

## **PLANT HIRE AGREEMENT**

between

[Insert name of the owner of the Plant]

and

[Insert name of Fletcher BU who is hiring the Plant from the Owner]

**CONTRACT NUMBER:**

xxx

**HIRE DESCRIPTION:**

[Insert brief Plant and Project description from the First Schedule,  
i.e. *Liebherr 160 HC-L Tower Crane for the NZICC Project*]

**THIS AGREEMENT** is dated the [insert date]

**BETWEEN** [INSERT FULL LEGAL NAME OF OWNER] (company number [Insert]) whose registered office is at [Insert] ("the Owner")

**AND** [Insert Name of Fletcher Construction BU] (company number [insert]) whose registered office is at [810 Great South Road, Penrose, Auckland or insert other address] ("the Hirer")

## **BACKGROUND**

- A. The Owner owns certain plant, machinery and equipment as described in the First Schedule.
- B. The Hirer wishes to hire the same for use on the Project named in the First Schedule.
- C. The parties wish to record the terms and conditions of such hire.

**THE PARTIES AGREE** as follows:

### **1. INTERPRETATION**

In this Agreement unless the context otherwise requires:

#### **1.1 Definitions:**

**"Agreement"** means this agreement (including the schedules hereto);

**"Authority"** means every local body, government or other authority having jurisdiction or authority over or in respect of the Plant or the use or occupation thereof;

**"Business Day"** means a calendar day other than any Saturday or Sunday, public holiday, or any day falling within the period from 24 December to 5 January both inclusive, irrespective of the days on which work is carried out;

**"Commencement Date"** means the commencement date for the hire of the Plant, as noted in the First Schedule;

**"Dry Hire"** means that the Hirer operates, fuels, greases and maintains the plant for the rental states in the First Schedule.

**"Force Majeure"** means an event or circumstance beyond the control of the Owner or the Hirer, as the case may be, which results in or causes a failure by such party in the performance of any obligations imposed on it by this Agreement notwithstanding the exercise by such party of reasonable care and shall include, but shall not be limited to acts of God, acts of enemies of the State, sabotage, acts of war, blockades, insurrections, riots, epidemics and pandemics (including lockdowns and isolation requirements), floods, storms, fires, washouts, explosions, breakage of or accident to machines, pipelines, or associated equipment, civil disturbances, industrial or strike actions and orders of any court or government authority;

**"GHG Emissions"** means emissions of Greenhouse gases from all sources, categorised as Scope 1, 2 and 3 Emissions as defined by "A Corporate Accounting and Reporting Standard" published by the Greenhouse Gas Protocol;

**"Hirer"** means the party identified as such in this Agreement and its successors and assigns;

**"Indicative Termination Date"** means the indicative termination date of the hire of the Plant noted in the First Schedule;

**"Owner"** means the party identified as such in this Agreement and its successors and permitted assignees;

**"Plant"** means the plant, machinery and equipment described in the First Schedule as well as all substitutions, replacements or renewals of such Plant and all related accessories, manuals and instructions provided for it;

**"Site"** means the location of the Site of hire noted in the First Schedule;

**"Sustainable Product Certifications"** means any certifications defined in the Fletcher Building 'Sustainability Certified Products' document (which can be accessed at <https://fletcherbuilding.com/assets/1-about-us/documents/revenue-sustainable-products.pdf>) and any third party; and

**"Wet Hire"** means that the Owner operates, fuels, greases and maintains the Plant.

- 1.2 **Headings:** section, clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Agreement;
- 1.3 **Parties:** references to parties are references to parties to this Agreement;
- 1.4 **Defined Expressions:** expressions defined in the main body of this Agreement bear the defined meaning in the whole of this Agreement;
- 1.5 **Schedules:** the schedules to this Agreement and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this Agreement;

## 2. TERM

- 2.1 **Initial Term:** This Agreement shall commence on the Commencement Date and, unless terminated earlier pursuant to Section 12, shall remain in force until the Indicative Termination Date, subject to clause 2.2 below.
- 2.2 Subject to earlier termination under the Agreement, if the Hirer does not terminate this Agreement by the Indicative Termination Date, the Term of this Agreement will be automatically extended until such time that the Hirer gives four (4) weeks written notice to the Owner that it no longer requires hire of the Plant and is terminating the agreement.

