



## TENDER APPLICATION

**Closing Date:** Offers Close **Friday 21<sup>st</sup> May 2021 at 4:00pm (AEST)** (“Closing Date”)

**Date of Offer:** \_\_\_\_\_

**Vendor’s Agent:** [Grays e-Commerce Group Limited ACN 125 736 914] (as Agent for the Vendor), 376 Newbridge Road, Moorebank NSW 2170, Ph: [+61 2 9105 8000]; Fax: [+61 2 9105 8155]

**Tenderer:**

**Tenderer’s Name:** \_\_\_\_\_  
 (“Tenderer”)

**Tenderer ACN/ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Company Officer:** \_\_\_\_\_

**Phone No(s):** (mobile) \_\_\_\_\_ (work) \_\_\_\_\_

**Email and Fax No:** (email) \_\_\_\_\_ (fax) \_\_\_\_\_

**Contract:** This Tender Application comprises of:

- This cover page (“Cover Page”);
- Tender Application;
- Annexure 1 (Description of Equipment, Total Amount Offered & Transaction) (“Annexure 1”); and
- Annexure 2 (Terms and Conditions of Sale for Contract for Sale of Equipment) (“Annexure 2”),

(together these form the contract, “Contract”).

- For the purposes of Annexure 2, the Agent and the Tenderer are each a party (“Party”) and together the parties (“Parties”); and
- Annexure 1 and Annexure 2 are together referred to as the Annexures (“Annexures”).

**Enquiries: –**  
**Matthew Fraser on 0488 064 350 or [matthew.fraser@grays.com.au](mailto:matthew.fraser@grays.com.au)**

## TENDER APPLICATION

- (A) The Tenderer hereby submits its offer to purchase the Equipment (described in Annexure 1) ("**Equipment**") for the total amount offered by the Tenderer (as indicated by the Tenderer in row "E" of the Purchase Price Table in Annexure 1) ("**Total Amount Offered**") in accordance with the terms and conditions of the Contract ("**Tender**").
- (B) The Tenderer acknowledges and agrees that:
- (i) the Tender:
    - i. forms an irrevocable offer to purchase the Equipment by the Tenderer for the Total Amount Offered by the Tenderer from the vendor in accordance with the terms and conditions as outlined in the Annexures; and
    - ii. may only be withdrawn by the Tenderer with the prior written consent of the vendor and/or the Agent;
  - (ii) for its Tender Application to be validly submitted to the vendor and/or Agent it must:
    - i. complete the necessary information on the Cover Page, complete each row of the Purchase Price Table contained in Annexure 1 and sign the Tender Application; and
    - ii. submit its fully completed and signed Tender to the Agent (by way of fax, email or post – each of which are as set out on the Cover Page) prior to the Closing Date;
  - (iii) if the Tender is accepted by the vendor and/or the Agent and the Tenderer is therefore the successful Tenderer ("**Successful Tenderer**"), then it:
    - i. will receive a notification from the vendor and/or the Agent accepting the Tender. The date on which such notification is provided by the vendor and/or the Agent to the Successful Tenderer will be the contract date for the purposes of the Annexures ("**Contract Date**");
    - ii. must pay the Total Amount Offered which includes, among other amounts, a buyer's premium equivalent to 8.50% plus GST of the Offer Price (set out in row "A" of the Purchase Price Table contained in Annexure 1) ("**Buyer's Premium**") which will be retained by the Agent in accordance with the terms and conditions as outlined in the Annexures; and
    - iii. agrees to comply with and abide by the terms and conditions of sale as outlined in the Annexures;
  - (iv) in the event of a tender not being accepted, the vendor and/or the Agent reserve the right to negotiate with one or more of the tenderers to the exclusion of other tenderers;
  - (v) the vendor and/or the Agent may sell or withdraw from sale all or part of the Equipment at any time prior to the Closing Date and any tenderer (including, for the avoidance of doubt, the Tenderer) or proposed tenderer will have no claim against the vendor or the Agent by reason of the sale or withdrawal of all or part of the Equipment on or prior to the Closing Date; and
  - (vi) the vendor and/or the Agent is under no obligation to accept any tender (including, for the avoidance of doubt, this Tender).

