

TERMS OF GUARANTEE, INDEMNITY & CHARGE

The Guarantors hereby JOINTLY AND SEVERALLY AGREE with Us as follows:

1. At the request of the Guarantor/s, We have indicated that We may, at Our sole discretion:
 - a. hire Equipment under Our Terms of Hire as amended from time to time;
 - b. make available a certain limit of credit to the Customer; and
 - c. make available in the future a certain limit of credit to the Customer.
2. The Guarantor/s give this Guarantee, Indemnity & Charge at the request of the Customer and in consideration of Us:
 - a. providing or continuing to provide a line of credit for the Customer; and
 - b. refraining from immediately asking for payment of any amounts now owing by the Customer.
3. The Guarantor/s unconditionally and irrevocably guarantee to Us the due and punctual payment by the Customer to Us of all monies at any time actually or contingently owing to Us by the Customer either alone or jointly or severally with others on any account (the 'Guaranteed Monies'), including without limitation, by way of:
 - a. monies payable for Equipment hired, or to be hired, by Us to the Customer;
 - b. interest;
 - c. costs and charges; and
 - d. indemnity or damages.
4. If the Customer defaults in payment of the Guaranteed Monies, the Guarantor/s shall pay those monies on demand, by way of currency, to or as directed by Us in order to discharge the debt owed by the Customer in full.
5. This Guarantee, Indemnity and Charge shall constitute a continuing guarantee and indemnity to Us for all Guaranteed Monies which are now or may from time to time be owing or remain unpaid.
6. The Guarantor/s' obligations under this Guarantee, Indemnity and Charge are primary obligations and are not ancillary or collateral to any other right or obligation. The Guarantor/s' obligations may be enforced against the Guarantor/s without Us being required to take any action against the Customer whether by making a demand or under any security it may hold for the Guaranteed Monies.
7. The liability of the Guarantor/s under this Guarantee, Indemnity and Charge is absolute and unconditional and it shall not be avoided, released or affected by anything at all which, but for this provision, might operate to relieve the Guarantor/s of any obligation in whole or in part, including without limitation:
 - a. Us making any variation or alteration in the terms of any agreement made with or to be made with the Customer or the Terms of Hire, or entering into any transaction or arrangement, including an arrangement which increases the Guaranteed Monies, any extension of time, any waiver of release, which may be made or given between Us, the Customer, the Guarantor/s and anyone else;
 - b. any agreement between Us and the Customer becoming wholly or partly unenforceable;
 - c. Our failure to give notice, or any other omission, mistake, delay or negligence on Our part;
 - d. Our refusal to hire further Equipment to the Customer;
 - e. the bankruptcy, winding up, liquidation or becoming insolvent under the administration of, or appointment of an administration to, the Guarantor/s, the Customer or any other person;
 - f. any change in the constitution, ownership, directors or management of the Customer;
 - g. Us compounding or compromising with or releasing the Customer or any Guarantor of this Guarantee, Indemnity and Charge or any other person or corporation whatsoever or the release, abandonment, variation, relinquishment, loss or renewal in whole or in part of any security, asset or right held by Us;
 - h. the fact that any other person fails to become bound or ceases to become bound as surety in respect of the Guaranteed Monies;
 - i. if the Customer is the trustee of a trust, it acting beyond its powers under the trust, or
 - j. anything else which might prejudice or discharge any Guarantor's liability under this Guarantee, Indemnity and Charge.
8. Any payment made to Us and later avoided by the application of any statutory provision or legal or equitable principle shall be deemed not to discharge the Guarantor's liability and, that in such event, the parties hereto are to be restored to the rights which each respectively would have had if the payment had not been made.
9. Notwithstanding the fact that this Guarantee, Indemnity and Charge may have been intended or expressed to be executed and given by more than one person it shall bind each person who executes it from execution, notwithstanding that any proposed or contemplated party does not execute this Guarantee, Indemnity and Charge.
10. Until We have received all monies due from the Guarantor/s to Us under this Guarantee, Indemnity and Charge, the Guarantor agrees:
 - a. in the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement, scheme of arrangement or other administration in insolvency of the Customer, that the Guarantor will not without Our prior consent lodge any proof of debt or similar claim for any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for Us;
 - b. on Our request, to lodge a proof of debt or similar claim in any such Administration and enforce any such security and to execute all such documents and do all such things as We may require to enable Us to have and receive the benefit of or arising from any such proof, claim or security;
