

NEWTONS BUILDING & LANDSCAPE SUPPLIES PTY LTD
 ACN 648 444 053 ABN 87 648 444 053
 28-30 Papagni Avenue
 Newton SA 5074
 Tel: (08) 8415 7777
 Fax: (08) 8415 7799
 Email: accrec@newtonsbuiding.com.au
 Web: www.newtonsbuiding.com.au



STATEWIDE HIRE PTY LTD
 ACN 087 582 358 ABN 14 087 582 358
 32 Papagni Avenue
 Newton SA 5074
 Tel: (08) 8336 9166
 Fax: (08) 8336 9155
 Email: admin@statewidehire.com.au
 Web: www.statewidehire.com.au



APPLICATION FOR COMMERCIAL CREDIT

The Customer applies to the Supplier Group to supply Goods and/or Services to the Customer on the terms of this Application for Commercial Credit which incorporates the attached Terms and Conditions, Privacy Statement, and Deed of Guarantee & Indemnity. If the Customer's application is directed to only one of the entities comprising the Supplier Group, the effectiveness and enforceability of this Application for Commercial Credit is not undermined, compromised, or affected whatsoever.

Upon acceptance by the Supplier Group, the Supplier Group may supply Goods, Services, and/or Equipment to the Customer on the terms and conditions of this Application for Commercial Credit.

Customer Details

Entity (please select one)	<input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trustee of a trust <input type="checkbox"/> Other:.....		
Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Purchasing contact person		Telephone	
Email			
Accounts contact person		Telephone	
Email			
Date business commenced		Nature of business	
Anticipated monthly spend (\$)		Purchase Order Req.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Details of Directors/Partners/Sole Trader

Name		DOB	
Residential address		Drivers licence	
Title		Mobile	
Property Owned/Rented			
Name		DOB	
Residential address		Drivers licence	
Title		Mobile	
Property Owned/Rented			

Trade References

Name		Telephone	
Email			
Name		Telephone	
Email			
Name		Telephone	
Email			

TERMS AND CONDITIONS

Definitions

- In these terms and conditions:
 - 'Supplier Group' means each of Newtons Building & Landscape Supplies Pty Ltd ACN 648 444 053 and Statewide Hire Pty Ltd ACN 087 582 358 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*).
 - 'Commencement Date' means, in relation to the Dry Hire of Equipment, the commencement date of the Term, being the earlier of:
 - the date of delivery of the Equipment to the Customer; or
 - the date the Customer (or any servant or agent thereof) collects the Equipment from the Supplier Group's premises (or such other premises at which the Equipment is stored).
 - 'Contract' means a contract between the Supplier Group and the Customer for the supply of Goods, Services, and/or Equipment.
 - 'Customer' means the person, firm, organisation, partnership, corporation, trustee of a trust or other entity (including its successors and permitted assigns) to whom Goods, Services, and/or Equipment are supplied by the Supplier Group.
 - 'Dry Hire' means the hire of Equipment under the exclusive direction and control of the Customer.
 - 'Equipment' means the plant, machinery, vehicles, and/or equipment hired by the Supplier Group to the Customer (together with such accessories, tools, associated items, manuals, and logbooks as accessories such plant, machinery, vehicles, and/or equipment) and any further Equipment supplied by the Supplier Group to the Customer following formation of a Contract (as identified in any instrument delivered by the Supplier Group to the Customer).
 - 'Fair Wear and Tear' means wear and tear which would be normal for similar Equipment operating in usual conditions, but excludes:
 - panel or structural damage from collision or abuse;
 - damage to glass or instrumentation;
 - damage to wheels and/or tyres; and
 - damage to the drive system.
 - 'Goods' means all goods supplied by the Supplier Group to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and as are described on the invoices, quotation, or any other forms as provided by the Supplier Group to the Customer.
 - 'GST' has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - 'Hire Charge' means, in relation to the Dry Hire of Equipment, the amount, or amounts, payable by the Customer to the Supplier Group to hire the Equipment for the Term, being the amount, or amounts, specified in the quotation, invoices, or any other forms as provided by the Supplier Group to the Customer, or, if not specified, based on the Supplier Group's current rates (as amended from time to time).
 - 'Order' means a written or verbal order from the Customer requesting the supply of Goods, Services, and/or Equipment.
 - 'PPSA' means the *Personal Property Securities Act 2009* (Cth).
 - 'PPSR' means the Personal Property Securities Register.
 - 'Price' means the Price payable for the Goods and/or the Services as determined in accordance with clause 2.
 - 'Services' means all services supplied by the Supplier Group to the Customer (and where the context so permits shall include any supply of Goods, as described above).
 - 'Site' means, in relation to the Dry Hire of Equipment, the location where the Equipment is to be used during the Term.
 - 'Term' means, in relation to the Dry Hire of Equipment, the period the Equipment is hired by the Customer, as agreed between the parties (subject to any extension in accordance with clause 58).

