

Credit Application Form

(Incorporating Standard Terms and Conditions of Hire)

Name of Customer / Hirer:	
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Return to:
Access Equipment Hire Australia Pty Ltd
PO BOX 1659, Canning Vale, WA 6970
Accounts: PH: (08) 6253 8366 FAX: (08) 6253 8322

APPLICATION FOR TRADING ACCOUNT

This application is made by the applicant named below to Access Equipment Hire Australia Pty Ltd (ACN 131 094 874).

Name of Person making application:		Date:
Position:	Contact #:	Office: Mobile:
Street Address:		
Suburb:	State:	Post Code:

Details of Applicant		
Please tick appropriate boxes: <input type="checkbox"/> Company <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Individual Trader <input type="checkbox"/> Government <input type="checkbox"/> Other: Specify: _____		
Business/Trading Name:		ABN:
Company Name:		ACN:
Trust Name:		Type:
Street Address:		
Suburb:	State:	Post Code:
Postal Address:		
Suburb:	State:	Post Code:
Facsimile #:	Office #:	Email:

Directors Name and Address		
Full Name:		
Street Address:		
Suburb:	State:	Post Code:
Full Name:		
Street Address:		
Suburb:	State:	Post Code:
Full Name:		
Street Address:		
Suburb:	State:	Post Code:
Directors Name and Address		
Full Name:		

Street Address:		
Suburb:	State:	Post Code:
Full Name:		
Street Address:		
Suburb:	State:	Post Code:

Trade References (Three required)			
Name of Company:		Contact Person:	
Contact #:	Email:	Monthly \$:	
Name of Company:		Contact Person:	
Contact #:	Email:	Monthly \$:	
Name of Company:		Contact Person:	
Contact #:	Email:	Monthly \$:	

Credit Limit Being Applied For:	Monthly \$:
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Banking Details		
Name of Bank:		Branch:
Street Address:		
Suburb:	State:	Post Code:

Dated this _____ day of _____ 20__.

By signing this Application for Trading Account (on your own behalf and where applicable on behalf of the Applicant / Hirer); you warrant the accuracy of the information set out above. You bind the Applicant/Hirer to the Terms and Conditions of the Hire attached to this Application for Trading Account (**Terms and Conditions**). You warrant having read, understood and agreed to the Terms and Conditions. You acknowledge that the Terms and Conditions apply every time the Applicant/Hirer hires equipment from the Access Group of Companies or any one or more of them.

SIGNED for and on)
behalf of the above named)
APPLICANT/HIRER by)

 (signature)

 (Name of signatory – please print)

 (Authority/Capacity to sign e.g. Director)

Terms and Conditions of Hire

1. Definitions and Interpretation

1.1. In these Terms and Conditions of Hire, unless specified to the contrary, the following words and phrases have the meanings given to them:

“**Access**” means Access Equipment Hire Australia Pty Ltd (ACN 131 094 874).

“**Claim**” means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost of liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred or to be made or recovered by or against such person, corporation or other legal entity however arising and whether ascertained or unascertained.

“**Credit Application**” means the Hirer’s signed application for credit accommodation by Access in respect of Equipment hire and in respect of which a copy of these Terms and Conditions is attached.

“**Equipment**” means any machine hired by Access to the Hirer and includes all tools, accessories, parts, item of equipment and devices affixed thereto or supplied therewith.

“**Environmental Laws**” means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including the use or protection of the environment.

“**Hire Agreement**” means every agreement between Access and the Hirer for the hire of Equipment (whether signed or not) including a Hire Docket, all of which will be deemed to include:

- (a) the Credit Application, and
- (b) these Terms and Conditions of Hire.

“**Hire Docket**” means each docket (if any) issued by Access identifying, amongst other things, the Equipment, the Hire Period and the hire rate that will be charged under clause 3.4 hereof.

“**Hirer**” means the person, firm or corporation to whom the Equipment is hired by Access (including the party named and described in the Credit Application as the “Hirer”) and includes any contractor, servant, agent or other person claiming through, under or in trust for any such person, firm or corporation.

“**Location**” means the place where the Hirer will use the Equipment.

