

Model Contract for Owner-Drivers

Notes

- This model contract (including its accompanying schedule) is a template prepared by the Road Freight Transport Industry Council and provided at no cost to owner-drivers and hirers for their assistance.
- Entering into a contract of the nature of this template will have legal implications for any party using the template and they are advised to seek their own independent legal advice as to its terms.

Model Contract for Owner-Drivers

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SIGNED BY THE PARTIES

PART 1 PRELIMINARY MATTERS

1 PREAMBLE

The parties to this contract are listed in the schedule to this contract. The owner-driver carries on a business of providing a vehicle for hire, together with the services of driving the vehicle and related business activities, to transport goods.

The hirer engages the owner-driver under this contract for services as an independent contractor (not as an employee) to supply services and a vehicle for the transportation of goods for either the hirer directly, or for the benefit of the hirer's customers.

2 DEFINITIONS

“**Act**” means the *Owner-Drivers (Contracts and Disputes) Act 2007* (Western Australia);

“**approved driver**” means a driver listed in the schedule as an approved driver or otherwise approved under Part 2, clause 11 to drive the vehicle;

“**code of conduct**” has the meaning given in section 3 of the Act;

“**contract**” means this owner-driver contract, which includes the schedule;

“**dangerous goods**” means dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road & Rail*;

“**dispute**” has the meaning given in section 37 of the Act;

“**goods**” has the meaning given in section 3 of the Act;

“**hirer**” has the meaning given in section 3 of the Act;

“**inspector**” has the meaning given in section 3 of the Act;

“**laws**” means any applicable law, whether Federal, State or local government, written or unwritten, including Acts of Parliament, ordinances, regulations, by-laws and any code of conduct in so far as it imposes any mandatory requirement;

“**licence**” means any government or statutory licence, permit, approval or permission, however described;

“**livery**” means any painting, decals, painted sides, logos, posters, stickers, trailer curtains or other material promoting or identifying the hirer or the hirer's customer that the hirer requires the owner-driver to apply to a vehicle supplied under this contract;

“**negotiating agent**” means the person, if any, appointed by the hirer or the owner-driver as their negotiating agent in accordance with section 28 or 29 of the Act;

“**NTC**” means the National Transport Commission based in Melbourne, Victoria;

“**owner-driver**” has the meaning given in section 3 of the Act;

“**owner-driver contract**” has the meaning given in section 3 of the Act;

“**party**” has the meaning given in section 3 of the Act;

“**properly completed documents**” means any documents, including proof of delivery documents and invoices, that have been obtained or completed by the owner-driver in the form, time and manner reasonably required by the hirer from time to time as part of the services provided;

“**schedule**” means the schedule to this contract;

“**services**” means the work that the hirer requires the owner-driver to perform under this contract using the vehicle and specialised equipment, as specified in the schedule;

“**specialised equipment**” means the equipment, if any, specified in clause 4.2 of the schedule, to be provided by the owner-driver (e.g. refrigeration unit, hoist, tailgate, curtains, dog & chains);

“**Tribunal**” has the meaning given in section 3 of the Act;

“**vehicle**” means the vehicle(s) specified in clause 4.1 of the schedule, to be supplied by the owner-driver to the hirer, or any other vehicle that in accordance with this contract is used to perform the services.

3 PERIOD OF CONTRACT

The period of this contract is the period between the date specified in clause 2 of the schedule as the date the contract is to commence, and the date specified in clause 2 of the schedule as the expiry date.

4 PREVIOUS CONTRACTS REPLACED

This contract replaces all previous contracts, arrangements or understandings made between the parties, but entering into this contract does not affect any rights, obligations or liabilities acquired, incurred or accrued under previous contracts, arrangements or understandings, unless there is express agreement to the contrary.

5 LEGAL RELATIONSHIP OF THE PARTIES

This contract is a contract for services, and not a contract of employment, and the owner-driver must not hold himself, herself or itself out to be an employee of the hirer. Unless authorised by the hirer in writing to do so, the owner-driver must not:

- (a) At any time bind or purport to bind the hirer to any other contract, agreement or transaction;
- (b) Pledge the credit of the hirer in any manner whatsoever; or
- (c) Permit or enable a third party to create any lien over any property of the hirer that may be in the possession or under the control of the owner-driver.