## 3. GRANT OF HIRE

- 3.1 The Owner hereby hires the Plant to the Hirer on the terms and conditions set out herein and the Hirer agrees to take the Plant on such hire terms and conditions.

## 4. TRANSPORTATION

- 4.1 The Plant shall be transported as per the First Schedule, and at the cost and risk of the party named in the First Schedule.
- 4.2 The Plant shall not otherwise be relocated from the Site during the term of this Agreement without the agreement of the Owner in writing.

## 5. MAINTENANCE AND OPERATION OF PLANT

- 5.1 Supply of Plant:** The Owner will ensure that the Plant is supplied to the Hirer in good order, safe operating condition and fit for any purpose held out by the Hirer or made known to the Hirer by the Owner expressly or by implication. In this respect the Hirer relies on the Owner's skill and judgement
- 5.2 Possession:** Subject to clause 10, the Hirer will enjoy quiet possession of the Plant during the term of this Agreement
- 5.3 No Alterations:** The Hirer will not make any alterations to the Plant without the Owner's prior written approval.
- 5.4 Compliance with Laws:** The Owner warrants that the Plant complies with, and that it will comply with, and will ensure that its personnel comply with, all statutes and regulations and bylaws of any relevant Authority as well as any guidelines licenses or industry codes from time to time in force which apply to the hire of the Plant. The Hirer undertakes to comply with all statutes and regulations and bylaws of any relevant Authority as well as any guidelines licenses or industry codes from time to time in force relating to the operation of the Plant or which relate to or otherwise affect the Plant.
- 5.5 Servicing and Repairs:** Maintenance and repairs shall be carried out by the Owner except where such repairs have been caused by improper operation, or misuse by the Hirer. Such maintenance or repairs shall be carried out at the Owner's cost and at such times and duration as will minimise disruption to the Hirer's use and operation of the Plant.
- 5.6 Rental Reduced:** Rental shall not be payable for any period in which the Plant is not available for use as intended by the Hirer due to breakdowns or the requirement for maintenance or repair where such repairs have not been caused by improper operation, or misuse by the Hirer.
- 5.7 Notify Defects:** The Hirer will notify the Owner promptly, and in any event within 2 Business Days, of any damage, breakage or defect in or to the Plant of which it is aware.
- 5.8 Wet Hire:** If the First Schedule states that the Agreement is a Wet Hire then:
- 5.8.1 Operation:** the Owner will supply the Plant complete with suitably qualified and experienced operator(s) and will operate and maintain the Plant to ensure it remains operational during the hire period for the rental stated in the First Schedule. The Owner will ensure that the operator(s) comply with the Hirer's reasonable instructions when at the Site and operate the Plant and perform such works as the Hirer may reasonably require during the hire period.
- 5.8.2 Daily Inspection:** Daily inspections, fluid top-ups, and greasing, will be by and at the cost of the Owner. The Owner will ensure Plant is fuelled each day. Responsibility for the provision and cost of fuel will be by the party named in the First Schedule.
- 5.8.3 Return of Plant:** The Hirer will upon the expiration or earlier termination of this Agreement return the Plant to the Owner. Responsibility for transportation to the place of return will be as set out in the First Schedule.
- 5.9 Dry Hire:** If the First Schedule states that the Agreement is a Dry Hire then the Plant will be operated by the Hirer and:

- 5.9.1 Daily Inspection:** Daily inspections, fluid top-ups, greasing, and fuelling will be by and at the cost of the Hirer.
- 5.9.2 Return of Plant:** The Hirer will upon the expiration or earlier termination of this Agreement return the Plant to the Owner in a similar condition to that it is in at the Commencement Date (fair wear and tear and defects excepted). Responsibility for transportation to the place of return will be as set out in the First Schedule. The Owner will inspect the Plant and advise the Hirer in writing within 5 Business Days of the date of Termination should the Plant require repairs due to improper operation, or misuse by the Hirer. The Hirer shall at its discretion carry out such repairs or meet reasonable cost of rectification of the Plant to the required condition.
- 5.9.3 Operations:** The Hirer will ensure that the Plant is operated within its capabilities and design and in accordance with Operation and Maintenance manuals supplied by the Owner.
- 5.9.4 Operators:** The Hirer will ensure that only persons with suitable qualifications and experience operate the Plant.

