

ACN 009 133 591 | ABN 64 009 133 591

Perth Aluminium Scaffolds Pty Ltd. - Completing our Company credit application

It is extremely important to have the attached Credit Application completed properly so as not to delay the delivery and or erection of your scaffold.

While advanced payments (credit card, EFT, company cheque or cash) are welcome the application still needs to be completed so that information such as billing address, contact phone numbers, accounts payable contact, email address, ABN number and other relevant information may be collected to facilitate actions such as tax invoice creation and electronic invoicing.

Another fundamental aspect of completing our credit application is the acknowledgement and acceptance of our Terms and Conditions. This includes but is not limited to trading terms, product care, loss charges and other basic aspects of our hire agreement.

We understand that the directors of some large listed companies are simply not available to sign off in acceptable time frames so we will accept the following;

- A standard corporate response to credit applications addressed to Perth Aluminium Scaffolds from the company CFO or Credit Manager containing all the required information to complete our credit application along with trade references and banking details will also be accepted.
- Plus a senior manager's witnessed signature as recognition of our terms and conditions, replacing the 1st "Guarantor" signature with the word "Manager" on the credit application along with the Manager's specific title under their name. eg. Signature of ~~Guarantor~~ Manager

On a regular basis credit applications will be reviewed and requests for updated information may be made in line with the credit exposure of any given client.

PLEASE READ THIS APPLICATION AND THE TERMS AND CONDITIONS CAREFULLY

IT IS IMPORTANT THAT ALL INFORMATION IS SUPPLIED, AS AN INCOMPLETE APPLICATION MAY DELAY A DECISION

APPLICANT'S DETAILS

Applicant's Trading Name: _____
 Business Address: _____
 Delivery Address: _____
 Email Address: _____ Telephone No.: _____
 Fax No.: _____ Mobile No.: _____
 Is the Applicant a Company/Sole Trader /Partnership /Trust _____ ABN: _____
 If the Applicant is a company state company name: _____ ACN: _____
 If the Applicant is a company list all directors: _____

 If the Applicant is a sole trader state sole trader's name: _____
 If the Applicant is a partnership list all partners: _____

 If the Applicant is a trust name the trustee(s) _____

GUARANTORS' DETAILS

Guarantor Name	Address	Role at Applicant e.g. Director

HAVE ANY OF THE PROPRIETORS/DIRECTORS/PARTNERS/TRUSTS/GUARANTORS REFERRED TO ABOVE:

(i) Had any of its property or assets attached as a result of a court order, or had winding up or bankruptcy proceedings instituted against it or them, or entered into bankruptcy voluntarily? **YES / NO**

(ii) Been refused credit in any capacity? **YES / NO**

LAND OWNED BY APPLICANT/GUARANTORS

Owners Names	Property Address	Property Value	Mortgage Outstanding

ACCOUNTS PAYABLE

Please nominate a person who will be available for account queries / contact:

Name: _____ Phone No. _____

Invoices and Statements can be delivered electronically.

Please specify the email address you wish for these documents to be sent to:

Email: _____

ANTICIPATED MONTHLY ESTIMATED HIRE:

\$ _____ (this is *not* a limit of liability)

PRIVACY AUTHORITY

Where Equipment is hired to the Applicant on credit the Applicant irrevocably authorizes Perth Aluminum Scaffolds Pty Ltd, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Applicant from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Applicant or any other credit providers (the information sources) and the Applicant hereby authorises the information sources to disclose to Perth Aluminum Scaffolds Pty Ltd such information concerning the Applicant which is within their possession and which is requested by Perth Aluminum Scaffolds Pty Ltd.

