



## TERMS AND CONDITIONS OF WET HIRE

### INTRODUCTION

- A. These Terms and Conditions state the terms and conditions on which **Qube Heavy Lift Pty Limited ACN 095 626 798** ("Qube") will, subject to availability for hire at the commencement of the Hire Period, offer the hire of the Equipment and Labour Personnel to the Customer.
- B. The Customer hereby accepts the hire of the Equipment and Labour Personnel by Qube for the Hire Period on the basis of these Terms and Conditions.
- C. Unless a separate formal written agreement has been executed by Qube and the Customer to govern the hire of the Equipment and Labour Personnel, these Terms and Conditions will be the sole authority for governing the Customer's hire of the Equipment and Labour Personnel to the exclusion of all others, including (for the avoidance of doubt) any terms and conditions associated with any materials proffered or used by the Customer, such as purchase orders or similar.

### 1. HIRE OF EQUIPMENT AND LABOUR

- 1.1 Subject to being available for hire at the commencement of the Hire Period, Qube agrees to hire the Equipment and the Labour Personnel to the Customer for the Hire Period on the terms and conditions of these Terms and Conditions.
- 1.2 Unless otherwise agreed in writing between the parties, the Hire Period will commence when the Equipment departs the Originating Location and will cease when the Equipment is returned to the Receiving Location.
- 1.3 If the Hire Period terminates:
  - (a) during the Minimum Hire Period, the Customer must pay all remaining Hire Charges for the full Minimum Hire Period only; or
  - (b) after the Minimum Hire Period, the Customer must pay all Hire Charges which are unpaid up to, and as at, the date of the termination.
- 1.4 If Qube replaces the Equipment during the Hire Period in accordance with clause 15.1, the Hire Period will be deemed unbroken as though the replacement equipment was the original Equipment.

### 2. MOBILISATION AND DEMOBILISATION

- 2.1 If Qube has issued a Quotation to the Customer in respect of the Hire, then in addition to the Hire Charges, the Customer must pay to Qube all charges, costs and expenses associated with the Mobilisation and Demobilisation of the Equipment and Labour Personnel specified in that Quotation.
- 2.2 Where such Mobilisation and Demobilisation charges are payable by the Customer, unless expressly stated in the relevant Quotation to be otherwise, the Customer acknowledges and agrees that the Mobilisation and Demobilisation charges are based on trucks and trailers being unloaded and loaded (as the case may be) within the very strict timeframe specified in the Quotation or, where no such timeframe is specified in the Quotation, within 1 hour from commencement of loading or unloading (as the case may be) (the **Timeframe**). Where there are delays in unloading or loading beyond the Timeframe, which are caused by or attributable to the acts or omissions of the Customer or Site conditions outside the control of Qube, the Customer must pay to Qube any additional costs incurred by Qube for every subsequent hour or part thereof (as a pro-rata of the Mobilisation and Demobilisation charges set out in the Quotation).
- 2.3 Qube will exercise its best endeavours to ensure the timely delivery to the Site of the Equipment and Labour Personnel for the commencement of the Hire Period, but the Parties acknowledge that circumstances outside the reasonable control of Qube and operational constraints (including those on Site) may mean that the Equipment and/or Labour Personnel are not available from the commencement of the Hire Period. Qube is not liable to the Customer for any late delivery or non-delivery of the Equipment, or other delay in commencement of the Hire (including for the avoidance of doubt with respect to any third-party back-charges, or similar), except to the extent caused by the negligent or wilful acts or omissions of Qube or its Labour Personnel (with its liability limited as provided for in these Terms and Conditions). By notification to the Customer, Qube reserves the right to reasonably extend or defer the date for delivery of the Equipment and the availability of the Labour Personnel, for the commencement of the Hire Period, where such delay arises directly or indirectly from any events or circumstances which are outside the reasonable control of Qube or from genuine operational constraints affecting Qube. Where Qube provides such notification, the Customer may cancel that part of the relevant Hire which is deferred without any liability to Qube.

