



Allquip Rentals Pty Ltd
 PO Box 265
 Noosa Heads, QLD 4567
 ABN: 17 608 219 138

CREDIT ACCOUNT APPLICATION

30 Days End of Month - Including Conditions of Hire, Guarantee and Indemnity

BUSINESS ACCOUNT DETAILS			
Full Company Name:			
Trading Name:			
Sole trader: <input type="checkbox"/>	Partnership: <input type="checkbox"/>	Pty Ltd Company: <input type="checkbox"/>	Other: <input type="checkbox"/>
ABN:		ACN:	
Type Of Business:			Years in Business:
Registered Address:			
City:		State:	Postcode:
Phone:		E-mail:	
Postal Address:			
City:		State:	Postcode:
CREDIT LIMIT			
Expected Monthly Expenditure: \$			
Credit Limit: \$			
Credit Limit would normally be two times your Expected Monthly Expenditure to cover 60 days of trading			
ACCOUNTS PAYABLE			
Contact Name:			Phone:
E-mail:			Mobile:
Trading Bank:		Branch:	
BSB:		Account Number:	
DAMAGE WAIVER			
Yes I am Insured and have Certificate Attached: <input type="checkbox"/>			No I am not Insured: <input type="checkbox"/>
Damage Waiver of 12.5% will be charged until a Certificate of Currency of Insurance Covering Hire in Plant & Equipment is Presented to Allquip Rentals. Please refer to section 1,3 & 5 in our Terms & Conditions			
BUSINESS/TRADE REFERENCES			
Company:		Company:	
Contact:		Contact:	
Phone:		Phone:	
Email:		Email:	
Company:		Company:	
Contact:		Contact:	
Phone:		Phone:	
Email:		Email:	

In consideration of Us agreeing to consider Your credit application, you agree that if We process Your credit application and give written notice of Our approval of a credit account for You, then You agree to be bound by the terms and conditions set out in this application for each and every transaction and dealing between You and Us. You also agree to be bound by Our Conditions of Hire, as amended from time to time, for each and every transaction and dealing between You and Us.

SECTION A – GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the Guarantor/s in favour of Allquip Rentals Pty Ltd t/as Allquip Rentals and includes their successors and assigns (**Supplier**).

Full Name of Director:
Address of Director:
Full Name of Director:
Address of Director:
Full Name of Director:
Address of Director:
Full Name of Director:
Address of Director:

(the Guarantor/s)

INTRODUCTION

- A. The Guarantor/s have asked the Supplier to supply the Equipment to the applicant named in this Agreement and to extend (or continue to extend) credit to the applicant named in the Credit Application (the Customer).
- B. The Supplier has agreed to the request of the Guarantor/s in consideration of their agreement as follows:

IT IS AGREED:

1. The Guarantor/s guarantee to the Supplier the punctual payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Equipment) which are now owing or may from time to time be owing by the Customer to the Supplier (Amount Owing).
2. The Guarantor/s acknowledge and agree that the Amount Owing includes any legal and other costs and expenses incurred or to be incurred by the Supplier in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantor/s.
3. If there is more than one guarantor, the Guarantors are jointly and severally liable to the Supplier for the Amount Owing.
4. For the purpose of securing payment of the Amount Owing, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge a caveat upon title of the Guarantor/s real property.
5. The Guarantor/s shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.
6. The obligations of the Guarantor/s under this Guarantee and Indemnity are principal obligations and are not affected by:
 - a. any variation which may be agreed by the Supplier and the Customer in respect of the terms on which the Equipment is delivered and/or hire of Equipment are provided and paid for.
 - b. any waiver, extension of time or indulgence given by the Supplier to the Customer or a Guarantor.
 - c. any right or claim which the Customer may assert to resist making payment of any part of the Amount Owing,
 - d. any increase in the amount of the Amount Owing.
 - e. any failure or omission by the Supplier to give notice to the Guarantor/s of any default by the Customer, for any act, omission, matter or other thing whatsoever.
7. This Guarantee and Indemnity is a continuing obligation of each Guarantor/s for the amount of the Amount Owing which may be owing from time to time and, binds the successors and assigns of the Guarantor/s and will not be affected by:
 - a. the death, incapacity, bankruptcy, of a Guarantor or the Customer; or
 - b. a Guarantor or the Customer which is a company becoming an externally administered company pursuant to the Corporations Act 2001(Cth).
8. If the obligation of any Guarantor in respect of any part of the Amount Owing is unenforceable, the Guarantor’s obligations in respect of the balance of the Amount Owing will not be affected by such unenforceability.