PART 2 OWNER-DRIVER'S RIGHTS & RESPONSIBILITIES

6 THE SERVICES

- (a) The owner-driver will provide a vehicle or vehicles and specialised equipment, and will perform the services as specified in clauses 3 and 4 of the schedule during the times, if any, specified in clause 3.4 of the schedule.
- (b) Unless otherwise specified in this contract, the owner-driver may perform services for persons other than the hirer during the period of this contract.
- (c) The owner-driver will ensure that all persons acting on behalf of the owner-driver, including officers, employees, subcontractors or agents of the owner-driver, comply with the terms of this contract.

7 SAFETY & COMPLIANCE WITH LAWS

7.1 CONDITION OF THE VEHICLE

The owner-driver will ensure that the vehicle is maintained in a mechanically sound, properly painted and clean condition that is fit for the purpose of providing the services.

7.2 COMPLIANCE WITH LAWS

The owner-driver will comply at all times in the performance of the services with all laws that are applicable to the services, including but not limited to laws dealing with:

- (a) Registration of the vehicle and compulsory third party insurance;
- (b) Heavy vehicle safety, mass and load regulations, including the lawful use of particular roads and routes;
- (c) Environmental requirements, emission controls and noise standards;
- (d) Mandatory Australian design standards;
- (e) Road safety and traffic management laws;
- (f) Occupational safety and health;
- (g) Dangerous goods, including any signage and compulsory insurance requirements;
- (h) Food transport and hygiene;
- (i) Security and anti-terrorism laws, including port identification requirements;
- (j) Driving hours and fatigue management;
- (k) Livestock carriage;
- (l) Owner-driver contracts;
- (m) Mandatory accreditation, where applicable.

7.3 CODES & LICENCES

The owner-driver warrants, at all relevant times, to hold the licences and comply with any codes listed in clause 3.5 of the schedule and any other licences required for the performance of the services, including but not limited to licences required:

- (a) to operate the vehicle or vehicles or other machinery or equipment supplied or operated by the owner-driver under this contract;
- (b) to carry particular kinds of goods, including dangerous goods;
- (c) to enter certain premises (such as ports); or
- (d) to operate the vehicle supplied under this contract to the carrying capacity specified in clause 4.1 of the schedule on the routes specified in the schedule.

The owner-driver will inform the hirer immediately of the cancellation or suspension of any such licence. The owner-driver will comply with the conditions of such licences at all times.

From time to time, the hirer may request the owner-driver to provide evidence of the holding of such licences and/or compliance with such codes. The owner-driver shall abide by each such request, so far as is reasonably practicable and to the extent that doing so will not unduly hinder the performance of the contract.

7.4 OWNER-DRIVER TO MANAGE FATIGUE & TAKE BREAKS

- (a) The owner-driver will comply with all applicable laws concerning fatigue, fatigue management, rest breaks and record keeping applicable to the services. Where the owner-driver is obliged to take mandatory rest or meal breaks under a law, such rest or meal breaks will not be paid for as time worked.
- (b) Where the owner-driver is not obliged to take rest breaks under a law, then the owner-driver may take meal and rest breaks as specified in clause 3.6 of the schedule. The owner-driver is entitled to refuse to perform any work during a meal or rest break that is not paid.

7.5 SAFE LOADING

- (a) The owner-driver will ensure the safe and proper loading of their vehicle, including the securing and appropriate weather protection of the load.
- (b) The owner-driver shall abide by the guidelines and performance standards for the safe carriage of loads on road vehicles as set out in the NTC's *Load Restraint Guide 2018*, unless required by the hirer to abide by a higher standard.
- (c) The owner-driver is responsible, so far as is practicable, for checking that the loading of pre-loaded vehicles is safe and satisfactory.

7.6 INDUCTION PROCESSES

The owner-driver will satisfactorily complete any site induction processes required by the hirer's customers as a condition of entry to the customer's site. This work will be subject to the payment arrangements, if any, set out in clause 8.7 of the schedule.