## 6. INSURANCE

- 6.1 Party to Insure:** The party named in the First Schedule, (the Insuring Party), shall keep the Plant insured for its full replacement cost in the joint names of the Owner and the Hirer for their respective rights and interests against risk of fire, theft, accident and damage, from the Commencement Date and until return of the Plant to the Owner (at the place for transportation on termination stated in the First Schedule).
- 6.2 Evidence of Insurance:** The Insuring Party shall produce evidence satisfactory to the other party that the Insuring Party has insured the Plant in accordance herewith.
- 6.3 Failure to Insure:** If the Insuring Party fails to keep the Plant insured the Insuring Party shall indemnify the other party for costs and loss the other party may incur in the event of damage or destruction of the Plant, which costs and loss should have otherwise been recovered from insurance but for the Insuring Party's failure.
- 6.4 Public liability cover:** The Owner and the Hirer will each hold a minimum public liability insurance during the term of this agreement for the amounts listed in the First Schedule and shall provide evidence of such cover upon request by the other party.

## 7. PLANT OWNERSHIP

- 7.1 Title to the Plant:** The Owner warrants that it has the right to hire the Plant, both at the time of its transfer to the Hirer and for the period of this Agreement.
- 7.2 Personal Property Securities Act 1999 (PPSA):**
  - 7.2.1** Hire of the Plant may create a security interest in the Plant. This Agreement constitutes a security agreement for the purposes of the PPSA.
  - 7.2.2** On the reasonable request of the Owner, the Hirer will promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Plant and its proceeds which will have priority over all other security interests in the Plant.

**7.2.3** The Hirer agrees that the Owner (at Owner's cost) may register a financing statement under the PPSA in respect of its security interest in the Plant (and its proceeds).

**7.3 Intellectual Property:** The Owner shall indemnify the Hirer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Hirer arising out of, or in connection with any claim made against the Hirer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the hire or use of the Plant.

## **8. RENTAL**

**8.1** Subject to the performance by the Owner of its obligations under this Agreement and the Hirer's rights under this Agreement and at law generally, the Hirer will pay to the Owner the rental entered in the First Schedule (subject to any adjustment under this Agreement) in consideration of the hire of the Plant, which rental shall be paid in accordance with Section 9.

## **9. TERMS OF PAYMENT**

### **General Provisions**

**9.1 Payment claim timing:** The Owner may submit payment claims for the Rental (including any other agreed charges) to the Hirer at the frequency and by the times stated in the First Schedule. If a payment claim is submitted later than the prescribed time, the claim will be processed and any payment made in the following month.

**9.2 Payment claims:** In each payment claim the Owner must include:

**9.2.1** the Owner's opinion as to the calculation of the Rental to the date of the claim and notification of any other charges which the Owner then has against the Hirer under this Agreement;

**9.2.2** sufficiently detailed evidence to enable the Hirer to assess the claim, which may include, for example, delivery dockets, signed timesheets or other accepted record of hours and any other information the Hirer considers reasonable to determine the accuracy of the payment claim;

**9.2.3** any other information reasonably required by the Hirer, including without limitation any Owner's insurances certificates of currency that may be required; and

**9.2.4** If the First Schedule states that invoices will be:

- (a) a Supplier Invoice, then the Owner will provide a valid GST invoice for the amount claimed; or
- (b) a BCTI (Buyer Created Tax Invoice), then the Owner will not submit a GST invoice with the payment claim.

