



Mailing Address: **PO Box 1554, DUBBO NSW 2830**
Earth Plant Hire: **4090 Golden Highway, ELONG ELONG NSW 2831**
Hiflex: **Unit1/8 Morgan Street, DUBBO NSW 2830**
Quarry: **Bloomfield Road, MOLONG NSW 2866**

14 DAY ACCOUNT CREDIT APPLICATION FORM

Are you a: Sole Trader Partnership Private Company (Pty Ltd) Public Company (Ltd)

Registered and/or Trading Name:	
Registered Address:	
Postal Address:	
Business Address:	
ABN/ACN	
Business Phone:	Mobile:
Fax:	Email:

DECLARATION FOR THE NATIONAL CREDIT CODE

I/We declare that the credit to be provided to me/us by Earth Plant Hire is to be applied wholly or predominantly for business and/or investment purposes.

**IMPORTANT: You should not sign this declaration unless credit is wholly or predominantly for business and/or investment purposes.
In signing this declaration you may lose your protection under the National Credit Code.**

Signature:		Date:
	(Signed on behalf of the applicant listed above)	
Name:		

Privacy Statement and consent to use your information

Earth Plant Hire comply with the National Privacy Principles and its obligations of confidentiality and the credit provider provisions in the *Privacy Act 1988 (Cth)*.

CREDIT INFORMATION

I/we consent to and authorise Earth Plant Hire to:

- (a) request a credit report containing information about my/our consumer or commercial credit arrangements from a credit reporting agency for the purposes of assessing this application or in connection with the Guarantee and Indemnity;
- (b) give a credit reporting agency information to allow that agency to create and maintain a credit information file containing information about me/us;
- (c) disclose a credit report or any personal information derived from the credit report, and any information about my/our personal or commercial credit arrangements to Earth Plant Hire or any agent of Earth Plant Hire assisting in processing the application and any other provider of credit to me/us named in this application in a credit report from a credit reporting agency;
- (d) notify and exchange information with other credit providers and any collection agent of Earth Plant Hire; and
- (e) request trade references from the referees listed in this credit application and to receive from those referees information necessary to assist Earth Plant Hire in assessing this application.

I/we understand that the information permitted to be disclosed under the Privacy Act 1988 (Cth) includes:

- (a) details to identify me/us – that is, name, sex, date of birth, current and two previous addresses, current or last known employer, and driver's licence number,
- (b) the fact that I/we have applied for credit, the amount, and that Earth Plant Hire is a current credit provider to me/us,
- (c) payments overdue for at least 60 days and for which collection action has started,
- (d) advice that payments (previously notified as unpaid) are no longer overdue,
- (e) cheques for more than \$100 drawn by me/us which have been dishonoured more than once,
- (f) in specified circumstances, that in the opinion of Earth Plant Hire I/we have committed a serious credit infringement, and
- (g) the fact that credit provided to me/us by Earth Plant Hire has been paid or otherwise discharged.

PRIVACY

I/we understand that I/we need not give any of the personal information requested in this application. However, without this information Earth Plant Hire may not be able to process our application or provide me/us with an appropriate level of service.

By signing this application I/we authorise Earth Plant Hire to collect, maintain, use and disclose my/our personal information in the manner set out in Earth Plant Hire’s privacy statement and policy as varied from time to time. I/we acknowledge having accessed a copy of the statement and policy on Earth Plant Hire’s website.

Signature:	_____	Date:
	(Signed on behalf of the applicant listed above)	
Name:		