9. If all or any of the Amount Owing is:
- not recoverable from the Customer; or
 - not recoverable from a Guarantor under this Guarantee and Indemnity; each of the Guarantor/s, as a separate and principal obligation, indemnifies the Supplier against any loss, liability, expense or outgoing suffered, paid or incurred by the Supplier in relation to such amounts and must pay the Supplier an amount equal to such amounts.
10. For the avoidance of doubt, it is expressly acknowledged by the Guarantor/s that the Guarantor/s' obligations extend to and may include Amount Owing and other obligations of the Customer which have arisen before or after the date of this Guarantee. 11. The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Guarantee by notice in writing to the Guarantor/s. The Guarantor/s agrees that any order for Equipment submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.
11. This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of Queensland.

SIGNED by

Guarantor:

WITNESSED by:

(1) Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

(2) Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

SECTION B – DECLARATION & AUTHORITY

- By Signing this Application, you agree to be bound by Our Terms & Conditions of Hire set out below and on our website.
- You Promise the information provided to Us by You is accurate, honest, true & correct.
- In accordance with the *Privacy Act 1988 (Cth)* You authorise Us to exchange with credit providers, credit reporting agencies and credit providers named in reports issued by those agencies, information about Your credit, including your personal or commercial activities or credit worthiness, including Your credit performance with Us.
- You confirm that You are authorised by the Customer to Complete this Credit Account Application.

AUTHORISED REPRESENTATIVE SIGNATURE

Signed for and on behalf of: (Companies Full Legal Name)	
Signature	
Full Name	
Position	
Date	

SECTION C - TERMS AND CONDITIONS

THIS CREDIT APPLICATION IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Definitions

Credit Application means Our formal Credit Application for the provision of Our Equipment on rental hire on account.

Credit Approved means You have properly completed a Credit Application that We have approved in writing, in our sole discretion.

Damage Waiver Amount means an additional 12.5% of the Hire Fee total that You elect to pay, being the consideration for our agreement to limit Your liability for physical loss or damage to Our Equipment in certain circumstances. It is agreed that this is not insurance.

Equipment means the buildings, machinery, plant and equipment listed in the Rental Agreement including parts, tools or accessories.

Guarantee and Indemnity means the guarantee and indemnity referred to in Section B of this Credit Application.

Guarantor means that person (or persons) or entity who agrees herein to be liable for the Hire Fees and any amounts owing and includes all directors of the company named in the Credit Application and where the entity named in the Credit Application is a trust all trustees of the trust and all directors of the trustee if there is a corporate trustee.

Hire Fees means the hire rates for the Equipment as determined by Us for the Hire Period, the Damage Waiver Amount (if applicable), any GST, fee/s for registering a security interest on the Personal Property Securities Register, transfer duty, tolls, fines, penalties, levies or freight and other charges. We reserve the right to change the Hire Fees in accordance with any changes to our standard pricing for the Equipment. The hire rates for the Equipment will be indicated on any invoice, tender, quotation and/or delivery docket.

Hire Period means the period commencing when You collect the Equipment or the Equipment is loaded by the Supplier onto any vehicle for delivery to You and will continue until the Equipment is back in Our possession and control and fit for the purpose of hire again, and includes all weekends and public holidays during that period.

