

## Conditions of Plant & Truck Hire For Council's Preferred Contractor Register

### 1 Acceptance of Offer

- 1.1 Before placing an order, the Council shall ascertain from the Contractor that the plant is available for hire. If the Contractor advises that the plant is not available for hire then the Contractor has no obligation to make the plant available unless the Contractor has offered to supply all Council requirements for a particular category of plant. If this is the case Council will give five (5) days notice and the Contractor must make the plant available.
- 1.2 The Council will accept the offer of any new item(s) of plant or changes to existing plant on written notification and such notification constitutes an agreement for hire on these conditions.
- 1.3 Contractor must provide a telephone contact during business hours which allows Council to make an offer of plant hire.
- 1.4 Where the Contractor or the Plant fails to meet the conditions as outlined in this document offers will not be accepted.

### 2 Transport

- 2.1 Transport costs shall be a separate lump sum or schedule of rates offer borne by Council. In cases where it is more economical or expeditious, the Council float or a float hired under a separate arrangement may be used for transporting hired plant in lieu of the owner's transport arrangements.

### 3 Hire Rates – With Operator

- 3.1 The 'A' Rate is payable when plant ordered with an operator is in operation on the site or moving between work sites under its own power. This rate is payable for up to 10 hours per day between 6.00 am and 6.00 pm Monday to Friday inclusive, excluding Public Holidays.

All time worked in excess of hours specified above for each normal working day, and all time worked during other days, shall be paid at a rate 10% higher than the quoted rate.

- 3.2 The 'B' Rate is payable when the plant ordered with an operator is available for work under the following circumstances:
  - 3.2.1 When the plant is being transported, other than under its own power, from one of Council's site to another, but excluding transport to the first site of hire and

removal at the end of hire.

- 3.2.2 When, due to reasons within the Council's control, the plant is not worked for a full shift, then plant is to be charged at 'A' Rate for the period worked, and 'B' Rate for the duration of the shift for that day.
- 3.2.3 When due to wet weather mechanically propelled plant driven from the Contractors depot to the nominated Council worksite and working outside the "town limits" of the Contractors depot has been stood down without achieving four hours 'A' rate hire for that day. One hour at 'B' rate only will be paid to offset travel costs.
- 3.3 No amount is payable in respect of periods when the plant is idle due to breakdown, strikes, reasons within the Contractor's control or reasons beyond the Council's control.
- 3.4 Councils Representative will advise the contractor when work is to cease due to wet weather.
  - 3.4.1 No rate will be paid once Contractors have been instructed by Council that no work will be carried out until further notice. (NB allowing for 3.2.3)
  - 3.4.2 Where rainfall occurs overnight the contractor is to contact the Council representative for confirmation that work is to commence for that day.
  - 3.4.3 If the contractor is advised that no work is to commence due to wet weather, by the Council Officer, no payment will be made for that day.
  - 3.4.4 Under such circumstances agreement should be reached as to whether the plant is either left on site for future use or removed at the Contractor's request.
  - 3.4.5 Any transport costs resulting from the Contractor's request to remove the hired plant will be met by the Contractor.
- 3.5 All times shall be calculated to the nearest 0.5 of an hour and parts of an hour are payable in proportion to the hourly hire rate.

#### **4 Hire Rates – Without Operator**

- 4.1 The 'C' Rate is payable for all time that plant ordered without an Operator while it is on hire and in working order, whether in use or not.
- 4.2 No payment is made for time the plant is idle due to breakdown.

## 5 Payment

- 5.1 At the end of each fortnight after commencement of hire, the Contractor shall lodge a claim for payment setting out such details of plant, operators, hours, etc, as the Council may request and if required by the Council, a statement signed by the Contractor that no wages or allowances are due and owing by the Contractor in respect of the operator of the hire plant or any employee of the Contractor working on the relevant site.
- 5.2 If any such wages or allowances are owing, then the Council may, upon the production of satisfactory evidence of a judgement or order of a court, pay the amount of the judgement or order including any costs awarded thereby to the workmen concerned and any amount so paid may be deducted or recovered by the Council. Payment by Council will be made two weeks from receipt of claim.