<p>A) APPLICATION</p> <p>Upon Earth Plant Hire allowing me/us to trade on credit, I/we agree, declare and acknowledge that the Terms apply to all my/our dealings with Earth Plant Hire and I/we hereby agree to comply with the Terms. I/we further acknowledge that if I am/we are a corporation, the provision of credit pursuant to this application may, at Earth Plant Hire’s absolute discretion, be subject to and conditional upon my/our directors executing the Guarantee and Indemnity.</p>					
<p>B) (i) ESTIMATED MONTHLY PURCHASES: \$ _____</p> <p>(ii) CREDIT LIMIT: \$ _____</p> <p>I/we acknowledge that Earth Plant Hire may, in its absolute discretion, vary the limit of or withdraw any credit granted to me/us and notify any Guarantor(s) of that variation or withdrawal of credit.</p>					
<p>C) REPRESENTATION WARRANTY AND ACKNOWLEDGEMENT</p> <p>I/we HEREBY REPRESENT AND WARRANT that the information contained in this application is true and correct in all material respects AND ACKNOWLEDGE that Earth Plant Hire will rely upon the information provided and IS HEREBY INDUCED TO grant credit to me/us.</p>					
<p>D) FULL NAMES AND ADDRESSES OF DIRECTORS, PARTNERS AND SOLE TRADERS (List all details for individual borrowers/directors/guarantors/trustees/attorneys/shareholders/authorised officers.)</p>					
Individual No. 1					
Name :					
Address :					
Telephone: (h)	(w)	(m)			
Email address:					
Drivers Licence No:			Date of Birth : / /		
Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	To :	
Are you a (tick) :	<input type="checkbox"/> Borrower	<input type="checkbox"/> Director	<input type="checkbox"/> Guarantor	<input type="checkbox"/> Trustee	<input type="checkbox"/> Attorney
	<input type="checkbox"/> Shareholder	<input type="checkbox"/> Authorised Officer			
Individual No. 2					
Name :					
Address :					
Telephone: (h)	(w)	(m)			
Email address:					
Drivers Licence No:			Date of Birth : / /		
Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	To :	
Are you a (tick) :	<input type="checkbox"/> Borrower	<input type="checkbox"/> Director	<input type="checkbox"/> Guarantor	<input type="checkbox"/> Trustee	<input type="checkbox"/> Attorney
	<input type="checkbox"/> Shareholder	<input type="checkbox"/> Authorised Officer			

Individual No. 3					
Name :					
Address :					
Telephone: (h)		(w)		(m)	
Email address:					
Drivers Licence No:			Date of Birth : / /		
Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	To :	
Are you a (tick) :	<input type="checkbox"/> Borrower	<input type="checkbox"/> Director	<input type="checkbox"/> Guarantor	<input type="checkbox"/> Trustee	<input type="checkbox"/> Attorney
	<input type="checkbox"/> Shareholder	<input type="checkbox"/> Authorised Officer			

Individual No. 4					
Name :					
Address :					
Telephone: (h)		(w)		(m)	
Email address:					
Drivers Licence No:			Date of Birth : / /		
Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	To :	
Are you a (tick) :	<input type="checkbox"/> Borrower	<input type="checkbox"/> Director	<input type="checkbox"/> Guarantor	<input type="checkbox"/> Trustee	<input type="checkbox"/> Attorney
	<input type="checkbox"/> Shareholder	<input type="checkbox"/> Authorised Officer			

E) BUSINESS:			
Bank :	Branch :	BSB :	A/c:
Nature of Business :		Date Business commenced:	
Length of current ownership?		Company/Builder's Registration No.	
Name of any related or subsidiary companies or partnerships :			
Are your business premises owned or leased?			
Do you (or related companies) currently trade with Earth Plant Hire and if so for what purpose?			

Please attach financial records to support this application.

TRADE REFERENCES: Monthly equal to requested credit limit. – Please list Previous Suppliers	
1. Supplier Name:	
Phone:	Email:
2. Supplier Name:	
Phone:	Email:
3. Supplier Name:	
Phone:	Email:
4. Supplier Name:	
Phone:	Email:

GENERAL CREDIT TERMS AND CONDITIONS

1. Payment: The Customer must pay in full for all Products supplied by Earth Plant Hire by the 14th day following the date of the invoice (14 days).

2. Interest and costs: Earth Plant Hire may, in its absolute discretion, charge the Customer interest on all amounts (including legal costs on a solicitor and own client basis, charges and expenses) not paid within the specified credit period at a rate equivalent to the reference rate charged by Suncorp Bank from the invoice date until payment of the debt.