Failure by the Owner to comply with the requirements above invalidates the payment claim. The Hirer may request reasonable additional information in respect of any payment claim (valid or otherwise) and if so requested the Owner must promptly provide any additional information so requested and the payment claim will be taken to have been given on the date the additional information is provided. The provision of the additional information does not validate an invalid payment claim unless expressly confirmed by the Hirer (who is under no obligation to do so).

**9.3 Submission of claims:** Owner will submit its payment claims (including any invoices and supporting information) in such format and through such method as

the Hirer may require (i.e. by email, electronic accounts payable system and/or other online platform).

- 9.4 Set-Off:** The Hirer is entitled to set-off, deduct or withhold against and from any sums that would otherwise be due to the Owner any amount in respect of genuine claims it may have against the Owner in relation to or in connection with this Agreement or any other legally binding agreement between the Owner and the Hirer, including overpayments, loss and damages (whether liquidated or otherwise).

#### **Option 1: Supplier Invoices**

- 9.5** This section applies in the event that the First Schedule states that invoices will be a Supplier Invoice.

- 9.6** The Owner is required to provide a valid GST invoice for the amount claimed.

Payments shall be paid on or by the 20<sup>th</sup> of the month following the month in which the services or plant were supplied, provided that the invoices are received by the 5<sup>th</sup> of the month following the month in which the services or plant were supplied. Invoices received after the 5<sup>th</sup>, or which do not contain sufficient information to validate the invoice shall be paid by the 20<sup>th</sup> of the subsequent month, provided any outstanding information has been supplied by the 5<sup>th</sup> of that month. If the Hirer disputes the amount of any invoice it shall notify the Owner and will pay the undisputed amount.

#### **Option 2: Buyer Created Tax Invoices**

- 9.7** This section applies in the event that the First Schedule states that invoices will be a BCTI (Buyer Created Tax Invoice).

- 9.8** The Owner is not required to provide a valid GST invoice for the amount claimed.

- 9.9** In accordance with section 19K of the Goods and Services Tax Act 1985, the Hirer and Owner agree that the Hirer will issue the tax invoice in respect of a taxable supply of goods and services made by the Owner to simplify the administration of invoicing and payments between the Hirer and Owner. The Owner and Hirer agree the Owner shall not issue a tax invoice for a taxable supply made in respect of the supply under this Agreement.

- 9.10** If the Hirer disputes the Owner's payment claim (or any part thereof), then by the last Business Day of the month following the month to which the payment claim relates ( of receipt of the payment claim validly submitted under clause 9.1, the Hirer must assess the claim and provide to the Owner a payment schedule identifying the payment claim and certifying the amount the Hirer reasonably considers is due to the Owner or the Hirer as the case may be, together with the reasons for the difference from the amount claimed and if it is less because the Hirer is withholding payment for any reason, the Hirer's reasons for withholding payment.

#### **10. ACCESS RIGHTS**

- 10.1 Right to Enter:** The Owner shall on giving reasonable notice to the Hirer have access to the Plant, to carry out any necessary repairs, to refurbish the Plant to comply with legislation, to ascertain whether or not any breach of this Agreement has occurred and/or to remove the Plant on the expiration or earlier termination of this Agreement.

- 10.2 Health and Safety and Environment:** The Owner must comply (and will ensure its personnel comply) with:

- 10.2.1 all applicable health and safety laws, regulations and codes of practice in relation to the Owner's activities, the Plant, and hire of the Plant to the Hirer, including (but not limited to) in relation to environmental matters and any applicable requirements of the Hirer's environmental plans; and
  - 10.2.2 the Hirer's health and safety policies and procedures when attending the Hirer's Site;
  - 10.2.3 the Hirer's reasonable instructions regarding health, safety, and environment, when on Site; and
  - 10.2.4 the Hirer's security and access requirements for the Site (as notified to the Subcontractor from time to time).
- 10.3 **Co-operation:** The Owner will consult, coordinate and cooperate with the Hirer and provide all information that may be reasonably requested by the Hirer in relation to health, safety, and environment (including Owner's personnel and subcontractors).
- 10.4 The obligations under this clause 10 are material obligations for the purposes of clause 12.1.2.

