are excluded and these terms prevail.

2.3 If the Owner amends the Request for Supply in any respect when purporting to accept it, DGA will only be deemed to have accepted the amendment if it notifies the Owner that it accepts the amendment.

2.4 If the Owner has not accepted the Request for Supply within the time stipulated the Request for Supply will lapse.

#### **3. SUPPLY OF EQUIPMENT AND LABOUR**

The Supplier agrees to supply to DGA the equipment or equipment and labour (where the Request for Supply is deemed to be commensurate with a “wet lease” arrangement) for the rate and period of hire set out in the Request for Supply and set out in these conditions for a period of hire.

#### **4. NATURE OF RELATIONSHIP**

The relationship between the Owner and DGA in relation to the Request for Supply is that of principal and independent contractor and not that of employer and employee. Nothing in the Request for Supply shall be construed to create a relationship of employment, agency or partnership between the Owner and DGA.

The Owner does not have any authority to act for or on behalf of DGA or to bind it without its express written consent, and shall not hold out that it does have the authority of DGA.

## **5. PERSONAL PROPERTY SECURITIES ACT (PPSA)**

The Owner agrees that it is wholly responsible for ensuring that all equipment supplied to DGA under the Request for Supply is properly registered on the Personal Property Securities Register for the period of hire.

In the event that the enforcement of the PPSA (arising from equipment being on hire to DGA) results the equipment being encumbered for any period, the Client agrees to indemnify DGA for any loss incurred by the client arising from the enforcement of the PPSA.

## **6. OBLIGATIONS OF OWNER**

6.1 The Owner must ensure that the equipment supplied to DGA as set out in the Request for Supply shall comply with the requirements of the Site where the equipment is being utilised, relevant Acts of Parliament, all other legislative instruments and all applicable codes of practice and Australian Standards. DGA may reject any equipment that it considers unsuitable for the purpose for which DGA proposes to use it, even though it may comply with the aforesaid requirements, and any item so rejected shall not be used for the purpose proposed, and, if DGA so directs, shall be removed from the Site at the Owner's cost. Nothing in this Clause shall relieve DGA of any responsibility to utilise the equipment in a safe and satisfactory manner.

6.2 DGA will be responsible for any initial third party inspection if requested; if the equipment fails to pass the initial inspection then the Owner will cover any further inspection costs until the equipment meets the recommended requirements.

6.3 All hire plant and equipment which is on a "wet lease" arrangement must follow the same process in regards to servicing and inspections as on a "dry lease" agreement. All associated costs for third party requested inspections will be the Owner's responsibility if on a "wet hire" arrangement.

## **7. OTHER COMMERCIAL CONDITIONS**

7.1 Where a "wet lease" arrangement is set out in the Request for Supply, the Owner warrants the labour component of the rates and prices in the Request for Supply are in accordance with the guidelines provided by the CCIWA (where applicable for the period of hire).

7.2 The cost of changes to labour rates shall not be reimbursable to the Owner by DGA (or vice versa) unless specifically provided for by a change in the guidelines approved by the CCIWA, and DGA has approved the Owner to enter into an industrial agreement, understanding or arrangement with respect to the Request for Supply.

7.3 DGA shall not be liable to pay for plant during any breakdown period.

7.4 Where operators are provided by the Owner for the purpose of operating the equipment, DGA shall only reimburse for costs associated with operators during breakdown periods at its own discretion, and only if operators perform productive tasks at the direction of DGA's supervision.

7.5 Where a Request for Supply extends over the Christmas/New Year break period, DGA will not be liable to pay the Owner any fee over this period. Unless otherwise

stated in the Request for Supply the Christmas/New Year break period is two (2) weeks.

7.6 The hire period shall commence from the first day of productive use of the equipment by DGA.

7.7 Equipment standby charges (calculated at 50% of the daily rate of hire set out in the Request for Supply) will apply for inclement weather days.

## **8. SAFETY REQUIREMENTS**

Minimum site personal protective equipment (PPE) to be provided by Owner includes:

- Safety hardhat
- Lace up ankle height steel capped boots (no slip-ons)
- High visibility vest to approved Australian Standard
- Safety glasses
- Trousers
- Long sleeve collared shirt

## **9. “WET LEASE” REQUIREMENTS**

9.1 Where the Request for Supply is commensurate with a “wet lease” arrangement, Site inductions are to be attended by the operator and paid for at the labour rate only.