PPSA means *Personal Property Securities Act (Cth) 2009*

Rental Agreement means these terms and conditions of hire, any Credit Application, Guarantee & Indemnity, quotation, hire contract, special terms or other documentation between the parties including any document that records the Hire Period and the Hire Fees for the Equipment.

Vehicle means Equipment that is a truck, utility or trailer including accessories but does not include Equipment like a scissor lift or bobcat.

We/Us/Our means Allquip Rentals Pty Ltd ABN 17 608 219 138, the owner of the Equipment

You/Your means the person/s, partnership, trustee of a trust, company or entity (including agents, employees or contractors) hiring Our Equipment, as listed in the Rental Agreement or Credit Application

2. Hire of Our Equipment

2.1 You are entitled to use the Equipment for the Hire Period.

2.2 Any extension of the Hire Period must be agreed to by Us.

2.3 A minimum Hire Period may apply as detailed in Clause 2.6 below. If such a minimum period applies, we will notify You.

2.4 If the Equipment is hired on a wet-hire basis, the terms of the Rental Agreement apply in its entirety except where damage or fines result from the negligent operation of the operation. In such case the costs of the damage and fines will be proportioned according to responsibility for the damage/fines.

2.5 You must pay Us the Hire Fees set out in the Rental Agreement for the full Hire Period. You are not entitled to any discount or rebate if the Equipment is not used by You for the entire Hire Period. We reserve the right to amend the Hire Fees in accordance with any changes to our standard pricing for the Equipment. Additional Hire Fees may apply if the Equipment is used for more than the hours listed below unless otherwise agreed.

2.6 Minimum hire hours for all equipment are: -

(a) Daily – 8 hours

(b) Weekly – 40 hours

(c) Monthly – 176 hours

3. Payment for Your Hire

3.1 Unless You are Credit Approved, the Hire Fees must be paid to Us prior to the start of the Hire Period.

3.2 If You are Credit Approved You must pay Your accounts within 30 days from the end of the month of the date of issue.

3.3 We may withdraw Your credit facilities at any time or vary Your credit limit, without notice to You or any Guarantor.

3.4 If You exceed your credit limit this is a breach of these terms, and We may take any action in accordance with Clause 6. In the event that You exceed Your credit limit and if We supply further Equipment to You this does not constitute acceptance or approval of any credit limit increase and We may enforce any of our rights pursuant to the Rental Agreement including any rights set out in Clause 6.

3.5 You agree that We may debit Your credit card, as provided in Section C, in accordance with terms of payment between Us and You, to satisfy any part or all of the monies payable by You to Us for the Equipment.

3.6 At Our sole discretion, a non-refundable deposit may be required from You.

3.7 If You want to return the Equipment before the end of the Hire Period, we may revise the Hire Fees payable by You from the start of the Hire Period to account for the reduction to the Hire Period, in our sole discretion.

3.8 Payment of the Hire Fees must be made by cash, or by cheque, bank cheque, or by direct credit or by credit card.

3.9 The Hire Fees shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by Us.

4. Other Charges

4.1 A cancellation fee may be charged by Us where the Equipment has been reserved by booking and You cancel the booking without reasonable notice or fail to take delivery of the Equipment.

4.2 We may charge You a fee of 1.5% of the Hire Fee for accepting payment by credit card.

4.3 If You return the Equipment after the end of the Hire Period, you will be charged a minimum of an additional full day hire. You will remain liable to be charged for the Equipment until it is returned to Us.

4.4 You are responsible for the payment of parking fines, tolls or any traffic violations, including penalties for any vehicles hired to You where the Equipment or

any part thereof is a Vehicle and the parking fines, or traffic violations or penalties are incurred on the Vehicle during the Hire Period and even if the fines or penalties are received after the Hire Period.

4.5 In addition to the Hire Fees and subject to Clause 7.2, You are responsible for any physical damage to the Equipment, reasonable fees associated with any necessary cleaning on return of the Equipment (if the Equipment is not returned in clean, good working order), charges for delivery and collection and installation, the costs for changing out equipment and mobilisation/demobilisation costs, consumables (including but not limited to fuel), any costs of operation training requested by You and any tax and government charges, levies or fines (including any environmental levy).