### 3. OWNERSHIP

- 3.1 At all times during and after the Hire Period, Qube retains its interest as the owner, or the Party otherwise in control of, the Equipment, and nothing contained in these Terms and Conditions will confer on the Customer any right or property or interest in the Equipment other than as mere bailee.
- 3.2 The Customer must protect Qube's interest in the Equipment at all times, including making clear to others that Qube has an interest in the Equipment (as owner or otherwise) as directed by Qube.
- 3.3 The Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest (as that term is defined in clause 8 of these Terms and Conditions) over, or otherwise deal with, the Equipment.

### 4. MINIMUM HIRE PERIODS

- 4.1 The Customer acknowledges and agrees that, on the commencement of a Hire, the minimum amount to be charged by Qube to the Customer is the Hire Charges for the Minimum Hire Period.
- 4.2 Unless a different Minimum Hire Period is specified in the Quotation or otherwise agreed in writing by the Parties, the Customer further acknowledges and agrees that:
  - (a) any Hire that commences and proceeds during ordinary working hours (being 07:00-15:30 Monday to Friday), will attract a Minimum Hire Period of four (4) hours for Equipment and Labour Personnel; and
  - (b) any Hire that commences and proceeds during the night shift (being 15:30-07:00 Monday to Friday) or on weekends will attract a Minimum Hire Period of four (4) hours for the Equipment and eight (8) hours for the Labour Personnel, plus any applicable overtime loading for the Labour Personnel as notified by Qube to the Customer in writing.

## 5. CANCELLATION BY THE CUSTOMER

- 5.1 On and from the commencement of any Hire, no purported cancellation of the Hire or any part of it by the Customer is binding on Qube, unless Qube provides its prior written agreement to such a cancellation. Where Qube so agrees to the Customer's cancellation after the commencement of the Hire, the Customer is liable to pay to Qube:
- (a) the Hire Charges for the Minimum Hire Period; and
  - (b) any losses suffered, paid or incurred by Qube as a result of that cancellation, (because, for example, Qube may be unable to redeploy the Equipment throughout the balance of the Hire Period), except where the cancellation is reasonably attributable to an act or omission of Qube.
- Where the Customer requests it in writing as part of a purported or possible cancellation of Hire (after commencement of that Hire), Qube will provide a reasonable estimate of its likely losses associated with such cancellation.
- 5.2 The Customer may cancel the Hire, without any liability on the part of the Customer to Qube, on the provision of written notice by the Customer to Qube:
- (a) where the Hire is scheduled to commence and proceed during ordinary working hours (being 07:00-15:30 Monday to Friday): a minimum of 24 hours prior to the commencement of the Hire Period;
  - (b) where the Hire is scheduled to commence and proceed during the night shift (being 15:30-07:00 Monday to Friday) or on weekends: a minimum of 48 hours prior to the commencement of the Hire Period,
- (the **Cancellation Window**), unless a different Cancellation Window is specified in the Quotation or otherwise agreed in writing by the Parties. On receipt of written notice of cancellation under this clause 5.2, the cancellation will be effected by Qube's acknowledgement of receipt of the cancellation notice.
- 5.3 If the Customer wishes to cancel the Hire, in the period between the closure of the Cancellation Window and the commencement of the Hire Term, the Customer must provide to Qube written notice of that cancellation, and pay to Qube the Hire Charges for the Minimum Hire Period as a condition of Qube accepting that cancellation. That payment is necessary to compensate Qube for its administrative costs, and the costs of Qube's inability, on short notice, to redeploy the Equipment and / or the Labour Personnel the subject of the cancelled Hire.