SIGNING SECTION

By signing this document the Applicant and Guarantor(s) hereby confirm the accuracy of the information provided herein and agree to the Trading Terms and Conditions which follow. Executed as a deed

Signed by the Applicant

Signed for and on behalf of the Applicant

Name of signatory

Capacity of signatory e.g. director, proprietor, partner

Signed as Guarantor

Signature of Guarantor

Name of Guarantor

Signature of witness

Name of witness

Signed as Guarantor

Signature of Guarantor

Name of Guarantor

Signature of witness

Name of witness

Signed as Guarantor

Signature of Guarantor

Name of Guarantor

Signature of witness

Name of witness

Accepted by Perth Aluminium Scaffolds Pty Ltd: _____ **Date:** _____

PLEASE RETURN COMPLETED APPLICATION TO:

Email
Fax: (08) 9445 7033
Post: Perth Aluminium Scaffolds Pty Ltd
PO Box 1377, OSBORNE PARK WA DC 6917

FOR ALL NEW ACCOUNT QUERIES PLEASE CONTACT:

Perth Aluminium Scaffolds on (08) 9445 2033

HIRE AND SALE OF ALL TYPES OF ALUMINIUM SCAFFOLDING

TERMS & CONDITIONS

NOTE: The Australian Consumer Law and other legislation have provisions that may not be contracted out of. Accordingly where those mandatory provisions apply, they override provisions to the contrary in these Terms and Conditions.

1. HIRE AGREEMENT

- a. The legal agreement between You and Us (the **Hire Agreement**) is always comprised of:
 - (a) these Terms & Conditions;
 - (b) each Quotation provided to You by Us whether signed or not by You; and
 - (c) the credit application that You submitted to Us.
- b. The Hire Agreement does not include any terms or conditions of Yours (including on any purchase order of Yours) unless We agree so in writing.
- c. You agree that the Hire Agreement applies each time We hire Equipment to You, even if You and We exchange only a Quotation each time.
- d. By signing a Quotation and/or taking possession of any Equipment You Agree to be bound by this Hire Agreement.

2. DEFINED TERMS USED IN THE HIRE AGREEMENT

- a. Various terms are defined in the Hire Agreement using **bold text**. Other defined terms are set out below.
- b. **Equipment** means the scaffolding, plant and equipment described in the Quotation (including any parts, components and any accessories and attachments specified in the Quotation or supplied with the Equipment when the Equipment was provided to You).
- c. **Quotation** means the document provided by Us to You with "Quotation" written on it and which outlines important information regarding the Equipment You hired.
- d. **Insurance Value** means the value stated as such in the Quotation plus GST, or if no value is stated then the replacement value of the Equipment brand new from Our supplier at the Start Date.
- e. **Job Site** means the site at which You will use the Equipment as stated in the Quotation.
- f. **Us/Our/We** means **Perth Aluminium Scaffolds Pty Ltd** ABN 61 009 133 591 of 9 Pitino Court, Osborne Park WA.
- g. **You/Your** means the person, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, as named in the Quotation.
- h. **Your Workers** means and includes any of Your employees, agents, contractors and subcontractors and their employees, agents, contractors and subcontractors.

3. OUR HIRE COMMITMENT

- a. We agree to hire the Equipment to You for Your exclusive use during the Hire Period.
- b. We agree that the Equipment will be in good working order (of light to medium duty rating unless specified to the contrary in the Quotation) when We hire it to You.

4. HIRE PERIOD

- a. The **Hire Period** commences from the date that You take possession of the Equipment and is for an indefinite term unless otherwise stated in the Quotation and until the Equipment is returned to Our address or the hire is ended earlier in the manner permitted in this Hire Agreement.
- b. The **Hire period** shall commence from the date of delivery to the date of collection where we are erecting and dismantling the Equipment, unless otherwise shown within the Quotation.
- c. Unless We agree otherwise the Hire Period includes weekends, public holidays and days of inclement weather
- d. The **Hire Period is terminated** when one of the following conditions are met;
 - i) The equipment is returned to the Owner's premises.
 - ii) By verbal communication and receipt of a reference number dated the day the Equipment may be collected.
 - iii) In writing on separate company documentation to the original order two days before collection is required.
 - iv) By Email and receipt of a reply stating a reference number dated the day the Equipment may be collected.