4.6 If You require Us to deliver the Equipment at the start of the Rental Period and/or collect the Equipment at the end of the Rental Period We will charge You an additional delivery fee.

5. Security Obligations

5.1 You charge in favour of Us any legal, equitable and beneficial interest in real property which You own now (or acquire after the date of the Rental Agreement) as security for any and all monies owed to Us and hereby authorise and consent to Us registering and maintaining a caveat over Your real property.

5.2 You shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed.

5.3 You indemnify us from and against all of Our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Our rights under this Clause.

5.4 You warrant that the Credit Application is required for Your business or commercial purposes and will not be used for personal, domestic or household purposes.

6. Default by You and Termination

6.1 If You do not pay the Higher Fees in full by the due date or if You and/or any Director goes into bankruptcy or is wound up or if You breach any of these terms, then all monies payable by You to Us shall become immediately due and payable notwithstanding the due date for payment shall not have expired and, without prejudice to any other rights, You agree that We may do all or any of the following:

(a) withdraw any credit facilities which may have been extended to You;

(b) enter any premises where the Equipment is situated and recover the Equipment;

(c) cease to supply any further Equipment to You;

(d) charge You, in addition to any other costs recoverable under the Rental Agreement, a late payment fee of 2% per month, compounding monthly; OR interest calculated monthly on the total outstanding balance. The interest rate used to calculate the interest payable is the 90-day Bank Bill Swap Rate as at the first business day of the month in which payment is due plus 5%; and

(e) charge You 100% of all costs and expenses incurred by Us in recovering any unpaid amounts under this Rental Agreement including any amounts payable to any commercial or mercantile agents and any legal costs on a solicitor and own client basis.

(f) sue for recovery of any damages or changes or loss suffered by Us and/or to cancel any insurances effective in respect of the Equipment.

6.2 We may terminate the Rental Agreement with immediate effect by serving a written notice if you commit a breach of the Rental Agreement which You do not remedy the breach within 5 Business Days of receiving written notice of the breach.

6.3 We may also terminate the Rental Agreement at any time for convenience by giving You at least 24 hours' notice. The right of termination is in addition to any other rights under the Agreement.

7. Lost, Stolen or Damaged Equipment

7.1 You are responsible for the Equipment and any accessories and tools during the Hire Period. If the Equipment is lost, stolen or damaged during the Hire Period or becomes unsafe to use due to any act or omission by You, you are liable to Us for and must indemnify Us for:

(a) the full cost of either repairing the Equipment or replacing the Equipment with new equipment, as determined by Us in Our sole and absolute discretion; and

(b) any other costs whatsoever arising from or in connection with the loss, theft or damage to the Equipment; and

(c) any lost revenue to Us arising from or in connection with the loss, theft or damage to the Equipment.

7.2 If You have paid the Damage Waiver Amount, your liability is limited as provided in clause 8 below.

7.3 You are liable for the payment of the new list price of any Equipment not returned to Us.

7.4 If the Equipment is damaged, you must notify Us within 24 hours of becoming aware of the damage.

7.5 If there is a breakdown or failure of the Equipment You must immediately stop using the Equipment and notify Us in writing.

7.6 You must take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Equipment.

7.7 You must take all necessary steps to prevent any further damage to the Equipment itself.

7.8 You must not repair or attempt to repair the Equipment.

8. Damage Waiver Amount

8.1 If You elect not to pay the Damage Waiver Amount, You must insure the Equipment and provide to Us before the Hire Period starts a certificate of currency for an appropriate policy of insurance that covers physical loss or damage and theft to the Equipment during the Hire Period for any amount not less than the full new replacement value of the Equipment. If required by Us, you must also take out and maintain, for the duration of the Hire Period, insurance for the Equipment which will be used offshore, over water or in underground mines. Such insurance must include Us as an insured so that We are deemed a separate insured under the policy and contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.