1.2. In the interpretation of these Terms and Conditions of Hire, unless specified to the contrary:

1.2.1. words importing the singular include the plural and *vice versa*;

1.2.2. words importing any gender includes both genders;

1.2.3. a reference to any matter or thing includes the whole and each part of it separately;

1.2.4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

1.2.5. a reference to a natural person includes a company or other corporate body or *vice versa*;

1.2.6. a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;

1.2.7. the obligations imposed by these Terms and Conditions of Hire on or in favour of a party who is a natural person includes his heirs, executors, administrators and assigns;

1.2.8. the obligations imposed by these Terms and Conditions of Hire on or in favour of a party which is a company or other corporate body includes its successors and assigns;

1.2.9. time will be of the essence; and

1.2.10. use of the word “**including**” is to be read and construed without limitation.

2. Title to Equipment

2.1. The Hirer acknowledges that in all circumstances Access retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Equipment are as a bailee only.

2.2. The Hirer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of Access as owner.

3. Hire Period

3.1. Subject to clause 3.3, the period of hire commences when the Hirer takes possession of the Equipment or when Access delivers the Equipment in accordance with the Hirer’s instructions and the period of hire ends when the Equipment is back in the possession of Access (in total, the “**Hire Period**”). The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

3.2. Hirer will be entitled to use the Equipment for the Hire Period on the express understanding that it will be charged for such use in accordance with the Hire Agreement. Any variation to the Hire Period must be agreed to in writing by Access.

3.3. Should Access agree with the Hirer that Access will deliver and collect the Equipment, hire charges will commence from the time the Equipment leaves Access’s premises and continue until Access is notified by the Hirer of the date that the Equipment is available for collection from the Location (“**Off-Hire Date**”), at which time Access may give the Hirer a number as verification that such notification has been received (“**Off-Hire Number**”).

The notification will be given by the Hirer in time for the Equipment to be picked up and returned to Access’s premises within Access’s normal business hours by

the Off-Hire Date. In the event of insufficient notice being given, the Hirer will be charged a minimum of an extra days hire at Access's absolute discretion. The Hire Period on the Hire Agreement will not be deemed notice to Access that the Equipment is available for collection. Where Access agrees to collect the Equipment, the Hirer remains responsible for theft, loss or damage to the Equipment until the Equipment is collected by Access.

3.4. The Hire Agreement will specify the type of rate that will apply. Equipment hired for at least 5 days in a seven day period, will be charged at the weekly rate.

3.5. Access reserves the right to charge a minimum period of hire for certain types of Equipment.

3.6. The Hire Period will not be subject to stand down or adjustment for any reason whatsoever unless agreed to by Access in writing.

4. Hire Charges and Other Charges

4.1. **Hire:** Subject to clause 4.10, the Hirer will pay Access the hire charges set out in the Hire Agreement. The Hirer is not entitled to any discount or rebate if the Equipment is not used by the Hirer for any part of the Hire Period. If the Equipment is used for more than eight hours on any given day Access may charge an amount of one eighth of the daily hire rate for each additional hour (or part thereof) that the Equipment is used.

4.2. **Other Services:** Access will, if requested by the Hirer, and only if personnel are available, attend the site and instruct the Hirer in the operation of the Equipment. The Hirer will in addition to the hire charges pay Access for such services at the scheduled rate per hour or part thereof including travelling time plus any associated travel and accommodation costs incurred by Access

4.3. **Consumables and Trade Materials:** The Hirer will be liable for charges made for consumables and trade materials used at the scheduled rate.

4.4. **Tax and Government Charges:** The Hirer will be liable for stamp duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the Hire Period. If the Hirer wishes to claim exemption from duty or tax, the Hirer must furnish appropriate exemption certificates to Access.

4.5. **Environmental Disposal Levy:** The Hirer will pay the amount specified by Access in the Hire Agreement in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Equipment.

4.6. **Credit Card Payments:** The Hirer acknowledges that Access may impose a charge for accepting payments by credit card in the amount of 2% of the total charges that would otherwise apply.