Price and Payment terms

- At the Supplier Group's sole discretion, the Price shall be either:
 - as indicated on the Supplier Group's then current price list (as amended from time to time);
 - as indicated on invoices provided by the Supplier Group to the Customer in respect of Goods and/or Services; or
 - the Supplier Group's quoted Price (subject to clauses 10 and 14 to 16) which shall be binding on the Supplier Group provided the Customer accepts the quotation in writing within the period specified in clause 10.
- Where the Customer has an approved credit account with the Supplier Group, the terms of payment are strictly thirty (30) days from the end of month of invoice (or such other period as nominated by the Supplier Group's invoices). The Supplier Group may, at any time, vary the terms of payment in accordance with these terms and conditions.
- If credit is not extended by the Supplier Group to the Customer, then the Customer must:
 - (in the case of Goods and/or Services) make payment for the Goods and/or Services either (at the Supplier Group's option):
 - prior to the Goods being despatched; or
 - by the date nominated by the Supplier Group's invoice.
 - (in the case of Equipment supplied on Dry Hire) make payment of the Hire Charges on or before the Commencement Date.
- If the Customer fails to make payment of any invoice by the due date, then all amounts (whether or not yet due) will, in the sole discretion of the Supplier Group, become immediately due and payable to the Supplier Group.
- The Customer must check all invoices and advise the Supplier Group of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier Group.
- Should the Customer not pay for the Goods, Services, and/or Equipment supplied by the Supplier Group in accordance with the terms and conditions provided herein, or as agreed in writing by the Supplier Group and Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, the Supplier Group will be entitled to recover from the Customer as an ascertained and genuine pre-estimate of the Supplier's administrative costs, but not as a penalty, an administration fee of ten (10) percent of the amount outstanding (up to \$250). The Supplier Group may debit these administrative costs to the Customer's account.
- The Customer acknowledges that the Supplier Group shall be at liberty to charge a surcharge for credit card transactions equal to the Supplier Group's costs of processing such transactions.

Purpose of credit

- The Customer acknowledges and agrees that any credit to be provided to the Customer by the Supplier Group is to be applied wholly or predominantly for business purposes.

Formation of Contract

- Quotations are exclusive of GST and shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Supplier Group, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a Contract in accordance with clause 11.
- Quotations made by the Supplier Group are estimates only will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier Group reserves the right to accept or reject, at its discretion, any Order. Only written acceptance by the Supplier Group of an Order will complete a Contract.
- Placement of an Order will constitute acceptance of these terms and conditions.
- At the Supplier Group's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the Order and shall immediately become due and payable upon the formation of a Contract in accordance with clause 11. For the purposes of clarity, where a deposit is requested, the Supplier

Group is under no obligation to supply Goods, Services and/or Equipment until the deposit has been received by the Supplier Group in cleared funds.

Variations

- Where the Customer requests or directs that any Goods and/or Services be supplied that are not strictly in accordance with the quotation or Order, then such Goods and/or Services shall constitute a variation, unless otherwise agreed between the parties.
- The Customer understands and agrees that:
 - all variations must be agreed between the parties in writing prior to the Goods and/or Services being supplied; and
 - all variations shall be, at the Supplier Group's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with the Supplier Group's current prevailing rates (as amended from time to time).
- Notwithstanding clauses 14 and 15, and subject to any rights the Customer might have under any relevant legislation, the Supplier Group reserves the right to vary the quoted price if:
 - there is any movement in the cost of supplying the Goods and/or Services specified in the Order (including, without limitation, any actual increase in the costs to the Supplier in manufacturing, procuring, or transporting the Goods, currency fluctuations, and/or actual increases in labour in connection with the supply of the Goods and/or Services);
 - the Goods and/or Services specified in the Order are varied from the Goods and/or Services specified in the Supplier Group's quotation; or
 - otherwise as provided for in these terms and conditions.

Cancellation of Orders

- Unless otherwise agreed in writing between the parties, the Customer may not cancel an Order (or any part of an Order) once accepted by the Supplier Group, delivery of the Goods and/or Equipment cannot be deferred, and Goods ordered cannot be returned except with the prior written consent of the Supplier Group and then (subject to clause 30(b)) only upon terms that the Customer reimburse and indemnify the Supplier Group against all losses it has incurred or may incur as a result of the cancellation, deferral or return, including, without limitation, cartage, bank charges, other incidental expenses incurred on any part of the Order and loss of profits.
- Notwithstanding any other rights the Supplier Group may have under this agreement, the Supplier Group may, in its sole discretion, cancel any Order or delivery of any Order, by providing written notice to the Customer if the Customer:
 - defaults in payment of any invoice by the due date;
 - enters into liquidation or, where the Customer is an individual, becomes bankrupt; or
 - breaches an essential term of this agreement.
- To the fullest extent permitted by law, the Supplier Group accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of the Supplier Group exercising its rights under clause 18.