## 6. HIRE CHARGES

- 6.1 Subject to clause 6.7, the Customer must pay to Qube all Hire Charges for the Hire and other fees and charges due and payable under these Terms and Conditions, within thirty (30) days from the date of the relevant invoice issued by Qube.
- 6.2 Unless otherwise agreed in writing, the Customer acknowledges and agrees that a *Crane and Labour Hire Docket* setting out the hours worked by Qube signed by the Customer's representative forms the basis for the Hire Charges becoming due and payable by the Customer to Qube for the Hire and the performance of any services contemplated by these Terms and Conditions.
- 6.3 Where the Hire Charges are expressed on a periodic basis (for instance, hourly, daily, weekly and monthly), the Hire Charges shall be payable for each completed period of Hire. Where a period of Hire is broken, the Hire Charges will be calculated on a pro rata basis, with the exception of the Hire Charges for the full Minimum Hire Period.
- 6.4 The Customer must pay to Qube the Hire Charges together with all other amounts referred to in these Terms and Conditions including (but not limited to):
- (a) the charges for Mobilisation and Demobilisation, and for any delay in the Timeline in accordance with clause 2;
  - (b) the cost of any additional services or disbursements (including those specified in clause 6.5, where relevant), which become necessary for the fulfillment of obligations under these Terms and Conditions or to comply with the reasonable directions of the Customer for the purposes of the Hire, which costs Qube will exercise its best endeavours to notify to the Customer sufficiently in advance (where reasonable and practicable in the circumstances) and agreed by the Customer, and otherwise identified as disbursements in Qube's invoices;
  - (c) the cost of repairing or replacing any of the Equipment due to any negligent or wilful act or omission by the Customer;
  - (d) the costs incurred by Qube to ensure the Equipment and Labour Personnel meet all Site requirements, including but not limited to safety modifications, medicals, training and inductions, which costs will be notified by Qube in advance (where reasonable and practicable in the circumstances) and agreed by the Customer;
  - (e) all government charges and taxes relating to the parties' entry into a contract for the Hire on these Terms and Conditions or the payments to be made under it, including stamp duty and GST; and
  - (f) costs and expenses incurred in the exercise or attempted exercise by Qube of Qube's rights under these Terms and Conditions, in respect of the acts, omissions, or breaches of the Customer, including collection agency fees and legal fees (calculated on a solicitor and own client basis).
- 6.5 Unless expressly stated to be otherwise in a Quotation or in these Terms and Conditions, the Customer acknowledges and agrees that the Hire Charges do not include costs associated with any of the following, and that such costs are entirely the responsibility of, and for the account of, the Customer:
- (a) road closures, permits, traffic control, escorts or pilot vehicles required during lifting operations;
  - (b) Railway approvals;
  - (c) supply, installation, removal and maintenance of signage, barrier fencing, overnight security and exclusion zones;
  - (d) engineering services, including but not limited to engineer assessments and approval for ground bearing pressure;
  - (e) engineering approvals and back propping of concrete slabs for Equipment access or certifications of structure;
  - (f) survey set out and levelling;
  - (g) clear and compacted access for the Equipment and transport where works are in progress;
  - (h) lifting gear below the hook (including but not limited to slings, specialist spreader bars, man boxes);
  - (i) task lighting, elevated work platforms, access platforms, scaffolding to access works;
  - (j) change in conditions at the Site;
  - (k) any road or bridge tolls;
  - (l) transportation of Qube Personnel to and from the Site where Equipment is left overnight; and
  - (m) damage to kerbs, gutters, service pit covers, grass verges and shoulders, or the like, that may be damaged during access or egress from the Site.
- If, for any reason, any of the foregoing costs are paid by or incurred by Qube, the Customer must reimburse Qube on demand for such costs. Qube will exercise its best endeavours to identify and articulate any such costs incurred or paid by Qube on behalf of the Customer as part of its regular invoicing of the Customer pursuant to these Terms and Conditions.
- 6.6 The Customer acknowledges that all claims for payment will be made under the relevant Building and Construction Industry Security of Payment legislation which is applicable in the Jurisdiction.
- 6.7 If the Customer in good faith disputes whether the whole or part of an invoice submitted by Qube is payable, the Customer must pay the full amount in the invoice by the due date for payment, but may give written notice to Qube (within 7 days of receipt of the relevant invoice) of the amount disputed and the reasons for that dispute. On provision of that written notice, the parties will be deemed to have invoked the dispute resolution process under clause 18. If a decision is made or reached, in respect of the dispute, that a lesser amount than the full amount of the invoice in question is payable by the Customer, Qube must promptly refund to the Customer the difference between the amount invoiced and that lesser amount. For the avoidance of doubt, the Customer must not otherwise withhold, or make deduction from, any payment due to Qube under these Terms and Conditions without the prior written consent of Qube.