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**This Contract is signed by the Tenderer's duly authorised representative:**

**Signed for and on behalf of the Tenderer,**

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## ANNEXURE 1 – DESCRIPTION OF EQUIPMENT, TOTAL AMOUNT OFFERED & TRANSACTION

Equipment	
<ul style="list-style-type: none"> <li>9x Terex/ Caterpillar MT4400 Dump Trucks and 2x Parts Trucks</li> </ul>	

Offer - Purchase Price payable by Successful Tenderer (“Purchase Price Table”)		
<b>A</b>	<b>Offer Price</b>	\$
<b>B</b>	<b>8.50% Buyers Premium</b>	\$
<b>C</b>	<b>Total of Column A &amp; B</b>	\$
<b>D</b>	<b>Plus GST (10% of Column C)</b>	\$
<b>E</b>	<b>Columns C plus D = Total Amount Offered</b>	\$

Transaction (to be entered into by the Successful Tenderer)	
<b>Purchaser:</b>	The Successful Tenderer is referred to as the “Purchaser” for the purposes of Annexure 2 (“Purchaser”)
<b>Equipment:</b>	Purchase and sale of each of the item(s) of Equipment
<b>Equipment Location:</b>	<b>Leigh Creek, SA (“Location”)</b>
<b>Removal Date:</b>	Successful Tenderer to remove Equipment (at its expense) from Location by appointment only (“Removal Date”)
<b>Transaction:</b>	The Vendor as the beneficial owner agrees to sell the Equipment to the Successful Tenderer and the Successful Tenderer agrees to buy the Equipment from the Vendor on the Completion Date for the Purchase Price on the terms and conditions of this Contract (“Transaction”)
<b>Note:</b>	Subject to any rights the Purchaser has under the Australian Consumer Law, the Equipment is generally sold “ <b>as is, where is, with all faults</b> ”. The age of some components of the Equipment may differ from the Equipment’s year of manufacture. It is the Successful Tenderer’s sole responsibility to: (a) read any information provided to the Purchaser by the Vendor and/or Agent to assess the suitability of the Equipment for the Purchaser, and to undertake all necessary steps to ensure that the Equipment and associated components meet all relevant certification requirements and Australian standards prior to use; and (b) supply all labour and craneage for loading as part of the Removal Work.
<b>Completion Date:</b>	<b>Deposit</b> - 1 Business Days after Offer is Accepted / <b>Final</b> - 5 Business Days after Deposit is Accepted (“Completion Date”)

Payment Terms (for Successful Tenderer)	
<b>Purchase Price:</b>	The Total Amount Offered (set out in row “E” of the Purchase Price Table) is due on the Completion Date. This Total Amount Offered is referred to as the “Purchase Price” for the purposes the Annexures (“Purchase Price”).
<b>Invoice:</b>	An Invoice will be issued to the Successful Tenderer by the Agent (“Invoice”).
<b>Deposit:</b>	A 10% deposit is payable by the Successful Tenderer within 24 hours of the Contract Date (“Deposit”). The Deposit will be held by the Agent as stakeholder pending completion of the Transaction.
<b>GST</b>	Goods and Services Tax (“GST”) is determined in accordance with <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (“GST Act”). If GST is payable in respect of the sale of the Equipment to the Successful Tenderer, then the Vendor and Agent may direct that the Purchase Price be increased by the amount necessary to take account of the GST.
<b>Payment terms:</b>	All payments required to be made by the Successful Tenderer must: (a) be paid in clear funds (Australian dollars) to the Agent; (b) be made by direct deposit to the Agent’s trust account (set out in the Invoice); and (c) comply with the requirements in the Invoice.
<b>Business Day:</b>	Business day means a day on which banks are open for business in the Location excluding a Saturday, Sunday or public holiday in that city (“Business Day”).

## **ANNEXURE 2- TERMS AND CONDITIONS OF CONTRACT FOR SALE OF EQUIPMENT**

The Parties agree as follows:

