

**TERMS AND CONDITIONS FOR PROVISION OF SERVICES**

**1. BASIS OF CONTRACT**

- 1.1 These terms apply exclusively to every Contract for the provision of Services by Lantrak to the Customer and cannot be varied or replaced by any other terms and conditions (including the Customer's terms and conditions of purchase, if any) without Lantrak's prior written consent.
- 1.2 Any Quotation is:
  - (a) valid for thirty (30) days (unless specified otherwise in writing),
  - (b) an invitation only to the Customer to place an order for the Services based upon that Quotation, and
  - (c) subject to the Customer offering to enter into a Contract and accepting these Terms.
- 1.3 Any additional terms in Lantrak's Quotation ("**Special Conditions**") form part of these Terms. If there is any inconsistency between the Special Conditions and these Terms, the Special Conditions will prevail.
- 1.4 It is the Customer's responsibility to accurately disclose to Lantrak the nature, weight, dimensions and type of Material involved in the provision of the Services ("**Material Specifications**"). Lantrak may rely on the Material Specifications when quoting for and arranging the provision of the Services.
- 1.5 The Contract is accepted by Lantrak when Lantrak confirms its acceptance of an order from the Customer in writing or electronic means or provides the Customer with the Services.
- 1.6 Lantrak is not a common carrier and reserves the right to refuse to quote or provide Services for any person or for any type of Material.
- 1.7 The Customer agrees that Lantrak may, at its discretion, subcontract the whole or any part of the Services provided by it. Where Services are performed by Sub-Contractors, these Terms apply as if the Sub-Contractors were Lantrak.
- 1.8 The following clauses do not apply to the Services that are for the supply of Material to the Site – clauses 1.4, 2.4, 5.7, 6.1 to 6.5 (inclusive), 7.1 to 7.4 (inclusive), 8, 9.12 and 9.13.
- 1.9 The following clauses do not apply to Services that are for the removal of Material from the Site – clauses 5.6, 10.7 and 15.7.

**2. PRICING**

- 2.1 Unless otherwise agreed in writing, the price payable for the Services is as specified in the CSA.
- 2.2 Unless otherwise specified by Lantrak, prices quoted for the supply of the Services:
  - (a) exclude GST and any other taxes or duties imposed on or in relation to the Services (which are additionally at the Customer's cost); but
  - (b) include the cost of Equipment hire, provision of Operators, and the supply and/or removal of the Material (as appropriate).

- 2.3 If there is any change in Lantrak's costs incurred in providing the Services, Lantrak may vary its price to take account of any such change by notifying the Customer.
- 2.4 Lantrak may increase the price if the Customer has not correctly and accurately declared the Material Specifications.
- 2.5 If the Customer requests any changes or additions to the Services, Lantrak may:
  - (a) reject the request for the variation;
  - (b) increase the price to account for the variation; or
  - (c) provide a revised quotation for the Services.
- 2.6 Where Lantrak varies the price or rates payable for Hire or Services following Lantrak's acceptance of the Customer's offer, Lantrak will notify the Customer of the new price/rates. Thereafter the Customer may reject the new price/rates within 24 hours and terminate the contract for supply without any cost or penalty to the Customer, otherwise the Customer agrees that the price/rates will apply to the contract.
- 2.7 The Customer acknowledges that given the nature of the Hire or Services it is reasonably necessary for Lantrak to require the Customer to respond to any such variations to the price or rates within the timeframe specified in clause 2.6.

**3. PAYMENT**

- 3.1 If a credit account is extended by Lantrak to the Customer, then payment for the Services must be made by the Customer to Lantrak in accordance with the terms of Lantrak's invoice. Otherwise, payment for the Services must be made within thirty (30) days of the date of Lantrak's invoice.
- 3.2 The Customer acknowledges and agrees that any credit to be provided to the Customer by Lantrak is to be applied wholly or predominantly for business purposes.
- 3.3 If credit is not extended by Lantrak to the Customer, then the Customer must pay for the Services either (at Lantrak's option):
  - (a) before commencement of the Services; or
  - (b) immediately upon completion of the Services.
- 3.4 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.5 Subject to clauses 3.6 and 3.7, payments by, or on behalf of, the Customer will be applied by Lantrak as follows.
  - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 4.3.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 4.1(a).
  - (c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by Lantrak in its absolute discretion.