Delivery

- The Customer shall be liable for all costs associated with delivery, including freight, insurance, handling, and other charges, unless otherwise agreed in writing.
- The Customer acknowledges and accepts that any period or date for delivery stated by the Supplier Group is intended as an estimate only and is not a contractual commitment. The Supplier Group will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery.
- Delivery will be made within normal business hours as published (unless otherwise agreed to in writing).
- Delivery is deemed to occur at the earlier of:
 - the collection of Goods from the Supplier Group by the Customer or any third party on behalf of the Customer;
 - the time of loading of Goods at the Supplier Group's premises for the purpose of delivery to the Customer;
 - the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- The Supplier Group is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.
- The Customer accepts that the Supplier Group may deliver Goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
- The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.
- The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

Returns

- The Customer must inspect the Goods immediately upon delivery and must within forty-eight (48) hours after the date of inspection give written notice to the Supplier Group with particulars, of any claim that the Goods are not in accordance with this agreement. Further, the Customer must, upon request from the Supplier Group, allow the Supplier Group to enter upon any premises occupied by the Customer to inspect the Goods that are subject of the claim. If the Customer fails to give notice or refuses to allow the Supplier Group to inspect the Goods, then to the extent permitted by law, the Goods must be treated as having been accepted by the Customer (and the Customer shall have no claim against the Supplier Group for damage or non-conformity of the Goods with these terms and conditions or any agreement between them) and the Customer must pay for the Goods in accordance with these terms and conditions.
- The Customer cannot return Goods to the Supplier Group without the written agreement of the Supplier Group. To the extent permitted by law, Goods that have been specifically produced or purchased by the Supplier Group at the Customer's request cannot be returned in any circumstances.
- After inspection has taken place as provided for by clause 28 (but subject to clause 29):
 - if the Supplier Group reasonably determines that:
 - the Goods are not damaged; or
 - the Goods were damaged by the Customer or the Customer failed to take reasonable steps to prevent the Goods from becoming damaged; and
 - the Goods are otherwise in conformity with these terms and conditions, the Customer is deemed to have accepted the Goods and the Supplier Group is entitled to the Price.
 - if the Supplier Group reasonably determines that:
 - the Goods are damaged; and
 - the Goods were not damaged by the Customer and the Customer did not fail to take reasonable steps to prevent the Goods from becoming damaged; or
 - the Goods are otherwise not in conformity with these terms and conditions, the Customer is entitled to any one or more, at the option of the Supplier Group:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - the payment of the cost of having the Goods repaired.
- Where Goods are the subject of a notice under clause 28:
 - the Customer must leave the Goods in the state and condition in which they were delivered until such time as the Supplier Group or its duly authorised agent has inspected the Goods; and
 - such inspection must be carried out within a reasonable time after notification by the Customer.