3. GST: Each amount payable by the Customer under these Terms in respect of a Taxable Supply by Earth Plant Hire is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *A New Tax System (Goods and Services) Act 1999*.

4. Withdrawal or Variation of Credit: Earth Plant Hire may at any time vary or withdraw any credit granted to the Customer without being liable to any third party. Credit limits may be imposed by Earth Plant Hire in its absolute discretion. Earth Plant Hire reserves the right to modify any credit limit at any time without any liability whatsoever to the Customer.

5. Property:

(a) Property in the Products does not pass until the Customer has paid all monies owing to Earth Plant Hire in full. Risk in the Products passes to the Customer at the time of delivery.

(b) Until payment of all monies owed by the Customer to Earth Plant Hire, the Customer holds the Products as fiduciary, bailee and agent for Earth Plant Hire and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Earth Plant Hire.

(c) If an Event of Default occurs, then without prejudice to Earth Plant Hire's other rights including any rights Earth Plant Hire may have pursuant to any security of payments legislation applicable in the relevant State or Territory, Earth Plant Hire may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of them. If the Customer sells any of the Products while money is owed to Earth Plant Hire, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.

(d) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for Earth Plant Hire. Such part is deemed to equal in dollar terms the amount owing by the Customer to Earth Plant Hire and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.

(e) If the Products are resold, or goods using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Earth Plant Hire. Such part of the book debts and proceeds is deemed to equal in dollar terms the amount owed by the Customer to Earth Plant Hire at the time of the receipt of such book debts.

(f) The Customer consents to Earth Plant Hire registering a security interest in relation to Products supplied to the Customer, and the Customer will provide all assistance reasonably requested by Earth Plant Hire facilitate this registration.

6. Charge over Customer's Property:

(a) To further secure the payment of all moneys payable by the Customer, the Customer hereby charges in favour of Earth Plant Hire all the right, title, estate and interest which it now has or may later acquire in any freehold or leasehold property.

(b) The Customer further agrees that if demand is made by Earth Plant Hire the Customer will immediately execute a mortgage in registrable form or other instrument of security, as required by Earth Plant Hire, and if it fails to do so within a reasonable time of being so requested, the Customer irrevocably and by way of security appoints any secretary, director, manager or attorney engaged by Earth Plant Hire to be its true and lawful attorney to execute and register such instruments.

7. Suspension or Ceasing of Supply:

(a) Earth Plant Hire may in its complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products to the Customer or amend these Terms.

(b) Without limiting clause 7(a), if an Event of Default occurs or the Customer otherwise fails to comply with its obligations under these Terms, Earth Plant Hire may, without prejudice to its other rights: immediately terminate all agreements and arrangements with the Customer; call up monies owed to it by the Customer; retain all monies paid on account; cease further deliveries; recover from the Customer all loss of profits arising there from; and/or take immediate possession of any Products not paid for, without incurring liability to any third party.

8. Set-off/Contra Arrangements: If the Customer is also a supplier of goods and/or services to Earth Plant Hire, Earth Plant Hire may, in its absolute discretion, apply amounts owed by the Customer to Earth Plant Hire against amounts owed by Earth Plant Hire to the Customer (**set-off**) and/or receive goods and/or services from the Customer in full or part satisfaction of amounts owed by the Customer to Earth Plant Hire (**contra arrangements**) on the following terms:

(a) Earth Plant Hire may commence and/or cancel set-off/contra arrangements at any time and with immediate effect upon written notice to the Customer.

(b) Earth Plant Hire will not be liable for any loss or damage whatsoever suffered by the Customer as a result of a decision by Earth Plant Hire to commence and/or cancel set-off/contra arrangements.

(c) A decision by Earth Plant Hire to commence set-off/contra arrangements with a Customer on any occasion does not amount to a course of conduct or dealing on the part of Earth Plant Hire such that the Customer should expect that the set-off/contra arrangements will remain in effect indefinitely.

(d) The existence of any set-off/contra arrangements with the Customer does not amount to a waiver by Earth Plant Hire of any of its rights or remedies under these Terms, at law or in equity including, but not limited to, Earth Plant Hire's right to demand payment from the Customer of the full amount owing to Earth Plant Hire by the Customer at any time and the right to charge interest on any amounts not paid within the credit period.