- 8.2 Subject to Clauses 8.4-8.5, if You elect to pay the Damage Waiver Amount We agree to limit Your liability for the physical loss or damage and theft of the Equipment during the Hire Period if You submit to Us within 5 business days a written Police report of the loss or damage and any other written or photographic evidence and you pay the Damage Waiver Amount. You are responsible to pay any excess payable by Us to Our Insurer on any claim made for the Equipment by Us pursuant to Our policy of insurance, and/or for any shortfall between the sum insured and the actual full new replacement value of the Equipment. Where any such excess and/or shortfall in the sum insured is payable by Us, we will deliver an account to You for the excess and/or shortfall and You must make payment of that account within 7 days.
- 8.3 Clause 8.2 in no way entitles You to, or implies the availability of, compensation from Us for any liability incurred by You in relation to the use of the Equipment.
- 8.4 Our responsibility under clause 8.2 will not continue if the loss or damage:
- has arisen as a result of Your breach of the Rental Agreement.
 - has been caused by Your negligence.
 - has been caused by theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to; hoses, drills, grease guns, electric tyres and tubes;
 - has arisen due to the lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of You under the Rental Agreement;
 - has been caused by Your disregard for instructions given to You by Us in respect of the proper use of the Equipment or in contradiction of the Manufacturer's Instructions (including intended purpose of use) if supplied with the Equipment at the start of the Hire Period;
 - has arisen due to any unexplained disappearances of the Equipment.
 - has been caused by theft of the Equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, and where proper security is not used by You to secure the Equipment whilst it is left unattended.
 - has arisen out of Your use of the Equipment or Vehicle in, on, under or over water without express written permission by Us.
 - has arisen out of Your use of the Equipment or Vehicle in forestry activities without express written permission by Us.
 - has arisen out of Your use of the Equipment or Vehicle in underground activities without express written permission by Us.
 - has arisen out of Your loading or off loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of the Equipment on any wharf or bridge or over any body of water; or
 - if the Equipment is or includes a Vehicle, has arisen out of.
 - Driving the Vehicle under or into an object lower than the height of the Vehicle.
 - Damage to tyres (including, punctures, bursts, cuts and abrasions), the underbelly of the Vehicle when no other vehicle is involved, windscreens or headlights (including chipping).
 - Damage caused while the Vehicle is being driven or towed upon a road that is unsealed or not a public road.
 - Damage caused by total or partial immersion in water regardless of cause; or
 - Damage to the interior of the vehicle including the need for professional cleaning or deodorising.
- 8.5 Our responsibility under clause 8.2 will not apply in the event of an on-hire agreement being entered into between You and a third party without Our express written permission.
- 9 Your Use, Operation and Maintenance of Our Equipment**
- 9.1 You agree that the use of the Equipment carries with it dangers and risks of injury and You agree to accept all dangers and risks.
- 9.2 You agree that the Equipment will be used in accordance with the conditions outlined in the Rental Agreement.
- 9.3 Your vehicle is suitable for towing the Equipment if required.
- 9.4 You agree that the Equipment has been received by You in a clean and good working order.
- 9.5 You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time without Our express written permission.
- 9.6 You must ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required that the operator shall hold a valid Certificate of Competency and/or be fully licensed to use the Equipment.
- 9.7 You agree, at your own cost, to operate, maintain, store and transport the Equipment strictly in accordance with any instruction provided by Us and with due care and diligence.
- 9.8 You agree to clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturers and Our instructions at Your cost.
- 9.9 You agree that You will ensure that the Equipment will be stored in a safe and secure environment and where available to store the Equipment in locked yards, buildings or sheds.
- 9.10 You agree that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by Us or posted on the Equipment in regard to its operation, maintenance and storage.
- 9.11 You agree to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.
- 9.12 You agree that if the Equipment includes a Vehicle that;
- any driver of a Vehicle must hold a valid unrestricted licence to drive that class of vehicle and must never have been refused motor vehicle insurance.
 - at no time shall any driver of a Vehicle have a breath or blood alcohol concentration exceeding the maximum lawful concentration or be under the influence of any drug or toxin or illegal substance.
 - the Vehicle shall only be operated with tyre pressure, fluid and fuel maintained to the proper levels.
 - the Vehicle shall not be operated in circumstances where recommended or legal load limits are being exceeded.
 - the Vehicle shall not be used to tow or propel a vehicle other than a trailer within recommended limits.