## 11. FORCE MAJEURE EVENTS

- 11.1 **Performance Excused:** Notwithstanding the other provisions of this Agreement (except subclause 11.2), a party shall be relieved from liability in the event of Force Majeure.
- 11.2 **Rental:** To the extent a Force Majeure event prevents or reduces the Hirer's ability to use the Plant as intended, the rental will be abated or reduced accordingly relative to the extent of the impact.
- 11.3 **Obligations if Force Majeure:** If either party seeks relief under subclause 11.1, that party shall, upon the occurrence of any such failure due to an event of Force Majeure:
- 11.3.1 **Give Notice:** As soon as reasonably practicable give notice to the other party of the occurrence of the event claimed to be an event of Force Majeure and provide to the other party full particulars relating to the event and the cause of such failure which notice shall also contain an estimate of the period of time required to remedy such failure;
  - 11.3.2 **Right to Investigate:** Render the other party reasonable opportunity and assistance to examine and investigate the event and the matters which caused the event and failure;
  - 11.3.3 **Due Diligence to Rectify:** Use due diligence and take all reasonable steps which may be necessary to rectify, remedy or overcome the event and minimise any damage caused thereby provided that this clause shall not impose any obligation on a party to settle or resolve any industrial dispute or strike action on terms not acceptable to it; and
  - 11.3.4 **Notice of expiry:** Give notice as soon as reasonably practicable to the other party upon expiry of the event of Force Majeure (at which time all liabilities hereunder shall resume).

## 12. TERMINATION

- 12.1 **Causes for Termination:** In cases where:
- 12.1.1 **Non-Payment:** The Hirer defaults in payment of any undisputed amounts payable under this Agreement; or

**12.1.2 Breach of Covenants:** Either party defaults in the performance of any of the other material covenants or obligations imposed upon it by this Agreement; or

**12.1.3 Force Majeure:** An event of Force Majeure occurs and continues for a period of 180 days, or a prolonged period such that it is unlikely that one party could ever again be in a position to perform its material obligations under this Agreement or for the Hirer to utilise the Plant on the Project;

then the party not in default (in the case of 12.1.1 and 12.1.2) or unaffected by the circumstances of Force Majeure (referred to in the balance of this clause 12 as the "Notifying Party") may at its option give notice to terminate this Agreement in the manner set out in this clause 12.

**12.2 Notice:** The Notifying Party shall give written notice to be served on the other party (the "Other Party") stating specifically the cause for terminating this Agreement and declaring it to be the intention of the Notifying Party to terminate the same unless the default is remedied;

**12.3 Remedy Default:** Where the notice is given in respect of a default under subclauses 12.1.1 or 12.1.2 (a "30 Day Default"), the Other Party shall have 30 calendar days after the service of that notice in which to remedy or remove the cause or causes stated in the notice for terminating this Agreement. In respect of notice of termination pursuant to subclause 12.1.3, the Other Party is not considered in default and no such 30 day period shall apply and termination can be effected immediately upon delivery of the notice.

**12.4 Notice Withdrawn if Remedied:** In respect of a 30 Day Default, if within 30 days after the service of notice the Other Party does remove and remedy the cause or causes and fully indemnify the Notifying Party for all direct consequences of such breach, then such notice of default shall be deemed to be withdrawn and this Agreement shall continue in full force and effect.

**12.5 Termination if Unremedied:** In case the Other Party does not so remedy and remove the cause or causes or does not indemnify the Notifying Party for any and all direct consequences of such a 30 Day Default to the satisfaction of the Notifying Party within 30 days, then the Notifying Party shall be entitled to terminate this Agreement forthwith.

**12.6 Termination at the Convenience of the Hirer:** The Hirer may terminate this Agreement at its sole discretion at any time on giving the Owner the minimum period of written notification of such termination set out in the First Schedule.