7.7 SAFETY EQUIPMENT

The owner-driver will supply and wear appropriate standard safety equipment, including safety boots and a safety vest, as directed by the hirer or the hirer's customers, or as required by any applicable law.

7.8 RIGHT TO REFUSE UNSAFE OR UNLAWFUL WORK

- (a) The owner-driver may at any time refuse to carry any goods or to perform any act if in the genuinely held view of the owner-driver, if the act was performed it might be negligent, unsafe or unlawful, or in breach of any law.
- (b) The owner-driver will advise the hirer of any such refusal and the reasons for the refusal, as soon as practicable.
- (c) A refusal of work under this clause does not constitute a breach of any term of this contract.

8 ABSENCES

8.1 ABSENCE

The owner-driver does not have to provide the services during the periods, if any, specified in clause 6.1 of the schedule.

Note: The owner-driver may provide the services at any time using an approved driver – see Part 2, clause 11 of this contract.

8.2 ILLNESS OR INCAPACITY

Where the owner-driver is unable to provide the services due to illness or incapacity or other unavoidable absence of an approved driver, then:

- (a) The owner-driver will advise the hirer of the situation as soon as practicable.
- (b) The owner-driver is not obliged to provide the services for the shorter of:
 - The period of the illness or incapacity; or
 - The period of time reasonable sufficient to allow the owner-driver to supply an alternative approved driver.

8.3 NO PAYMENT DURING ABSENCE UNDER THIS CLAUSE

The owner-driver is not entitled to any payment from the hirer during any period of non-performance of services described in this clause.

9 OWNER-DRIVER'S INSURANCES

Subject to any variations specified in clause 7 of the schedule, the owner-driver will arrange and keep current insurance policies meeting the requirements described in clauses 9.1 to 9.5 below. Such policies must be arranged with an authorised Australian insurer and holder of an Australian financial services licence in accordance with the *Corporations Act 2001* (Cwlth).

9.1 COMPREHENSIVE MOTOR VEHICLE INSURANCE

- (a) Own damage to vehicle - for no less than market value.
- (b) Third party property damage - \$20,000,000 (\$20 million).
- (c) Dangerous goods liability - where applicable, as specified in the schedule
- (d) Liability for material loss of, or damage to, non-owned trailer (where the owner-driver tows one or more trailers that is/are not owned by the owner-driver) - \$100,000 or not less than the market value of any one trailer.
- (e) Coverage to be for Western Australia, or for Australia-wide if the owner-driver travels outside of Western Australia.

9.2 PUBLIC LIABILITY INSURANCE

Legal liability in respect to third party property damage or bodily harm for an amount not less than \$10,000,000 (\$10 million) for any one occurrence and unlimited in the aggregate.

9.3 GOODS IN TRANSIT INSURANCE

Where clause 7.1 of the schedule indicates that the owner-driver will take out goods in transit insurance, then the following requirements for the policy apply:

- (a) Limit of any one loss: \$150,000.
- (b) The Policy will cover at least the following insured events:
 - Fire, hail, explosion, lightning or flood.
 - Collision of the conveying vehicle with any external object other than the road, gutter or similar surrounding surfaces.
 - Overturning, jack-knifing or derailment of the conveying vehicle.
 - Impact of the goods with something that is not on or part of the conveying vehicle (but not impact with the road or surrounding areas caused by the goods dropping or falling from the conveying vehicle, unless caused by one of the above events).

- Loss of profit / consequential loss to \$100,000.
- Theft, pilferage and non-delivery.
- Debris removal following loss - \$25,000 limit.
- Shedding of load.
- Damage caused by strikers, locked-out workers or persons taking part in labour disturbances, riots or civil commotions.
- The wilful act of a third party, which was committed without the knowledge or connivance of the owner-driver or the owner of the goods.
- Where refrigerated goods are carried, cost of deterioration of refrigerated goods caused by any of the above events or by mismanagement or malfunction of refrigerating equipment.

9.4 ADDITIONAL INSURANCE

The owner-driver will arrange and keep any additional insurance coverage specified in clause 7.2 of the schedule.