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- 3.6 To the extent that payments have been allocated to invoices by Lantrak in its business records, Lantrak may allocate and/or retrospectively reallocate payments in any manner whatsoever at Lantrak's absolute discretion, including in a manner inconsistent with clause 3.5 herein.
- 3.7 Payments allocated (and/or reallocated) under clause 3.5 and/or 3.6 will be treated as though they were allocated (and/or reallocated) in the manner determined by Lantrak on the date of receipt of payment.
- 3.8 Notwithstanding any other provision of this clause 3, Lantrak reserves the right to require payment of a deposit prior to performing the Services, and is under no obligation to supply the Services until the deposit has been received in cleared funds.
- 3.9 All payments required to be made by the Customer will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Lantrak and the Customer in writing or as required by law. Any amount due to Lantrak from time to time may be deducted from any monies which may be or may become payable to the Customer by Lantrak.
- 3.10 If the Customer is not satisfied with any aspect of Lantrak's invoice, it must notify Lantrak in writing within seven (7) days of the date of Lantrak's invoice, except in the case of a manifest error. If the Customer does not provide notice in accordance with this clause 3.10, the Customer is deemed to have accepted the invoice.
- 3.11 Waiting Time**  
The Customer must pay Lantrak the Waiting Time Fee if:
  - (a) Lantrak is providing contract cartage services; or
  - (b) its Sub-Contractors experience a delay of fifteen (15) minutes in performing the Services, excluding delays due to inclement weather, and to the extent that it inhibits the contractor from providing the services as priced and where the delay is due to no fault of Lantrak or its Sub-Contractor; or
  - (c) the Customer has not provided Lantrak at least one (1) hour prior notice to the estimated commencement time for the provisions of the Services that a delay will occur to the commencement of the provision of services.
- 3.12 Waiting time charges will not substitute the responsibility of the Customer to pay a minimum hire where a minimum hire charge is applicable at the full hourly hire rate.

**4. PAYMENT DEFAULT**

- 4.1 If the Customer defaults in payment by the due date of any amount payable to Lantrak, then all money which would become payable by the Customer to Lantrak at a later date on any account, becomes immediately due and payable without the requirement of any notice, and Lantrak may, in addition to any other remedy available to it:
  - (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 4% for the period from the due date until the date of payment in full;
  - (b) cease or suspend for such period as Lantrak thinks fit, provision of any further Services to the Customer;
  - (c) by written notice to the Customer, terminate any Contract with the Customer so far as unperformed by Lantrak, without effect on Lantrak's accrued rights under any Contract.
- 4.2 Clauses 4.1(b) and 4.1(c) may also be relied upon, at Lantrak's option, where the Customer becomes bankrupt or enters into any scheme of arrangement has a liquidator or similar functionary appointed in respect of its assets.
- 4.3 Lantrak may in its absolute discretion terminate or suspend any Contract or proposed Contract with the Customer where the value of the Services performed or to be performed and which is either unbilled or for which payment is outstanding exceeds the Credit Limit.

**5. OWNERSHIP AND RISK OF MATERIAL**

- 5.1 At no time does Lantrak take or accept any ownership of or responsibility for the Material. All risk and liability in and attaching to the Material remains with the Customer at all times.
- 5.2 The Customer is responsible for all extra costs and risks incurred by Lantrak and for any and all damage sustained by Lantrak in reliance on the Material Specifications.
- 5.3 Where Lantrak collects Material from the Customer, or delivers Material to the Customer (as appropriate), the Customer warrants that it is the owner of the Material or is authorised and entitled to request the Services in relation to the Material.
- 5.4 The Customer must immediately notify Lantrak of any actual or attempted ownership claim or levy of execution by third parties concerning the Material.
- 5.5 The Customer is responsible for satisfying itself as to the quality and type of Material (and for raising any concerns with Lantrak) prior to the collection of the Material from the Customer, or prior to the delivery of the Material to the Customer (as appropriate).

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- 5.6 Acceptance of the Material onto the Site is acknowledgement that the Material satisfies the Material Specifications, excepting any manifest error.
- 5.7 The Customer must comply with all relevant State or Territory legislation and guidelines (as applicable) regarding sampling and/or classifying of the Material for transport, supply, disposal and re-use.

**6. PRESCRIBED INDUSTRIAL WASTE**

- 6.1 Material containing Prescribed Industrial Waste may be tendered to Lantrak in accordance with this clause 6 or otherwise in accordance with these Terms. Any Material which contains asbestos will be deemed to be Prescribed Industrial Waste.
- 6.2 Lantrak reserves the right to accept or reject Material containing Prescribed Industrial Waste in its complete discretion.
- 6.3 Material containing Prescribed Industrial Waste will only be accepted by Lantrak if the Customer provides a copy of a current exemption under the applicable State or Territory environment protection legislation to Lantrak prior to its delivery.
- 6.4 Where the Material contains Prescribed Industrial Waste (and a certificate of exemption has not been obtained or provided to Lantrak), Lantrak may, in its absolute discretion:
  - (a) refuse to provide or cease providing the Services; and/or
  - (b) dispose of the Material at an authorised Prescribed Industrial Waste disposal facility at the Customer's cost and risk.
- 6.5 Where the Material contains Prescribed Industrial Waste (and a certificate of exemption has not been obtained or provided to Lantrak), the Customer will be liable to indemnify Lantrak for any loss or damage occasioned either directly or indirectly to Lantrak, its Sub-Contractors and any third parties.