**12.7 Termination without Prejudice to Amounts Outstanding:** The termination of this Agreement shall not, of itself:

**12.7.1 Relieve Payment Obligation:** Relieve a party of its obligation to pay any money outstanding at the time;

**12.7.2 Constitute Waiver:** Constitute a waiver of any remedy to which the party not in default may be entitled for breach of this Agreement;

**12.7.3 Prior Events:** Affect the rights and obligations of the parties, or relieve them of any liability, in respect of prior events.

**12.8 Effects of Termination:** The termination rights set out in subclause 12.1 (other than subclause 12.1.3) shall be in addition to, and not in substitution for, any other rights and remedies available to the parties (including any rights and remedies which, but for the inclusion of clause 11.3, would not have been available to the parties) whether pursuant to this Agreement, at law, at equity or otherwise. Further, the existence of a 30 Day Default shall be without prejudice to the rights of the Notifying Party to act upon any other default. The termination

right set out in subclause 12.1.3 shall be the party's sole remedy in the event of Force Majeure.

### 13. ASSIGNMENT

- 13.1 Control of Assignment:** The Hirer acknowledges that this Agreement is wholly personal to it and as such it may not assign, transfer, sub-let, mortgage, charge or otherwise encumber all or any of its rights or obligations hereunder or any interest therein to any person without the prior written consent of the Owner (such consent not to be unreasonably withheld).
- 13.2 Assignment or novation by Owner:** The Owner must not, without the prior written consent of the Hirer, assign or novate this Agreement. Any such consent required from the Hirer is at the Hirer's sole and absolute discretion.

### 14. DISPUTE RESOLUTION

- 14.1 General:** If a party believes there is a dispute in respect of this Agreement, it will first notify the other party in writing giving details of the nature of the dispute. The dispute will then be referred to senior representatives of each party for resolution. They shall use their best endeavours to resolve such dispute as quickly as possible having regard to their respective interests.
- 14.2 Arbitration:** In the event that the Owner and the Hirer do not resolve the dispute within 20 Business Days and in accordance with subclause 14.1, then such dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 and the remaining provisions of this section 14.
- 14.3 Notice:** The arbitration shall be convened by either the Owner or the Hirer giving to the other notice in writing stating the subject matter and details of the dispute and that party's desire to have the matter referred to arbitration as follows:
- 14.3.1** in accordance with the Arbitration Act 1996 (and clause 5 of Schedule 2 of that Act applies);
  - 14.3.2** by a sole arbitrator agreed upon by the parties and failing agreement, by an arbitrator appointed by AMINZ or equivalent body at the request of either party;
  - 14.3.3** the seat and location of the arbitration will be Auckland, New Zealand;
  - 14.3.4** the language of the arbitration will be English; and
  - 14.3.5** the award of the arbitrator will be final and binding on the parties, subject to the rights of appeal on a question of law pursuant to clause 5 of Schedule 2 of the Arbitration Act.
- 14.4** The agreement to arbitrate contained in this clause is governed by, and will be interpreted in accordance with, the laws of New Zealand.
- 14.5** Nothing in the agreement to arbitrate prevents either the Hirer or the Owner from seeking an interim injunction or other urgent interim relief for any conduct or threatened conduct that is or would be a material breach of this Agreement.
- 14.6 Give Reasons:** The arbitrator shall give reasons for any determination made.
- 14.7 Parties to Continue to Perform:** Pending resolution of any dispute or difference, the parties shall continue to perform their respective obligations pursuant to the provisions of this Agreement.

## 15. LIMITATION ON LIABILITY

- 15.1 Direct Losses Only:** If it is determined that the Owner or the Hirer is liable to the other for breach of this Agreement, the liability of the party in breach to the other shall never exceed the loss or damage suffered by the other party arising directly from and out of the breach. Despite that, under no circumstances will any party be liable to the other in contract, tort (including negligence) or otherwise for any consequential or indirect loss or damage, loss of profits, business or anticipated savings and damages, whether or not such loss or damages ought to have been known by the party in breach.
- 15.2 Limitation on liability:** Subject to clause 15.1 above, the maximum aggregate liability of the Hirer for any and all claims by the Owner, whether as a result of any breach of the Agreement or on any other ground or terms whatsoever (including liability in tort for negligence) will not exceed the total Rental payable by the Hirer in the First Schedule to the Agreement. No amount awarded or agreed to be paid under the indemnities in clauses 6.3 and 7.3 shall count towards the cap on the Owner's liability under this clause 15.2.
- 15.3 Specific Performance:** Nothing in this section 15 shall limit the right of the parties to enforce this Agreement by seeking an order for specific performance in any court of competent jurisdiction.