## 7. GST

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

## 8. PERSONAL PROPERTY SECURITIES ACT

- 8.1 In this clause 8, the terms 'Register', 'Purchase Money Security Interest', 'Proceeds', 'PPS Lease', 'Security Agreement', 'Security Interest' and 'Verification Statement', will have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- 8.2 Qube and the Customer acknowledge and agree that:
- (a) these Terms and Conditions (or a transaction in connection with them) constitutes, gives rise, or may give rise to, one or more Security Agreements covering the Equipment supplied or to be supplied to the Customer under these Terms and Conditions and all Proceeds of any kind for the purposes of the PPSA;
  - (b) in circumstances where any transaction in connection with these Terms and Conditions constitutes a PPS Lease, the Customer is the grantor and Qube is the secured party holder of a Purchase Money Security Interest by virtue of that transaction and the PPSA; and
  - (c) the rights of Qube under these Terms and Conditions are in addition to and not a substitution for Qube's rights under other law (including the PPSA) and Qube may choose whether to exercise its rights under these Terms and Conditions, or under such other law, as it chooses.
- 8.3 The Customer grants a Security Interest to Qube for the Equipment supplied or to be supplied to the Customer under these Terms and Conditions and all Proceeds of any kind for the purposes of the PPSA.
- 8.4 The Customer hereby consents to Qube effecting a registration on the Register in relation to such Security Interest arising under or in connection with these Terms and Conditions.
- 8.5 The Customer agrees to provide all reasonable assistance (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Qube deems reasonably necessary for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
  - (b) enabling Qube, as Secured Party, to apply for any registration, or give any notification, in connection with the Security Interest in the Equipment supplied or to be supplied to the Customer under these Terms and Conditions on the Register, so that the Security Interest has the priority required by Qube; or
  - (c) enabling Qube to exercise rights in connection with the Security Interest.
- And to assure the performance of its obligations, the Customer hereby gives Qube irrevocable power of attorney to do anything Qube considers necessary to give effect to the matters set out in this clause.
- 8.6 The Customer waives its right to receive any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA and cannot be excluded.
- 8.7 Any money paid by the Customer shall be applied by Qube to any and all monies owing by the Customer to Qube as determined by Qube (in its sole discretion).
- 8.8 Where a person is a controller in relation to the Equipment, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Equipment by that controller.
- 8.9 The Parties agree that to the extent they may be excluded by law:
- (a) sections 142 and 143 of the PPSA are excluded; and
  - (b) Qube need not comply with the following provisions of the PPSA: sections 95, 96, 118, 121(4), 125, 130, 132(3)(d) and 132(4) and any other provision of the PPSA notified to the Customer by Qube after the date of this Security Agreement; and
- 8.10 Qube and the Customer agree not to disclose information of the type referred to in section 275(1) of the PPSA.

## 9. WARRANTIES BY THE CUSTOMER

The Customer represents, warrants and must ensure that:

- (a) it has provided, and will provide, to Qube all necessary instructions and accurate information regarding a Site relevant to a Hire, insofar as the instructions or information relate to the Hire or the performance of Qube's obligations pursuant to these Terms and Conditions;
- (b) it has the authority of the owner or operator of any Site relevant to a Hire, to agree to these Terms and Conditions, and acts as the Site owner's agent in agreeing the Hire on the basis of these Terms and Conditions;
- (c) it has procured, and must procure, in favour of Qube, full and free access to any Site required in order for Qube to perform its obligations pursuant to these Terms and Conditions;
- (d) it has available at the relevant Site, for use by Qube in the ordinary operation of the Equipment or otherwise for the performance of Qube's obligations pursuant to these Terms and Conditions, suitable hardstand areas capable of withstanding the ground bearing pressure of the Equipment. On request by the Customer, Qube must provide any and all Equipment manufacturing recommendations and usage details required by the Customer in order for the Customer to make its engineering assessment pursuant to this warranty.