**7. CONTAMINATION OF MATERIAL**

- 7.1 The Customer warrants that the Material will not be contaminated and will not depart from the Material Specifications concerning type of Material, unless an environmental site assessment has first been conducted and provided to Lantrak. The Customer must pay Lantrak for the costs associated with the storage, handling and re-delivery of the Material or the return of the Material to the collection site if the Material is contaminated or does not comply with the Material Specifications, and is rejected by the Customer at the site of delivery.
- 7.2 Material will be deemed to be contaminated or potentially contaminated if:
  - (a) it has been mixed with any waste material;

- (b) it consists of, or contains material of unknown origin brought onto the Site;
- (c) it originates from sites where former uses include industrial, commercial, mining or agricultural activities;
- (d) it has had manufactured chemicals applied; or
- (e) it was located in a Fire Ant Zone.

7.3 Lantrak reserves the right to inspect any of the Customer's Material that is the subject of the Services by Lantrak. The Customer must provide Lantrak with access to such Material upon request and agrees to cooperate with Lantrak's reasonable directions during such inspection.

7.4 Where the Material is considered to be contaminated, Lantrak reserves the right to manage it in accordance with the waste hierarch regulations applicable in the relevant State or Territory, at the customer's cost.

7.5 Where the Material is considered to be contaminated (and the environmental site assessment has not been conducted or provided to Lantrak), the Customer agrees to indemnify Lantrak for any loss or damage occasioned either directly or indirectly to Lantrak, its Sub-Contractors and any third parties.

**8. FILL MATERIAL**

8.1 All material designated "Fill Material" or "Clean Fill" must meet all applicable environmental legislation in the relevant State or Territory.

**9. SITE REQUIREMENTS**

- 9.1 The Customer must provide on-site staff or contractors to supervise and manage the Site and the provision of the Services ("**Supervisors**"). If required by legislation, the Customer must provide Lantrak or its Sub-Contractors with site specific induction.
- 9.2 The Customer must ensure that all of its Supervisors are appropriately trained and experienced to manage and control the Site and to direct the Services being provided by Lantrak.
- 9.3 Lantrak will deem any Supervisors to be authorised by the Customer to request and approve all changes to pricing and specifications, unless Lantrak is specifically notified otherwise by the Customer in writing.
- 9.4 At no time does Lantrak take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Customer at all times.
- 9.5 The Services are provided under the control, supervision and direction of the Customer. Lantrak and its Sub-Contractors are not obliged to follow any unreasonable or unlawful direction of the Customer, or any direction which may pose a risk to the Equipment, the Operator or any other person or property.