## 16. Code of Conduct

- 16.1** The Owner acknowledges that it has read and understood the Hirer's Supplier Code of Conduct, which is available at <https://fletcherbuilding.com/assets/4-investor-centre/other-documents/Supplier-Code-of-Conduct.pdf>. The Owner agrees to be bound by the Supplier Code of Conduct, as may be amended from time to time, in the performance of this Agreement.
- 16.2** Breach of this clause 16 shall be deemed a material breach of this Agreement, allowing the Hirer to terminate this Agreement by immediate written notice without any liability from the Hirer to the Owner.

## 17. PRIOR REPRESENTATIONS

- 17.1** The Owner represents, warrants and undertakes on a continuing basis that all information and representations made by the Owner to the Hirer, whether oral or in writing prior to or after the date of this Agreement, including in response to any pre-qualification questions or procurement process leading to this Agreement are:
- 17.1.1** true, complete and correct and not misleading (including through non-disclosure); and
  - 17.1.2** shall not limit any other obligation under this Agreement.
- 17.2** The Owner will notify the Hirer promptly should it become aware that any representations referred to in clause 17.1 made to the Hirer were untrue, incorrect or misleading at the time, or where the representations made at the time were true, correct and not misleading but the position has now materially changed.
- 17.3** The Owner acknowledges that the Hirer has, in entering into this Agreement and during the term, relied on clause 17.1 and the Owner's representations. Should any representations be untrue or misleading in any material respect it will be considered a material breach by the Owner, and the Hirer may terminate this Agreement by written notice to the Owner without any liability from the Hirer to the Owner.

## **18. ESG REPORTING**

- 18.1** If requested by the Hirer, the Owner shall, at its cost, provide in the form, to the extent, in the manner, to whom, and at times requested by the Hirer, data, records, reports and information relating to environmental, sustainability and governance issues, including as to:
- 18.1.1** GHG Emissions associated with the Owner's activities under this Agreement (which may be provided to the Hirer directly, or via a third party supply chain portal nominated by the Hirer);
  - 18.1.2** energy production or energy consumption; and
  - 18.1.3** waste data relating to the Owner's activities under this Agreement, including type of waste, volume or tonnage, and disposal route (landfill or diversion).
- 18.2** If product supply is part of this Agreement, if requested by the Hirer, the Owner shall, at its cost, provide the Hirer with any Sustainable Product Certifications that it holds.
- 18.3** The Owner shall:
- 18.3.1** collect and keep all data, information and records as may be required to enable the Owner to discharge its obligations under clause 18.1 and in any event hold such data, information and records for a minimum of seven years;
  - 18.3.2** ensure such data, information and records are accurate;
  - 18.3.3** (advise whether the data, information or records or any part of the data, information or records, has been validated by independent audit and, if so, to what verification standard; and
  - 18.3.4** permit any persons appointed or approved by the Hirer to examine, monitor, measure, copy, audit and/or verify such data, information and records and will cooperate with, and provide all reasonable assistance to any such persons (including providing access to premises, plant and the Owner's equipment, producing and giving access to documents and answering any relevant questions).
- 18.4** Breach of this clause 18 will be deemed a material breach of this Agreement, allowing the Hirer to terminate this Agreement by immediate written notice without any liability from the Hirer to the Owner.

## **19. SEVERABILITY**

- 19.1** In the event that any one or more of the provisions of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions hereof shall not in any way be affected, prejudiced or impaired thereby.