## 10. OBLIGATIONS OF THE CUSTOMER

10.1 The Customer undertakes that it will:

- (a) comply with all applicable legislative requirements (including, without limitation, in relation to workplace health and safety);
- (b) apply for and maintain throughout the Hire Period, any and all authorisation, consent, right, certificate, exemption, permit or licence (including from any government agency), required by law in order for Qube to comply with its obligation to supply the Equipment to the Customer (including, for the avoidance of doubt, with respect to the use of the Equipment at the Site);
- (c) not allow any person or third party, other than the Labour Personnel, to operate the Equipment or relocate the Equipment from the Site and any attempt to operate the Equipment or relocate the Equipment from the Site without the express written consent of Qube shall constitute a material breach of these Terms and Conditions;
- (d) accept responsibility for the safe keeping of the Equipment where the Equipment is left at the Site between shifts (including storing the Equipment safely, securely and protected from theft, seizure, Loss or damage);
- (e) immediately give notice to Qube if the Equipment is seized, lost, stolen, damaged or destroyed;
- (f) not make any warranty to a third party about the performance of Qube's obligations under these Terms and Conditions, or make an undertaking to a third

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- party which requires that Qube perform its obligations under these Terms and Conditions; and
- (g) at the end of the Hire Period, do all that is practicable to facilitate the removal of the Equipment by Qube from the Site.

## 11. OBLIGATIONS OF QUBE

11.1 Qube will use its best endeavours to:

- (a) ensure that the Equipment is in good working order at the commencement of the Hire Period and is maintained during the Hire Period to a standard of good repair and condition (fair wear and tear excepted);
- (b) ensure that the Labour Personnel are suitably trained, experienced and competent persons in accordance with Occupational Health and Safety legislation, regulations and industry requirements;
- (c) ensure that the Equipment is properly used and operated only as it was intended and designed within the constraints and design limitations as per the manufacturer's stated performance expectations when operated in accordance with the operating instructions issued by the manufacturer;
- (d) carry out all maintenance and servicing requirements in accordance with the manufacturer's specification and supply all consumables, spare parts and components necessary for the continued operation of the Equipment.

## 12. INDEMNITY

12.1 Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) against all losses, damages, costs (including legal costs), expenses, claims, demands or causes of action of any kind whatsoever (including statutory to the extent permitted by law and common law including contract, tort and equity) arising out of or resulting from:

- (a) personal injury (including death or disease) to the Labour Personnel or any officer, employee, agent, supplier, contractor or subcontractor of Qube or the Customer;
- (b) loss or damage to any real or personal property owned or supplied under these Terms and Conditions by Qube, subcontractors or suppliers, contractors or subcontractors of Qube or their respective officers, employees or agents;
- (c) loss of or damage to any real or personal property of the Customer;
- (d) loss of or damage to the Equipment;
- (e) personal injury (including death or disease) to or loss of or damage to the real or personal property of any third party; and
- (f) a breach of or non-compliance with a provision of these Terms and Conditions,

insofar as and to the extent that any loss, damage, cost, expense, claim, demand or cause of action was caused by a negligent or wilful act or omission of the Indemnifying Party, its officers, employees or agents.

## 13. LIMITATION OF LIABILITY

13.1 If the Customer is a consumer, as defined under the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **ACL**), then Qube's services come with guarantees that cannot be excluded under the ACL. For major failures with the services, in that context, the Customer is entitled:

- (a) to cancel the Customer's service contract with Qube; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the contract and obtain a refund for the unused portion of the contract.

13.2 To the extent permitted by law:

- (a) all guarantees, terms, conditions, warranties, representations, undertakings, express or implied, statutory or otherwise, relating to these Terms and Conditions are excluded; but
- (b) where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to these Terms and Conditions, then Qube and the Customer note that none of the services are of a kind ordinarily acquired for personal, domestic or household use or consumption, and Qube's liability for a breach of any such guarantee, term, condition, warranty, undertaking, inducement or representation is limited (at Qube's election) to the supplying of the services again, or the payment of the cost of having the services supplied again.

13.3 To the extent permitted by law, Qube's liability for any claims arising out of or connected with any contract on these Terms and Conditions, including liability for breach of any such contract, in negligence or in tort, or for any other common law or statutory action, shall:

- (a) be limited (including with respect to proportionality) to the extent the loss or damage the subject of the claim was caused directly by Qube or its Labour Personnel (and the parties agree that, where Qube or its Labour Personnel operate the Equipment under the instruction, direction or supervision of the Customer, any loss or damage which arises by reason of such instruction, direction or supervision will not be deemed to have been caused directly by Qube or its Labour Personnel); and
- (b) in any one case be limited to the resupply of services or, at Qube's option, payment of the cost of having services resupplied.