4.7. **Delivery:** If the Hirer requires Access to deliver, collect or install the Equipment, the Hirer will be liable for the cost of delivery, collection or installation.. Access will not be responsible for any loss or damaged whatsoever caused by delays in delivery or installation or failure to deliver for any reason whatsoever, including negligence on the part of Access or its agents or employees. Access shall have the right to charge the Hirer for an additional delivery or collection fee for each occasion where the Equipment was not able to be delivered and or collected at the agreed times and location. Access is not a common carrier and does not accept the obligation or liability of common carriers. Access may refuse the handling, lifting and or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

4.8. **Late Return of Equipment:** If the Customer returns the Equipment to Access's premises after the end of the Hire Period, the Hirer will be charged a minimum of an additional full day hire. The Customer will remain liable to be charged for the Equipment until it is returned to Access and made available for the next hire.

4.9. **Early Return of Equipment:** If the Hirer returns the Equipment before the end of the Hire Period, the Hirer will remain liable for all hire and other charges payable to Access for the entire Hire Period.

4.10. **Payment Due Date:** The Hirer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within 30 days of the invoice date.

4.11. **Late Payment:** If a Hirer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, without limiting clause 9.4, the Hirer will be liable to indemnify Access for all expenses incurred by Access in recovering any amounts which the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).

4.12. **Offset:** Access may offset against any credit owed to the Hirer any amount owing by the Hirer to Access. Any claims for credit by the Hirer shall be made within fourteen days of receiving Access's invoice.

4.13. **Return time:** For the sake of certainty the Hirer may only return the Equipment to Access's premises during normal business hours.

4.14. **Rental Levy:** The Hirer will pay a 12% Rental Levy on all Hire Agreements in addition to Access' Hire Charge for the purpose of covering aesthetic and incidental wear and tear, servicing, break downs and costs associated with the hire and off-hire of Equipment in accordance with the manufacturers guidelines, all relevant Australian Standards and all recommendations published by the Elevating Work Platform Association. The Rental Levy expressly excludes loss or damage occasioned by any one or more of the following:

- (a) damage due to misuse, abuse or overloading of the Equipment or any components thereof;
- (b) wrongful conversion of the Equipment or any components thereof;
- (c) loss or damage in contravention of the Hire Agreement;
- (d) loss or damage from use in violation of any statutory laws and regulations;
- (e) damage caused to tyres and tube by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
- (f) glass breakage or graffiti;
- (g) loss or damage relating to lack of lubrication or other normal servicing of Equipment;
- (h) loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (i) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
- (j) damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt, water, acid, etc;

- (k) theft of the Equipment or any deliberate damage of any type caused to the Equipment (whether caused by the Hirer or any third party whatsoever);
- (l) loss or damage to Equipment during transport, except where transported by Access;
- (m) loss or damage caused by the negligence of the Hirer and Damage caused by paint texture coat overspray concrete, grinding welding gas cutting collision dropping and or impact.

4.15. **Extreme Worksite Levy:** The Hirer will pay a 20% Extreme Worksite Levy on all Hire Agreements in addition to Access' Hire Charge if Equipment is used off-shore, over water or down in under-ground mines. The Hirer must advise Access in writing if the Equipment is proposed to be used off-shore, over water or down in under-ground mines and must produce evidence that they have taken out suitable insurance cover for these items of Equipment with such insurance cover to include Access as an insured and cover Access' ability as a principal in connection with the performance of the Hire Agreement and contain provisions whereby all rights subrogation or action against any of the persons comprising the insured are waived; the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance policy.

4.16. **Cleaning:** The Hirer is responsible for all costs associated with any cleaning, painting, replacement of decals, repairs and refuelling of equipment returned to Access in an unsatisfactory condition as determined by Access.

5. Hirer's Hire Obligations

5.1. **Possession and Use by Hirer:** The Hire Agreement is personal to the Hirer and the Hirer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period.

5.2. **Suitability:** The Hirer agrees that the use of the Equipment is deemed acceptance it has satisfied itself as to the suitability, condition and fitness for purposes of the Equipment. Access gives no warranty that the Equipment is suitable for the Hirer's purpose.