9.5 WORK COVER

The owner-driver will comply with any obligations to take out a Sick and Accident coverage policy for themselves. Any employees of the owner-driver shall be covered for workers' compensation.

Note: For information on which party is obliged to take out a WorkCover policy, contact your insurance agent or go to www.workcover.wa.gov.au .

10 INSTALLING THE HIRER'S EQUIPMENT

10.1 COMMUNICATIONS EQUIPMENT

- Unless specified to the contrary in clause 4.3 of the schedule, the hirer may install, at its own cost:
 - Vehicle communications equipment or other devices used for communicating with the driver in the owner-driver's vehicle; and/or
 - Any other communications or monitoring equipment specified in the schedule.
- Any communications equipment provided by the hirer will remain the hirer's property and may be removed at any time, including on termination of this contract, at the hirer's expense. Any damage to the owner-driver's vehicle caused by such removal shall be repaired at the hirer's expense.
- Owner-drivers will use the hirer's communications equipment in the manner directed by the hirer and will indemnify the hirer for the cost of repair or replacement of communications equipment damaged by the owner-driver's negligent or wilful conduct.
- In this sub-clause "installation costs" means the costs of the labour and incidental parts for installing the equipment and does not include the capital costs of the equipment.

10.2 LIVERY

- Unless specified to the contrary in clause 4.3 of the schedule, the hirer may apply, at its own cost, livery to the owner-driver's vehicle in the manner as the hirer from time to time may require.
- Any livery that is provided by the hirer and that can be removed in reusable form will remain the hirer's property and may be removed by the hirer at any time at the hirer's expense. Any damage to the owner-driver's vehicle caused by such removal shall be repaired at the hirer's expense.
- The owner-driver will care for the livery in the manner directed by the hirer and will indemnify the hirer for any cost of repair or replacement of the livery damaged by the owner-driver's negligent or wilful conduct.
- The hirer will arrange for the removal of the livery at the conclusion or termination of this contract, at the hirer's expense.
- Where livery is removed or replaced under this clause, the hirer will do so as soon as reasonably practicable, at a time agreed with the owner-driver, and will ensure that the arrangements do not unduly prevent the owner-driver from earning income.
- The owner-driver will refund to the hirer fifty percent of the installation costs if this contract is terminated either at the initiative of the owner-driver or for reason of fundamental breach of this contract by the owner-driver, where the termination occurs within twelve months of installation of

the livery. Such cost may be deducted from moneys owed to the owner-driver, provided that it is properly accounted for by the hirer.

- (g) In this sub-clause "installation costs" means the costs of the labour and of incidental and non-recoverable materials (such as paint and decals) of installing the livery, but does not include costs of any materials that can be recovered and re-used (such as tarpaulins).

11 APPROVED DRIVERS

- (a) The owner-driver will provide the services by using only a driver who is:
- specified in clause 5 of the schedule as an approved driver; or
 - approved in advance by the hirer to drive the vehicle.
- (b) The hirer may withhold approval of a particular driver, or withdraw approval that has been given, but only if the hirer has reasonable grounds to believe that the driver or proposed driver:
- is not qualified, properly licensed or capable of performing the services as required under this contract; or
 - is not a fit or proper person to perform the services; or
 - the driver is not acceptable to the hirer's customer on reasonable and lawful grounds.
- (c) Any approval of a driver given by the hirer under this clause may be withdrawn if:
- the driver engages in misconduct; or
 - the driver fails to comply with a provision of this contract or any laws.

12 SUBSTITUTE VEHICLE

The owner-driver may substitute a vehicle for that specified in clause 4.1 of the schedule, but only if:

- (a) The substitute vehicle is fit for the purpose of providing the services; and
- (b) The hirer agrees that the owner-driver may use the substitute vehicle.

13 OTHER REQUIREMENTS FOR PERFORMANCE OF THE SERVICES

13.1 SERVICES TO BE PROFESSIONAL & CONSCIENTIOUS

- (a) The owner-driver will provide the services in a conscientious and professional manner.
- (b) The owner-driver will comply with any lawful conditions of entry to premises of the hirer's customers, including any lawful requirement to submit to drug or alcohol testing.

