

TERMS AND CONDITIONS OF ENGAGEMENT

1. Definitions

- 1.1. For the purposes of this agreement:-
 - 1.1.1. "Foley" means Foley's Earthmoving Pty Ltd ACN 123 627 056 as trustee for the Foley's Earthmoving Discretionary Family Trust.
 - 1.1.2. "the Contractor" means the earthmoving contractor described in the Application Form.
 - 1.1.3. "the Application Form" means the application form attached hereto.
 - 1.1.4. "Assignment" means work for which the Contractor and the Equipment are engaged by Foley to perform for a Hirer as described in any job description provided by Foley to the Contractor from time to time.
 - 1.1.5. "Equipment" means the plant and/or machinery of the Contractor described in the Application Form.
 - 1.1.6. "the Hirer" means the customer of Foley for whom the Assignment is to be performed by the Contractor.
 - 1.1.7. "Employee" and "Employees" shall mean any employees servants or agents of the Contractor engaged by the Contractor for the purpose of carrying out the Assignment including but not limited to any equipment operator, digger, rigger, spotter, foreman, supervisor or mechanic.
 - 1.1.8. "the Site" means the place where the Assignment is to be performed.
 - 1.1.9. "the Guarantor" means the person or persons listed in the Application Form as guarantors of the Contractor.

2. Understandings

- 2.1. Foley is a hire company supplying equipment and labour hire to its customers.
- 2.2. Foley engages independent contractors to perform the work required by its customers.
- 2.3. The Contractor by completing the Application Form requests Foley to arrange Assignments for the Contractor and the Equipment and agrees that in performing any Assignment the Contractor will be bound by these terms and conditions.
- 2.4. Foley by accepting the Application Form completed by the Contractor gives no promise or guarantee of providing Assignments to the Contractor and may at any time remove the Contractor from its list of Contractors without notice.
- 2.5. If Foley considers that the Contractor and the Equipment is suitable for an Assignment and the Contractor is available to perform the Assignment Foley may employ the Contractor to perform the Assignment.
- 2.6. Each time the Contractor accepts an Assignment it will be entering into a new contract with Foley. The terms of each such contract will include the rights and obligations contained in these terms and conditions.

- 2.7. Foley will each time it makes an offer to employ the Contractor for an Assignment provide to the Contractor details of the Assignment including but not limited to:
 - 2.7.1. the site where the Assignment is to be performed.
 - 2.7.2. functions and duties to be performed.
 - 2.7.3. the name of the Hirer.
 - 2.7.4. the wages and payments to which the Contractor will be entitled.
- 2.8. The Contractor acknowledges and agrees that at all times when performing the Assignment from the time the Contractor reports to the Hirer the Contractor and its Employees shall be under the direction and control of the Hirer.

3. **Warranties**

- 3.1. The Contractor warrants that:
 - 3.1.1. It and its Employees possess the skills, experience and qualifications set out in the Application Form or any other documents supplied with the Application Form.
 - 3.1.2. It and its Employees are lawfully entitled to work in Australia.
 - 3.1.3. That it holds WorkCover Insurance in accordance with the requirements of the applicable law and public liability insurance for an amount of not less than \$5,000,000.00 with a reputable insurance company approved by Foley and will provide to Foley copies of certificates of insurance with respect thereto.
 - 3.1.4. The level of the health and fitness of the Contractor and/or its Employees is suitable for the performance of the genuine occupational requirements of the Assignment.
 - 3.1.5. The Equipment meets all necessary machinery compliance requirements and will continue to do so during the period of the Assignment.
 - 3.1.6. The Machinery is in good order and condition and capable of performing the Assignment.
 - 3.1.7. That it and its Employees will at all times relevant to the Assignment be capable of passing any drug or alcohol test required by the Hirer and shall not be under the influence of drugs or alcohol.