1. **Purchaser acknowledgements:** If a Purchaser is a consumer under the Australian Consumer Law (under the *Competition and Consumer Act 2010* (Cth)) ("**Australian Consumer Law**"), the Purchaser has certain non-excludable rights, including that goods are of an acceptable quality. Nothing in this Contract excludes or restricts any rights a Purchaser has under the Australian Consumer Law. Subject to this, the Purchaser acknowledges and agrees that:
  - (a) It has inspected, or has been given a reasonable opportunity to inspect, the Equipment (at its own risk) and has satisfied itself as to its condition.
  - (b) It will purchase the Equipment on an "as is, where is, with all faults" basis.
  - (c) No warranty, guarantee or representation is given by the Vendor or its Agent as to the condition of the Equipment or to any matter that may affect its future use.
  - (d) It is the Purchaser's responsibility, prior to commissioning or otherwise using the Equipment to: (i) carry out a risk assessment on the Equipment to identify safety hazards and then take appropriate remedial action; and (ii) take steps to ensure that the Equipment meets relevant certification requirements and Australian standards.
  - (e) The Vendor and its Agent will not be liable to the Purchaser or any other person for any losses, liabilities, damage, claims or costs arising out of or in connection with the Purchaser's failure to comply clause 1(d).
  - (f) While every effort has been made to ensure the accuracy of the descriptions of the Equipment, the Vendor and its Agent cannot warrant they are correct. The Equipment is not sold or deemed to be sold by brochure or advertisement descriptions (including descriptions set out on the Agent's website, www.grays.com).
2. **Transaction:** On the Completion Date, the Vendor will sell, and the Purchaser must buy, the Equipment on the terms set out in this Contract.
3. **Purchase Price:** The Purchaser must pay the Purchase Price to the Agent by the Completion Date in the manner set out on the cover page.
4. **Passing of risk and title:** Until the full payment of the Purchase Price has been received and cleared by the Agent, all title, risk and property in the Equipment will not pass to the Purchaser. The date on which all title, risk and property in the Equipment passes from the Vendor to the Purchaser under this clause is the "**Transfer Date**". The Purchaser agrees to maintain appropriate levels of insurance on the Equipment throughout the period during which it bears the risk of loss under this clause.
5. **Security Interest:** The Purchaser agrees and acknowledges that:
  - (a) Subject to clause 5(b) and (c), before, on and after the Transfer Date, the Equipment may be subject to a Security Interest.
  - (b) If a Security Interest has been granted by the Vendor, then the Vendor will procure the relevant secured party to release that Security Interest ("**Release**").
  - (c) If the Security Interest granted by the Vendor is registered on the Personal Property Securities Register ("**PPSR**") established under the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") and if that registration specifically describes the Equipment (in whole or part), then the Vendor will procure the relevant secured party to register a financing change statement in respect of the Equipment to reflect the Release within the time periods required under the PPSA (or such other period as agreed between the parties).
  - (d) Prior to entering into the Contract, it has made its own enquires and investigations (including PPSR searches) at its own cost, in relation to any Security Interests.
  - (e) "**Security Interest**" means any security interest (including a "security interest" as defined under the PPSA) held by a secured party in respect of the Equipment.
6. **Default:** If the Purchaser fails to comply with any of its obligations under this Contract in a material respect, then after reasonable notice from the Agent:
  - (a) the Vendor may retain any Deposit paid and/or any other monies paid by the Purchaser under this Contract;
  - (b) the Vendor and its Agent has the right to resell the Equipment in any manner and upon such terms and conditions that they may think fit; and
  - (c) the Agent is entitled to terminate this Contract.All expenses reasonably and actually incurred by the Vendor and its Agent resulting from any resale pursuant to this clause shall be recoverable from the Purchaser.
7. **Limitation of liability:**
  - (a) If the Purchaser is a consumer under the Australian Consumer Law, the Purchaser has certain non-excludable rights. Nothing in this Contract excludes or restricts any rights a Purchaser has under the Australian Consumer Law. Further, nothing in this Contract excludes, restricts or modifies any condition, warranty, right or liability implied in this Contract or protected by law to the extent that such exclusion, restriction or modification would render this Contract or any provision of this Contract void, illegal or unenforceable.
  - (b) Subject to clause 7(a), any condition, warranty, representations, right or liability which would otherwise be implied in this Contract or protected by law is excluded.
  - (c) Subject to clause 7(a), the Purchaser acknowledges and agrees that:
    - (i) prior to completing the purchase of the Equipment, it has been given a reasonable opportunity to examine and satisfy itself regarding the Equipment and it has availed itself of that opportunity;
    - (ii) at no time prior to the purchase of the Equipment has it relied on the skill or judgment of the Vendor or its Agent and that it would be unreasonable for it to rely on any such skill or judgment; and
    - (iii) where the acquisition of the Equipment has been made by reference to a demonstration model, prior to entering into this Contract it has been given a reasonable opportunity to:
      - A. satisfy itself that the Equipment corresponds with the demonstration model as to quality, state and condition; and
      - B. examine the demonstration model for any apparent defects, and that it has availed itself of that opportunity.
  - (d) The application of the *United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention)* to this Contract (by virtue of any law relevant to this Contract) is excluded.
  - (e) Pursuant to section 64A of the Australian Consumer Law:
    - (i) this sub-clause applies in respect of the Equipment or Services supplied under this Transaction which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this sub-clause will not apply if the parties establish that reliance on it would not be fair and reasonable; and
    - (ii) liability for breach of a guarantee conferred by the Australian Consumer Law, other than those conferred by sections 51–53 of that law, is limited:
      - A. in the case of the Equipment, to any one of the following as determined by the Agent:
        1. the replacement of the Equipment or the supply of equivalent Equipment; or
        2. the repair of the Equipment; or
        3. the payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or
        4. the payment of the cost of having the Equipment repaired;
      - B. in the case of Services, to any one of the following as determined by the Agent:
        1. supplying of the Services again; or
        2. the payment of the cost of having the Services supplied again.
  - (f) Subject to clause 7(a), and except in relation to liability for personal injury (including sickness and death), and/or liability caused by the gross negligence or wilful misconduct of the Vendor and/or its Agent, the Vendor and its Agent will have no liability to the Purchaser in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly because of the Purchaser's purchase of the Equipment.
  - (g) The Purchaser acknowledges that to the extent the Vendor or its Agent has made any representation which is not otherwise expressly stated in the item listing, the Purchaser has been provided with an opportunity to independently verify the accuracy of that representation.
  - (h) Each Party is under a duty to mitigate any damages or loss suffered or incurred as a result of a failure of the Equipment.
  - (i) Subject to this Contract and Australian Consumer Law, the aggregate liability of the Vendor and the Agent in respect of