5. QUOTATIONS

- a. Unless previously withdrawn, a Quotation is valid for 30 days or such other period as stated in it whichever period is the lesser.
- a. A Quotation is not to be construed as an obligation to Hire but merely an invitation to treat and no contractual relationship shall arise from it until Your order has been accepted by Us.
- b. A Quotation of our standard mobile scaffold hire, transport & labour rates are shown at & available from Our address.
- c. We are not bound by any conditions attaching to Your order or acceptance of a Quotation and, unless such conditions are expressly accepted by Us in writing, You acknowledge that Your conditions are expressly negated.

6. OUR CANCELLATION

- a. If We are unable to deliver the goods, then We may cancel Your order (even if it has been accepted) by written notice to You and We will not be liable for any losses of any kind.

7. HIRE & LABOUR CHARGES

Method of calculating:

- a. All lumpsum and labour items described in the Quotation will be charged at the rate set out in the Quotation and will be invoiced upon the installation process unless otherwise agreed in writing.
- b. All delays beyond the control of Us which we incur in the labour, installation or removal process will be charged at an additional rate of \$85 per hour per man on site at a minimum of 2 hours per man or for the 8 hour period per man should no works that period be achievable due to said delays.
- c. Should We be required to attend any site induction or any prestart meetings, these will be charged as a delay in accordance with clause 7(b) above.
- d. Hire rates are charged at the weekly rate set out in the Quotation and are invoiced at the end of each month or at the end of the Hire Period whichever is the earliest.
- e. If the Hire Period is 1–3 days, there is a hire charge of 70% of the weekly rate set out in the Quotation.
- f. If the Hire Period is 4–7 days, there is a hire charge of the full weekly rate set out in the Quotation.
- g. In the second and any subsequent weeks of hire:
 - i) The first 1 – 3 days of each week thereafter is charged at 16.64% of the weekly rate set out in the Quotation; and
 - ii) The fourth day onwards attracts the full weekly rate set out in the Quotation.

Time taken to repair or replace Equipment:

- h. You agree that You must pay hire charges for the period it takes to repair or replace Equipment that is damaged, lost or destroyed during the Hire Period (see clause 14g). This includes time taken to clean any excess construction product (including paint, texture, concrete) that is not removed before the end of the Hire Period.

8. OTHER CHARGES

You agree to pay Us:

- a. All charges stated in the Hire Agreement;
- b. All charges, fines and penalties arising out of Your possession or use of the Equipment;
- c. Our costs of travel to and from the Job Site and all of Our labour and materials costs if We agree to complete servicing or repairs You are responsible for (as indicated on the Quotation); and
- d. All GST, transfer duty, registration fees and other levies or fees payable by Us as a result of the Hire Agreement.

9. OUR PAYMENT TERMS

- a. You must pay to Us all charges and sums payable under this Hire Agreement
 - i) **Cash Accounts**
In advance for all cash accounts; or Upon Our invoice.
 - ii) **Credit Accounts**
Within 30 days from the date of Our invoice.
 - iii) **All Accounts**
- a. Our invoices shall be deemed correct unless disputed in writing by You within 14 days of the date of the invoice.
- b. If You default in payment by the due date of any amount payable to Us then all money which would become payable by You to Us at a later date on any account, becomes immediately due and payable without the requirement of

any notice to You, and We may, without prejudice to any of Our other accrued or contingent rights:

- i. charge You interest on any sum due at the prevailing rate of 15% per annum for the period from the due date until the date of payment in full;
- ii. charge You for, and You must indemnify Us for, all costs and expenses (including without limitation indemnity legal costs) incurred by Us resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- iii. cease or suspend supply of any further hire, goods or services to You;
- iv. by written notice to You, terminate any uncompleted contract with You.