9. Liability: Earth Plant Hire will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Earth Plant Hire, its employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so.

10. Certification: A statement signed by an Officer certifying the amount of any moneys payable by the Customer or identifying any Products as "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer.

11. Notification of Change of Details: The Customer will notify Earth Plant Hire of any change in its structure or management, including any change of director, shareholder, unitholder or any change in partnership or trusteeship within 7 days of the date of change. Until the Customer notifies Earth Plant Hire of the change, the Customer remains liable for and hereby indemnifies Earth Plant Hire for all Products sold to the Customer pursuant to these Terms.

12. Effect of Other Terms: These Terms are in no way affected by any other express or implied terms contained in any terms of sale issued in relation to the sale of the Products. No terms of the Customer apply to any agreement between the Customer and Earth Plant Hire where inconsistent with these Terms.

13. Expenses: The Customer must pay to Earth Plant Hire any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by Earth Plant Hire in connection with the entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, and the failure of the Customer to comply with these Terms.

14. Trusts: Where the Customer is a trustee, the Customer shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to Earth Plant Hire.

15. Severance: Each clause and subclause of these Terms is separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

16. Time: Time is of the essence in respect of all the Customer's obligations under these Terms.

17. Application of Laws: The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Application for Commercial Credit was entered into and the law applying in that State or Territory is the proper law governing these Terms.

18. Assignment: The Customers agrees that Earth Plant Hire may by notice to the Customer assign any rights against the Customer to any third party.

19. Definitions: In these Terms unless the context requires otherwise: **(a) "Customer"** means each and every person or corporation to whom Earth Plant Hire supplies Products; **(b) "Event of Default"** means any of the following events: (i) the Customer fails to pay for the Products; (ii) the Customer is in breach of these Terms; (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the *Corporations Act 2001*; if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; the Customer ceases or threatens to cease carrying on business; **(c) "Officer"** means each director, secretary, manager and authorised representative of Earth Plant Hire; **(d) "Products"** means all goods supplied and all services rendered by Earth Plant Hire to the Customer; **(e) "Terms"** means these General Credit Terms and Conditions.

20. PPSA. "PPSA" means the Personal Property Securities Act 2009 (Cth). If a term used in this clause has a particular meaning in the PPSA that has not already been defined in these Terms and Conditions, then that term has the same meaning in this clause.

20.1 The Purchaser acknowledges and agrees that for the purposes of the PPSA, these Terms and Conditions constitute a security agreement that covers the Goods for the purposes of the PPSA and the Purchaser further acknowledges and agrees that:

- (a) Earth Plant Hire holds a security interest (as a secured party), over all of the present and after acquired Goods supplied by Earth Plant Hire to the Purchaser and any proceeds of the sale of those Goods and the Purchaser agrees:
 - (i) to treat that security interest as a subsisting and continuing interest in the Goods;
 - (ii) that Earth Plant Hire will continue to hold the security interest in the Goods notwithstanding that the Goods may be processed, commingled or become an accession with other goods;
 - (iii) that the security interest will have priority over any registered or unregistered general (or other) security and any unsecured creditor, to the fullest extent permitted by law; and
 - (iv) that the security interest secures all monies owing to Earth Plant Hire by the Purchaser under these Terms and Conditions or otherwise;