32. The Customer acknowledges and agrees that any return, other than a return due to a default by the Supplier Group under this agreement or as otherwise permitted by law, will incur a handling and administration charge of up to fifteen (15) percent of the purchase price of the returned Goods.
33. Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any Goods (either to the Supplier Group or from the Supplier Group to the Customer or any third party) including freight, insurance, handling and other charges. Goods to be returned to the Supplier Group must be unsoiled, undamaged, packed and wrapped appropriately, and must include all original packaging and documentation. The Supplier Group accepts no liability for any damage that occurs to any Goods in return transit.
- Risk**
34. Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery against all losses which may be sustained as a result of the loss, damage or destruction of the Goods or any part thereof by accident, theft, fire, flood, negligence and such other insurable causes as may be available and shall include the Supplier Group as co-insured.
35. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier Group is entitled to receive all insurance proceeds payable for the Goods to the extent of the indebtedness of the Customer to the Supplier Group. The production of these terms and conditions by the Supplier Group is sufficient evidence of the Supplier Group's rights to receive the insurance proceeds without the need for any person dealing with the Supplier Group to make further enquires.
36. If the Customer requests that Goods are delivered either to an unattended location, left outside, or are left outside the Supplier Group's premises for collection, the Customer acknowledges that the Supplier Group will deliver the Goods as requested at the Customer's sole risk.
37. The Customer acknowledges and understands that certain Goods made by derived from natural products and as such may exhibit variations in the texture, shade, colour, surface, finish, and markings. Whilst the Supplier Group will take reasonable steps to match sales samples to the Goods supplied, the Supplier Group, to the extent permitted by law, accepts no liability whatsoever where such samples differ to the Goods supplied.
38. The Customer further acknowledges and understands that timber is a hygroscopic material subject to expansion and contraction, and as such, the Supplier, to the fullest extent permitted by law, accepts no liability whatsoever for damage, disfiguration, deterioration, or loss to timber caused as a result of:
- natural expansion and contraction;
 - exposure to liquids or damaging substances;
 - exposure to the elements; or
 - impact, abrasion, or scratching.
- Retention of title**
39. Until such time as the Customer has made payment in full for the Goods and until such time as the Customer has made payment in full of all other money owing by the Customer to the Supplier Group (whether in respect of money payable under a specific Contract or on any other account whatsoever):
- title in the Goods does not pass to the Customer;
 - the Customer agrees that property and title in the Goods will not pass to the Customer and the Supplier Group retains the legal and equitable title in those Goods supplied and not yet sold;
 - the Customer will hold the Goods in a fiduciary capacity for the Supplier Group and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier Group, and will not mix the Goods with other similar goods; and
 - the Customer will be entitled to sell the Goods in the ordinary course of its business but will sell as agent and bailee for the Supplier Group and the proceeds of sale of the Goods will be held by the Customer on trust for the Supplier Group absolutely.
40. The Customer's liability to the Supplier Group under these terms and conditions will not be discharged by the operation of clause 39(d) (but its levels of indebtedness will be reduced by the extent of the funds so remitted to the Supplier Group).
41. The Customer agrees that whilst property and title in the Goods remains with the Supplier Group, the Supplier Group has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods of the Supplier Group and, when payment is overdue, to immediately enter the premises (as the Customer's invitee) to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.
42. The Customer will be responsible for the Supplier Group's reasonable costs and expenses in exercising its rights under clause 41 where the Customer is otherwise in default of the terms of this agreement. Where the Supplier Group exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier Group, its employees, servants, or agents.
43. The Customer agrees that where the Goods have been retaken into the possession of the Supplier Group, the Supplier Group has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to the Supplier Group to do all things necessary to sell the Goods bearing the name or trademark of the Customer.
44. For the avoidance of doubt, the Supplier Group's interest constitutes a 'purchase money security interest' pursuant to the PPSA.
- Security Interest**
45. The Customer acknowledges that by assenting to these terms and conditions, the Customer grants a security interest to the Supplier Group in:
- all Goods (and their proceeds) now or in the future supplied by the Supplier Group to the Customer (or to its account); and
 - all Equipment (and their proceeds) now or in the future hired by the Supplier Group to the Customer.
46. The Customer undertakes to do anything that is required by the Supplier Group:
- so that the Supplier Group can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods and their proceeds;
 - to register a financing statement or financing change statement; and
 - to ensure that the Supplier Group's security position, and rights and obligations, are not adversely affected by the PPSA.
47. Unless the Customer has obtained the Supplier Group's prior written consent, the Customer undertakes not to:
- register a financing change statement in respect of a security interest contemplated or constituted by these terms and conditions; and
 - create or purport to create any security interest in the Goods and/or Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or Equipment in favour of a third party.
48. The Customer:
- waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under these terms and conditions;
 - agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
49. The Customer agrees that it will, if requested by the Supplier Group, sign any documents, provide any information or do anything else the Supplier Group requests, to ensure that any security interest created in the Supplier Group's favour by these terms and conditions is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
50. Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
51. The Customer irrevocably grants to the Supplier Group the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if the Supplier Group has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify the Supplier Group from any claims made by any third party as a result of such exercise.
52. The Customer will be responsible for the Supplier Group's reasonable costs and expenses in exercising its rights under clause 51 where the Customer is otherwise in default of these terms and conditions. Where the Supplier Group exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier Group, its employees, servants, or agents.
53. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier Group by the Customer or the Customer's authorised representative.
54. The Customer further agrees that where the Supplier Group has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- Dry Hire of Equipment**
55. Clauses 56 to 78 hereof apply to all Contracts for the Dry Hire of Equipment.
- Dry Hire of Equipment – Term**
56. Where the Supplier Group has been engaged to supply Equipment on Dry Hire, the Term shall commence on the Commencement Date and shall continue thereafter until the conclusion of the Term, unless:
- the Term is extended in accordance with clause 58 hereof; or
 - the Term is terminated earlier in accordance with these terms and conditions.
57. Upon delivery of the Equipment in accordance with clause 68, the Customer must inspect the Equipment and must, within two (2) hours of delivery, notify the Supplier Group if the Equipment is unsuitable for the purpose of hire or is not in good order. If the Customer fails to provide the Supplier Group with such notice, then, to the extent permitted by law, the Customer shall be deemed to have inspected the Equipment, accepted the Equipment in the condition it was provided, and satisfied itself as to the suitability of the Equipment for the purpose of hire.
58. At any time up until the conclusion of the Term, the Customer may request that the Term be extended. The Supplier Group may, in its sole discretion, agree to such an extension and shall specify the period by which the Term is to be extended ("**Extended Term**").
59. If the Supplier Group agrees to an extension of the Term pursuant to clause 58, the Customer shall be liable to pay to the Supplier Group additional charges to hire the Equipment in accordance with the rates set out in the Contract or as otherwise agreed.
60. Upon conclusion of the Term (or Extended Term, as the case may be), the Customer shall be liable to pay to the Supplier Group additional charges at the applicable daily rate (and if a daily rate is not specified for the relevant Equipment, it shall be calculated by reference to the relevant Hire Charge paid by the Customer for the said Equipment) for each day (or part thereof) until such time as the Equipment is either:
- collected by the Supplier Group; or
 - returned to the Supplier Group's premises (or such other location nominated by the Supplier Group).
61. Upon conclusion of the Term (or Extended Term, as the case may be):
- if it is agreed that the Equipment is to be collected by the Supplier Group, the Customer shall ensure that the Equipment is ready for collection by the Supplier Group at the time and place agreed between the parties in the same state of cleanliness and condition that it was in at the time the Customer took possession of it (Fair Wear and Tear excepted); or
 - if it is agreed that the Equipment is to be returned to the Supplier Group's premises (or such other location nominated by the Supplier Group) by the Customer, then the Customer shall return the Equipment to the Supplier Group's premises (or such other location nominated by the Supplier Group) by the time and date required and in the same state of cleanliness and condition that it was in at the time the Customer took possession of it (Fair Wear and Tear excepted).
- Dry Hire of Equipment – Hire Charge**
62. In consideration of the Supplier Group hiring the Equipment to the Customer, the Customer agrees to pay to the Supplier Group the Hire Charge.
63. Unless specified otherwise in writing, the Hire Charge does not make allowance for the following items ("**Additional Charges**"):
- fuel;
 - oil/grease;
 - tyre repairs or replacement;
 - all other consumables;
 - mobilisation;
 - demobilisation;
 - freight;
 - insurance;
 - daily services;
 - scheduled services;
 - repairs (minor and major);
 - toll charges;
 - traffic management expenses;
 - cleaning fees;
 - decontamination costs;
 - all other costs and expenses incurred or paid by the Supplier Group in connection with the Dry Hire of the Equipment to the Customer or the Customer's use of the same.
64. Subject to clause 65, if the Additional Charges arise, they will be payable by the Customer as an extra charge.
65. The right to payment for Additional Charges shall be valued in the following order of precedence:
- any applicable rates or prices or other value methods as provided by the Contract;
 - by agreement between the parties;
 - reasonable rates and prices;
 - costs incurred by the Supplier Group plus a reasonable margin for profit and overheads.
- Dry Hire of Equipment - Delivery**
66. The Customer shall be liable for all costs associated with delivery, installation (where applicable), mobilisation and demobilisation, and collection of the Equipment, including freight, insurance, handling, and other charges, unless specified otherwise in writing. These are Additional Charges which will be charged as extra charges in accordance with clause 64.
67. Where the Supplier Group agrees to transport the Equipment to the Site, delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm and only on business days (unless otherwise agreed to in writing).