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- 9.6 Unless otherwise specified, the Customer is responsible for directing Lantrak or its Sub-Contractor at the Site, and for the safe loading and unloading of the Material. The customer must prepare a risk assessment and a safe work method statement (**SW MS**) for the provision of the services that is specific to the Site.
- 9.7 The Customer must ensure and warrants that the Site specified for the removal and/or disposal of the Material and the provision of the Services meets with all applicable occupational health and safety legislation and guidelines.
- 9.8 The Customer must not direct the Material to be carried in a manner that exceeds statutory transport limits and road rules.
- 9.9 The Customer is responsible at all times for maintaining the safety and cleanliness of the Site and its access roads, including the removal of mud and debris.
- 9.10 The Customer must make all enquiries and notify Lantrak as to the existence and location of any overhead and underground cables, pipes and/or other subterranean services and utilities at the Site ("**Utilities**").
- 9.11 The Customer agrees to indemnify Lantrak and the Sub-Contractors against all costs, claims, damage, fines, expenses and loss suffered by Lantrak or its Sub-Contractors as a result of the Customer's failure to inform Lantrak of the existence and location of the Utilities.
- 9.12 If requested by Lantrak, the Customer must conduct a preliminary Site investigation ("**Preliminary Site Investigation**") and provide the results to Lantrak. The Preliminary Site Investigation may include, but is not limited to:
- (a) preparing or obtaining investigation reports for the Site;
  - (b) preparing or obtaining soil reports and Material condition reports;
  - (c) supplying history of the Site and the Material;
  - (d) preparing or obtaining sampling and analytical results or other technical reports of contaminants or potential contaminants and other constituent matter in the Material.
- 9.13 The Customer acknowledges that Lantrak and its Sub-Contractors may rely on the information obtained from the Preliminary Site Investigation. The Customer agrees to indemnify and keep Lantrak harmless from all costs, claims, damage, fines, expenses and loss suffered by Lantrak or its Sub-Contractors as a result of incorrect or incomplete information obtained from the Preliminary Site Investigation.
- 9.14 The Customer grants to Lantrak and its Sub-Contractors an irrevocable license to enter upon the Site at any time for the purpose of removing the Equipment.
- 10. DELIVERY AND COMPLETION OF SERVICES**
- 10.1 Any period or date for completion of the Services stated by Lantrak is intended as an estimate only and is not a contractual commitment. Lantrak will use its reasonable endeavours to meet any estimated dates for completion of the Services.
- 10.2 The Customer must provide suitable, practical and safe means of access and egress to the Site.
- 10.3 Lantrak's obligations in relation to the provision of services under these Terms is limited to using reasonable care and skill to ensure that the authorised independent contractors and agents who Lantrak engages to provide the Services are appropriately qualified, instructed and trained in relation to the provision of the Services.
- 10.4 The Customer acknowledges and agrees that:
- (a) The nature of the Services is such that Lantrak may engage independent contractors to facilitate its provision of the Services; and
  - (b) clause 10.3 is necessary and reasonable in the context of Lantrak's provision of the Services.
- 10.5 The Customer agrees that Lantrak may determine in its absolute discretion:
- (a) the route for Cartage of the Material; and
  - (b) the method of handling the Material.
- 10.6 Lantrak will collect from or deliver the Material to the Customer at the Site.
- 10.7 The Customer or its Supervisor must sign Lantrak's Docket upon completion of the Services. Unless otherwise agreed between the parties, Lantrak's Docket will be prima facie proof of the contents stated therein, and the completion of the Services.
- 10.8 If the Customer fails or refuses to accept delivery of the Material, or Lantrak is unable to effect delivery for any reason other than the fault of Lantrak, the Customer must pay Lantrak for all costs associated with storage, handling and re-delivery of the Material, or return of the Material to the collection Site.
- 10.9 The Customer may be charged for any delay occasioned to Lantrak when attempting to load or unload the Material, other than arising from the fault of Lantrak.
- 11. INSPECTION OF SERVICES**
- 11.1 Clause 11.3 only applies if the contract for supply is not a Consumer Contract and not a Small Business Contract.
- 11.2 The Customer must inspect the Site and satisfy itself that the Services have been provided at the Site. If the Customer is not satisfied, it must notify Lantrak in writing within two (2) days of the completion of the Services.

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11.3 If the Customer fails to give the notice as required in clause 11.2, it is deemed to have accepted the provision of the Services and will be bound to pay for them.

**12. DRY HIRE OF EQUIPMENT**

- 12.1 This clause 12 only applies to Dry Hire.
- 12.2 The following clauses do not apply to Dry Hire; 2.2(b), 2.3, 2.4, 3.8, 5, 6, 7, 8, 9, 10, 11 and 15.7.
- 12.3 Lantrak agrees to grant the Customer an exclusive licence to use the Equipment in accordance with the Contract.
- 12.4 The Customer agrees:
  - (a) to use the Equipment in accordance with and solely for the use outlined in the Contract;
  - (b) not to use the Equipment for any use that is prohibited by Lantrak or any law;
  - (c) to keep the Equipment only at the Site; and
  - (d) not to permit or allow any person other than its employees to use the Equipment for any purpose without the prior written consent of Lantrak.

**12.5 Warranties**

- (a) The Customer warrants to Lantrak that:
  - (i) every person who drives or operates the Equipment holds and maintains a full license of the required class, and will operate the Equipment in accordance with the statutory requirements in every jurisdiction in which the Equipment is or may be kept or used; and
  - (ii) it holds the Policy referred to in clause 12.10(a).
- (b) To the extent permitted by law, no representation or warranty, express or implied, is given by Lantrak to the Customer:
  - (i) as to the condition or suitability of the Equipment for any purpose of the Customer; or
  - (ii) that the Equipment will meet any requirements of the Customer.

**12.6 Customer Acknowledgements**

- The Customer acknowledges that:
- (a) its right to use the Equipment is as bailee only;
  - (b) it is satisfied with the present order and condition of the Equipment;
  - (c) it is satisfied that Equipment in its present condition meets the Customer's requirements;
  - (d) it uses the Equipment at its own risk; and
  - (e) it has no right, title, estate or interest in the Equipment.