5.3. **Operation of Equipment:** The Hirer warrants that at all times it will:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operating or erecting the Equipment are suitably instructed/trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;
- (c) return the Equipment to Access in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer fails to clean the Equipment, Access will charge the cleaning cost to the Hirer.
- (d) display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by the operator of the Equipment;
- (e) ensure all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by Access;
- (f) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (g) conduct a job safety analysis prior to using the Equipment at a site;
- (h) accept responsibility for the safe-keeping of and insuring the Equipment during the Hire Period;
- (i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
- (j) comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.

5.4. **Cleaning and Maintenance:** The Hirer must:

- (a) Carry out daily checks, clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturer's and Access's instructions at the Hirer's cost; and
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Access's written consent.

5.5. **Safekeeping:** The Hirer must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, seizure, damage or vandalism.

5.6. **Alteration and Identifying Marks:** The Hirer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Equipment.

5.7. **Inspections:** The Hirer consents to Access inspecting the Equipment from time to time during the Hire Period. In addition, the Hirer may arrange a joint inspection with Access at the end of the Hire Period.

5.8. **Safe Loading and Transport:** The Hirer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Hirer and any transporting contractor must observe any safety directions advised by Access and/or manufacturer of the Equipment for its loading and safe handling.

5.9. **Location:** The Hirer must not remove the Equipment from the Location without first obtaining Access's written consent, which consent can be given or withheld at Access's absolute discretion. The Equipment must be returned to Access's premises where the Equipment was collected from by the Hirer or delivered from Access (during normal business hours).

5.10. **Electrical Equipment re-testing and re-tagging:** The Hirer is responsible for arranging at the Hirer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard/s and Regulatory Authority requirements. Access is able to arrange, at the Hirer's cost, for such re-testing and re-tagging of the electrical equipment. Any damage caused to the Equipment resulting from incorrect testing will be at the Hirer's cost.

6. Equipment Breakdown

6.1. **Obligations of Hirer:** In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:

- (a) immediately stop using the Equipment and notify Access;

- (b) immediately take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) immediately take all steps necessary to prevent any further damage to the Equipment; and
- (d) not repair or attempt to repair the Equipment without Access's written consent.

6.2. Obligations of Access: In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer or any third party who gains access to the Equipment at the Location, Access will:

- (a) take all steps necessary to repair the Equipment soon as reasonably possible after being notified by the Hirer;
- (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment;
- (c) not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer or any Claim made against the Hirer arising from or in any way connected with a breakdown of or a malfunction in the Equipment, no matter the cause of the breakdown or malfunction.

7. Lost, Stolen or Damaged Equipment

7.1. The Hirer is at all times responsible for the Equipment and its attached tools and accessories during the Hire Period.

7.2. If the Equipment is lost, stolen or damaged during the Hire Period, the Hirer will be liable for:

- (a) any costs incurred by Access in repairing the Equipment or for the new replacement cost of the Equipment if it can not be economically repaired; and
- (b) any other costs whatsoever incurred by Access as a result of the loss, theft or damage to the Equipment, including the full hire charges as set out in the Hire Agreement.

8. Supply Documents

8.1. Upon request by Access the Hirer must supply Access with full copies of any document relating to the Equipment in any way including any police report regarding any damage caused to the Equipment by any person.

9. Indemnities and Exclusions of Liabilities

9.1. Subject to clause 9.2 and except as expressly provided to the contrary in the Hire Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Access's obligations under the Hire Agreement are excluded from the Hire Agreement to the extent permissible by law.

9.2. Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement to the minimum extent permissible. The Hirer hereby warrants and agrees with Access that any damages suffered by it as a result of any breach by Access of this Hire Agreement or any breach of any applicable legislation will not exceed and otherwise be capped at the lesser of the actual charges payable pursuant to the Hire Agreement or four months hire charges.

9.3. Subject to clause 9.2, Access will not be under any liability to the Hirer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Agreement.

9.4. The Hirer is liable for and indemnifies Access against all liability, claims, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against Access and any environmental loss, cost, damage or expense) arising from or incurred in connection with Hirer's hire and use of the Equipment or its breach of the Hire Agreement.

9.5. 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 a party to incur expenses or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Hirer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.