68. Delivery of the Equipment is deemed to occur at the earlier of:
- when the Equipment is collected by the Customer from the Supplier Group's premises (or such other location nominated by the Supplier Group);
 - where the Supplier Group agrees to transport the Equipment to the Site, at the time the Equipment is unloaded at the Site;
 - where the Customer nominates a carrier to transport the Equipment to the Site, when the carrier takes possession of the Equipment, in which event the carrier shall be deemed to be the Customer's agent.
69. If the Customer retains the Supplier Group to deliver the Equipment, the Supplier Group is entitled to charge:
- a reasonable fee for redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Equipment; and
 - the Customer a reasonable fee for storage and/or for any costs which the Supplier Group incurs as a result of any delay in the delivery of the Equipment caused by the Customer, its agents, or employees.
70. The Customer accepts that the Supplier Group may deliver the Equipment in instalments and may require payment for each separate instalment in accordance with these terms and conditions.
71. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in the despatch or delivery of the Equipment.

Dry Hire of Equipment - Risk and title

72. The Supplier Group is the legal and beneficial owner of the Equipment and, where the Equipment is supplied on Dry Hire, the Customer's rights under the Contract to use the Equipment for the Term is as bailee only.
73. Where the Equipment is supplied on Dry Hire, risk of damage to or loss of the Equipment passes to the Customer on delivery and the Customer acknowledges that the Equipment shall remain at the sole risk of the Customer during the Term and during any further term in which the Customer has possession, custody, or control of the Equipment ("**Risk Period**") until such time as the Equipment is repossessed by the Supplier Group.
74. The Customer must insure the Equipment on or before delivery against all losses which may be sustained as a result of the loss, damage or destruction of the Equipment (or any part thereof) by accident, theft, fire, flood, negligence and such other insurable causes as may be available and shall include the Supplier Group as co-insured. The Customer must produce a certificate of currency to the Supplier Group upon request.
75. If the Equipment is damaged, destroyed, or stolen during the Risk Period due to any act or omission of the Customer, its servants, agents, employees, invitees or any third party, including through failure to comply with these terms and conditions, the Customer shall:
- pay to the Supplier Group all money past due in relation to the Hire Charge plus the cost of repair and/or replacement of the Equipment; and
 - repair the Equipment if reasonably directed to do so by the Supplier Group (a direction to repair shall be at the Supplier Group's sole discretion); and
 - indemnify the Supplier Group in respect of any loss and/or damage, including any consequential losses associated with the loss and/or damage of the Equipment.
76. Notwithstanding clause 75, if the Equipment is damaged, destroyed, or stolen during the Risk Period, the Supplier Group is entitled to receive all insurance proceeds payable in respect of the Equipment to the extent of the indebtedness of the Customer to the Supplier Group. The production of these terms and conditions by the Supplier Group is sufficient evidence of the Supplier Group's rights to receive the insurance proceeds without the need for any person dealing with the Supplier Group to make further enquires.
77. If the Customer requests that the Equipment be delivered either to an unattended location or left outside, the Customer acknowledges that the Supplier Group may, in its sole discretion, deliver the Equipment as requested at the Customer's sole risk.