**12.7 Customer Obligations**

- The Customer:
- (a) must maintain the Equipment in good order and condition at its own expense, including servicing and maintaining it in accordance with the manufacturer's specifications and recommendations;
  - (b) must not sell, pledge, assign or otherwise deal with the Equipment in a manner inconsistent with Lantrak's rights and interest in the Equipment;
  - (c) must replace or repair any damage to the Equipment at its own expense and in accordance with Lantrak's or the manufacturer's specifications and recommendations;
  - (d) must comply with all relevant statutory requirements and regulations in relation to the use of the Equipment and immediately give to Lantrak any notice or order received from any government authority about the use or condition of the Equipment;
  - (e) must operate the Equipment in accordance with directions provided by the manufacturer, Lantrak or a qualified repairer and must not exceed the recommended or legal load and capacity limits of the Equipment;
  - (f) must not allow any person to operate (or attempt to operate) the Equipment under the influence of drugs and/or alcohol;
  - (g) must protect the Equipment against acts of theft and vandalism, and store the Equipment safely and securely (at its own cost);
  - (h) must not alter, remove, deface, or cover up any label, plates, or marks on the Equipment which bear the name of Lantrak, or any other entity, or any trade marks or trade names used in relation to the Equipment;
  - (i) not make any Claim against Lantrak, its officers, servants or agents in respect of any damage, injury or loss to any persons using the Equipment;
  - (j) not move the Equipment from the Site without the prior written consent of Lantrak;
  - (k) allow Lantrak to inspect the Equipment at any reasonable time upon reasonable notice (except in the case of emergency when no notice shall need to be given);
  - (l) promptly notify Lantrak in writing of any breakdown or loss of, material damage to, or contamination of the Equipment (however so caused) and take all reasonable steps to secure and safeguard the Equipment from any potential damage or injury to any person and/or property (including further damage to the Equipment);

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- (m) pay full and reasonable compensation for any damage or wear to the Equipment which, in the opinion of Lantrak, was caused by the failure of the Customer to properly operate or adequately maintain the Equipment; and
- (n) return the Equipment if and when demanded by Lantrak in the event of the Customer breach any condition of the Contract.

period, Lantrak is hereby authorised and entitled to carry out such repairs restoration and alteration as it deems necessary at the cost of the Customer which will be a liquidated debt, payable on demand.

- (c) Lantrak may offer the Customer a stand down rate in accordance with any stand down policy specified in the Contact or the CSA.

### 12.8 Termination

- (a) Lantrak may terminate the Contract if, in Lantrak's reasonable opinion:
  - (i) the Customer causes or allows to be caused substantial damage to the Equipment; or
  - (ii) the Equipment is being operated unsatisfactorily.
- (b) Upon termination of the Contract, the Customer must:
  - (i) immediately stop all use of the Equipment;
  - (ii) restore and reinstate the Equipment to the state, order and condition as existed on the commencement of the hire period in accordance with the Customer's obligations in the Contract; and
  - (iii) return the Equipment to Lantrak or at its direction.
- (c) If the Customer fails to return possession of the Equipment in accordance with clause 12.8(b)(iii) then the Customer authorises Lantrak to enter onto the Site for the purpose of collecting the Equipment and Customer shall be responsible for Lantrak's costs of such collection which will be a liquidated debt, payable on demand.

### 12.10 INSURANCE

- (a) The Customer must effect and maintain at all times and with an insurer approved by Lantrak, which approval shall not be unreasonably withheld:
  - (i) a public liability insurance policy for not less than the amount of \$20 million dollars (or any greater amount reasonably required by Lantrak) in respect of any single claim arising out of the activities of the Customer, covering all third-party claims arising out of:
    - (A) death, injury to, or disease of persons;
    - (B) loss, including financial loss, destruction or damage to real or personal property and ensuing loss or use of that property.
  - (ii) an employers' liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Customer arising:
    - (A) by virtue of any statute relating to workers' or accident compensation or employers' liability; or
    - (B) at common law;
  - (iii) a policy for loss and damage of the Equipment from risks reasonably specified by Lantrak from time to time, including fire, malicious damage, impact by vehicles and theft, for its full replacement value, such policies referred to collectively as "**the Policy**".
- (b) If requested by Lantrak, the Customer must provide Lantrak with:
  - (i) a certificate of currency for the Policy which clearly confirms the requirements of clause 12.10(a):
    - (A) prior to the commencement of the hire period; and
    - (B) at any other time upon request by Lantrak; and
  - (ii) a copy of the Policy upon request by Lantrak.