10. MOBILISATION AND DEMOBILISATION

- a. The Quotation will state whether You or We are responsible for arranging mobilisation and demobilisation of the Equipment. **Mobilisation** includes loading at the Our Address, transporting to the Job Site, unloading at the Job Site. **Demobilisation** includes loading at the Job Site, transporting to Our Address and unloading at the Our Address.
- b. If We agree to arrange:
 - i. mobilisation We will transport the Equipment from the Our Address to the Job Site and You must pay the mobilisation charges specified in the Quotation; and
 - ii. demobilisation We will transport the Equipment from the Job Site to Our Address and You must pay the demobilisation charges specified in the Quotation.
- c. If You agree to arrange:
 - i. mobilisation You must transport the Equipment from the Our Address to the Job Site and You must pay all costs of mobilisation; and
 - ii. demobilisation You must transport the Equipment from the Job Site to the Our Address and You must pay all costs of demobilisation.
 - iii. No returns will be accepted on weekends or public holidays or after 4pm Monday to Friday.
- d. If the Quotation states that We agree to arrange demobilisation You must ensure that the Equipment is available and in a condition suitable for immediate collection and transport by Us or Our freight provider from the Job Site on the Expected Return Date or Agreed Return Date, whichever is the earlier. You must also pay all penalties and waiting charges charged by Us or Our freight provider if You do not comply with these obligations.

11. WHEN RISK IN THE EQUIPMENT PASSES

- a. If We are responsible for arranging:
 - i. mobilisation, risk in the Equipment passes to You when the Equipment has been unloaded at the Job Site;
 - ii. demobilisation, risk in the Equipment passes to Us when loading of the Equipment is complete at the Job Site.
- b. If You are responsible for arranging:
 - i. mobilisation, risk in the Equipment passes to You when loading of the Equipment commences Our Address; and
 - ii. demobilisation, risk in the Equipment passes to Us when the Equipment has been unloaded at the Our Address.

12. INSPECTION AND ACCEPTANCE

- a. You must inspect the Equipment upon delivery and within 48 hours of delivery give notice with full details and description to Us if you allege that the Equipment is not in accordance with the Your order. Failing such notice, the goods shall be deemed to have been delivered to and accepted by You.
- b. When any non-compliance with Your order is accepted by Us, We may, at Our discretion, replace the Equipment, or refund the hire charges for the Equipment.

13. USE, POSSESSION AND OPERATION OF THE EQUIPMENT

- You agree to:
- a. keep the Equipment at the Job Site at all times other than when it is being transported between Our address and the Job Site;
 - b. not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time. You may not cross hire the Equipment without Our prior written permission;
 - c. use and store the Equipment safely and securely and protected from theft, loss or damage, during the Hire Period including the period between the Off Hire Date and the earlier of (i) the date of return to the Dispatch Address or (ii)

the date We will collect the Equipment from the Job Site if We are responsible for demobilisation;

- d. use the Equipment in compliance with all applicable laws;
- e. complete at Your cost all required testing and tagging during the Hire Period;
- f. ensure the Equipment is not contaminated with any hazardous substances;
- g. obtain all necessary approvals, permits and licenses relating to using the Equipment;
- h. only use the Equipment for a purpose for which it is designed to be used and in accordance with the manufacturer's instructions;
- i. ensure that operators of the Equipment have the required training and qualifications for safe operation of the Equipment;
- j. supply all required personal protection equipment for operators of the Equipment; and
- k. not alter the Equipment or deface or obscure any identifying number or mark or safety instruction on the Equipment.