Dry Hire of Equipment - Customer's obligations

78. The Customer warrants and acknowledges that it shall:
- protect the Equipment against acts of theft and vandalism, and store the Equipment safely and securely (at its own cost);
 - keep the Equipment in its possession, in a suitable place, and not part with possession of any Equipment or enter into any sub-lease agreement in respect of the Equipment without the Supplier Group's prior written consent;
 - not sell, pledge, assign or otherwise deal with the Equipment in a manner inconsistent with the Supplier Group's rights and interest in the Equipment;
 - not move the Equipment over any body of water or remove the Equipment from the Site without the Supplier Group's prior written consent;
 - each day complete the pre-start safety checklist and logbook (where provided with the Equipment);
 - check the Equipment daily for oil, grease, water and battery levels and any sign of looseness or wear and, at the Customer's own cost, maintain the Equipment as required by the Supplier Group (including, but not limited to, maintaining (where applicable) oil, grease, water, battery levels, other fluid levels (using only products approved by the Supplier Group) and tyre pressure);
 - ensure the Equipment is refuelled prior to its return;
 - not alter, tamper with, modify, repair (or attempt to alter, tamper with, modify or repair) any Equipment without the express written consent or prior direction of the Supplier Group;
 - not alter, remove, deface, or cover up any label, plates, or marks on the Equipment which bear the name of the Supplier Group, or any other entity, or any trade marks or trade names used in relation to the Equipment;
 - not allow any person to operate or occupy (or attempt to operate or occupy) the Equipment except for properly trained, licensed (where applicable), and competent personnel, and only strictly in accordance with the law and in line with the Equipment's intended purpose;
 - not allow any person to operate (or attempt to operate) the Equipment under the influence of drugs and/or alcohol;
 - not exceed the recommended or legal load and capacity limits of the Equipment;
 - observe warranties and maintenance guidelines given by the Supplier Group and the manufacturer of the Equipment;
 - use best endeavours to use the Equipment in a manner that will minimise damage to the Equipment;
 - comply on time with all of its obligations in connection with the Equipment, including statutes and requirements and orders of government authorities, including, for the avoidance of doubt, all environmental laws;
 - immediately give to the Supplier Group any notice or order received from any government authority about the use or condition of the Equipment;
 - not carry any animals or illegal, prohibited, or hazardous substances on, or in, the Equipment without prior written permission from the Supplier Group;
 - use best endeavours to ensure that the Equipment is not contaminated with any noxious or hazardous substances;
 - promptly notify the Supplier Group in writing if the Equipment becomes bogged or stuck; and
 - promptly notify the Supplier Group in writing of any breakdown or loss of, material damage to, or contamination of the Equipment (however so caused) and take all reasonable steps to secure and safeguard the Equipment from any potential damage or injury to any person and/or property (including further damage to the Equipment).

Security/charges

79. The Customer charges in favour of the Supplier Group all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future

become owing to the Supplier Group whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Customer.

80. The Customer charges in favour of the Supplier Group all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to the Supplier Group whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Customer.
81. As security for the payment of the amount of its indebtedness to the Supplier Group from time to time, the Customer irrevocably appoints as its duly constituted attorney the Supplier Group's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier Group may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
82. Where the Customer has previously entered into an agreement with the Supplier Group by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier Group may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Suspension and cancellation of terms of credit

83. The Supplier Group reserves the right suspend credit to the Customer where the Customer fails to make payment of any invoice by the due date for payment.
84. The Supplier Group reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
85. Notwithstanding clause 84, if the Customer defaults in the payment of any amount due to the Supplier Group pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, the Supplier Group may terminate this agreement (to be effective immediately) upon notice to the Customer.
86. Upon the withdrawal of credit in accordance with clause 84, or upon termination of this agreement in accordance with clause 85, all liabilities incurred by the Customer become immediately due and payable to the Supplier Group.
87. For the avoidance of doubt, termination of this agreement will not affect:
- the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
 - the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

Provision of further information

88. The Customer undertakes to comply with any reasonable written requests by the Supplier Group to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
89. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier Group of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier Group may ask for its directors to sign a guarantee and indemnity.

Corporations

90. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with the Supplier Group in relation to the Customer's obligations to the Supplier Group.

Trustee capacity

91. If the Customer is the trustee of a trust (whether disclosed to the Supplier Group or not), the Customer warrants to the Supplier Group that:
- the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - the Customer has the right to be reasonably indemnified out of trust assets;
 - the Customer has the power under the trust deed to sign this agreement; and
 - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier Group and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.
92. The Customer must give the Supplier Group a copy of the trust deed upon request.

Partnerships

93. If the Customer enters into this agreement in its capacity as a partnership, the Customer warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier Group in relation to the Customer's obligations to the Supplier Group.
94. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier Group. In the case of a change of partners, the Supplier Group may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

95. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier Group receives a dividend or payment as a result of the Customer being insolvent.

Indemnity

96. The Customer agrees to indemnify the Supplier Group in respect of all liability, claims, damage, loss, costs and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that the Supplier Group may suffer or incur at any time, directly or indirectly, as a result of:
- loss of, or damage to, the Equipment by any cause (including lawful confiscation);
 - damage to property, or death of, or injury to, any person caused directly or indirectly by the Equipment during the Risk Period;
 - any claim against the Supplier Group in relation to any incident concerning the Equipment or its use, operation, transportation, or storage where such incident occurs during the Risk Period; or
 - any default by the Customer in the performance or observance of the Customer's obligations under this agreement.

97. The Customer's liability to indemnify the Supplier Group will be reduced proportionally to the extent only that:

- any negligent act or omission by the Supplier Group or a breach of the Supplier Group's obligations under these terms and conditions has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
- these terms and conditions make the Supplier Group specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of or damage to the Goods.

98. The Customer's liability to indemnify the Supplier Group is a continuing obligation separate and independent from the Customer's other obligations and survives termination of this agreement or any Order.

99. It is not necessary for the Supplier Group to incur any expense or make any payment before enforcing its rights of indemnity conferred by these terms and conditions.

Costs

100. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier Group relating to any default by the Customer under this

agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).