## 6 Period of Termination of Hire

- 6.1 When ordering plant, the Council shall specify an anticipated period of hire involved. The Council may terminate the hire on 8 hours notice. Without the consent of the Council the Contractor may not terminate earlier than the time of the expiration of the anticipated period of hire specified by the Council. These conditions apply to any extension of the hire.
- 6.2 If the Contractor fails to deliver the plant at the commencement of the period of hire or without the consent of the Council withdraws the plant before the expiration of the period of hire or commits any other breach of the conditions of plant hire, the Council may recover from the Contractor any costs, expenses or damages thereby incurred.
- 6.3 Should the Council be dissatisfied with the condition, quality or capacity of the plant or the performance of the operator or should a breach of the conditions of plant hire occur, the Council may terminate the hire forthwith by notice to the Contractor and, in such event, the Contractor is not entitled to the amount, if any, for the removal from site of the plant, or for transport to the site of a replacement item if such is required by the Council.
- 6.4 On termination of the hire, the Contractor shall forthwith remove the plant. If the Contractor fails to remove the plant, then the Council may, after reasonable notice to the Contractor, dispose of the plant and, if by sale, shall account to the Contractor for any net proceeds.

## 7 Risk

- 7.1 The plant is at the risk of the Contractor at all times. The operator, if supplied by the Contractor, is and remains the servant and agent of the Contractor.
- 7.2 The Contractor is responsible for and must indemnify Council against liability for all loss, damage or injury to persons or property caused by the Contractor, or its employees servants, invitees, or agents, and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by the Council in respect of any such loss, damage or injury must be made good at the Contractor's expense and may be deducted from any

moneys due or becoming due to the Contractor. The Contractor releases Council from any liability for damage, loss, injury or death arising from or in connection with the carrying out of the work except where such liability, damage, loss, injury or death is caused by the act, negligence or default of the Council or its employees.

## **8 Insurance**

The Contractor shall insure and keep insured, during the period of the hiring, on suitable terms with an insurer acceptable to the Council. This will include comprehensive insurance, public liability insurance coverage of \$20 million and unlimited WorkCover insurance. Certificates of currency are required for all insurances.

### **8.1 Comprehensive Insurance (Motor Vehicle and Plant).**

The Contractor shall insure each item of plant against the loss of or damage to the plant, against personal injury to third parties and damage to property resulting from the operation of the plant with the sum insured being not less than the market value of the plant item and with the legal liability (Personal and property cover) of \$20,000,000 unless otherwise specified by Council.

8.1.1 Mechanically propelled plant and trailers designed for use on land to be covered by a Motor Vehicle Policy pursuant to the NSW Motor Vehicle (Third Party Insurance) Act 1942 whether the plant item is registered or not.

### **8.2 Public Liability Insurance**

The Contractor shall effect a Public Liability Policy covering liabilities to third parties including liability for loss or damage to property or death or bodily injury to any person arising out of an accident occurring during the period of hire, and caused by the negligence of the insured, or by any persons for whose negligence the insured are or could become legally liable in the course of the use of or through any defect in the item of plant with a limit of indemnity of not less than \$20 million (unless otherwise specified by Council). This policy shall not be required in the case of plant described in clauses 8.1.1. This policy must note Council as an interested party.

### **8.3 Workers Compensation**

The Contractor shall effect a Workers Compensation Policy pursuant to the NSW Workers Compensation and Injury Management Act 1998 covering any liability, loss, claim, demand, suit or proceeding, cost and expense arising at common law or under any statute or other legislative provision relating to Workers Compensation as a result of personal injury to or death of any person employed by the Contractor.

### **8.4 Personal Accident Insurance**

In the case of owner-operator contractor, where there is no Workers Compensation Policy the Contractor shall affect a Personal Accident Insurance policy covering any and all claims, demands, actions and proceedings whatsoever in relation to the personal injury or

death of the Contractor and made by the Contractor, his legal representatives, heirs or assigns.