9.6. For the purposes of clauses 9.3 to 9.5, use of Equipment operated by a person supplied by Access will be use of the Equipment by the Hirer.

10. Termination

10.1. Access may terminate the Hire Agreement immediately by notice to the Hirer, if:

- (a) the Hirer breaches any term of the Hire Agreement; or
- (b) the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

10.2. Access may terminate the Hire Agreement for any other reason by 2 hours notice.

10.3. The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Agreement.

11. Recovery of Equipment

11.1. If the Hirer is in breach of the Hire Agreement or if Access has terminated the Hire Agreement with the Hirer pursuant to clause 10, Access may take all steps necessary (including legal action) to recover the Equipment, including entering the Hirer's premises to do so and the Hirer hereby authorises Access to do so.

12. Remote Area Hire Conditions

12.1. **Definitions:**

“Remote Area” is a Location in excess of 50km from nearest Access branch.

“PMP” is the electronically managed preventive maintenance programme operated by Access (or its agent) for all Equipment. The PMP involves regular attendance on site by Access's service personnel to conduct routine 3 Monthly Equipment servicing and general maintenance requirements.

- 12.2. Unless otherwise specified in the Hire Agreement the PMP for all Equipment operating in a Remote Area will be subject to a per km charge both to and from the site at the scheduled rate per kilometre plus labour costs at the scheduled rate, per person per hour (including travelling time) plus any other direct travelling costs including airfares and accommodation (**Remote Area Travelling Charges**).
- 12.3. Multiple items of Equipment hired by the same Hirer on the one site will only be charged as “one all out”.
- 12.4. The Hirer remains responsible for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 12.5. If the Equipment breaks down in a Remote Area, the Hirer must also pay Access the Remote Area Travelling Charges relating to any attendance to the Location concerned.
- 12.6. It is the responsibility of the hirer to provide access to site.
- 12.7. It is the responsibility of the hirer to provide accommodation for remote areas if no accommodation is available within 20 kilometres of the Location or if requested by Access.

13. Miscellaneous

- 13.1. **Severability:** If any part of the Hire Agreement (including these Terms and Conditions) becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 13.2. **Governing Law and Default Recovery:** The Hire Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the Courts of that State.
- 13.3. **Security of Obligations:** As security for the obligations and liabilities of the Hirer under the Hire Agreement, the Hirer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way and all Real Property. Without limiting the generality of the charge in this clause, the Hirer agrees, on request by Access, to execute any documents and do all things necessary required by Access to register a mortgage security over any Real Property. The Hirer will indemnify Access on an indemnity basis against all costs and expenses incurred by Access in connection with the preparation and registration of any mortgage documents. The Hirer also consents unconditionally to the Owner lodging a caveat or caveats noting its interest in any Real Property.
- 13.4. **Entire Agreement:** The Hire Agreement, including these Terms and Conditions of Hire, comprises the entire agreement between the parties. No additional terms and conditions proposed by the Hirer (including any terms contained in any purchase order provided by the Hirer) apply to the hire of the Equipment unless agreed to in writing by Access.
- 13.5. **No Reliance:** The Hirer acknowledges that neither Access or any other person acting on Access’s behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.
- 13.6. **Variation:** Access may at any time vary the Hire Agreement, including these Terms and Conditions of Hire, by giving the Hirer 14 day’s written notice of its intention to do so. If the Hirer is materially prejudiced by the variation it may terminate the Hire Agreement within 48 hours of receipt of the notice of variation.
- 13.7. **Privacy:**
- (a) Access may collect personal information about the Hirer. Access may use the Hirer’s personal information to provide services to the Hirer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Hirer or third parties, and for marketing and client relationship purposes. Generally, the Hirer has a right to access personal information Access holds about the Hirer.
 - (b) The Hirer consents to and authorises Access to use and disclose the Hirer’s personal information in accordance with clause 13.7(a).
- 13.8. **Notice to Customer:** Any document which by the Hire Agreement may be given by Access may be served or rendered by leaving it at or posting it to the address of the Hirer as stated in the Hire Agreement or last notified by the Hirer in writing to Access and will be deemed to have been serviced or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of Access on behalf of the Hirer.
- 13.9. **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to Access upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of Access to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 13.10. **Withdrawal of Credit Accommodation:** Any credit accommodation granted by Access to the Hirer may be reviewed at any time without notice. Credit may be withdrawn for Hirers failing to make payments or use the Equipment in accordance with these Terms and Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- 13.11. **Authority of Hirer:** The person signing the Hire Agreement (including the Credit Application) for and on behalf of the Hirer hereby covenants with Access that he or she has the authority of the Hirer to make the Agreement on the Hirer’s behalf and is empowered by the Hirer to bind the Hirer to the Agreement and hereby indemnities Access against all losses, costs and claims incurred by Access arising out of the person so signing the Agreement not in fact having such power and/or authority.
- 13.12. **Previous Editions:** This edition of the Terms and Conditions of Hire replaces and supersedes all of Access’s previously issued Terms and Conditions of Hire.
- 13.13. **Time of the Essence:** Time is to be of the essence of all obligations of the Hirer in the Hire Agreement.
- 13.14. **Right of Refusal to Hire:** Access is in no way obliged to hire any Equipment to the Hirer and may refuse to hire Equipment to a Hirer at its absolute discretion, including if the Hirer fails to provide adequate identification or if the opinion of Access, the Hirer’s safety is put at risk by providing them with such Equipment.