14. DAMAGE, LOSS, THEFT AND REPAIRS

- a. **Inspections:** We will inspect the Equipment before it is mobilised from Our address and when it is returned to Our address.
- b. Subject to clause 12a, you agree that the Equipment was hired to You in good working condition.
- c. You agree to return the Equipment to Us clean and in the condition We hired it to You except for Fair Wear and Tear.
- d. **Fair Wear and Tear** means wear and tear which would be normal for similar equipment operating on a civil construction environment and includes superficial scratches and scuffing to Equipment. It does not include excess construction product (such as paint, texture, concrete).
- e. **Your strict liability:** You agree that You are strictly liable for and must pay Us for all loss, theft, destruction or damage to or of the Equipment during the Hire Period as well as all associated loss or expenses suffered by Us, including damage or loss caused by third parties, accessories "going missing", Our lost hire fees, Our insurance excesses, Our legal costs (on a full indemnity basis) and Our costs of repairing or replacing the Equipment.
- f. **What You must pay Us for damage and loss:** If the Equipment or any part of it is damaged, destroyed, stolen or lost during the Hire Period You must pay to Us all of the following:
 - i. Our costs to repair the Equipment (including Our labour costs and costs to recover the Equipment) if the Equipment can be repaired (as determined by Us); or
 - ii. The standard sale price for its replacement
- g. **Hire continues- calculating hire charges:** For the purposes of calculating Our hire charges under clause 7, You agree that the Hire Period will end on the latest of the following dates:
 - i. if the Equipment is in good working order and does not need repair on the date it is returned to Our address, that date;
 - ii. if the Equipment requires repair on the date it is returned to Our address, the date that the Equipment is repaired and available for hiring out by Us from ; or
 - iii. if the Equipment is lost, stolen, destroyed or incapable of repair, the date We receive a replacement for that Equipment at Our address or, if We elect not to replace the Equipment, the date that We have received cash payment in full from You and/or Your insurers as required by this Hire Agreement.
- h. **Claims:** You agree that We are entitled to but are not obliged to make a claim pursuant to Equipment Insurance.
- i. **Carrying out of repairs:** You agree that no person may complete repairs to the Equipment unless We authorise that in writing.
- j. **Minor Repairs:** You must pay the costs of all Minor Repairs required during the Hire Period. **Minor Repairs** means any single fault in the Equipment that in Our opinion would cost \$250.00 or less to repair if repaired by a reputable third party repairer.
- k. **What You must do if damage or loss occurs:** If the Equipment is damaged or loss occurs during the Hire Period You must stop using the Equipment and immediately inform Us by telephone and in writing and You must also take all steps necessary to prevent further damage or loss

to the Equipment. You must also take photographic evidence as We require and cooperate with Us and provide information as We require.

15. BREAKDOWNS

- a. If the Equipment suffers a Breakdown You must stop using the Equipment and immediately inform Us by telephone and in writing.
- b. We will then either, at Our discretion:
 - i. dispatch a technician to the Job Site and endeavour to repair the Equipment as soon as is practicable; or
 - ii. send equipment that is the same as or similar to the Equipment to the Job Site and remove the Equipment from the Job Site at Our cost.
- c. If We dispatch a technician to the Job Site but We cannot repair the Equipment at the Job Site We may either, at Our discretion:
 - i. replace the Equipment with equipment similar to the Equipment or remove the Equipment to a place where it can be repaired and then return it to the Job Site; or
 - ii. elect by notice in writing to terminate the hire of the Equipment.
- d. We will pay Our costs for fixing Breakdowns.
- e. Provided You have complied with clause 15a, You will not have to pay hire charges under clause 7 for periods during which the Equipment is not available for use by You due to a Breakdown.
- f. **Breakdown** means a material defect that results in an inability to operate the Equipment for the primary function intended which is not caused by an act or omission by You in breach of this Hire Agreement. It does not include theft, destruction or damage to or of the Equipment by any person.

16. INSURANCE

- a. You must arrange and maintain at all times during the Hire Period the following insurances with a reputable insurer:
 - i. an insurance policy covering the Equipment to the Insurance Value plus GST for accidental loss, destruction and damage and other risks as We may require from time to time. The policy must note Us as owner and loss payee of the Equipment and You as hirer, and it must include a principal's indemnity extension in Our favour. If there is any shortfall between the amounts You must pay Us under the Hire Agreement and the funds We receive from Your insurance company You must pay the shortfall to Us;
 - ii. all insurances required by law, including workers compensation insurance with a principal's indemnity extension in Our favour.
- b. You agree that We are entitled to receive all moneys payable to You under any insurance policy or by any other person in relation to any damage to or loss or destruction of the Equipment, and You appoint Us as Your attorney to recover and or compromise in Your and Our names any claim for any such damage, loss or destruction and to give releases and receipts for the same, and You irrevocably authorise and direct insurers to pay all such moneys directly to Us.