#### **8.5 General Conditions applying to all Insurance Policies.**

All insurance policies required by these Conditions for Hire of Plant and Trucks to be effected by the Contractor shall:

8.5.1 note the interest of Council for respective rights and interests;

8.5.2 be effected with a reputable insurer approved by Council;

8.5.3 provided that, in so far as the policy may cover more than one insured, all insuring agreements and endorsements shall operate in the same manner as if they were a separate policy of insurance covering each party comprising the insured (subject always to the overall sum insured not being thereby increased);

8.5.4 contain no exclusions, endorsements or alterations made after the commencement date of the hire, unless those exclusions, endorsements or alterations have been first approved in writing by Council; and

8.5.5 require the insurer, whenever the insurer gives to or serves upon the Contractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Council in writing that the notice has been given to or served upon the Contractor.

8.5.6 Where any insurance policy bears any reference to an excess, such excess shall be borne solely by the Contractor.

#### **8.6 Inspection and Provision of Insurance Policies**

At the time of submission of the Offers for Hire of Plant and Trucks from the Contractor shall provide details of insurance policies held at that time by the Contractor. Before the commencement of the hire, the Contractor shall provide Council with a certificate of currency for each insurance required to be effected by these Conditions for Hire of Plant and Trucks together with copies either of the policy or an endorsement slip referred to the policy indicating that all conditions in Cl 8 of these Conditions for Hire have been met.

### **9 Registration Certificates and Licences**

Whenever by any legislation the plant or the Contractor's operator is required to be registered or licensed or to hold any permit or certificate or exemption certificate or other qualification, the Contractor shall, at his expense, ensure that the legislation is complied with and proof thereof shall be produced to the Council's Supervisor on request.

### **10 Contractor's Responsibilities Generally**

The Contractor shall:

- 10.1 Supply the plant in good working order and maintain it in that condition.
- 10.2 Unless otherwise specifically provided, unload and load the plant at the site.
- 10.3 When the plant is required for night work, or when so instructed by the Council's Supervisor, fit suitable and efficient lights to the plant.
- 10.4 Ensure that the plant is safe and is supplied with all necessary shields, guards, spark arresters, warning signs, lights, indicators and other safety apparatus.
- 10.5 When the plant is supplied with operator:
  - 10.5.1 Provide a competent operator or operators to operate plant, and notify the Council's Supervisor of any change in operator.
  - 10.5.2 Pay all wages, overtime, accommodation, allowances, travelling expenses and other entitlements of the operator and of any other personnel necessary for the efficient operation of the plant.
  - 10.5.3 Provide accommodation facilities for employees when necessary.
  - 10.5.4 Supply all fuel, oil, grease and spare parts and anything necessary, including cutting edges, tyres, etc, for the continuous and satisfactory operation of the plant.
  - 10.5.5 Have the plant ready to commence operations at the starting of each day.
  - 10.5.6 Work the plant continuously as required during the period of hire.
  - 10.5.7 Carry out all repairs to the plant of whatever description expeditiously. As far as practicable, all adjustments and repairs shall be carried out on wet days or outside normal working hours. Tools and equipment to carry out repairs shall be provided by the Contractor.
  - 10.5.8 Keep daily work dockets showing the hours worked each day, breakdowns, delays, operator breaks and any other details required by the Council's Supervisor, to whom the dockets or other details shall be submitted each day for signature.
  - 10.5.9 Ensure that when unattended the plant is in a safe condition and not liable to be or to become a safety hazard.
  - 10.5.10 Provide the operator with appropriate Personal Protective Equipment and Clothing as per Work Health and Safety Legislation.
  - 10.5.11 Dispose of all waste products from the plant, including, but not limited to,

sump oils, by removing the same from the site and properly disposing thereof or, if approved by the Council's Supervisor, by placing the same at a location on site in the manner directed by the Supervisor.

- 10.5.12 Comply with the requirements of all Acts, Regulations, Ordinances and By-laws and the safety requirements in force on the site of the Works.

## **11 Work Health and Safety and Other Requirements Where Applicable**

- 11.1 The contractor must submit to the Council prior to the commencement of work and or at the request of Council;

11.1.1. Standard operating procedures required to operate the equipment in a safe manner,

11.1.2. Safe systems of work to be implemented during the plant hire,

11.1.3. A system that identifies clear guidelines for responding to WH & S incidents arising from the works, specifies the qualified person(s) to manage such incidents and procedures to notify affected parties and authorities.