- (b) any purchase by the Purchaser under this Agreement will constitute a purchase money security interest (“PMSI”) and the PMSI granted:
 - (i) will apply to any Goods (coming into possession of the Purchaser);
 - (ii) will apply to any proceeds of sale of Goods being received by the Purchaser; and
 - (iii) is attached to all Goods now or in the future supplied to the Purchaser by Earth Plant Hire.
- (c) until title in the Goods supplied by Earth Plant Hire passes to the Purchaser, the Purchaser must:
 - (i) hold and maintain the Goods free of any charge, lien or security interest other than those created under this Agreement; and
 - (ii) not otherwise deal with the Goods in a way which will or may prejudice any rights of Earth Plant Hire set out in this Agreement or pursuant to the PPSA.
- (d) if the Purchaser defaults under this Agreement, Earth Plant Hire may enforce its security interest in the Goods by exercising all or any of its rights under this Agreement or the PPSA, including, without limitation, the right to enter the Purchaser’s property or premises without notice to seize, dispose of or retain the Goods, without being liable to the Purchaser or any other party if Earth Plant Hire has reason to do so.
- (e) Earth Plant Hire may register its security interest in the Goods created under this Agreement on public registers, including the
 - b. Personal Property Securities Register (“PPSR”), at any time before or after delivery of the Goods.

20.2

The Purchaser undertakes to:

- (a) sign any documents and provide any information which Earth Plant Hire may require to register, amend or update:
 - (i) its security interests, with the priority required by Earth Plant Hire, and to maintain those registrations;
 - (ii) a Financial Statement or Financing Change Statement in relation to a security interest on the PPSR;
- (b) sign any documents and do anything necessary to ensure that Earth Plant Hire security interest in the Goods is a
- (c) perfected first ranking security interest and has priority over all other security interests in all of the Goods supplied by Earth Plant Hire to the Purchaser;
- (d) not register or permit to be registered a Financing Change Statement in the Goods without the prior written consent of Earth Plant Hire;
- (e) notify Earth Plant Hire in writing of any anticipated change in the Purchaser’s name, address, contact details, business practice or other change in the Purchaser’s details registered on the PPSR, at least 10 days prior to effecting any such change, to enable Earth Plant Hire to register a Financing Change Statement if necessary;

I/We agree to be bound by the General Credit Terms and Conditions set out above and by the terms set out in this application and warrant that the information given by me/us in this application is true and accurate.		
Signature:		Date:
	(Signed on behalf of the applicant listed above)	
Name:		Position:
Witness:		Date:
Name:		
Witness Address:		

GUARANTEE AND INDEMNITY

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1 GUARANTEE

1.1 Guaranteed Moneys

In consideration of Earth Plant Hire agreeing, at the request of the Guarantor, to provide or continue to provide credit and/or goods from time to time to or for the Customer, the Guarantor unconditionally and irrevocably guarantees to Earth Plant Hire the due and punctual payment of:

- (a) all moneys due and payable or from time to time to become due and payable to Earth Plant Hire under or in connection with the provision of credit and/or goods;
- (b) all other moneys which the Customer either alone or jointly with any other person now or from time to time is or becomes actually or contingently liable to pay to Earth Plant Hire under this Guarantee and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
- (c) to avoid doubt, any GST that may be due and payable or from time to time become due and payable by Earth Plant Hire under or in connection with the provision of credit and/or goods. (the "Guaranteed Moneys").

1.2 Result of Non Payment

If the Customer defaults in the due and punctual payment of the Guaranteed Moneys or in any part of them the Guarantor shall pay those moneys on demand as directed by Earth Plant Hire.

1.3 Demand

Any demand to be made upon the Guarantor or the Customer shall be deemed to be duly made if in writing and signed for or on behalf of Earth Plant Hire by any secretary, director, manager, attorney, credit manager, authorised officer or solicitor of Earth Plant Hire from time to time.

1.4 Continuing Guarantee

This Guarantee is a continuing security for the whole of the Guaranteed Moneys and all other money payable under this Guarantee until the Guaranteed Moneys and all other moneys payable under this Guarantee have been paid in full.

2 GUARANTOR'S OBLIGATIONS

2.1 Principal Obligations

The Guarantor's obligations:

- (a) are principal obligations; and
- (b) may be enforced against the Guarantor without Earth Plant Hire being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold with respect to the Guaranteed Moneys.