any claim for loss or damage sustained by the Purchaser or any third party under or in connection with this Transaction and the Equipment (whether under statute, in contract or in tort, including for negligence, or otherwise), or through use of the Service, is limited to the payment of the cost of replacing the Equipment with equivalent equipment or having the Equipment repaired or with respect to the use of the Service, supplying the Services again.

8. **GST:** The Purchaser warrants that, if required under the GST Act, it is registered or required to be registered for GST and will remain so until completion of the Transaction.

9. **Purchaser's indemnities:** The Purchaser hereby:

- (a) Indemnifies the Vendor and its Agent from all claims or proceedings which may be brought against the Vendor or its Agent which in any way arise out of or are connected with the collection of the Equipment from the Location including without limitation, any claims by the owners of the properties in connection with any damage suffered or caused to these premises located at the Location, except to the extent that any claim arises directly from the negligence or wilful misconduct of the Agent and/or Vendor.
- (b) Waives, releases, discharges and relinquishes any and all claims that the Purchaser now has or may have against the Agent, the Agent's affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives ("**Indemnified Parties**") which are connected with, arise out of, relate to or are incidental to the use of any service offered by the Agent (including the online sales process) ("**Services**"), except to the extent that any claim arises directly from the Agent's fraud, negligence or wilful misconduct.
- (c) Indemnifies and holds the Agent and the Indemnified Parties harmless from and against any and all claims, loss, damage, tax, liability and/or expense that may be incurred by the Indemnified Parties arising out of or in connection with the Purchaser's negligence, wilful misconduct or breach of this Contract, including any legal costs, fees and expenses of defending themselves against any claim by any or all of the parties to any transaction and/or by any other person.
- (d) Indemnifies and holds the Agent and the Indemnified Parties harmless from any claim or demand, including legal fees on a full indemnity basis, made by any third party due to or arising out of a breach of this Contract by the Purchaser.

10. **Removal conditions:** The Purchaser acknowledges and agrees that:

- (a) **Removal:** It must dismantle, collect and remove (including transport) the Equipment purchased from the Location ("**Removal Work**") (at its own risk, cost and expense) once the Transfer Date has occurred and by the Removal Date.
- (b) **Removal Date:** It will make its own arrangements to complete the Removal Work by the Removal Date unless an extension is agreed in writing with the Agent.
- (c) **Uncollected goods:** Subject to any applicable legislation governing the disposal of uncollected goods, if the Equipment is not removed by the Removal Date (or Agent approved extension date), and after notice to the Purchaser, the Equipment shall be deemed to be abandoned and will be reclaimed by the Vendor and no refund of monies paid will be made.
- (d) **Appointment:** The Equipment can only be removed from the Location by the Purchaser by prior appointment (between 8.00am to 4.00pm on Business Days), unless otherwise arranged with the Agent. Unauthorised entry to the Location is prohibited.
- (e) **No damage:** It will use all care and skill to complete the Removal Work without causing any damage to the surrounding buildings, structures and equipment. It shall not cause damage or injury to or permit damage or injury to be caused to any equipment, machinery, structures, fixtures and fittings or any other property of the Vendor, the Agent or any other person on or near the Location. Any damage, breakage or injury caused by the Purchaser, its employees, agents or contractors ("**Personnel**") shall be made good by the Purchaser at its expense.
- (f) **Agent's requirements:** Prior to commencement of the Removal Work, the Purchaser must comply with the Agent's reasonable requirements for Removal Work. The Agent will advise the Purchaser if the Vendor requires craneage liftage and platform supports. If required, these will be accessed by the Agent prior to and during the Removal Work.
- (g) **Site safety:** Upon entering the Location, it will be required to conform to site safety and environmental regulations as

stipulated by the Agent which details the Purchaser's responsibilities regarding inspections and Removal Work.