Without limiting any of the above the contractor must;

11.1.4. Provide Council with all of the Contractor's employee / training records;

11.1.5. Immediately report in writing to Council all incidents involving injury to any of the contractor's employees, agents or sub-contractors arising from the performance of this contract.

### **11.2 Contractor's Legal WH&S Duties with Respect to Hire Plant**

The contractor is responsible for ensuring that Hired plant is safe and without risk to health and safety when properly used.

#### **11.2.1 Record Keeping**

The contractor must keep and make available to Council, when requested:

- i. Records of maintenance, inspection, repair and alteration of plant,
- ii. Records that show how risks have been managed, including records of any test carried out.

#### **11.2.2 Transporting, Maintenance, Inspection, Repair and Cleaning of Plant on Council Sites**

The Contractor must ensure that:

- i. The necessary facilities and systems of work are provided and maintained so as to minimise the risks to health and safety of persons

transporting, maintaining, inspecting, repairing or cleaning the plant;

- ii. All safety features and warning devices of plant are maintained and tested by a competent person, and records are maintained;
- iii. All work is carried out by a competent person; and
- iv. Repairs to the plant are carried out so as to retain the plant within its design limits.

### 11.2.3

The contractor is responsible for providing adequate information about the plant to council to ensure its safe use. In addition to any such information contained in the plant operating manual and displayed in the plant, the contractor must provide with each plant supplied without an operator a concise safety information sheet complying with the following:

- i. The information should preferably be on a single, laminated sheet no larger than A4 size so that it can be easily photocopied. A double sided or folded sheet may be used if the information will not fit on one page. Information should be presented in a form that is easy to understand, with illustrations being included where appropriate.

The sheet must contain:

- i. The name of the contractor
- ii. The heading Safety Information For (make and Model of Plant)
- iii. An identification number (e.g. registration number) of the plant item to which the sheet belongs
- iv. What must be checked before operating the machine;
- v. Emergency stop procedures in the event of malfunction or loss of control (including what to do in the event of a failure of the main braking system)
- vi. Safe operating limits, e.g. maximum gradient, speed limits for certain conditions, maximum load carrying capacity;
- vii. Warning systems and what to do in particular malfunction conditions;
- viii. Shut down and parking procedure
- ix. Other safety information supplied by the designer or manufacturer

Any information that a competent operator would need in order to operate the plant, including its attachments, safely.

An information sheet in the specified format is required even if this information is contained within the plant operating manual supplied with the plant. Inspectors will confirm that this safety information sheet has been provided.



## 11.3 Contractors Legal WH&S Duties with Respect to the Operator

- 11.3.1 Where Hired Plant is supplied with an Operator, the Contractor must:
- i. Provide and maintain systems of work that are safe and without risk to health
  - ii. The Contractor has a corresponding right to information about the work to be carried out, work procedures and safety management systems on Council sites. The supervisor will provide this on request.
  - iii. Provide the operator with the necessary training / instruction to ensure health and safety whilst operating the plant;
  - iv. Provide the operator with
    - General Construction Induction training (White Card), and
    - Relevant work activity WHS induction training.
- 11.3.2 Ensure compliance with the WHS Act 2011 and WHS Regulation 2017 and the National Code of Practice and relevant Codes of Practice and Australian Standards.
- 11.3.3 Keep records of all training provided to the Operator and supply copies of such records to Council on request;
- 11.3.4 Provide the operator with appropriate Personal Protective Equipment and Clothing on site to ensure safety;
- 11.3.5 Ensure that the operator
- i. Holds the necessary certificates or licences to operate the plant
  - ii. Attends site meetings and training sessions as directed by Council
  - iii. Undertakes daily plant inspections and maintains records.