### 12.9 Pricing and Costing

- (a) In addition to the price specified in the Contract or the CSA, the Customer agrees to pay the full cost of:
  - (i) any Excess Usage Costs;
  - (ii) all cleaning, fuel, grease, preventative or minor servicing, attention and running repairs required to the Equipment;
  - (iii) repairing any damage to the Equipment caused by or arising from the use of the Equipment other than Fair Wear and Tear;
  - (iv) any loss of the whole or any portion of the Equipment, whether due to theft or other cause.
- (b) If in the opinion of Lantrak any work is required to make good, remedy or repair any damage done to the Equipment by the Customer to restore the Equipment to the condition and order the Equipment was in at the commencement of the hire

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- (c) The Customer must promptly notify Lantrak if:
  - (i) an event occurs which may give rise to a claim under or prejudice the Policy; or
  - (ii) the Policy is cancelled.
- (d) The Customer must not do anything or allow anything to be done which may:
  - (i) prejudice any insurance held by Lantrak in connection with the Equipment; or
  - (ii) increase the premium payable by Lantrak for any insurance held in connection with the Equipment.
- (e) The Customer must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in Dry Hire of the kind referred to and permitted by the Contract.

**SECURITY INTEREST**

- 12.11 The Customer acknowledges that by assenting to these Terms, the Customer grants a security interest to Lantrak in all Equipment (and their proceeds) now or in the future supplied by Lantrak to the Customer (or to its account).
- 12.12 The Customer undertakes to do anything that is required by Lantrak:
  - (a) so that Lantrak can acquire and maintain one or more perfected security interests under the PPSA (whether in respect of the Equipment (and their proceeds), or otherwise);
  - (b) to register a financing statement or financing change statement; and
  - (c) to ensure that Lantrak's security position, and rights and obligations, are not adversely affected by the PPSA.
- 12.13 Unless the Customer has obtained Lantrak's prior written consent, the Customer undertakes not to:
  - (a) register a financing change statement in respect of a security interest contemplated or constituted by these Terms; and
  - (b) create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in favour of a third party.
- 12.14 The Customer agrees that it will, if requested by Lantrak, sign any documents, provide any information or do anything else Lantrak requests, to ensure that any security interest created in Lantrak's favour by these Terms is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
- 12.15 Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.

- 12.16 The Customer irrevocably grants to Lantrak the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Lantrak has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Lantrak from any claims made by any third party as a result of such exercise.
- 12.17 The Customer will be responsible for Lantrak's reasonable costs and expenses in exercising its rights under clause 13.6 where the Customer is otherwise in default of these Terms. Where Lantrak exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Lantrak, its employees, servants or agents.
- 12.18 The Customer agrees to accept service of any document required to be served, including any notice under these Terms or the PPSA or any originating process, by prepaid post at any address nominated by the Customer or any other address later notified to Lantrak by the Customer or the Customer's authorised representative.
- 12.19 The Customer further agrees that where Lantrak has rights in addition to those under part 4 of the PPSA, those rights will continue to apply
- 12.20 Expressions used in this clause 13 and in the PPSA have the same meanings as when used in the PPSA.
- 12.21 The Customer waives its right to receive a copy of any verification statement in accordance with section 157 of the PPSA.

**13. CHARGE OVER THE CUSTOMER'S REAL AND PERSONAL PROPERTY**

- 13.1 As security for the sums the Customer owes, or may owe Lantrak, the Customer charges in Lantrak's favour all of its estate and interest in:
  - (a) any real property (i.e. any house or land); and
  - (b) personal property (i.e. any other assets including for example and without limitation, any plant, equipment, vehicles, personal effects, and household items),
 whether:
  - (c) such property is held in the Customer's own right or in its capacity as trustee;
  - (d) the Customer owns the property at present or later acquires it; and
  - (e) wherever it is situated.
- 13.2 The Customer irrevocably appoints Lantrak's company secretary from time to time as its duly constituted attorney to execute in the Customer's name a real property mortgage, general or specific security agreement, bill of sale, or consent to any caveat upon written notice and demand to the Customer.

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13.3 If the Customer has previously entered into an agreement with Lantrak by which the Customer has granted a charge, mortgage, or other security interest in respect of the Customer's property then those security interests will continue and will co-exist with the security interests created in these Terms and will secure all of the Customer's indebtedness and obligations hereunder. Lantrak may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect these Terms.

13.4 The Customer acknowledges that:

- (a) It has read and understood this clause 13; and
- (b) this clause 13 is necessary to protect Lantrak's legitimate interests including having regard to:
  - (i) the risk that retention of title and personal guarantees (if applicable in these Terms) may not in substance, provide adequate protection to Lantrak;
  - (ii) the terms of any credit we may approve are given on the basis that this clause 13 would apply, and if that were not the case, Lantrak would not have given the same Terms; and
  - (iii) the risk of the Customer's insolvency given the nature of the industry in which the parties operate.

