

**PERSONAL GUARANTEE AND INDEMNITY**

(to be given by all directors of the Customer, if the Customer is a company)

In consideration of FLEET PLANT HIRE PTY LTD granting the trading account and extending credit to the Customer, each of the undersigned hereby jointly and severally:

- (i) guarantee to FLEET PLANT HIRE PTY LTD the due and punctual payment by the Customer of all amounts which may from time to time be due and payable to FLEET PLANT HIRE PTY LTD on any account whatsoever, even if the amount exceeds the maximum credit amount stipulated in the Customer's trading account and credit application;
- (ii) indemnify FLEET PLANT HIRE PTY LTD in respect of any loss, cost (including legal costs on a full indemnity basis), claim or damage suffered by FLEET PLANT HIRE PTY LTD by reason of any failure by the Customer to pay any amount due and payable by it to FLEET PLANT HIRE PTY LTD;
- (iii) acknowledge that this guarantee and indemnity shall be a continuing guarantee and indemnity and no extension of time for the Customer to pay, extension of the Customer's credit facility or variation of the terms of such terms of credit or terms of trade or other indulgence shall affect this guarantee;
- (iv) acknowledge that FLEET PLANT HIRE PTY LTD may recover from the directors, as guarantors, all monies due and payable to it by the Customer even though the customer may not be in default or FLEET PLANT HIRE PTY LTD has made no demand on the Customer;
- (v) acknowledge that they that read the terms and conditions of supply overleaf and agreed that such terms and conditions, where appropriate, are incorporated into this guarantee and indemnity; and
- (vi) undertake to advise FLEET PLANT HIRE PTY LTD immediately upon any change of contact details.

All directors must complete and sign below, if only one director please state that this is the case. (If more than two directors, please photocopy and attach.)