 - c. not to attempt or purport to be subrogated to Us;
 - d. to waive all rights as surety which are inconsistent with this Guarantee, Indemnity and Charge; and
 - e. that the Guarantor's liability under this Guarantee, Indemnity and Charge shall be that of principal debtor.
11. The Guarantor/s agree that a certificate issued by any of Our authorised officers stating any monies owed by the Customer or Guarantor to Us (or any related body corporate) including monies due under this Guarantee, Indemnity and Charge, shall be conclusive evidence of such amounts owing by the Customer and each Guarantor.
12. All payments which a Guarantor is required to make under this Guarantee, Indemnity and Charge must be made without any set-off, counterclaim condition or deduction and are payable on demand by Us.
13. Each Guarantor hereby charges and creates in Our favour a security interest in, for the payment of all monies due from the Guarantor to Us under this Guarantee, Indemnity and Charge, all the Guarantor's present and future beneficial interests in real property and all of the Guarantor's present and after-acquired property. Each Guarantor also agrees that on demand by Us, the Guarantor will immediately execute such mortgage or other instrument of security, as We require, and against the event that the Guarantor fails to do so within a reasonable time of being so requested, the Guarantor hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Us to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this Guarantee, Indemnity and Charge each Guarantor irrevocably and unconditionally consents to lodgement by Us of a caveat noting the interest given by this charge, security interest, or any other mortgage or other instrument of security, on the title of any property of the Guarantor whenever We so wish.
14. The Guarantor/s unconditionally and irrevocably guarantee Us the due and punctual performance by the Customer of Our Terms of Hire.
15. The Guarantor/s agree to indemnify Us against any losses, costs, charges or expenses of any nature (including Our solicitors' costs and disbursements on an indemnity basis of any litigation, arbitration or other alternative dispute resolution process between Us and the Customer or any Guarantor, or any commission paid or payable by Us to any commercial or mercantile agent) which it has incurred or incurs in the future:
 - a. as a result of the Customer's breach of any of the terms and conditions of the Credit Application or Terms of Hire; or
 - b. otherwise arising out of the business relationship between the Customer and Us; or
 - c. in connection with the preparation, enforcement or discharge of this Guarantee, Indemnity and Charge or further security requested under clause 13, or
 - d. otherwise arising under or in connection with this Guarantee, Indemnity and Charge.
16. Until such time as the Guaranteed Monies have been irrevocably paid in full, if the Customer is wound up, We may prove for all monies which the Guarantor/s may have paid under this Guarantee, Indemnity and Charge and need not apply, in discharge of the Guaranteed Monies, any monies which it receives.
17. For the consideration mentioned above, the Guarantor/s unconditionally and irrevocably indemnify Us against any loss or liability which they may suffer because the whole or any part of the Guaranteed Monies are not recoverable from the Customer, and not recoverable from any Guarantor as surety, because of any default by the Customer in the performance and observance by the Customer of Our Terms of Hire, by reason of the Customer's insolvency or bankruptcy, or by reason of the contract between the Customer and Us being void, voidable or unenforceable for any reason whatever, whether or not the circumstances were known to Us.
18. If, after We apply any amount against any of the Guaranteed Monies, We form the view that We are obliged to, or that it is reasonable to compromise and, make a payment in respect of the amount so applied by Us to any person under the law relating to bankruptcy, winding up or the protection or creditors, Our rights under this Guarantee, Indemnity and Charge will be re-instated, and will be the same in respect of the amounts as if the application, or the payment or transaction giving rise to it, had not been made.
19. Service of any notice, demands, proceedings, summonses, suits or actions (together referred to as 'Notice') upon any Guarantor herein may be effected by Us or Our solicitors sending such process by prepaid post to the Guarantor's address shown above or to the last disclosed address of the Guarantor in any company search or business name search. Service shall be deemed to have been effected two business days after the posting of the Notice.
20. The Guarantor/s:
 - a. consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Guarantee, Indemnity and Charge and the Guarantor/s agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest. The Guarantor/s waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge;
 - b. undertake to:

(i) do anything (including executing any new document or providing any information) that is required by Us to register a financing statement or financing change statement or to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA and that We acquire and maintain a perfected security interest under the PPSA;

(ii) not register a financing change statement in respect of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge without Our prior written consent; and

(iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the personal property which is the subject of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge in favor of a third party without Our prior written consent.

21. If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Guarantee, Indemnity and Charge and the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Guarantor/s 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.

22. Unless otherwise agreed and to the extent permitted by the PPSA, We and the Guarantor/s agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Guarantor/s waive any right they may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

23. This Guarantee, Indemnity and Charge is a security agreement for the purposes of the PPS Act and We may apply amounts received in connection with a security interest contemplated or constituted by this Guarantee, Indemnity and Charge to satisfy obligations secured by that security interest in any way it determines in its absolute discretion.

24. The Guarantor/s agree to notify Us in writing of any change to details set out in this Guarantee, Indemnity and Charge, within 5 days from the date of such change.

25. This Guarantee, Indemnity and Charge and the construction and interpretation of it shall be governed by the laws in force for the time being and from time to time, and the parties to this Guarantee, Indemnity and Charge irrevocably submit generally and unconditionally to the jurisdiction in respect of all claims, proceedings and matters arising out of or in respect of this Guarantee, Indemnity and Charge.

26. In this Guarantee, Indemnity and Charge the following rules of interpretation apply unless the context otherwise requires:

a. "Guarantor" means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns.

b. "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended) (the "PPS Act") and any other legislation and regulations in respect of it and the following words in clauses 20 to 23 have the respective meanings given to them in the PPS Act: financing change statement, financing statement, interested person, personal property, register, registration, security agreement, security interest and verification statement;

c. words denoting the singular number includes the plural (and vice versa);

d. any capitalised terms not defined in this Guarantee, Indemnity and Charge have the same meaning as set out in Our Terms of Hire.

e. words denoting natural persons include bodies corporate and unincorporated and their permitted assigns (and vice versa); and

f. references to any party to this Guarantee, Indemnity and Charge or any other agreement or instrument include the party's successors and permitted assigns.

27. By signing this Guarantee, the Guarantors consent to and authorise Us:

a. to obtain from a credit reporting agency a consumer credit report containing information for the purpose of assessing whether to accept the Guarantor/s as a guarantor for credit applied for by, or provided to, the Customer - until the credit covered by the Customer's application ceases.

b. unless otherwise prevented by law, to obtain any information about any of the Guarantor's consumer or commercial credit or business history or its commercial activities or commercial credit worthiness from its bank or any other credit provider for the purposes of assessing whether to accept me/us as a Guarantor for credit applied for by, or provided to, the Customer and to disclose information to a credit reporting agency.

c. unless otherwise prevented by law, to collect from, store, use, disclose to or exchange with any of the parties named in clause (c) above or other credit providers, third party provider, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved in the collection of trade debt, information about my/our personal or commercial worthiness or business history in order to assess the Credit Application (including whether to accept the Guarantor), monitor the credit worthiness or withdrawing credit facilities, notification of my/our default, issues trade bills, insure risk processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer and/or Guarantor/s, and enable the daily operation of the Customer/s credit account and collect overdue accounts; and

d. the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to Our solicitors or mercantile agents.

28. We agree that, in dealing with information disclosed to it by the Guarantor pursuant to clause 22, We will deal with that information in accordance with clause 19 of Our Terms of Hire and the National Privacy Principles and with the Privacy Act 1988.

LEGAL ADVICE

Each Guarantor acknowledges that:

- (a) the Guarantor has either:
 - (i) sought advice if necessary as to the purport, effect and consequences of and obligations created by this Guarantee, Indemnity and Charge from a solicitor or barrister independent of Us; or
 - (ii) having had the opportunity to seek such advice, determined such advice was not necessary and that it understood the effect and consequences of and obligations created by this Guarantee, Indemnity and Charge, before executing this Guarantee, Indemnity and Charge; and
- (b) it enters into this Guarantee, Indemnity and Charge freely after considering such advice or electing not to obtain such advice.

Full Terms and Conditions can be downloaded from manholeformhire.com.au
or on request from info@manholeformhire.com.au

Office Use:	Customer No.: _____	Credit Limit: _____
Account Approved by	Sign _____	Date _____
Entered to Syrinx	Sign _____	Date _____
Entered to Customer List	Sign _____	Date _____
Entered in QB	Sign _____	Date _____
Customer Advised	Sign _____	Date _____