13.4 Each party's maximum aggregate liability for all claims under or relating to these Terms and Conditions is limited to an amount equal to the market value of the Equipment provided to the Customer under these Terms and Conditions, except that this limitation does not apply in the context of personal injury or death caused by or contributed to by the Customer.

13.5 To the extent permitted by law, neither party is liable to the other party, for any claims arising out of or connected with any contract on these Terms and Conditions, for any Consequential Loss, including claims for breach of contract, in negligence or in tort, or for any other common law or statutory action, provided that nothing in this clause 13.5 relieves the Customer from its obligation to pay Qube the Hire Charges or other costs under these Terms and Conditions.

13.6 To the extent permitted by law, every exemption, exclusion or limitation in these Terms applicable to Qube or to which Qube is entitled (under these Terms and Conditions or otherwise) shall also be available and shall extend to protect:

- (a) all Labour Personnel; and
  - (b) all persons who are or might be vicariously liable for the acts or omissions of any such person,
- and for the purposes of this clause 13.6, Qube holds the benefit of each exemption, exclusion or limitation in these Terms and Conditions on trust for all such persons and each of them and may enforce the exemptions, exclusions or limitations on their behalf.

13.7 Subject to the Customer's statutory rights, and subject to the recourse available under clause 15.1, Qube is not liable to the Customer for any loss, damage, costs, expenses, damages or any other liabilities resulting from:

- (a) Any breakdown or any other mechanical failure of the Equipment, except if the breakdown or failure was caused by or within the reasonable control of Qube (in which case, Qube's liability will nonetheless be limited (or excluded, as the case may be) pursuant to the balance of this clause 13;
- (b) any piece of Equipment not being operational due to repairs or servicing of that Equipment necessitated by the Customer's acts or omissions; or
- (c) any failure or delay in the provision of the Hire, if such failure or delay is due to inclement weather, natural disasters, strike, lock-out, or other industrial or transportation disturbances, law, regulation or ordinance, or any causes reasonably beyond the control of Qube.

#### 14. INSURANCE

- 14.1 Qube will effect and maintain at all times during the Hire Period all policies of insurance that a prudent service provider in the equipment hire industry would obtain for the Hire.
- 14.2 The Customer must, at its own cost, effect and maintain at all times during the Hire Period, sufficient insurances to cover its liability to Qube for loss of or damage to the Equipment and the death of or injury to the Labour Personnel (other than liability covered under workers' compensation insurance) for a limit of not less than \$10,000,000 for any one occurrence.
- 14.3 A party must provide proof of any insurance held in accordance with these terms to the other party upon request.

#### 15. EQUIPMENT LOST, STOLEN, DAMAGED

- 15.1 If the Equipment is or becomes damaged, faulty or unsafe during the Hire Period Qube may, in its discretion:
- (a) repair or remove the Equipment from the Site or any place; and
  - (b) offer the Customer a replacement piece of Equipment which will be hired by the Customer on the same Terms and Conditions as if the replacement piece of Equipment were originally hired by the Customer under these Terms and Conditions.
- 15.2 If the Equipment is lost, stolen or otherwise damaged as a result of poor Site security during the Hire Period or the Customer's negligent or wilful acts or omissions, the Customer will be liable for:
- (a) any costs incurred by Qube to recover and repair or replace the Equipment; and
  - (b) the Hire Charge for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

#### 16. TERMINATION

- 16.1 Any and all Hires on foot, pursuant to these Terms and Conditions, may be terminated by either Party:
- (a) immediately where a Party breaches a term of these Terms and Conditions and fails to remedy that breach within seven (7) days of notification of breach by the other Party;
  - (b) immediately if a Party engages in conduct which would enable a court to make an order against it for winding-up (if a company) or grant a creditor's petition (if an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of its assets or any of them is appointed, or if any court order or process is made against it in relation to any of its assets or it is ceased to carry on business; or
  - (c) immediately if a Party commits any material breach of these Terms and Conditions.
- 16.2 On breach of these Terms and Conditions by the Customer or termination of these Terms and Conditions or on expiration of the Hire Period, Qube may take all steps necessary to recover the Equipment including entry to the premises where the Equipment is located. The Customer expressly consents to Qube entering such premises for the purpose of recovering the Equipment pursuant to this clause.
- 16.3 On termination of these Terms and Conditions for any reason whatsoever should Qube be unable to gain access to the Equipment for any reason, the Hire Period will continue at the agreed Hire Charges (excluding costs of labour) until access to the Equipment is available to Qube.