(1) NAME OF DIRECTOR \_\_\_\_\_ (DRIVERS LICENCE NO) \_\_\_\_\_

ADDRESS OF DIRECTOR \_\_\_\_\_

SIGNATURE OF DIRECTOR \_\_\_\_\_

DATE OF BIRTH \_\_\_\_/\_\_\_\_/\_\_\_\_ MOBILE PHONE NO \_\_\_\_\_ HOME NO \_\_\_\_\_

WITNESS' SIGNATURE: \_\_\_\_\_

WITNESS' NAME (Please print): \_\_\_\_\_

WITNESS' RESIDENTIAL ADDRESS: \_\_\_\_\_

(2) NAME OF DIRECTOR \_\_\_\_\_ (DRIVERS LICENCE NO) \_\_\_\_\_

ADDRESS OF DIRECTOR \_\_\_\_\_

SIGNATURE OF DIRECTOR \_\_\_\_\_

DATE OF BIRTH \_\_\_\_/\_\_\_\_/\_\_\_\_ MOBILE PHONE NO \_\_\_\_\_ HOME NO \_\_\_\_\_

WITNESS' SIGNATURE: \_\_\_\_\_

WITNESS' NAME (Please print): \_\_\_\_\_

WITNESS' RESIDENTIAL ADDRESS: \_\_\_\_\_

## **TERMS AND CONDITIONS OF SUPPLY**

1. Hire equipment will be supplied to the Customer only on these terms and conditions and the terms contained in invoices from FLEET PLANT HIRE PTY LTD provided that these terms shall prevail in the event of inconsistency.
2. FLEET PLANT HIRE PTY LTD may withdraw credit at any time for any reason.
3. Hire equipment will be invoiced to the Customer on supply by FLEET PLANT HIRE PTY LTD The Customer will pay the amount invoiced within thirty days of the date of invoice. However, FLEET PLANT HIRE PTY LTD at its sole and absolute discretion reserves the right to demand immediate payment at any time and if such demand is made the Customer must pay immediately on demand.
4. Unless otherwise stated, all prices stated or quoted for any supply are net of any goods and services tax and the Customer shall pay, in addition to the amount payable in respect of a supply and at the same time, all goods and services tax payable in respect of such supply.
5. Interest at the rate of 16% per annum is payable by the Customer on any amounts not paid when due.
6. FLEET PLANT HIRE PTY LTD reserves the right to accept any orders in whole or part or to decline any order. The Customer is not entitled to cancel any orders once made.
7. Acceptance of delivery of the hire equipment by the Customer shall be deemed acceptance of these conditions, if not previously acknowledged by the Customer. All hire equipment, once delivered to the Customer and until returned by the Customer to FLEET PLANT HIRE PTY LTD, remains at the risk of the Customer.
8. FLEET PLANT HIRE PTY LTD is entitled at its absolute and sole discretion to suspend (without any liability whatsoever to the Customer) further supplies of hire equipment which FLEET PLANT HIRE PTY LTD has agreed to supply to the Customer if:
  - (a) the Customer has exceeded its credit terms where the Customer has a credit account with FLEET PLANT HIRE PTY LTD;
  - (b) any monies owing by the Customer to FLEET PLANT HIRE PTY LTD are overdue;
  - (c) the Customer has a receiver or receiver and manager or administrator or other controller (as defined in the Corporations Act) appointed or goes into liquidation or otherwise commits an act of bankruptcy; or
  - (d) the Customer is otherwise in default of its obligations hereunder.
9. In the event the Customer defaults in its obligations to FLEET PLANT HIRE PTY LTD and FLEET PLANT HIRE PTY LTD instigates collection proceedings or issues legal proceedings against the Customer, then the Customer must also pay the legal costs FLEET PLANT HIRE PTY LTD on a full indemnity basis and any commissions and other costs incurred by the FLEET PLANT HIRE PTY LTD in recovering any amounts owing.
10. To the extent permitted by law:
  - (a) All conditions and warranties, which are or may otherwise be implied in relation to the supply of hire equipment, are excluded and negated.
  - (b) The customer releases and indemnifies FLEET PLANT HIRE PTY LTD against any liability arising out of the failure of the Customer to use the hire equipment properly, or to properly notify others as to the suitability or manner of using the hire equipment.
  - (c) The only conditions and warranties which are binding on FLEET PLANT HIRE PTY LTD in respect of the state, quality or condition of the hire equipment supplied to the Customer are those imposed and required to be binding by statute and to the extent permitted thereby the liability, if any, of FLEET PLANT HIRE PTY LTD arising from breach of such conditions or warranties shall, to the full extent permissible by law and at the option of FLEET PLANT HIRE PTY LTD, be limited to and be completely discharged by one or more of the following:
    - (i) The re-supply of the hire equipment; or
    - (ii) The payment of the costs of having the hire equipment re-supplied;
 and otherwise all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the said hire equipment which may apart from this clause be binding on FLEET PLANT HIRE PTY LTD are hereby expressly excluded and negated.
11. Except as expressly provided herein, FLEET PLANT HIRE PTY LTD shall not be liable to the Customer for any liability (including any liability in negligence) loss or damage of whatsoever nature, consequential or otherwise, howsoever arising, by the Customer or any third party caused or resulting directly or indirectly from the supply of the hire equipment by FLEET PLANT HIRE PTY LTD to the Customer.
12. FLEET PLANT HIRE PTY LTD shall only consider any claims by the Customer in relation to the hire equipment if made in writing and received by FLEET PLANT HIRE PTY LTD within seven days of the date of delivery of the hire equipment to the Customer.
13. The Customer must not alter, tamper with, modify or affect any hire equipment without the express consent in writing from FLEET PLANT HIRE PTY LTD and further must not alter or remove any label, insignia or mark attached to the hire equipment, which bears the name of FLEET PLANT HIRE PTY LTD or any trademarks or trade names used in relation to the hire equipment.
14. A certificate signed by an officer of FLEET PLANT HIRE PTY LTD shall be conclusive evidence as to details of the hire equipment delivered to the customer and the status of payment for that hire equipment (including amount(s) invoiced and amount(s) paid) by the Customer.
15. The Customer shall not be entitled to withhold or set off payment of any amount due to FLEET PLANT HIRE PTY LTD under the terms of any contract whether in respect of any claim of the Customer in respect of faulty or defective goods or for any other reason.

- 16. The Customer and each of the directors as guarantors hereby jointly and severally charges in favour of FLEET PLANT HIRE PTY LTD all of their legal and/or beneficial estate and interest in any land which they may now have or may later acquire with payment of all amounts owed or owing from time to time by the Customer to FLEET PLANT HIRE PTY LTD.
- 17. The Customer and its directors as guarantors shall notify FLEET PLANT HIRE PTY LTD of any change in the beneficial ownership of the Customer or any guarantor or of the death, insolvency, liquidation, dissolution, administration, official management, bankruptcy of or the appointment of a receiver or receiver and manager to the Customer or any guarantor. The Customer and the directors as guarantors hereby jointly and severally indemnify FLEET PLANT HIRE PTY LTD against any losses resulting from the delivery of hire equipment by FLEET PLANT HIRE PTY LTD prior to receiving such written notice.
- 18. These terms and conditions and any contract or agreement entered into between FLEET PLANT HIRE PTY LTD and Customer pursuant to or in contemplation of these terms and conditions shall be governed and interpreted according to the laws of Victoria, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.
- 19. Pursuant to the Privacy Act 1988 (as amended) the Customer and each of the directors as guarantors authorise FLEET PLANT HIRE PTY LTD to give to and obtain from another credit provider or credit reporting agency for the purpose of assessing this application for credit or for the purpose of notifying other credit providers of default, a credit report containing personal information about the customer and/or each of the guarantors or a report containing information concerning the commercial activities or commercial creditworthiness of the Customer and/or each of the guarantors. This authority remains in force for so long as credit is provided by FLEET PLANT HIRE PTY LTD to the Customer.

**NOTICE OF DISCLOSURE OF YOUR CREDIT REPORTING TO A CREDIT REPORTING AGENCY**

Under Section 18E(8)(c) of the Privacy Act (“the Act”), the Credit Provider is allowed to give a Credit Reporting Agency personal information about your credit application. The information which may be given to an Agency is covered by Section 18E(1) of the Act and includes:

- 1. Identity particulars (as permitted by the privacy Commissioner’s determination issued under Section 18E(3));
- 2. The fact that you have applied for credit and the amount;
- 3. The fact that the Credit Provider is a current credit provider to you;
- 4. Payments which become overdue more than sixty (60) days, and for which collection action has commenced;
- 5. Advice that payments are no longer overdue;
- 6. Cheques drawn by you which have been dishonoured more than once;
- 7. In specified circumstances, that in the opinion of the Credit Provider you have committed a serious credit infringement; and
- 8. That credit provided to you by the Credit Provider has been paid or otherwise discharged.

I/We acknowledge that I/we have read and understood the Notice of Disclosure.

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For and on behalf of the Customer

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Print Name