101. The Customer will pay the Supplier Group's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
102. Subject to clauses 103 and 104, payments by, or on behalf of, the Customer will be applied by the Supplier Group as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 42, 52, 96, and 101.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 107.
 - (c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by the Supplier Group in its absolute discretion.
103. To the extent that payments have been allocated to invoices by the Supplier Group in its business records, the Supplier Group may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier Group's absolute discretion, including in a manner inconsistent with clause 102 herein.
104. Payments allocated (and/or reallocated) under clause 102 and/or 103 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier Group on the date of receipt of payment.

Taxes and duty

105. The Customer must pay GST on any taxable supply made by the Supplier Group to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
106. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier Group becomes liable to pay any tax, duty, excise, or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier Group these additional amounts on 48 hours' written demand.

Interest rates

107. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum, which interest will accrue and be recoverable each day or part thereof that the debt remains outstanding.

Subcontracting and assignment

108. The Supplier may engage a subcontractor without the approval of the Customer to perform all or any of its obligations under these terms and conditions.
109. Neither party shall assign its benefits or obligation under these terms and conditions without the written consent of the other (which consent shall not be unreasonably withheld).

Waiver

110. A waiver of any provision or breach of this agreement by the Supplier Group shall only be effective if made by an authorised officer of the Supplier Group in writing. A waiver of any provision or breach of this agreement by the Customer shall only be effective if made by the Customer's authorised officer in writing. If the Supplier Group or the Customer elect not to enforce its rights arising as a result of a breach of these terms and conditions, that will not constitute a waiver of any rights relating to any subsequent or other breach.

Set-off

111. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier Group and the Customer in writing or as required by law.
112. Any amount due to the Supplier Group from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier Group.

Limitation of liability

113. In relation to the supply of Goods, to the fullest extent permitted by law, the Supplier Group's liability to the Customer for any loss, damage or injury, whether under contract, in tort, pursuant to statute or otherwise, is limited to, at the Supplier Group's discretion, to any one or more of the following:
- (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - (d) the payment of the cost of having the Goods repaired.
114. In relation to the supply of Services, to the fullest extent permitted by law, the Supplier Group's liability to the Customer for any loss, damage or injury, whether under contract, in tort, pursuant to statute or otherwise, is limited to, at the Supplier Group's discretion, to any one or more of the following:
- (a) the supply of the Services again; or
 - (b) providing for the cost of having the Services supplied again.
115. In relation to the Dry Hire of Equipment, to the fullest extent permitted by law, the Supplier Group's liability to the Customer for any loss, damage or injury, whether under contract, in tort, pursuant to statute or otherwise, is limited to, at the Supplier Group's discretion, to any one or more of the following:
- (a) the supply of the Equipment again; or
 - (b) providing for the cost of having the Equipment supplied again.
116. The Supplier Group is not liable for loss of profit, economic or financial loss, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Goods, Services, and/or Equipment supplied under these terms and conditions.
117. All terms, conditions, warranties, indemnities and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which are not expressly set out in these terms and conditions are hereby expressly excluded and, to the extent they cannot be excluded, the Supplier Group disclaims all liability in relation to them.

Liability of parties

118. If two or more parties are included within the same defined term in these terms and conditions:

- (a) these terms and conditions have separate operation in relation to each of them;
- (b) a liability or obligation of those persons under these terms and conditions is a joint liability or obligation of all of them and a several liability or obligation of each of them; and
- (c) a right given to those parties under these terms and conditions is a right given severally to each of them.

Force majeure

119. The Supplier Group is not liable to the Customer for any delay or failure to perform its obligations pursuant to these terms and conditions if such delay or failure to perform is due to force majeure being a circumstance beyond its reasonable control, including strikes, lockouts, fires, floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or Equipment breakdown or malfunction, disease or pandemic, government intervention or regulation, acts of God or any other activity beyond the Supplier Group's control.

Severance

120. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
121. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation of agreement

122. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier Group at any time by written notice to the Customer. Subject to clause 123, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Customer.
123. If the Customer does not agree with the variation(s) proposed by the Supplier Group, it must notify the Supplier Group in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. The Supplier Group and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Supplier Group without notification.
124. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier Group may refuse any such request without providing reasons either orally or in writing.
125. Variations requested by the Customer will only be binding upon the Supplier Group if they are in writing signed by an authorised officer of the Supplier Group.

Jurisdiction

126. The Customer acknowledges and agrees that this agreement will be governed by the laws of South Australia, and the laws of the Commonwealth of Australia which are in force in South Australia.
127. The Customer acknowledges and agrees that any Contract between the Supplier Group and the Customer is formed at the address of the Supplier Group.
128. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of South Australia and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

129. Any advice provided to the Customer in relation to the Goods and/or Equipment is provided in good faith only. The Customer acknowledges and agrees that it is satisfied itself as to the quality or fitness of the Goods and/or Equipment for the Customer's specific purpose and that the Customer has not relied on any statement, representation, assurance, or warranty made by the Supplier in relation to the quality or fitness of the Goods and/or Equipment for any specific purpose.
130. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier Group and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
131. Notwithstanding clause 130, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and the Supplier Group, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
132. These terms and conditions shall apply to every Contract between the Supplier Group and the Customer. Any terms and conditions of the Customer's Order or of any other document deviating from or inconsistent with these terms and conditions are expressly rejected by the Supplier Group. For the avoidance of doubt, the Customer understands and agrees that these terms and conditions will prevail over, and the Supplier Group will not be bound by, any terms or conditions (express or implied) added or provided by the Customer, whether in an Order or otherwise, unless otherwise agreed in writing by the Supplier Group.