4. **Performance of the Assignment**

- 4.1. During the performance of the Assignment the Contractor and its employees shall:
 - 4.1.1. complete the Assignment to the best of their skill and judgment.
 - 4.1.2. comply in every respect with all directions, working methods, policies, procedures, guidelines and standards as issued and updated from time to time by Foley.
 - 4.1.3. follow all lawful and reasonable directions of the Hirer.
 - 4.1.4. work with due care and diligence and without negligence.
 - 4.1.5. observe all safe work practices.

- 4.1.6. work in accordance with all relevant standards/competencies and abide by all relevant laws.
- 4.1.7. abide by legislation and workplace policies in relation to Workplace Health and Safety, Discrimination, Equal Opportunity, Ethical conduct and Environmental policies.
- 4.1.8. Maintain the Equipment in good order and condition to enable them to perform the Assignment.
- 4.1.9. maintain and keep current all insurances as set out in clause 3.1.3.
- 4.1.10. undergo and/or undertake any induction program, medical examination, drug or alcohol test or other workplace requirement of the Hirer.
- 4.1.11. Ensure that at all times all environmental legislation and specific site requirements are complied with, including but not limited to, ensure that the Equipment, any protective clothing, personal equipment, personal possessions and clothing are cleaned and free of contaminants before entering the Site and before entering the Site in order to prevent any contamination by flora or fauna or otherwise within the Site or to areas around the Site.

5. Inability to Continue to Work

5.1. In the event that the Contractor is unable to continue to perform the Assignment due to:-

- 5.1.1. Illness.
- 5.1.2. Accident to the contractor or its Employees.
- 5.1.3. Damage to or failure of the Equipment.
- 5.1.4. It reasonably appearing that the working environment is or has become or is likely to become unsafe for any reason including but not limited to that the Hirer:-
 - has not established safe work procedures
 - is not complying with safety standards
 - is not complying with any health and safety legislation or regulations
 - has directed the Contractor to operate the Equipment in a manner which is in the Contractor's opinion unsafe to do so.

the Contractor will notify Foley at the earliest possible opportunity so that Foley may negotiate with the Hirer in respect to the continuation of the Assignment.

6. Period of Assignment and Charges

- 6.1. The Assignment shall commence from the time and date the Contractor and the Equipment arrive at site and shall conclude on the completion of the Assignment plus applicable travel and/or float time as set out in Foley's offer to perform the Assignment.
- 6.2. Foley shall pay the Contractor the fees as set out in Foley's offer to perform the Assignment.

- 6.3. If the Assignment is for a period in excess of one month the rate of fees set out in the Offer to Perform the Assignment shall be reviewed at the end of each month.

7. **Confidentiality**

- 7.1. Confidential information of which the Contractor becomes aware or generates in the course of the Assignment is to be used solely for the purpose of performing the Assignment and must not be disclosed to third parties except with the written consent of Foley or for the purpose of obtaining professional advice or as required by law.
- 7.2. In particular any information or documentation relating to the terms and conditions and rates of pay between the Contractor and Foley is confidential information and must not be disclosed to the Hirer or any other person.
- 7.3. On completion of the Assignment:
 - (a) the Contractor must return to Foley, or delete or destroy, as directed, all property and information that is the property of Foley and/or the Hirer including but not limited to confidential information; and
 - (b) the Contractor's rights and obligations regarding the disclosure of confidential information continue indefinitely.

8. **Offers of Employment**

- 8.1. The Contractor shall not accept any casual, part time or permanent employment from a Hirer or permit the Equipment or any of its Employees to be hired or used by a Hirer within a period of six months from being engaged in an Assignment for a Hirer without first obtaining the written consent of Foley.
- 8.2. In the event of any breach of clause 7.1 the Contractor shall pay to Foley 10% of any amount received by the Contractor from the Hirer.

9. **Time Sheet**

- 9.1. The Contractor shall ensure that it arranges for the authorised representative of the Hirer to sign the Contractor's time sheet each day.
- 9.2. In the event that the Contractor should fail to get the time sheet duly signed by the authorised representative of the Hirer then Foley may refuse to pay the Contractor for work performed on that day.