### 14. ACKNOWLEDGEMENTS

- 14.1 The Customer acknowledges and agrees that:
- (a) no information representation or warranty by or on behalf of Lantrak which is not expressly set out in these Terms was supplied or made concerning these Terms with the intention or knowledge that it would be relied upon by the Customer;
  - (b) no such information, representation or warranty has been relied upon; and
  - (c) these Terms (together with the quotation, where applicable) constitute the entire agreement between the parties concerning the Services and supersede all previous negotiations, understandings, representations, warranties, memoranda and/or commitments.

### 15. LIMITATION OF LIABILITY

15.1 No party is liable to the other party for any Consequential Loss, including under clause 18 however caused arising out of or in connection with any contract for supply of which these Terms form part.

15.2 While Lantrak will take reasonable endeavours to meet any estimated delivery date or estimated time for Materials and Services, the Customer acknowledges and agrees that Lantrak is not liable for any delay associated with meeting those estimated timeframes.

15.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, Lantrak's liability is limited to:

- (a) (in the case of the hire of Equipment):
  - (i) Lantrak repairing the Equipment or providing a suitable replacement; or
  - (ii) Lantrak paying the Customer the cost of having the Equipment repaired or procuring a suitable replacement.
- (b) (in the case of a supply of Services):
  - (i) Lantrak supplying the Services again; or
  - (ii) Lantrak paying you the cost of having equivalent Services supplied.

### 16. CANCELLATION

16.1 If through circumstances which are related to the Customer's operational impediments and are beyond Lantrak's control, and as a result Lantrak is unable to provide the Services, then Lantrak may, by written notice to the Customer:

- (a) extend any date for completion; or
- (b) cancel the Customer's order (even if it has already been accepted).

16.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Lantrak after it has been accepted by Lantrak.

16.3 If Lantrak accepts the cancellation of an order by the Customer, then Lantrak is entitled to levy a cancellation fee in accordance with the CSA.

### 17. FORCE MAJEURE

17.1 A party will be relieved from its obligations under this Contract to the extent that the performance of such obligation is hindered or prevented by Force Majeure. "**Force Majeure**" means any event outside the reasonable control of the party affected by it, which could not have been avoided by that party exercising reasonable care and includes, without limitation, strikes, lockouts, fires, floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, disease or pandemic, government intervention or regulation, acts of God or any other activity beyond the party's control.

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- 17.2 A party affected by Force Majeure must promptly notify the other party of the event or circumstances and of the expected duration of the Force Majeure and if a party has notice of any event or circumstance which is not, but may become an event of Force Majeure, that party will notify the other of it.
- 17.3 The party affected by Force Majeure will take all reasonable steps to alleviate or remedy the effect of the Force Majeure. After an event of Force Majeure ceases to have effect upon a party, that party will notify the other party of the cessation and the obligations of the other party will resume.
- 17.4 Force Majeure does not apply to an obligation to pay money.

**18. INDEMNITY**

- 18.1 If the Customer defaults in the performance or observance of its obligations under any contract of which these Terms form part, then:
  - (a) Lantrak will take steps to mitigate its loss and act reasonably in relation to any default by the Customer; and
  - (b) Lantrak will give the Customer notice requesting payment for loss and damage occasioned in respect of those events and requesting that the Customer remedy any breach within a reasonable time; and
  - (c) if that demand is not met then the Customer indemnifies Lantrak in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that Lantrak has suffered arising therefrom.
- 18.2 The Customer's liability to indemnify Lantrak will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by Lantrak or a breach of its obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 18.3 The Customer's liability to indemnify Lantrak is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of any contract of which these Terms form part.

**19. MISCELLANEOUS**

- 19.1 Any proposed variation to these Terms by the Customer must be requested in writing. Lantrak may refuse any such request without providing reasons either orally or in writing. Variations requested by the Customer will only be binding upon Lantrak if they are in writing signed by an authorised officer of Lantrak.

- 19.2 The Customer acknowledges and agrees that these Terms will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria. The parties to any Contract submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.
- 19.3 A waiver of any provision of these Terms will only be effective if made by the affected party in writing.
- 19.4 If any of the Terms are unenforceable, it shall be read down so as to be enforceable, or if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining Terms.
- 19.5 A notice must be in writing and handed personally or sent by fax, email or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received within two (2) business days of posting. Notices sent by fax or email are deemed to be received upon the sender's telecommunications machine confirming transmission.
- 19.6 In providing the Services to the Customer under Terms, Lantrak is acting in the capacity of independent contractor. These Terms do not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.