13.2 INABILITY TO PERFORM

The owner-driver will promptly advise the hirer if the owner-driver is unable to perform the services or anticipates an unusual delay in the performance.

13.3 CESSATION OF WORK

The owner-driver will notify the hirer in person, by radio or by telephone if the owner-driver intends to cease providing services on any day prior to any agreed or scheduled time. The owner-driver must not cease work earlier than the agreed time without reasonable excuse.

13.4 PAPERWORK

The owner-driver will provide properly completed documents in the form, time and manner reasonably required by the hirer from time to time.

13.5 OWNER-DRIVER WILL CARRY OUT HIRER'S REASONABLE REQUIREMENTS

The owner-driver will carry out all reasonable requirements of the hirer, or customers of the hirer, in connection with the loading or unloading and carriage of goods, provided that:

- (a) Such requirements do not place the health and safety of any person in jeopardy, including by interfering with the driver's fatigue management obligations under this contract;
- (b) The request does not require the owner-driver to use any equipment (such as a forklift or pallet jack) that the relevant driver is not licensed, trained or competent to use; and
- (c) Any such work is paid in accordance with this contract.

13.6 CARE & DELIVERY OF GOODS

- (a) The owner-driver will promptly advise the hirer if the vehicle or the goods are involved in any accident or suffer any damage.
- (b) The owner-driver will take all reasonable steps to ensure that the goods transported under this contract are received by the recipient complete, undamaged and as described in the properly completed documents.
- (c) The owner-driver will, as far as reasonably practicable, accurately record any loss of or damage to the goods on the properly completed documents and obtain a signature from the recipient of the goods, acknowledging the loss or damage.

13.7 BUSINESS INTERESTS OF HIRER

- (a) The owner-driver will at all times use their best efforts to protect and advance the hirer's business interests.
- (b) The owner-driver will not at any time during this contract, or for a period of six months after the termination of this contract, whether on the owner-driver's own account or as an agent, officer or employee of any person, canvass or solicit (directly or indirectly) the carriage of goods on behalf of any person who was a permanent customer of the hirer and for whom the owner-driver has performed services under this contract.
- (c) In this clause, "permanent customer" is one that provides work to the hirer on a regular basis, and "person" includes a company or partnership or any other legal entity.

13.8 CONFIDENTIAL INFORMATION

- (a) The owner-driver will not disclose any confidential information concerning the hirer or the hirer's customers to any person, either during the period of this contract or after its termination or expiry, except where:
 - (i) it is necessary or reasonably required for the owner-driver to make such a disclosure to the owner-driver's employees, accountants, auditors, financial advisors, legal advisors, insurers or insurance brokers. Such disclosure shall be made by the owner-driver on a confidential basis;
 - (ii) the owner-driver is duly required by law, or any statutory or regulatory authority, to do so; or
 - (iii) the parties otherwise agree.
- (b) "Confidential information" in this clause means commercial or technical information relating to the business of the hirer or the hirer's customer that:
 - Is communicated to the owner-driver with a written or verbal indication that the information is sensitive or confidential or not to be communicated; or
 - Which is by its nature commercially sensitive or confidential, such as customer lists and contacts, pricing information or business plans;but does not include information that is, or comes into, the public domain otherwise than through a breach of this clause by the owner-driver.

13.9 ACCOUNTING FOR MONEYS RECEIVED

- (a) The owner-driver will account for and pay to the hirer any cheques or moneys received on behalf of the hirer or the hirer's customers as soon as is practicable.
- (b) The owner-driver is not responsible for fraudulent cheques collected by the owner-driver in good faith on behalf of the hirer.

13.10 WORKING EXPENSES & STATUTORY CHARGES

The owner-driver is responsible for all working expenses and statutory charges, including tolls, incurred in the course of their business, unless these are specified in clause 8.4 of the schedule as costs or expenses to be paid or reimbursed by the hirer.

PART 3 HIRER'S RIGHTS & RESPONSIBILITIES

14 PAYMENTS TO OWNER-DRIVER

The hirer will pay to the owner-driver all remuneration due under this contract, less any authorised deductions, in accordance with the terms of this contract.