17. INDEMNITY AND RELEASE AND LIMIT ON LIABILITY

- a. You indemnify Us and Our directors, officers and employees (**Indemnified Persons**) from and against all Claims which may be brought against or suffered by an Indemnified Person arising out of or in relation to:
 - i. You using or possessing the Equipment;
 - ii. any act, neglect, default or omission of any operator of the Equipment during the Hire Period;
 - iii. Your breach of this Hire Agreement; or
 - iv. any accident, incident, damage or delay caused during the Hire Period involving the Equipment, including for loss of life or any loss, damage or injury suffered by any third party or operator of the Equipment.
- b. To the full extent permitted by law You release each Indemnified Person from all Claims You may have arising out of or in relation to any of the matters referred to in clauses 17a.i, 17a.ii, 17a.iii or 17a.iv.
- c. 17 does not apply to the extent an Indemnified Person is guilty of fraudulent acts or omissions or a breach of this Hire Agreement.
- d. You agree that each Indemnified Person shall not under any circumstances be liable to You or any third party (including Your customers) in respect of any indirect, consequential or special losses (including loss of profit, loss of opportunity or

payment of liquidated sums or damages under any other agreement).

- e. You agree that the maximum aggregate liability of the Indemnified Persons for all Claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis, is limited to the charges paid by You under this Hire Agreement.
- f. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for Us to incur expense or make any payment before enforcing a right of indemnity in this Hire Agreement.
- g. **Claims** means actions, suits, proceedings, judgements, orders, claims, demands, costs, damages, losses and all liability whatsoever, including all legal costs on a solicitor and own client basis.

18. WARRANTIES

- a. To the maximum extent permitted by law, You warrant that You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for and that You have not entered into the Hire Agreement in reliance on any representations or inducements made by Us.
- b. We warrant that the Equipment will be in working order on the date the Equipment is hired to You.
- c. Other than as set out in clause 18b, to the maximum extent permitted by law the Equipment is provided without any warranties or guarantees of any kind, either express or implied, and any warranty which is implied by law or statute which can be excluded is excluded.

19. AUSTRALIAN CONSUMER LAW RIGHTS

- a. The Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) provides consumer rights and remedies that may not be contracted out of, in part or wholly. Where those consumer rights and remedies apply to the hire of Equipment by Us to You and cannot be contracted out of, they apply and override any inconsistent provisions in this Hire Agreement but only to the extent of the inconsistency.
- b. Where You are entitled to a statutory right or term that We are not able to exclude but We are entitled to limit Your remedy for a breach of that right or term, then Our liability for breach of that right or term is limited to (at Our election):
 - i. in the case of goods We supply, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - ii. in the case of services We supply, the supplying of the services again, or the payment of the cost of having the services supplied again.

20. TITLE TO EQUIPMENT

- a. You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation, receivership or administration or become bankrupt during the Hire Period).
- b. Your rights to use the Equipment are as a bailee only, and no circumstances will the Equipment be deemed a fixture.
- c. You must not offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- d. You acknowledge that in some circumstances a person other than Us may be the legal owner of the Equipment (the **Owner**) and We may have entered into an agreement to use the Equipment with the Owner. The exercise of any rights by the Owner under that agreement will not constitute a breach or default under this Hire Agreement by Us.

21. ACCESS TO YOUR ADDRESS AND JOB SITE

You grant Us an irrevocable license to enter on any premises where We believe the Equipment is located:

- a. at all reasonable times and upon reasonable notice for the purpose of performing Our obligations under this Hire Agreement, for inspecting or testing the Equipment, for conducting incident investigations or audits or for serving any notice in relation to the Equipment; and
- b. at any time for the purpose of repossessing the Equipment if You are in breach of this Hire Agreement or if it has been terminated or has expired.