#### 17. GREENHOUSE GAS EMISSIONS AND ENERGY DATA

- 17.1 Qube acknowledges that the Customer may be obliged under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (the "NGER Act") to report on whatever data, information, records and/or reports of a type that a registered corporation or any other person may be required or entitled to provide under the NGER Act (the "Greenhouse Data") including as to:
- (a) greenhouse gas emissions, energy production or energy consumption; and
  - (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any green house gas project.
- 17.2 If requested by the Customer, Qube will endeavour to provide, to the extent and in a manner at such times reasonably requested by the Customer, a statement setting out the information required under the NGER Act and any similar statutory requirements in respect of Qube's Greenhouse Data arising out of or in connection to the Hire.
- 17.3 The Customer acknowledges and agrees that:
- (a) Qube may provide or otherwise disclose the Greenhouse Data as is required by any applicable authority; and
  - (b) nothing in clause is to be taken as meaning that Qube has agreed to perform on behalf of the Customer, any obligation that the Customer itself may have under any statutory requirement regarding the provision of Greenhouse Data to any authority.

#### 18. DISPUTE RESOLUTION

- 18.1 If a dispute arises in connection with these Terms and Conditions (**Dispute**) a party will give notice to the other party indicating the nature of the Dispute. Representatives of the parties must meet and attempt to resolve the Dispute within fourteen (14) days of that notice.
- 18.2 If the parties' representatives fail to resolve the Dispute within fourteen (14) days, the chief executive officers (or equivalent) of the parties, or their nominees must meet and attempt to resolve the Dispute within fourteen (14) further days.
- 18.3 If the parties fail to resolve the Dispute with the period specified in clause 18.2, either party may commence proceedings in a court of competent jurisdiction.
- 18.4 Each party will bear its own costs relating to the resolution of a Dispute.
- 18.5 This clause does not limit in any way a party's right to seek any form of equitable relief including, without limitation, injunctive relief.
- 18.6 Notwithstanding the existence of a Dispute, both parties must continue to perform their obligations under these Terms and Conditions.

#### 19. NOTICE

- 19.1 Where the Customer has provided notice details for the purposes of a Quotation, any notice, demand, termination procedure or other communication relating to these Terms and Conditions must be served using those supplied notice details. Where no such notice details have been provided the Customer, and for Qube, any notice, demand, termination procedure or other communication relating to these Terms and Conditions must be either personally served on a Party, left at the Party's current address or sent to a Party's current address by pre-paid ordinary mail, or by email to the Party's current email for service.

#### 20. GENERAL

- 20.1 The parties will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other Party to carry out and effect the intent and purpose of these Terms and Conditions.
- 20.2 These Terms and Conditions shall be governed by and construed in accordance with the laws of the Jurisdiction, and any proceedings with respect to any matter of things against, arising from or in connection to, these Terms and Conditions must be instituted or carried on in the Jurisdiction only.
- 20.3 Neither Party will be responsible for any act or thing due to an event the cause of which is beyond that Party's control.
- 20.4 Any variation of or to these Terms and Conditions which form part of an agreement will not have any effect whatsoever unless such variation is agreed in writing by Qube and the Customer.

- 20.5 Failure of a Party to exercise any or all of its rights or powers under these Terms and Conditions at any time and for any period of time shall not constitute a waiver of any of that Party's rights or powers arising pursuant to these Terms and Conditions.
- 20.6 The terms and conditions listed in these Terms and Conditions shall apply equally and fully to any replacement or substituted Equipment or Labour Personnel supplied during the Hire Period.