15 NO DIRECTION IN BREACH OF LAW

The hirer will not direct the owner-driver to commit any act that will, or is likely to, result in a breach of any law.

16 HIRER'S INSURANCE

16.1 GOODS IN TRANSIT INSURANCE

Where clause 7.1 of the schedule indicates that the hirer will take out goods in transit insurance, then the following requirements for the policy apply:

- (a) The hirer will arrange and keep goods in transit insurance that will indemnify both the hirer and the owner-driver against their respective legal liabilities for loss or damage to goods in transit, and equipment owned by the hirer (such as a trailer) used by the owner-driver in the performance of the services. The insurance will meet at least the specifications referred to in clause 9.3 of this contract.
- (b) The hirer may deduct the cost of the hirer's goods in transit insurance from money payable to the owner-driver, provided that:
 - (i) The deduction is a direct and proper reflection of the actual cost of the insurance policy; and
 - (ii) The hirer provides to the owner-driver a copy of the insurance policy; and
 - (iii) Where the policy covers multiple owner-drivers or employee drivers, satisfactory written evidence that the amount to be deducted from the owner-driver is proportional to the owner-driver's share of potential liability covered by the policy.
- (c) If the owner-driver has adequate goods in transit insurance meeting the standards as described in clause 9.3, the hirer will not deduct moneys for insurance under this clause.

16.2 WORK COVER

The hirer will comply with any obligations to take out a workers' compensation policy for the owner-driver, and any employees or agents of the owner-driver, under the *Workers' Compensation and Injury Management Act 1981* (WA).

Note: For information on which party is obliged to take out a WorkCover policy, contact your insurance agent or go to www.workcover.wa.gov.au

17 UNIFORMS

The hirer will supply the owner-driver with any uniform that the hirer requires the owner-driver to wear, at no cost to the owner-driver. Uniforms will remain the property of the hirer.

18 DELAYS & BREAKDOWNS

- (a) The hirer may transfer goods from the owner-driver's vehicle in order to complete the delivery if the owner-driver is unduly delayed or is unable to perform the services due to a vehicle breakdown or a personal problem, and the delay would cause the hirer to be in breach of its obligations to its customer.
- (b) In this case, the owner-driver is entitled to be paid the amount that the owner-driver would otherwise have received for the performance of the services, less an amount equal to the costs reasonably incurred by the hirer in completing the delivery.

19 RIGHT TO SUSPEND ALLOCATION OF SERVICES

The hirer may suspend the allocation of any services to the owner-driver if:

- (a) The owner-driver's vehicle is declared unroadworthy, or, in the reasonable opinion of the hirer, the vehicle is not in a safe or roadworthy condition;
- (b) The owner-driver ceases to hold any necessary licence as required by clause 7.3 of this contract;
- (c) The owner-driver's vehicle does not meet the hirer's reasonable requirements concerning appearance; or

(d) The owner-driver is in breach of any term of this contract.

During any period of suspension, the owner-driver is not entitled to any minimum payment under Part 4, clause 20.

The hirer will recommence the allocation of services to the owner-driver as soon as practicable after the owner-driver has provided evidence to the hirer that the reason for the suspension has been remedied.

Nothing in this clause removes the right of either party to terminate this contract in accordance with Part 5, clause 26 or clause 29 of this contract.

Note: Any dispute over the suspension of the allocation of services is to be dealt with under Part 6, clause 30.

PART 4 RATES & PAYMENT

20 MINIMUM PAYMENT

The hirer will pay the owner-driver the minimum payment, or payment relevant to the minimum number of hours of work, as specified in clause 8.1 of the schedule. This minimum payment will be paid to the owner-driver regardless of whether any work is allocated to, or performed by, the owner-driver, provided that the owner-driver is available to perform the services.

21 PAYMENTS TO OWNER-DRIVER

The hirer will pay remuneration to the owner-driver in accordance with the terms specified in clause 8 of the schedule, less any deductions permitted to be made under this contract or permitted by section 10 [1] of the code of conduct, or any other deductions required by law.