10. **Termination**

- 10.1. Foley may terminate the employment of the Contractor on an Assignment upon such minimum notice (if any) as may be required by law or so far as may be permitted by payment in lieu of notice for reasons that include but are not limited to the Contractor or its Employees:
 - 10.1.1. breaching of any of the Terms and Conditions or obligations that apply to the Assignment
 - 10.1.2. being charged with any criminal offence or being involved in any conduct which in the reasonable opinion of Foley brings the Contractor or Foley into disrepute
 - 10.1.3. being guilty of any misconduct

- 10.1.4. being determined by the Hirer to be unsuitable to continue the Assignment
- 10.1.5. being unable to continue due to industrial action, civil commotion or unrest or any other stoppage of work for which Foley is not responsible
- 10.1.6. The Hirer terminating the Assignment for any reason
- 10.2. The Contractor may terminate the Assignment upon giving twenty-four (24) hours notice of its intention to so terminate such termination to be effective as of the expiry of the twenty-four (24) hours.
- 10.3. If the Contractor's engagement for the Assignment is terminated by either Foley or the Contractor pursuant to clauses 9.1 or 9.2 prior to the completion of the Assignment in addition to any other damages to which a party may be entitled the Contractor shall not be entitled to any payment for removing the Equipment from the Site and Foley shall be entitled to deduct four (4) hours pay and the costs of mobilisation of alternative equipment to the Site from any monies otherwise due to the Contractor.

11. **Indemnity**

- 11.1. The Contractor indemnifies Foley against:
 - 11.1.1. loss or damage to property including any property of the Hirer
 - 11.1.2. claims in respect to personal injury or death
 - 11.1.3. any liability that Foley may suffer or incur under any statutory warranty in connection with the Assignment
 - 11.1.4. any liability that Foley may suffer or incur as a result of a breach of this Agreement by the Contractor or its Employees including any legal costs incurred by Foley in enforcing the terms of this Agreement or the recovery of any monies owing there under on a solicitor and own client basisarising directly or indirectly out of, connected to or as a consequence of:-
 - 11.1.5. the Contractor or its Employees breaching this Agreement
 - 11.1.6. any negligence on the part of the Contractor and/or any Employee of the Contractor
 - 11.1.7. any deliberate act or omission on the part of the Contractor or its Employees
 - 11.1.8. any failure of the Equipment or lack of proper control thereof.

12. **Variation**

- 12.1. The Contractor shall have no right to negotiate any variation of the Assignment with the Hirer. If for any reason a variation of the Assignment is required, the Contractor will immediately notify Foley thereof who will negotiate any such variation with the Hirer.
- 12.2. These terms and conditions may not be varied unless agreed in writing and signed by both the Contractor and Foley.
- 12.3. The Contractor may not assign or subcontract this agreement without the written consent of Foley.

13. **Miscellaneous**

- 13.1. If any of the Conditions of Hire are found to be void, voidable or unenforceable the validity and enforceability for the remaining provisions shall not in any way be affected or impaired.
- 13.2. No amendment or variation of this agreement is valid or binding unless made in writing and executed by the parties.
- 13.3. No failure to exercise nor any delay in exercising any right, power of remedy by Foley operates as a waiver. A single or partial exercise of any right, power of remedy does not preclude any other or further exercise of that or any other right, power of remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 13.4. The right, powers and remedies of a party under this agreement are in addition to, and do not exclude limit, any right, power of remedy provided by law or equity or by any agreement.
- 13.5. This Agreement is governed by the laws of the State of Queensland and all disputes arising therefrom shall be submitted to the Brisbane registry of any Court that is competent to hear the matter.

14. **Guarantee and Indemnity**

In consideration of Foley entering into this Agreement at the request of the Guarantor Foley may require the guarantor to execute a form of guarantee to guarantee the performance and observance of these terms and conditions by the Contractor.