**20. DEFINITIONS**

In these Terms:

"**Australian Consumer Law**" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

"**Cartage**" means the carting or transporting of Material to or from the Site or between the Sites by Lantrak for the Customer.

"**Claim**" includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.

"**Contract**" means any contract entered into for the provision of Services by Lantrak to the Customer.

"**Credit Limit**" means the limit of credit extended by Lantrak to the Customer, as advised to the Customer from time to time.

"**CSA**" means the Customer Service Agreement that Lantrak provides to the Customer prior to the provision of the Services that outlines the usual and current schedule of rates and charges for the Services in the relevant State or Territory as amended from time to time.

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**"Consequential Loss"** includes any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
- (h) loss or corruption of data;
- (i) downtime costs or wasted overheads; or
- (j) special, punitive, or exemplary damages.

**"Consumer Contract"** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

**"Customer"** means the person, firm or corporation, jointly and severally if there is more than one, acquiring the Services from Lantrak.

**"Docket"** means Lantrak's docket (including electronic docket or any other system used by Lantrak to record provision of the Services) supplied by the Sub-Contractor to the Customer to sign to verify the attendance of the Sub-Contractor and the Services having been completed.

**"Dry Hire"** means the hire of any Equipment by the Customer without an Operator.

**"Equipment"** means the vehicles and machinery owned or operated by Lantrak or the Sub-Contractors and used in the provision of the Services.

**"Excess Usage Costs"** means the charge the Customer agrees to pay Lantrak for excessive or abnormal usage of Equipment. This charge will be calculated in accordance with the Contract or the CSA and can include excessive hours of operation of the Equipment or abnormal wear on tyres, tracks, buckets, electrical or ground engagement tools.

**"Fair Wear and Tear"** means wear and tear which would be normal for similar Equipment operating in usual conditions, but excludes:

- (a) panel or structural damage from collision or abuse;
- (b) damage to glass or instrumentation;
- (c) damage to wheel, tyres and/or tracks; and
- (d) damage to the drive system.

**"Fire Ant Zone"** means a fire ant biosecurity zone, as designated by any State or Territory government body.

**"GST"** has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Lantrak"** means:

- (a) Lantrak Pty Ltd (ABN 14 163 639 727); and
- (b) any other entity nominated by Lantrak as a "Lantrak" entity for the purpose of these Terms, severally (but not jointly) to the extent that they provide Services to the Customer.

**"Material"** means any soil, compost or organic matter delivered to or removed from the Site (as appropriate), whether clean fill, fill material, contaminated fill or compactable materials.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"Site"** means the site or sites identified by the Customer where the Services are to be provided.

**"Operator"** means any drivers or operators of the Equipment provided by Lantrak to the Customer, either in conjunction with the Services or separately.

**"Prescribed Industrial Waste"** means prescribed industrial waste, hazardous waste, regulated waste or any other analogous waste description as defined in the relevant environmental protection legislation and regulations applicable in the State or Territory in which the Services are being performed.

**"Quotation"** means any written or verbal quotation provided by Lantrak to the Customer concerning the proposed provision of the Services.

**"Services"** means all services supplied by Lantrak to the Customer, whether itself or through its Sub-Contractors, and includes (as appropriate):

- (a) booking services;
- (b) project management services;
- (c) the provision of Equipment with or without Operators;
- (d) excavation and earth moving services;
- (e) Cartage;
- (f) supply and/or removal and disposal and/or re-use of the Material; and
- (g) Dry Hire;

**"Small Business Contract"** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

**"Sub-Contractor"** means any person who performs the Services pursuant to an arrangement with Lantrak.

**"Terms"** means these Terms and Conditions for Provision of Services.

**"Waiting Time Fee"** means an amount equal to the time of the delay experienced by Lantrak or its Sub-Contractors in performing the Services multiplied by 50% of the applicable hourly rate payable to drivers in accordance with the Customer's CSA excluding any other allowance or benefit.

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### 21. INTERPRETATION

21.1 Headings are for convenience only and shall not affect the interpretation of these Terms.

21.2 Unless specified otherwise, all reference to sums of money shall be in terms of Australian currency (AUD), and all documents and correspondence between the parties shall be in the English language.

21.3 Unless the contrary intention appears:

(a) an expression which denotes the singular includes the plural and vice versa;

(b) a person includes the person's successors, executors, administrators, substitutes (including a person who

becomes a party by novation) and assigns;

(c) a reference to any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments re-enactments or replacement of any of them; and

(d) where two (2) or more persons are defined as a party to a Contract, these Terms shall apply to each of them severally and all of them jointly.

21.4 Examples given are non-exhaustive and exist for illustrative purposes only.

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