2.2 Obligations Absolute and Unconditional

The liability of the Guarantor is absolute and unconditional and is not affected by anything which, but for this provision might operate to acquit it from any of its obligations including, without limitation, any one or more of the following (whether occurring with or without the consent of any person):

- (a) the grant to the Customer, the Guarantor or any other person at any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Customer, the Guarantor or any other person;
- (b) any arrangement that may take place between Earth Plant Hire and the Customer, the Guarantor or any other person;
- (c) the bankruptcy, winding up, liquidation, becoming an insolvent under administration (in terms of the Corporation Law), the appointment of an administrator to or the death of, the Customer, the Guarantor or any other person;
- (d) the variation, replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Moneys including any other guarantee or security now or in the future held by Earth Plant Hire from any person;
- (e) the failure by Earth Plant Hire to give notice to the Guarantor of any default by the Customer or any other person;
- (f) any legal limitation, disability, incapacity or other circumstance related to the Customer, the Guarantor or any other person; or
- (g) any laches, acquiescence, delay, acts, omissions or mistakes on the part of, or suffered by Earth Plant Hire or any other person, in relation to this Guarantee or any other guarantee, security, agreement, or negotiable instrument.

3 PREFERENCE

If, after Earth Plant Hire applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- (a) Earth Plant Hire's rights are to be reinstated and will be the same in respect of that amount, or in the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Guarantor shall immediately do anything (including the signing of the documents) required by Earth Plant Hire to restore any security or guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

4 SUSPENSION OF GUARANTOR'S RIGHTS

4.1 Suspension of rights

Until the Guaranteed Moneys and other moneys payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:

- (a) share in any security or guarantee held or money received by Earth Plant Hire in respect of the Guaranteed Moneys or stand in the place of Earth Plant Hire in respect of any such security or guarantee or right to receive money;
- (b) take any steps to enforce a right or claim against the Customer in respect of any money paid by the Guarantor to Earth Plant Hire under this Guarantee; or
- (c) have or exercise any rights as surety in competition with Earth Plant Hire.

4.2 Winding up or Bankruptcy of Debtor

If the Customer is wound up or bankrupted, the Guarantor irrevocably authorises Earth Plant Hire to:

- (a) prove for all moneys which the Guarantor has paid under the Guarantee; and
- (b) retain and carry to a suspense account and appropriate at Earth Plant Hire discretion any moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.

5 INDEMNITY

5.1 Indemnity in respect of Guaranteed Moneys

On account of the consideration contained in clause 1.1, the Guarantor, as a separate undertaking, unconditionally indemnifies Earth Plant Hire against any loss which Earth Plant Hire may suffer as a result of the Guaranteed Moneys, in whole or in part, not being recoverable from the Customer or having been recovered are repaid and restored.

5.2 Payment under Indemnity

The Guarantor shall pay to Earth Plant Hire on demand a sum equal to any loss in respect of which it indemnifies Earth Plant Hire under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.

6 INTEREST ON OVERDUE AMOUNTS

(a) The Guarantor shall, on demand, pay interest on any of the Guaranteed Moneys which are due and payable by it and unpaid (including interest payable under this clause).

(b) Interest will accrue daily from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the rate set under clause 2 of the Terms on the relevant amount of the Guaranteed Moneys.

7 WAIVER

No failure or delay by Earth Plant Hire to exercise any power, right or remedy under this Guarantee operates as a waiver, nor does any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. Earth Plant Hire's rights and remedies under this Guarantee are in addition to any rights and remedies arising at law.

8 CLAIM IN ADMINISTRATION

Until this Guarantee is released by Earth Plant Hire, the Guarantor will not without Earth Plant Hire consent, prove in any administration of the Customer in competition with Earth Plant Hire.

9 APPLICATION OF MONEYS RECEIVED

If Earth Plant Hire receives or recovers money in respect of debts of the Customer or anyone else, Earth Plant Hire may use it to pay off whichever part of those debts it chooses and does not have to apply it for the Guarantor's benefit.

10 JOINT AND SEVERAL LIABILITY

If two or more persons are the Guarantor:

- (a) references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
- (b) the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
- (c) the fact that one person is released from its promise does not mean that any other person is also released.

11 CHARGING CLAUSE

(a) To further secure the Guaranteed Moneys the Guarantor hereby charges with payment of the Guaranteed Moneys all the right, title, estate and interest which it now has or may hereafter during the currency of the Guarantee acquire in any freehold or leasehold property.