- no illegal, prohibited or dangerous substances will be used or carried in the vehicle.
 - the Vehicle shall not be used to travel outside the State or Territory where the Vehicle is hired without Our expressed prior written permission.
 - the Vehicle shall not be used for any illegal purpose.
 - the Vehicle shall not be taken or used on any beaches or in salt water without Our expressed prior written permission.
 - the Vehicle shall not without Our prior written permission be altered, tampered with, repaired or modified in any way nor shall any other person be permitted so to do; and
 - in the event of a motor vehicle accident, you are responsible for all motor vehicle insurance excesses including additional excesses payable where any driver is under the age of 25 years and the total cost of repairing damage:
 - to tyres.
 - caused other than by the normal use of the Vehicle.
 - caused while the Vehicle is being driven on any road that is unsealed or is not a public road; or
 - caused while You are in breach of any clause of these terms.
 - In the event that a Vehicle is lost, stolen or damaged (not through a motor accident) during the Hire Period, you are liable to pay the amount to replace or repair the Vehicle, except where You pay the Damage Waiver Amount in which case Your liability is subject to Clause 8.
- 10. On-hire to Third Parties**
- 10.1 You must not on-hire the Equipment to any third party without Our prior written permission. In the event of a third party on-hire being agreed, you shall remain liable to Us as per the terms of the Rental Agreement as though the on-hire agreement did not exist.
- 10.2 Any agreement by Us to You entering into an on-hire agreement with a third party, shall be subject to the third party agreeing to operate under the same terms and conditions as contained in the Rental Agreement.
- 11 Our Preventative Maintenance**
- 11.1 We may undertake preventative maintenance on the Equipment and on doing so will charge You a per kilometre charge for distances travelled exceeding 50kms (round trip) plus the consumables and labour involved in the preventative maintenance.
- 11.2 For the avoidance of doubt, you remain responsible for the daily maintenance and care of the Equipment in accordance with the Rental Agreement, notwithstanding Our election to provide preventative maintenance.
- 12 Repair of the Equipment**
- 12.1 We will upon receiving notice of the breakdown or failure of the Equipment (provided that there is no misuse, recklessness or negligence on Your part) take all necessary steps to repair or have the Equipment repaired or will provide a suitable replacement as soon as reasonably possible after receiving notification from You. The delivery costs of providing replacement Equipment will be at Our expense.
- 12.2 We will not be liable for any expenditure, damages, losses, costs or inconvenience incurred by You arising from a breakdown of the Equipment however caused, including as a result of Us requiring time to assess, repair and/or replace the Equipment.
- 13 Limitation of Liability and Indemnity**
- 13.1 Both parties agree that all Equipment and their use shall be at Your sole risk, and We will not be liable for any loss, damage or injury that You may incur or that may arise from any cause whatsoever including any fault or other defect in the Equipment.
- 13.2 You accept full responsibility for, and indemnify Us against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment however arising, whether from Your negligence or that of Ours and without limiting the foregoing whether or not the Equipment were being operated or transported by an agent or servant of Ours or any other person for whose acts We may be held to be responsible for.
- 13.3 You agree to indemnify Us for any costs or loss, or damage incurred in recovering the Equipment, whether the Equipment was abandoned, unlawfully detained or otherwise not returned to Us in accordance with these terms.
- 13.4 To the extent permitted by law all conditions, warranties and undertakings are expressly excluded. Any liability of Us pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the Equipment or for the cost of resupplying the Equipment at Our sole discretion.
- 14 Personal Property Securities Act 2009 (PPSA) & Related Regulations**
- 14.1 In this clause: a) financing statement has the meaning given to it by the PPSA; b) financing change statement has the meaning given to it by the PPSA; c) security agreement means the security agreement under the PPSA created between You and Us by these terms; and d) security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms in writing You acknowledge and agree that these terms:
- constitute a security agreement for the purposes of the PPSA; and
 - create a security interest in all Equipment previously supplied. (sold, hired or otherwise) by Us to You (if any) and all Equipment that will be supplied (sold, hired or otherwise) in the future by Us to You.
- 14.3 You undertake to: (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which We may reasonably require to register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register (PPSR); register any other document required to be registered by the PPSA; correct a defect in a statement referred to in clause 14.1(a) or 14.1 (b); and/or comply with section 275 of the PPSA. (b) indemnify, and upon demand reimburse, us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby.
- not register a financing change statement in respect of a security interest without Our prior written consent.