22. GRANT OF SECURITY INTEREST IN OUR FAVOUR

- a. As security for Your obligations and liabilities under this Hire Agreement, You hereby charge all of Your legal and equitable interest (present and future) of whatsoever nature in any and all real property and present and after acquired personal property.
- b. You agree to execute any documents and do all things necessary as required by Us to register the security granted in clause 22a. You also appoint each of Our directors to be Your attorney to execute and register such documents and instruments.

23. PPSA

- a. This Hire Agreement is a security agreement for the purposes of the PPSA.
- b. You consent to Us effecting and maintaining a registration on the register in any manner We consider appropriate in relation to any security interest granted in or constituted by this Hire Agreement:
 - i. in Your present and after acquired personal property and the proceeds arising in respect of any dealing in such property; and/or
 - ii. in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- c. You agree that We may at any time register a financing statement or financing change statement in respect of such a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration by Us on the register of such a security interest.
- d. You agree to do anything and sign any documents and provide all assistance and information required by Us to:
 - i. facilitate the registration and maintenance by Us of any security interest on the register;
 - ii. acquire and maintain a perfected security interest under the PPSA in respect of Your present and after acquired personal property and/or the Equipment and the proceeds arising in respect of any dealing in such property;
 - iii. ensure that Our rights and Our security and priority position are not adversely affected by the PPSA.
- e. You agree to not register or permit to be registered a financing change statement in respect of a security interest granted in or constituted by this Hire Agreement (including in relation to the Equipment) without Our prior written consent.
- f. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest granted in or constituted by this Hire Agreement and:
 - i. section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - ii. section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- g. You and We agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any other person, to the extent permitted by the PPSA.
- h. **PPSA** means the Personal Property Securities Act 2009 and any other legislation and regulations in respect of it and the following words in this Agreement have the meanings given to them in the PPSA: financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

24. WHEN THIS AGREEMENT ENDS

- a. You or We may terminate this Hire Agreement immediately by giving notice to the other party, if:
 - i. the other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or

- ii. that other party ceases to carry on business, becomes bankrupt or insolvent, executes a personal insolvency agreement or has an external controller appointed.
- b. These rights of termination are in addition to any other rights You or We have under the Hire Agreement or at law or in equity.

25. CONFIDENTIALITY

- a. Each party to this Hire Agreement agrees not to disclose or use for an improper purpose any confidential information received or obtained from the other party.
- b. Each party can disclose such confidential information if:
 - i. required by law, judicial proceedings, rules of a stock exchange or regulatory or governmental body; or
 - ii. the information is disclosed on a confidential basis to professional advisers or bankers; or
 - iii. the information is disclosed to a director, officer, employee or agent of the party; or
 - iv. the information is in the public domain otherwise than through the fault of the disclosing party.

26. DELAY/FORCE MAJEURE

- a. If a party is restricted or prevented from performing any of its obligations under this Hire Agreement due to act of God, industrial action, embargo, boycott, delay by carrier or freight company, flood, fire, war, civil unrest, decrees or orders or other Government intervention or any other cause or delay whatsoever outside the reasonable control of the party (the **Restricted Party**) but not including adverse weather, the Restricted Party may give notice of such cause to the other party and the time for performance of the Restricted Party's obligations (other than to pay money) shall be extended by the period the cause continues. If the cause continues for more than 60 days either party may terminate this Hire Agreement.
- b. Nothing in clause 26a will limit or exclude Your responsibility and liability under the Hire Agreement for safekeeping and maintaining the Equipment.