22 AGREED RATE FOR VEHICLE

Unless agreed between the parties, the owner-driver will be paid by the hirer at the rate specified in clause 8.2 of the schedule for the vehicle specified in the schedule, regardless of whether the services could have been performed using a vehicle with a lesser carrying capacity. The hirer will not direct the owner-driver to accept a reduced rate.

23 METHOD & TIMING OF PAYMENTS

- (a) The hirer will make all payments due to the owner-driver under this contract after receipt by the hirer or properly completed documents, within the period specified in clause 8.5 of the schedule.
- (b) The hirer will make payment to the owner-driver by electronic funds transfer to the owner-driver's nominated bank account, or by any other method specified in clause 8.5 of the schedule.
- (c) The hirer will provide the owner-driver with a statement setting out the calculation of each payment made and accounting for any deductions made.

Note: Section 10 [2] of the code of conduct places restrictions on the making of deductions for services or goods.

24 INTEREST ON LATE PAYMENTS

If any amount of money that is properly due and owed by one party to the other party under this contract has not been paid after five business days since the day on which that amount was due, then the following applies:

- (a) The party who is owed the money may send written notice to the other party, stating that the amount is due and that the party owed is claiming interest under the terms of this contract.
- (b) The party who owes the amount will be liable to pay interest on that amount for the period beginning from the day after the payment was due until and including the day on which the payment is made. The rate of interest payable is equal to that prescribed for that time under regulation 4(1) of the *Civil Judgments Enforcement Regulations 2005* (WA).

25 RATE REVIEW

- (a) The rate specified in clause 8.2 of the schedule will be reviewed annually by the parties at the times specified in clause 8.6 of the schedule.
- (b) The owner-driver or the hirer may seek a review of rates at any time in the event of significantly changed circumstances. Either party may involve its negotiating agent in a review.

PART 5 TERMINATION

26 TERMINATION FOR FUNDAMENTAL BREACH OF CONTRACT

Either party may terminate this contract without notice or penalty where the other party commits a fundamental breach of this contract. Examples of a fundamental breach include, but are not limited to:

- (a) Serious and wilful misconduct, including repeated failure to perform the services as directed in accordance with the contract;
- (b) Falsification of documents;
- (c) Disclosure of confidential information;
- (d) Dishonesty or negligence;
- (e) Conviction of, or charge with, any criminal offence involving a serious allegation of violence or dishonesty;
- (f) Being unfit for performance of this contract due to the use of intoxicating drugs or alcohol;
- (g) Unauthorised withholding or late or non-payment of moneys payable under this contract; or
- (h) Committing any act of insolvency or bankruptcy or being declared insolvent or bankrupt.

27 FIXED TERM CONTRACTS

- (a) Where clause 2 of the schedule provides that this contract is to expire on a fixed date (i.e. a fixed term contract), then this contract will expire on that date and may not be terminated during the period of this contract except in accordance with Part 5, clause 26 or 29 of this contract.
- (b) Where the period of this contract is for six months or more and it is not a fixed term contract, the hirer will give the owner-driver notice of its intention to seek to renew or extend this contract, or not to do so. The period of notice is to be not less than the applicable period of notice set out in Part 5, clause 28.

28 TERMINATION BY GIVING NOTICE

- (a) Where this contract does not specify an expiry date, then either party may terminate this contract by the giving of three months' written notice.
- (b) This requirement may not apply if a party obtains a determination from the Tribunal.
- (c) Alternatively, the party seeking to terminate the contract may agree to pay to the other party an amount in lieu of giving notice.

29 FORCE MAJEURE

- (a) This contract may be suspended or terminated, by agreement between the parties, if either party is unable to perform this contract due to a force majeure event (an "act of God"), such as a flood, fire, explosion, death or other circumstance outside the party's reasonable control.
- (b) As soon as possible after a force majeure event occurs, the party affected by it must, if it has not already done so, notify the other party of the force majeure event and the extent to which the notifying party is unable to perform its obligations under this contract.
- (c) If the notifying party is wholly or partially precluded from complying with its obligations under this contract by the force majeure event, then that party's obligations to perform in accordance with this contract may, by agreement between the parties, be either terminated or suspended for the duration of the delay arising out of the force majeure event.
- (d) If the owner-driver is unable to perform the services because of the force majeure event, the hirer may have the services performed by another person and/or body for the period until the owner-driver is able to resume performing the services. The hirer remains obliged to pay the owner-driver for the portion of services already provided by the owner-driver.