Privacy Act

133. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

The Customer hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Customer and the information given is true and correct to the best of my/our knowledge.

Signature		Witness signature	
Name (print)		Witness name (print)	
Position		Date	
Date			
Signature		Witness signature	
Name (print)		Witness name (print)	
Position		Date	
Date			

OFFICE USE ONLY - FOR COMPLETION BY THE SUPPLIER GROUP

The Customer's credit application is accepted. Signed for and on behalf of the Supplier Group.

Signature		Position	
Name (print)		Date	

PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications, and disclosures under or in relation to the *Privacy Act 1988 (Act)*.
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier Group may collect personal information about the Customer and/or Guarantor(s) for the Supplier Group's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. The Customer and/or Guarantor(s) consent to the Supplier Group collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. The Supplier Group may collect, and may already have collected, Information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier Group it may restrict or impede upon the Supplier Group trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
7. The Customer and/or Guarantor(s) consent to the Supplier Group obtaining and making disclosure of Information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier Group notifies the Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
8. The Supplier Group may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier Group intends to disclose default information to any or all of the credit reporting bodies listed below. The Customer and/or Guarantor(s) consent to such disclosure. The Supplier Group's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier Group may disclose and the Customer's and/or Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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9. The Supplier Group may disclose Information to, and about them and the Customer and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier Group's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit.
10. A full copy of the Supplier Group's privacy policy and credit reporting policy can be obtained from the Supplier Group's website (details above) or by making a request in writing directed to the Supplier Group's privacy officer. The Supplier Group's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier Group will deal with any such complaint.
11. The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier Group within fourteen (14) days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier Group after receipt of this Statement or, if the Customer and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier Group after receipt of this statement.

DEED OF GUARANTEE & INDEMNITY

To **(Supplier Group)**
 Newtons Building & Landscape Supplies Pty Ltd ACN 648 444 053 and
 Statewide Hire Pty Ltd ACN 087 582 358 and their related bodies corporate

Name of Guarantor		Address	
Name of Guarantor		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction

1. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of South Australia, and the laws of the Commonwealth of Australia which are in force in South Australia.
2. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of South Australia and the relevant federal courts and courts competent to hear appeals from those courts.

Consideration

3. In consideration of the Supplier Group extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time or services provided or to be provided, the Guarantors guarantee payment to the Supplier Group of all money which is now or at any time in the future becomes due and payable to the Supplier Group by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to the Supplier Group arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

4. The Guarantors agree to guarantee and indemnify the Supplier Group against all losses damages or expenses that the Supplier Group may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to the Supplier Group whether for goods sold, services provided or otherwise or to observe the terms of any agreement between the Customer and the Supplier Group, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier Group to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier Group.
5. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier Group to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for the Supplier Group, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
6. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier Group will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
7. The Supplier Group will have the right to enforce this guarantee and indemnity, irrespective of whether the Supplier Group has sought to recover the amounts guaranteed from the Customer and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, the Supplier Group may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
8. This guarantee and indemnity will continue in force until such time as the Supplier Group releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
9. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier Group against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - (a) any other security taken by the Supplier Group from the Customer or from any other person;
 - (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
 - (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
 - (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

10. In the event of a Guarantor making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until the Supplier Group has been paid in full.
11. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until the Supplier Group has been paid in full.

Insolvency of Customer

12. No sum of money which the Customer pays to the Supplier Group and the Supplier Group later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations*

Act 2001, Bankruptcy Act 1966 or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

Costs

13. The Supplier Group is at liberty from time to time to charge the account of the Customer with all costs, charges, and expenses, legal or otherwise that the Supplier Group incurs in connection with:
 - (a) the account of the Customer;
 - (b) this guarantee and indemnity;
 - (c) any other security in respect of the indebtedness of the Customer to the Supplier Group;
 - (d) the preparation, completion and stamping of this deed; or
 - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier Group under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.
14. The Guarantors agree to pay the Supplier Group's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
15. As security for the payment of the amount of the indebtedness to the Supplier Group from time to time, the Guarantors irrevocably appoint as their duly constituted attorney the Supplier Group's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier Group may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

16. The Guarantors authorise the Supplier Group to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to the Supplier Group, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
17. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier Group making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

18. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Security/charge

19. The Guarantors charge in favour of the Supplier Group all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to the Supplier Group, including all amounts referred to in clauses 3 and 4.
20. The Guarantors charge in favour of the Supplier Group all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to the Supplier Group, including all amounts referred to in clauses 3 and 4.
21. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
22. Where the Guarantors have previously entered into an agreement with the Supplier Group by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier Group may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

23. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier Group constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
24. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Service of notices

25. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier Group by the Guarantors or the Guarantors' authorised representative.

Privacy Act

26. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

Executed as a deed on (date)

Signed, sealed, and delivered by the Guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	

Signed, sealed, and delivered by the Guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	