9.2 An Operator Prestart form shall be completed daily and forwarded to the respective site supervisor prior to starting work the following day.

9.3 All operators will conform to the Site’s Safety regulations and procedures.

9.4 DGA reserves the right to discontinue hire of the Owner’s operator for breach of Site procedures, or, failing to follow directions of DGA’s designated supervisor, or, incompetent operation of the plant. The Owner shall replace the operator as soon as practicable and the agreed minimum hours shall be adjusted by deducting the resulting downtime hours.

## **10. INSURANCE**

10.1 Unless otherwise agreed all insurances are the responsibility of the Owner.

10.2 A copy of the Owner’s certificate of insurance must be supplied before commencement of hire.

## **11. INDEMNITY**

11.1 The Owner will indemnify and keep indemnified DGA and DGA's personnel against all losses incurred by DGA, whether wholly or in part by equipment and or equipment operators provided by the Owner, directly or indirectly by the:

- Performance or non-performance of the Owner's equipment or equipment operators; or
- presence of the Owner's equipment or equipment operators on or about the Site;

including injury to or death of any person and damage to or destruction of any property (including property and personnel of DGA and any Client or other service provider engaged on Site by DGA) irrespective of any negligence on the part of the DGA or the DGA's personnel except where losses incurred or suffered are the result of the sole negligence of DGA.

## **12. INSURANCE**

12.1 The Owner is required, at its expense, to effect and maintain throughout the period of hire, each of the following insurances in relation to risks or occurrences arising, or which may arise:

12.2 Insurance covering liability to pay damages or compensation arising out of any injury to or death of any person or any loss of or damage to (including resulting loss of use) any property howsoever caused. Such insurance must, unless prohibited by law provide cover in respect of each and every occurrence for an amount not less than \$20,000,000 and must be unlimited as to the number of claims which can be made under the policy.

12.3 Workers' compensation and/or employers' liability insurances in the names of the Owner and all operators provided by the Owner for their respective rights and interests covering all liabilities, whether arising under statute or common law, in relation to the death of, or injury to, employees or any person deemed to be an employee. This insurance must, unless prohibited by law, waive all express or implied rights of subrogation against DGA.

12.4 If the Owner will use or provide for use of equipment, the Owner shall maintain insurance covering all loss of and damage to such equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against DGA and DGA's personnel.

12.5 If the Owner is required to transport goods and/or equipment to or from the Site, unless advised otherwise by DGA in writing, the Owner will maintain insurance covering loss of or damage to the goods during transit. Such insurance must note DGA as a party insured under the policy.

## **13. PAYMENT TERMS**

13.1 The Owner must provide an invoice for the hire of their equipment by DGA on a monthly basis to coincide with the end of a calendar month.

13.2 DGA must pay the rate for the hire of the equipment set out in the Request for Supply within 45 days of the end of that calendar month.

#### **14. CANCELLATION**

- 14.1 Without limiting any of its other rights, in these conditions DGA may at any time up to 1 day from mobilisation of the equipment or equipment and labour (to be provided by the Owner under the Request for Supply) cancel the Request for Supply by giving notice to the Owner (**Cancellation Notice**).

#### **15. NOTICES**

Notices under these conditions must be given in writing and may be given by post; facsimile or email. Notice shall be given to one of the following:

- (a) as specified in the Request for Supply;
- (b) any address, facsimile number or email with which the Parties have used to communicate prior to or after the Purchase Order has been accepted; or
- (c) if there is not data relevant for the purposes of (a) or (b), to the principal place of business of the relevant party and the facsimile number or email published by it as the point of contact for making orders.

#### **16. VARIATIONS IN WRITING**

Any variation will only be effective if they are agreed in writing and will only bind DGA if they are agreed by DGA's Chief Executive Officer or Chief Operating Officer.

#### **17. GOVERNING LAW**

These conditions and the Contract between the Supplier and DGA are governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.