14. Insurance

- 14.1. The Hirer shall effect and maintain at its expense the policies of insurance specified in Clause 14.1 (a) and (b) providing cover from the commencement of the Period of Hire for the full duration including any extension or continuation.
- (a) A policy providing indemnity for physical loss, including theft and/or damage to the Equipment for the replacement value of each item of Equipment, including whilst in transit; and
 - (b) A public liability policy in the usual terms which provides indemnity with respect to the operation of the Equipment to a limit of indemnity of at least \$20,000,000.
- 14.2. The Hirer shall ensure that each policy of insurance names Access as a named insured as owner of the Equipment.
- 14.3. The Hirer shall provide Access with evidence of the insurance affected in compliance with Clause 14.1 immediately upon demand by Access.
- 14.4. The Hirer warrants shall not:
- (a) Do anything, or fail to do anything, which would allow an insurer to refuse or reduce a claim;
 - (b) Vary the insurance required by this clause in any way without the written consent of Access;
 - (c) Enforce, conduct, settle or compromise a claim without the consent of Access.

15. Rental Levy and Environmental Disposal Levy

- 15.1. The Rental and Environmental Disposal Levies are to be charged on all contracts and invoices. In the event a Hirer refuses to pay a levy component then all charges specific to repainting, tyre wear, description, new decals, new stickers, off-hire costs, onsite servicing, inspections, break downs, repairs, oils filters, oil disposal, all accommodation, air fares, travel per km, inductions, training and chargeable time will be billed separately to the Hirer.

GUARANTEE AND INDEMNITY

THIS DEED OF GUARANTEE AND INDEMNITY is given on the date set out in Item 1 of the Schedule

BY THE PERSONS named and described in Item 2 of the Schedule (the “**Guarantors**”)

IN FAVOUR OF:

Access Equipment Hire Australia Pty Ltd (ACN 131 094 874) of 1 Catalano Road, Canning Vale, Western Australia 6155 (called “**Access**”).

ON BEHALF OF THE COMPANY named and described in Item 3 of the Schedule (the “**Hirer**”)

RECITALS

- A. Access, at the request of the Hirer and the Guarantor, has agreed to grant credit accommodation to the Hirer on the terms and conditions comprised in the Credit Application Form (incorporating Terms and Conditions of Hire) to which this Deed is attached (collectively called the “**Hire Agreement**”).
- B. The Guarantors comprise the Hirer’s Directors.