27. CHARGE

- a. You and each of the Guarantors, if any, hereby jointly and severally charge all right, title and interest in the property or properties referred to in the Credit Application as the Trading Address and Private Addresses that may be owned by any of them and also any land that they own currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of Us, with due and punctual observance of all of the obligations of You. You indemnify Us against all expenses and legal costs (on an indemnity basis) for preparing, lodging and removing any caveat.
- b. You and each of the Guarantors, if any, hereby acknowledge that We may at Our discretion register and lodge an absolute caveat(s) on such property or properties in respect of the interest conferred on it under this clause 27. Such registration of a caveat by Us over Your property or properties must not be challenged by You in any way whatsoever, and You agree not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that You have paid all monies owing to Us as claimed from time to time.

28. CHANGE IN CONTROL

- a. You must advise Us in writing no later than fourteen (14) days before a change in effective control of You or of any change or alteration of any particulars contained in the credit application (if applicable).
- b. We (upon receipt of such advice) are entitled to review the Agreement and in Our sole discretion, may terminate the credit facilities upon seven (7) days written notice.
- c. In such circumstances, We are entitled to payment by You of a sum equal to the Hire Charges then unpaid by You. You shall indemnify Us in respect of any loss arising from Your failure to so notify.
- d. If You sign the credit application as the trustee of any trust (the "Trust"), You are personally liable for the performance of all covenants contained in the Hire Agreement and agrees that Our right of recourse pursuant to this Hire Agreement shall not be limited to the Trusts' assets.

29. GUARANTEE & INDEMNITY

- a. In consideration of Us agreeing to Hire the Equipment on credit to You each person who has signed the Agreement as guarantor hereby unconditionally and irrevocably guarantees to Us the due and punctual payment of all debts and monetary liabilities including without limitation sums of money, interest, indemnity legal costs, damages, charges and expenses which are, or which may become payable by the You to Us on any account and in any capacity (**Guaranteed Moneys**) and, as a separate and independent obligation, agrees to indemnify and keep Us indemnified from and against any claim, action, loss, damage, cost, expense, outgoing or payment suffered, paid or incurred by Us in relation to the non-payment or non-recovery of the Guaranteed Moneys.
- b. Each guarantor hereby expressly acknowledges that this Guarantee and Indemnity ("the Guarantee") is given upon and subject to the following conditions:-
 - i. In the event of You failing to pay Us any Guaranteed Moneys the Guarantor will immediately pay such monies to Us.
 - ii. In the event of You failing to carry out or perform any obligations the Guarantor will immediately carry out and perform the same.
 - iii. The Guarantor shall be deemed to be jointly and severally liable with You (in lieu of being merely a surety for it) for the payment of the Guaranteed Moneys and it shall not be necessary for Us to make any claim or demand on or to take any action or proceedings against You or make any demand against the Guarantor before commencing proceedings against the Guarantor to pay the Guaranteed Moneys or to carry out and perform the obligations herein contained.
 - iv. No time or other indulgence whatsoever that may be granted by Us to You shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to remain in full force and effect until all monies owing to Us have been paid and all obligations have been performed.

30. OTHER

- a. You agree that We shall not be responsible for and shall have no liability whatsoever for any property or articles claimed by You or any third party to have been left with, repossessed or returned with the Equipment.
- b. Neither party may assign or transfer any obligation under this Hire Agreement without the written consent of the other.
- c. If any provision or part provision of this Hire Agreement is invalid, unenforceable or illegal then it shall be deemed to not operate until it is valid, enforceable and legal.
- d. This Hire Agreement is governed by the law in force in Western Australia. You and We irrevocably submit to the jurisdiction of the courts of Western Australia with respect to any Claim relating in any way to this Hire Agreement.
- e. You agree that We may vary this Hire Agreement with 30 days prior written notice to You explaining the variation. If You believe such variations will prejudice Your rights You can terminate this Agreement within 14 days of such notice without penalty.
- f. Any omission by Us to enforce any of Our rights in this Hire Agreement shall not operate as a waiver by Us and will not prejudice Our rights to enforce any of the provisions.
- g. This Hire Agreement is a claim for payment under the Construction Contracts Act 2004 (WA) and/or the Construction Contracts (Security of Payments) Act 2009 (NT).