- (h) **Personnel used:** It will be required to provide the Agent with details of its Personnel to be used in the Removal Work and the Agent reserves the right to reasonably refuse entry to or the use of any Personnel which do not have the Agent's approval.
- (i) **Safe work:** It shall enforce safe work practices on its Personnel and ensure compliance with all laws relating to the Location and the Removal Work.
- (j) **No drugs and alcohol:** Alcohol, drugs and other substances are strictly prohibited on the Location. The Purchaser and its Personnel must present themselves in a state free from the effects of any substance. All parties attending the Location may be subject to random drug and alcohol testing.
- (k) **Condition:** It shall ensure that the Location is kept in a clean and tidy condition and shall remove all rubbish it and its Personnel accumulate during their activities at the Location. If the Purchaser fails to comply with this clause then after giving notice of intention, the Agent may arrange for any cleaning reasonably required to be carried out at the Purchaser's expense and the cost will become a debt owed by the Purchaser to the Agent.
- (l) **No inconvenience:** It shall complete the Removal Work in such a way as to ensure so far as reasonably practicable no inconvenience is caused to the Agent or the Vendor and that all roads surrounding the Location and Location access are kept free of blockage and obstruction at all times.
- (m) **Tools and equipment:** All plant, tools and equipment used by the Purchaser and its Personnel on or around the Location shall be selected and maintained in a fully serviced and safe condition. The Purchaser and its Personnel must make such plant, tools and equipment available for inspection by the Agent's safety officer prior to commencing the Removal Work. Any item which does not meet the Agent's and/or statutory requirements must be removed immediately from the Location.
- (n) **Insurance:** It shall produce written evidence (such as a certificate of currency) to the satisfaction of the Agent prior to commencing the Removal Work that it has arranged adequate insurance cover in respect of any liability arising out of the Removal Work.

11. **Environmental management:** The Purchaser acknowledges and agrees that it will:

- (a) **Environmental policy compliance:** Ensure that the Removal Work is carried out strictly in accordance with the Agent's and/or Vendor's (whichever is applicable) environmental policies (if any) which is made accessible to the Purchaser upon request.
- (b) **Contaminants:** Accept full responsibility for any contaminants and pollutants which may be reasonably and foreseeably associated with the Equipment or with any container, vessel or other equipment of the Purchaser or its Personnel. Such contaminants and pollutants include but are not limited to hydraulic oil, motor oil, greases, solvent, acids, garbage and other materials. The Purchaser must transport these to an approved site or as directed by the Agent. Any spillage of any contaminants or pollutants shall be cleaned up to the satisfaction of the Agent and at the cost of the Purchaser.
- (c) **Prohibited conduct:** Not permit its Personnel, without the approval of the Agent, to do any of the following at the Location: (i) start fires of any type; (ii) dig or cut any excavations; (iii) drive vehicles off-road; (iv) dispose of solid and liquid waste in other than prescribed or approved areas; or (v) bring firearms or animals on the Location.

12. **Duties:** The Purchaser must pay all duty (being any stamp, transaction or registration duty or similar charge imposed by any government agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them) assessed in respect of the Equipment and the execution, delivery and performance of this Contract.

13. **Costs and expenses:** Unless otherwise provided in this Contract, each Party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this Contract. Any action to be taken by the Purchaser or the Agent in performing its obligations under this Contract must be taken at its own cost and expense unless otherwise provided in this Contract.

14. **Entire agreement:** Goods are provided and services are supplied on the terms expressly set out in this Contract and subject to non-excludable rights under the *Competition and Consumer Act 2010*

(Cth). Other representations or statements made by the Vendor or the Agent to the Purchaser, howsoever made, are not part of this Contract. However, the Purchaser may have other legal rights in relation to those representations.

**15. Invalidity and enforceability:**

- a. If any provision of this Contract is invalid under the law of any applicable jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- b. Paragraph (a) does not apply where enforcement of the provision of this Contract in accordance with paragraph (a) would materially affect the nature or effect of the Parties' obligations under this Contract.

**16. Governing law and jurisdiction:** This Contract is governed by the laws in force in the State or Territory of the Location. Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State or Territory of the Location and courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.