OPERATIVE PART

1. DEFINITIONS

- 1.1. In this Deed, unless specified to the contrary, the following words and phrases either:
- 1.2. have the expressed meaning given to them; OR
- 1.3. have the meaning given to them in the Recital or clause set out opposite them:
 - “**Business Day**” means any day other than a Saturday, Sunday or a gazetted Western Australian Public Holiday;
 - “**Electronic Communication**” means a communication of information in the form of data, text or images of guided and/or unguided electromagnetic energy (including via email);
 - “**Hire Agreement**” – Recital A, and includes the elaborated definition appearing in the Terms and Conditions of Hire referred to in Recital A;
 - “*inter alia*” is the legal phrase, in Latin, meaning “*amongst other things*”; and
 - “*mutatis mutandis*” is the legal phrase, in Latin, meaning “*with the necessary changes being made*”.

2. GUARANTEE AND INDEMNITY

- 2.1. The Guarantors, in consideration of Access at their request entering into the Hire Agreement which constitutes valuable consideration to the Guarantors:
 - 2.1.1. unconditionally and irrevocably guarantee to Access that the Hirer will perform all of its obligations under the Hire Agreement; and
 - 2.1.2. indemnify Access against all losses, costs, charges and expenses whatsoever which Access may incur by reason of any default by the Hirer under the Hire Agreement;with effect from the date of this Deed.
- 2.2. If the Hirer defaults in the payment of money under the Hire Agreement, the Guarantors must on demand immediately pay the outstanding amount to Access.
- 2.3. If the Hirer fails to perform or observe any of its obligations under the Hire Agreement (other than an obligation concerning the payment of money), the Guarantors must on demand immediately compensate Access for that failure.
- 2.4. The Guarantors acknowledge that:

- 2.4.1. the guarantee and indemnity constituted by this Deed is a continuing one which will not be affected by part payment or part performance by the Hirer; and
- 2.4.2. their liability to Access under this Deed will not be affected by:
 - (a) Access granting to the Hirer or the Guarantors any time or other indulgence;
 - (b) Access agreeing not to sue the Hirer or the Guarantors; and/or
 - (c) the failure of any of the Guarantors to sign this Deed.
- 2.5. If the Hirer goes into liquidation:
 - 2.5.1. Access may retain all money received from the Hirer's liquidated estate and not allow the Guarantors a reduction in their liability under this Deed (other than to the extent of the amount received) until such time as the Hirer's indebtedness to Access is paid in full;
 - 2.5.2. the Guarantors may not and must not seek to recover any money from the Hirer so as to reimburse them for payments made to Access under this Deed until Access have been paid and/or compensated in full;
 - 2.5.3. the Guarantors may not and must not prove a claim in the insolvency of the Hirer in competition with Access, whether in respect of an amount paid by the Guarantors under this Deed or otherwise for any amount which Access has demanded from them under this Deed;
 - 2.5.4. the Guarantors must pay to Access all money which Access may be obliged to refund to the Hirer's liquidator as preferential payments received from the Hirer; and
 - 2.5.5. the Guarantors must not raise against Access a defence, set-off or counter-claim available to themselves, the Hirer or any other Guarantor, or claim a set-off or make a counter-claim against Access, in reduction of the Guarantor's liability under this Deed.
- 2.6. If any of the obligations on the part of the Hirer under the Hire Agreement are unenforceable or invalid, then this and the five (5) previous clauses are to operate as a separate indemnity with the result that:
 - 2.6.1. the Guarantors indemnify Access against all loss resulting from Access's inability to enforce performance of such obligations; and
 - 2.6.2. the Guarantors must on demand pay to Access the aggregate of the monetary quantification of all such losses arising out of such inability to enforce performance of such obligations.
- 2.7. The Guarantors (testified by their execution of this Deed) represent and warrant to Access that:
 - 2.7.1. prior to their executing this Deed, each of them either:
 - (a) received competent and independent legal advice in connection with the full purport and effect of this Deed, or
 - (b) although having had the opportunity of doing so, he has not obtained independent legal advice in connection with the full purport and effect of this Deed for the very reason that he is fully cognizant of such purport and effect; and
 - 2.7.2. they have executed this Deed freely, voluntarily and without any duress on the part of Access.