(b) The Guarantor further agrees that if demand is made by Earth Plant Hire the Guarantor will immediately execute a mortgage in registrable form or other instrument of security, as required by Earth Plant Hire, and if it fails to do so within a reasonable time of being so requested, the Guarantor irrevocably and by way of security appoints any secretary, director, manager or attorney engaged Earth Plant Hire to be its true and lawful attorney to execute and register such instruments.

12 NOTICES

12.1 Method of Giving Notices

A notice, consent, approval or other communication (each a "Notice") under this Guarantee shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered; or
- (b) sent by pre-paid mail, to that person's address.

12.2 Time of Receipt

A notice given to a person in accordance with this clause is treated as having been given and received on the day of actual delivery.

12.3 Address for Notices

For the purpose of this clause, a person (the "sender") may take the address of another person (the "recipient") to be:

- (a) the address given in this Guarantee; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it.

13 APPLICATION OF LAWS

The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory in which this Application for Commercial Credit was entered into and the law applying in that State or Territory is the proper law governing these Terms.

14 CREDIT INFORMATION AND PRIVACY

The Guarantor consents to and authorises Earth Plant Hire, in its absolute discretion, to:

- (a) request a credit report containing information about the Guarantor's consumer or commercial credit arrangements from a credit reporting agency in connection with this Guarantee;
- (b) request and obtain from the Guarantor, information and documentary evidence concerning the Guarantor's personal financial position and the particulars of all assets, of whatever nature and wherever located, owned by the Guarantor legally, beneficially or jointly with another person;
- (c) disclose a credit report or any personal information derived from the credit report, and any information about the Guarantor's personal or commercial credit arrangements to any agent of Earth Plant Hire assisting in processing the Customer's application and any other provider of credit to the Customer in a credit report from a credit reporting agency; and
- (d) notify and exchange information with other credit providers and any collection agent of Earth Plant Hire.

By signing this Guarantee, the Guarantor authorises Earth Plant Hire to collect, maintain, use and disclose the Guarantor's personal information in the manner set out in Earth Plant Hire's privacy statement and policy as varied from time to time. The Guarantor acknowledges having accessed a copy of the current statement and policy from Earth Plant Hire's website (<http://www.earthplant hire.com.au>).

15 TRUSTEE PROVISIONS

Where the Guarantor is a trustee, the Guarantor shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to Earth Plant Hire.

16 EXPENSES

The Guarantor must pay to Earth Plant Hire all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees) incurred by F Earth Plant Hire in connection with any entry into this Guarantee, the exercise or attempted exercise of any power, right or remedy under this Guarantee, and the failure of the Guarantor to comply with any obligations under this Guarantee.

17 ACKNOWLEDGMENT

The Guarantor acknowledges that the Guarantor:

- (a) has entered into this Guarantee voluntarily;
- (b) has read and understood the nature and consequences of entering into this Guarantee;
- (c) has not signed this Guarantee on the basis of any representation of any of Earth Plant Hire, its employees, agents or representatives or under the duress of any person;
- (d) is entitled to seek independent legal advice before signing this Guarantee;
- (e) submits to the non-exclusive jurisdiction of the courts of the State or Territory in which the Application for Commercial Credit was entered into and the law applying in that State or Territory is the proper law governing this Guarantee; and
- (f) consents to Earth Plant Hire assigning any rights against the Guarantor to any third party .

18 SEVERANCE

Each clause and subclause of this Guarantee is separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

SCHEDULE

I have read and understood this document. I have not relied on anything said to me by the Customer or Earth Plant Hire as to what it means or what its effect may be.

SIGNED by each Guarantor in the presence of the witnesses named below.	
Guarantor's Name (Print):	
Guarantor's Signature :	
Witness' Name (Print) :	
Witness' Signature :	
Witness Address :	
Guarantor's Name (Print):	
Guarantor's Signature :	
Witness' Name (Print) :	
Witness' Signature :	
Witness Address :	