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent; and (e) immediately advise Us of any material change in Your business practices of selling Equipment which would result in a change in the nature of proceeds derived from such sales.
- 14.4 The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms.
- 14.5 You hereby waive Your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 You waive Your rights as a grantor and/or any amount owing or under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by Us, you waive Your right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 You shall unconditionally ratify any actions taken by Us under clauses.
- 14.3 to 14.7.
- 14.9 We reserve the right to charge you the fee/s for registering a security interest on the Personal Property Securities Register and You agree to pay these fees to us.
- 14.10 You must not dispose or purport to dispose of or create or purport to create or permit to create any security interest in the Equipment other than with Our express written consent. You must not lease, hire, bail or give possession ("sub-hire") of the Equipment to anyone else unless We (in Our absolute discretion) first consent in writing. If We do consent any such sub-hire must be in writing in a form acceptable to Us and must be expressed to be subject to the Our rights under these terms. You may not vary a sub-hire without Our prior written consent (which may be withheld in its absolute discretion).
- 14.11 You must ensure that We are provided at all times with up-to-date information about the sub-hire including the identity of the sub-hiree, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 14.12 We must take all steps including registration under the PPSA as may be required, to ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA, enabling You to gain (subject always to Our rights) first priority (or any other priority agreed to by Us in writing) for the security interest, and enabling You and Us to exercise our respective rights in connection with the security interest.
- 14.13 To assure performance of Your obligations under this clause You hereby gives Us an irrevocable power of attorney to do anything We consider necessary to protect Our interest in the Equipment. We may recover from You the cost of doing anything under this clause, including registration fees.
- 15 **Suitability**
- 15.1 You agree that before accepting the Equipment You have satisfied yourself as to the suitability, condition and fitness for purpose of the Equipment without relying upon Our skills or judgment or any person purporting to act on Our behalf.
- 15.2 You acknowledge that, to the extent permitted by law, we have not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Equipment or any other matter. You agree that to accept delivery of the Equipment on an "as is" condition unless We indicate otherwise at the time of delivery.
- 16 **Risk and Title for Equipment**
- 16.1 At no time does property in and title to the Equipment ever pass to the You. Except with Our prior written consent, you will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Equipment in any way whatsoever.
- 16.2 If We determine, in Our absolute discretion, that the PPSA applies to any transaction, you agree:
- (a) To grant a first ranking security interest and purchase money security interest in the Equipment for the purposes of the PPSA, as security for all amounts owing (including but not limited to the Hire Fees) now or in the future, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to Us (where applicable), and that You waive the right to receive any verification statement;
- (b) You will do all things necessary to enable Us to register and perfect Our security interest in the Equipment and, if requested by Us, will not take possession of the Equipment unless We have registered a financing statement designating a purchase money security interest over the Equipment.
- (c) We may appropriate (or re-appropriate despite any prior appropriation) monies received by You in Our absolute discretion toward any part of the amounts owing, including in order to maximise the extent to which We can have recourse to Our security interest in the Equipment held by You.
- (d) To notify Us of any change in writing of Your details set out in the credit application; and
- (e) The terms of this clause 16.2 prevail over any other term in the Agreement to the extent of any inconsistency with respect to the Equipment.
- 17 **When the Hire Period Ends**
- 17.1 You must ensure the Equipment is returned to Us:
- (a) clean of all foreign matter or agree to a reasonable cleaning fee being charged by Us.
- (b) with the same quantity of fuel as was provided by Us at the start of the Hire Period.
- (c) with other consumables in the same condition (including but not limited to ground engaging tools and wear parts) provided by Us at the start of the Hire Period.
- For the sake of clarity any consumables used by You are to be charged at a reasonably commercial rate by Us.
- 17.2 You agree to return the Equipment to Our address on or before the end of the Hire Period as outlined in the Rental Agreement and any failure to do so can be criminal theft and may be immediately reported to the police.
- 17.3 If We have agreed to collect the Equipment, you shall give us written notice at least one week prior to the Equipment being available for collection.
- 18 **Claim by You**
- 18.1 Subject to Clauses 18.2 and 19, all claims relating to the failure by Us to comply with Your order whether due to shortfall, defect, incorrect delivery or otherwise must be made by written notice to Us within 7 days of the date of delivery. If You fail to provide such written notice within 7 days, then You shall be deemed to have accepted the Equipment and shall not be entitled to make any claim against Us.
- 18.2 We shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) failing to properly maintain or store any Equipment.
- (b) You are using the Equipment for any purpose other than that for which they were designed.
- (c) You continuing to use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user.
- (d) You failing to follow any instructions or guidelines provided Us; or
- (e) fair wear and tear, any accident or act of God.
- 19 **Force Majeure**
- Any notified times for delivery are estimates only and We shall not be liable to You for any failure to deliver or for delay in delivery of the Equipment occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond Our control. You will not be relieved of any obligation to accept the Equipment or pay for the Hire Fees by reason of any delay in delivery.
- 20 **Variation**
- If we intend to amend the terms of the Rental Agreement, we will give You 30 days' notice of the intended amendments. If you fail to dispute the amendments within 7 days of receiving such notice, then you shall be deemed to have accepted the amendments. Any other variations to these terms and conditions shall be agreed in writing between the parties.
- 21 **non-mergers**
- The covenants, agreements and obligations contained in the Rental Agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 22 **Severance**
- If any provision of the Rental Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of the provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
- 23 **Governing Law**
- The Rental Agreement is governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the Courts of Queensland.
- 24 **Privacy**
- We will comply with the National Privacy Principles in all dealings with You. Information on our privacy policy is available on request.
- 25 **Provisions of this Agreement Excluded from Consumer Contracts** Where You are an individual acquiring goods and services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of the Rental Agreement will not apply:
- (a) Variation clause (clause 20)
- (b) Security Clause (clause 5)
- 26 **Claim for Payment**
- This Rental Agreement and any associated tax invoice is a claim for payment under the *Building and Constructions Industry Payments Act 2004* (QLD), the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Constructions Contracts (Security of Payments) Act 2009* (NT), the *Building and Construction Industry Security of Payment Act 2002* (VIC), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), the *Buildings and Construction Industry (Security of Payment) Act 2009* (ACT) and/or the *Building and Construction Industry Security of Payment Act 2009* (TAS).
- 27 **Consumer Credit Code**
- You and the Guarantors declare that the credit to be provided is to be applied wholly or predominantly for business purposes and not for personal domestic or household purposes.
- 28 **Whole Agreement**
- These terms and conditions, together with the Credit Application embody the whole agreement between the parties and subject to the express terms contained in any written acceptance thereof all previous dealings, representations and arrangements are hereby excluded and cancelled.
- 29 **Privacy**
- We will comply with the Australian Privacy Principles in all dealings with you. Information on our privacy policy is available on request.