3. NOTICE

- 3.1. Any demand, notice or document under this Deed may be made or given by Access, or its solicitor, and will be sufficiently served or delivered on the Guarantors:
 - 3.1.1. if served or delivered personally;
 - 3.1.2. if posted by pre-paid post addressed to the Guarantors at their respective addresses appearing in this Deed;
 - 3.1.3. if sent by facsimile transmission to the party to be served or to that party's solicitor;
 - 3.1.4. if sent by Electronic Communication to the party to be served or to that party's solicitor; or

- 3.1.5. if served or delivered in any other manner authorised by the Supreme Court Rules of the State for service of documents on parties or their solicitors.
- 3.2. Service or delivery by pre-paid post will be deemed to have been made or given at 12.00 noon on the Business Day following posting.
- 3.3. Service or delivery:
 - 3.3.1. by facsimile transmission will be deemed to have been made or given at the moment the sender's facsimile machine confirms transmission to the recipient's machine, subject to the production of a transmission report to that effect, and
 - 3.3.2. by Electronic Communication will be deemed to have been made or given at the time of receipt under the *Electronic Transactions Act 1999* (Cth).

4. GENERAL CONDITIONS

4.1. Further Assurances

The Guarantors must sign such documents and do anything else which may be necessary or desirable to give full effect to this Deed.

4.2. Waiver

A waiver by Access of a default by the Guarantors under this Deed will not constitute a release of the Guarantors' obligation to observe and perform all of their obligations under this Deed in the future.

4.3. Counterparts

This Deed may be executed in two or more counterparts each of which will be deemed an original, but all of which will constitute one and the same document.

4.4. Jurisdiction

This Deed is to be governed by and construed in accordance with the law of Western Australia (the "**State of Jurisdiction**").

5. INTERPRETATION

5.1. In the interpretation of this Deed, unless specified to the contrary:

- 5.1.1. words importing the plural include the singular and *vice versa*;
 - 5.1.2. words importing any gender includes both genders;
 - 5.1.3. a reference to any matter or thing includes the whole and each part of it separately;
 - 5.1.4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - 5.1.5. the obligations imposed by this Deed in favour of Access includes his heirs, executors, administrators and assigns;
 - 5.1.6. the obligations imposed by this Deed on or in favour of a party which is a company or other corporate body includes its successors and assigns; and
 - 5.1.7. use of the word "**including**" is to be read and construed without limitation.
- 5.2. In the interpretation of this Deed, time will be of the essence. However, if something must be done on or by a specified day which is not a Business Day, it is to be done instead on or by the next Business Day.
- 5.3. This Deed is to be interpreted so that it complies with the law of the State of Jurisdiction, although if any provision does not comply, then that provision is to be read down so as to give it as much effect as possible. However, if it is not possible to give the provision concerned any effect at all, then it is to be

severed from this Deed, in which case the remainder of this Deed will continue to have full force and effect.

- 5.4. Any obligation imposed by this Deed on two or more persons binds them jointly and each of them severally.
- 5.5. The legal doctrine of *contra proferentum* does not apply to this Deed, which means that a provision in this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed and/or the inclusion of the provision concerned.
- 5.6. The clause headings are for ease of reference only and are not intended to affect the construction or interpretation of this Deed.

EXECUTED BY THE GUARANTORS AS A DEED in the following manner:

SIGNED by THE FIRSTNAMED)
GUARANTOR in the presence of:) _____
)

Signature of Witness

Name of Witness (block letters)

SIGNED by THE SECONDNAMED)
GUARANTOR in the presence of:) _____
)

Signature of Witness

Name of Witness (block letters)

SIGNED by THE THIRDNAMED)
GUARANTOR in the presence of:) _____
)

Signature of Witness

Name of Witness (block letters)

SIGNED by THE FOURTHNAMED)
GUARANTOR in the presence of:) _____
)

Signature of Witness

Name of Witness (block letters)

**SIGNED by THE FIFTH NAMED
GUARANTOR in the presence of:**

)
)
)

Signature of Witness

Name of Witness (block letters)

SCHEDULE

1. Date of this Deed: The _____ day of _____ 20__

2. The Guarantors:

(1) (Name): _____

(Address): _____

(2) (Name): _____

(Address): _____

(3) (Name): _____

(Address): _____

(4) (Name): _____

(Address): _____

(5) (Name): _____

(Address): _____

3. The Hirer:

(Name): _____

(ACN): _____