## 12 National Law (NHVL) Chain of Responsibility Heavy Vehicle (CoR)

The Contractor accepts that undertaking specified functions that exercise, or have the capability of exercising control or influence over any heavy vehicle transport task is therefore part of a Chain of Responsibility (CoR), and is obliged to comply with the Heavy Vehicle National Law (HVNL). The Contractor accepts that a breach of the HVNL or Heavy Vehicle National Regulator (HVNR) CoR may be a breach of the contract between Snowy Monaro Regional Council and the Contractor. Council reserves its rights under the contract (including termination) in the event of such a breach.

## 13 Plant Without an Operator

When plant is hired without an operator ('C' Rate), the Council is responsible for the replenishment of fuel and other oils and no other items whatsoever unless otherwise specified.

## 14 Directions

The Contractor, operator or any employee on site, shall comply with all reasonable directions of the Council's Site Supervisor, including those relating to safety and safe working. In the event of the Supervisor directing the removal of any servant or agent of the Contractor from the site, the Contractor, servant or agent shall comply with such direction.

## 15 Assignment and Sub-Letting

The Contractor shall not assign or sub-let the hire of any plant or any part thereof without the approval in writing of the Council.

## 16 Inspection

The Contractor shall make the plant available for inspection when required. The Council reserves the right to stand down, without pay, any plant due to expired insurance, until such time that proof of renewal has been produced.

The Council reserves the right to stand down, without pay, any plant that is deemed defective or in need of repair arising from an Inspection. The Contractor is responsible for correcting the fault identified within the specified time limit noted on the inspection report. A re-inspection will determine that the plant item is deemed suitable for use.

## 17 Other

**In addition, the following specific conditions apply:**

17.1 Offers tendered by agents are to state the fact that the Tenderer is an Agent, and that the Owner's agreement has been given for the machines to be offered for hire.

17.2 A Contractor may substitute another machine in the following circumstances:

17.2.1 When a machine becomes unserviceable or is sold whilst under hire to the Council

17.2.2 An offered item can be replaced on the Councils preferred Contractors Register after being listed as an available machine; providing the Council is notified in writing of the full details of the replacement machines, and this machine is of the same classification as the tendered machine with the same hire rates applying. Plant once replaced cannot be offered for hire to the Council unless reregistered on the Councils preferred Contractors Register. A substitute cannot be made for a machine that is unavailable with a more expensive tendered machine, although the Contractor may offer it at the same rate as the unavailable machine.

17.3 Offers for multi-tyred rollers must be classified at their maximum weight. Deballasted rollers cannot be offered in a lesser weight classification.

- 17.4 In respect of Prescribed Payment Tax, the Contractor shall provide to the paying officer documentary evidence from the Australian Taxation Office as to the rate of deductions to be made, if any.
- 17.5 The Council reserves the right to stand down any plant for any reason which is considered to be a breach of these and other conditions.
- 17.6 Rates offered by the Contractor shall include all overheads. Separate claims for overheads will not be paid by the Council.
- 17.7 An appeals procedure will be available to any Contractor dissatisfied in regard to non-acceptance of an offer, or regard to determinations made during hire on performance or payment. The appeal will be dealt with by the Council's representative personally and the Contractor advised of his decision in writing. (The representative shall be the Director of Operations and Infrastructure or hirer of the plant.)
- 17.8 Any Contractor still dissatisfied may appeal to the Council. This appeal shall be in writing and fully documented and will be heard by the Council at its first available Meeting.
- 17.9 Copies of all Insurance Policies shall be sighted before any offer of hire is made.

## **18 Declaration of Interest**

The Contractor is required to make declarations of interest, advising of their, or close family members, associations with officials or staff of the Council and in other plant hire firms.

## **19 Definition**

In this document Council is the Chief Executive Officer of Snowy Monaro Regional Shire Council.  
In this document the word "plant" refers to both plant & truck hire where appropriate.  
In this document "town limits" refers to restricted speed zones up to and including 80km/hr in or directly adjacent to towns and villages within Snowy Monaro Regional Council.

## **20 Council Policy, Procedure, Protocol**

The Contractor is required to comply with Council Policies, Procedures and Protocols, including but not limited to;

Health and Safety,  
Personal Protective Equipment and Clothing,  
Alcohol and Other Drugs,  
Smoke Free Work Environment,  
Chain of Responsibility