## 21. DEFINITIONS

21.1 In this document, unless the contrary intention appears:

**Consequential Loss** means loss or damage, whether direct or indirect, in the nature of loss of profits, loss of revenue, loss of production, loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage, and includes in the case of the Customer the costs of any alternative service providers or equipment hire;

**Customer** means any person, organization, business, company or body corporate which is named in a Quotation, Rate Card, Rates Schedule, or which otherwise requests the Hire from Qube, together with any subsidiary or associated company as defined by the *Corporations Act 2001* (Cth), and with whom Qube contracts and includes, where the context requires, their respective officers, employees, servants, agents, contractors or sub-contractors and their employees;

**Demobilisation** in the case of the Equipment, means the transportation of the Equipment from the Site to the Receiving Location; and in the case of the Labour Personnel, means the disengagement and return of the Labour Personnel from the Site;

**Equipment** means any equipment specified in a Quotation, Rate Card or Rates Schedule, and which includes but is not limited to any item of plant, equipment, machinery or vehicle; any tools, accessories, parts items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle; and the means to transport the Equipment or any replacement thereof, provided by Qube to the Customer during the Hire Period;

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

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

**Hire** means the hire of the Equipment and Labour Personnel to the Customer under these Terms and Conditions;

**Hire Charges** means the rates and charges that are payable by the Customer to Qube for the hire of the Equipment and Labour Personnel, as specified in the Quotation or a Rate Card or Rates Schedule or otherwise, under the terms of these Terms and Conditions;

**Hire Period** means the period specified in a Quotation or otherwise agreed in writing by Qube, including the Minimum Hire Period, for the hire of the Equipment and Labour Personnel and includes any further periods where the Equipment and Labour Personnel are on hire to the Customer, up until the completion of the Hire or termination in accordance with these Terms and Conditions, whichever is the earlier;

**Jurisdiction** means the Originating Location, in relation to each Hire pursuant to these Terms and Conditions;

**Labour Personnel** means any operator of the Equipment, rigger, dogman, supervisor, engineer or any other personnel supplied by Qube to the Customer under these Terms and Conditions;

**Liability** means any liability (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred;

**Loss** means all damage, loss, cost, and expense (including legal costs and expenses of whatsoever nature or description) howsoever arising including in contract, tort (including negligence), indemnity or under statute;

**Minimum Hire Period** means the minimum period for which the Equipment and Labour Personnel may be hired by the Customer as set out in the Quotation or, if not specified in a Quotation (or if no Quotation is issued), as set out in clause 4.2 of these Terms and Conditions;

**Mobilisation** in the case of the Equipment, means the loading of the Equipment onto its means of transport at the Originating Location and the transportation from the Originating Location to the Site; and in the case of the Labour Personnel, means the deployment of the Labour Personnel to the Site;

**Originating Location** means, immediately prior to the Hire, the nominated place set out in the Quotation or otherwise in writing by Qube, and/or the place from which the Equipment will be mobilised to the Site (and, if no location is nominated, Qube's usual storage facility);

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

**Qube** means Qube Heavy Lift Pty Ltd (ABN 78 095 626 798) of 494 Nudgee Road, Hendra, Queensland and includes, where the context requires, its officers, employees, agents, suppliers or any subcontractors and their employees and any permitted assigns;

**Quotation** means the quotation provided by Qube to the Customer, and accepted by the Customer, on the basis of these Terms and Conditions, prior to the commencement of the Hire;

**Rate Card** or **Rates Schedule** means the document of either name, in which Hire Charges are specified, pending a contract on these Terms and Conditions coming into existence between Qube and the Customer;

**Receiving Location** means, the nominated place set out in the Quotation or otherwise in writing by Qube, and/or the place to which the Equipment will be demobilised from the Site (and, if no location is nominated, Qube's usual storage facility);

**Site** means the land or workplace at which the Equipment and Labour Personnel will operate and be utilised, as specified in the Quotation or otherwise agreed in writing by the parties, and any other land and/or workplaces made available to Qube by the Customer for the purposes of the Hire; and

**Terms and Conditions** means these Terms and Conditions of Wet Hire which give effect to the hire by Qube, and includes any other terms and conditions contained in any Quotation, Rate Card or Rates Schedule or any other document incorporated by reference herein.

## 22. INTERPRETATION

(a) In the event of any inconsistency, the terms of any Quotation to which these Terms and Conditions of Wet Hire are attached, shall take precedence over these Terms and Conditions of Wet Hire (to the extent of the inconsistency, and no further).

(b) In these Terms and Conditions, unless the context indicates a contrary intention:

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