## **20. NOTICES**

- 20.1** Any notice, request, demand, consent or other to be made or given to any party under this Agreement shall (without prejudice to any lawful mode of service), be in writing, marked for the attention of the designated person and delivered to the address noted in the First Schedule or by email delivered to the email address noted in the First Schedule.

## **21. NON-WAIVER**

- 21.1** The failure of either party to insist in any one or more instances upon a strict performance of any of the terms of this Agreement or the waiver by either party of any term or right hereunder or of any default by the other party shall not be deemed or construed as a waiver by such party of any such term right or default in the future.
- 22. ENTIRE AGREEMENT**
- 22.1** This Agreement constitutes the sole understanding between the parties with respect to the subject matter hereof and supersedes all prior understandings, written or oral.
- 23. GOVERNING LAW**
- 23.1** This Agreement shall be governed by and construed under the laws for the time being in force in New Zealand.
- 24. VARIATION**
- 24.1** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 25. NO PARTNERSHIP OR AGENCY**
- 25.1** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 26. MEDIA ENQUIRIES / NO ANNOUNCEMENTS**
- 26.1** The Owner shall not make any public announcement, respond to media requests, issue any press release or other information (including digital images) concerning this Agreement, its subject matter, the Hirer, the Project or any client of the Hirer, in any media or in its marketing material, including on social media, without the prior written approval of the Hirer. The Owner shall refer to the Hirer any enquiries from any media or third parties, including members of the public, concerning the same.
- 27. FURTHER ASSURANCES**
- 27.1** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**SIGNED** for and on behalf of **the Owner**:

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Authorised signatory

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Name and position title

\_\_\_\_\_  
Date

**SIGNED** for and on behalf of **the Hirer**:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name and position title

\_\_\_\_\_  
Date

## FIRST SCHEDULE

Clause	Item	Details
1.1	Description of the Plant	[insert plant description and any identification details.]
1.1	Project	[Project Name]
1.1	Site	[Project Address]
1.1	Commencement Date	[Date hire to start].
1.1	Indicative Termination Date	[Indicative last date of hire]
4.1	Party transporting the Plant	On Commencement: transport from [insert] to [insert] by [Owner OR Hirer (select one and delete other)]  On Termination: transport from [insert] to [insert] by [Owner OR Hirer (select one and delete other)]
4.1	Plant moves by Owner during hire period	Yes / No  [If yes, insert rate for specialist moves within a site – i.e. crane movement by truck transporter]
5.1	Type of Hire	[Dry Hire OR Wet Hire (select one and delete other)]
5.8.2	Wet Hire Only	Fuel provider will be [Owner OR Hirer (select one and delete other), OR state N/A if Dry Hire
6.1	Plant Insuring Party	[Owner OR Hirer (select one and delete other – Owner preferred)]
6.4	Public Liability Insurance Amounts	Owner: \$[x] Hirer: \$[x]
8	Rental	[Include rental amount or list of rental rates (can refer to an appendix to attach if required)]
9	Payment claims submitted	Monthly (for each calendar month), by no later than 5th of the month following the month to which the payment claim relates [OR delete and state other payment claim timing i.e. at the end of the hire period]  Select payment claim and invoice method: [Option 1, Supplier Invoices (issued by Owner) OR Option 2 Buyer Created Tax Invoices (issued by Hirer along with payment schedule) (select one and delete other)]
12.5	Termination	Hirer may terminate for convenience by giving a minimum of [XXX] days written notice.
14.4	Arbitration Body	[AIMNZ]
17	Notices and Contact Details	The initial email, address and contact person (if any) designated by each party for notices is as follows:

		<p><b>For the Owner:</b></p> <p>Designated Person: [Owner's rep]</p> <p>Address: [Owner's Business address]</p> <p>Email address: [Rep email]</p> <p>Phone: [Rep phone number]</p> <p><b>For the Hirer:</b></p> <p>Designated Person: [Fletcher BU rep]</p> <p>Address: [Level 1, Fletcher House Tahī, 810 Great South Road, Penrose]</p> <p>Email address: [Rep email]</p> <p>Phone: [Rep phone number]</p>
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