PART 6 RESOLUTION OF DISPUTES

30 DISPUTES PROCESS

The parties will engage in the following dispute resolution process if any dispute arises over the terms, performance or termination of this contract.

30.1 STAGE 1 INITIAL DISCUSSION

The aggrieved party will advise the other party of the dispute as soon as possible. The parties will use their best efforts in good faith to resolve the dispute. Before proceeding to Stage 2, the aggrieved party must have:

- (a) Notified the other party in writing of the dispute;
- (b) Advised what they would like to occur to resolve the dispute;
- (c) Provided a reasonable time period for resolution; and
- (d) Accepted any invitation to meet with the other party to attempt to resolve the dispute.

30.2 STAGE 2 INDUSTRIAL INSPECTOR

If the matter in dispute is not settled at Stage 1, either party may refer the dispute to an inspector, on the basis that the inspector will attempt to resolve the dispute through a conciliation process.

The parties will participate in good faith with this process and will take all necessary steps to resolve the dispute as soon as practicable. This may include, but is not limited to, providing all information relevant to the dispute that is requested by the inspector.

Alternatively, either party may proceed directly to Stage 3.

30.3 STAGE 3 ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

If the matter in dispute is not settled at the first or second stage, either party may refer the dispute to the Tribunal.

30.4 NEGOTIATING AGENTS

Either party may seek the assistance of a negotiating agent at any stage during the dispute resolution process.

30.5 PARTIES TO CONTINUE WORKING DURING THE DISPUTE PROCESS

Work will continue as normal while this process is being followed.

30.6 URGENT MATTERS

Nothing in this clause prevents either party from referring a dispute to the Tribunal in respect of genuinely urgent matters.

PART 7 MISCELLANEOUS

31 ASSIGNMENT

Either party may, with the consent of the other party and the proposed assignee, assign their rights and obligations under this contract to another person (the assignee).

32 GOODWILL

Under no circumstances may the owner-driver:

- (a) Dispose of the vehicle referred to in clause 4.1 of the schedule to any other person and charge or receive goodwill;
- (b) Sell, or offer to sell, the rights under or in connection with this or any future contract in consideration of receiving goodwill;
- (c) Claim a right to introduce any new owner-driver to the work in question; or
- (d) Make any representation to any person, whether written or verbal, implied or direct, that the owner-driver has a right to do any of the above things.

“Goodwill” in this clause means any payment or benefit or a premium paid above the market price of the vehicle, however described, made or given, with the express or implied representation of the payer obtaining rights under this contract or any contract for services with the hirer.

33 ENTIRE AGREEMENT AND WAIVER

This contract, including the schedule, constitutes the entire agreement between the parties. None of the terms or conditions may be waived or varied unless the parties agree in writing. A waiver of any right by a party on one occasion does not oblige the party to agree to any further waiver on a subsequent occasion.

34 LAWS OF WESTERN AUSTRALIA APPLY

This contract is governed by the laws of Western Australia. The parties agree to the exclusive jurisdiction of the courts and tribunals of that State.

35 SERVICE OF NOTICES

All notices to be given under this contract will be given by ordinary post, hand delivery or (where specified in the schedule) by email to the relevant party's address for service of notices specified in clause 1 of the schedule.

SIGNED BY THE PARTIES

HIRER

ABN / ACN

**SIGNED FOR & ON BEHALF
OF THE HIRER**

NAME (PRINT)

DATE

OWNER-DRIVER

ABN / ACN

**SIGNED FOR & ON BEHALF
OF THE OWNER-DRIVER**

NAME (PRINT)

DATE

Disclaimer: The information contained in this publication is provided in good faith. The State shall in no way be liable for any loss sustained or incurred by anyone relying on the information (July 2018).

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