



9 Woodthorpe drive,  
 Willetton WA 6155  
**P (08) 9259 0611**  
**E admin@hireways.net.au**

## APPLICATION FOR CREDIT CARD ACCOUNT & MASTER HIRE AGREEMENT

### DETAILS OF BUSINESS (The Hirer):

<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Company	<input type="checkbox"/> Trust	<input type="checkbox"/> Other: (Please specify)
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TRADING NAME:		ACN:
COMPANY NAME:		ABN:
TRUST NAME (if applicable):		TRUST ABN:
BUSINESS ADDRESS:	POSTCODE:	
POSTAL ADDRESS:	POSTCODE:	
DATE BUSINESS ESTABLISHED:		
PHONE:	FAX:	EMAIL:

#### CONTACT DETAILS

	ACCOUNTS PAYABLE	PURCHASING
CONTACT NAME:		
PHONE:		
MOBILE (If applicable):		
EMAIL:		

### FULL DETAILS OF EACH DIRECTOR, PARTNER OR SOLE TRADER (as applicable):

	Director 1/Partner 1/Sole Trader	Director 2/Partner 2	Director 3/Partner 3
FULL NAME			
TITLE/POSITION			
DATE OF BIRTH			
FULL RESIDENTIAL ADDRESS (Include Postcode)			
HOME PHONE No			

### IDENTIFICATION DETAILS

(To be completed by each Director/Partner or Sole Trader – to be verified by Hireways or copies to be provided)

<b>1</b>	DRIVERS LICENCE No: _____	EXPIRY DATE: _____
	ADDRESS ON LICENCE: _____ (Check back of licence)	STATE OF LICENCE: _____
		DATE OF BIRTH: _____
<b>2</b>	MEDICARE CARD No: _____	EXPIRY DATE: _____
	NAME ON CARD: _____	No ON CARD: _____

<b>3</b>	CREDIT CARD No:															CARD TYPE: _____	
	EXPIRY DATE:							CCV: _____									
	CARDHOLDER NAME: _____																
<b>4</b>	OTHER ID (If unable to complete all 3 above) _____																
	ID TYPE:	_____															
	ID NUMBER:	_____									EXPIRY DATE:	_____					
	NAME ON ID _____																

**NOTE: NO CREDIT HAS BEEN APPLIED FOR BY COMPLETING THIS DOCUMENT, ALL TRANSACTIONS MUST BE PREPAID.**

**\*THE SECTION BELOW MUST BE SIGNED AND DATED BY THE HIRER**

1. Despite that fact that no credit has been granted and that all transaction must be prepaid, there may be occasions where the Hirer withholds payment for the final invoice (for items including but not limited to diesel, pickup charges and damage). In those circumstances I/we agree that:
  - a. Hireways may disclose our respective information, and information about the Hirer, to credit reporting or debt collecting agencies, and to other parties authorised or required to collect our information, and information about the Hirer. We understand that this information may be disclosed and used for the purposes permitted under the Privacy Act 1988 (Cth) including:
    - to identify each of us and the Hirer and to verify the information provided to Hireways; and
    - to notify the relevant parties of any payments which are overdue.
  - b. We each, personally and on behalf of the Hirer, authorise Hireways to obtain credit reports from credit reporting agencies, information about us and the Hirer (including information about our creditworthiness, credit history, credit standing or credit capacity) from any credit provider named in a credit report, and information about us or the Hirer from a credit reporting agency or business that reports on commercial credit worthiness. We understand that this information may be given and used to assist us and the Hirer to collect overdue payments, avoid default and to notify other credit providers of any default by us or the Hirer.
2. Hireways agrees to hire Plant to the Hirer on terms set out in the attached Master Hire Agreement. By signing below, the Hirer agrees to be bound by the terms of the Master Hire Agreement. If the Hirer wishes to hire Plant the Hirer must complete and sign a Hire Schedule and such other documents as Hireways may require, in each case in the form required by Hireways. Each Hire Schedule is not a separate contract but forms a part of the Master Hire Agreement between Hireways and the Hirer. Hireways may terminate this agreement or decline to hire Plant to the Hirer at any time. The Hirer agrees and acknowledges that Hireways has the right to amend this agreement from time to time.
3. I/We agree to give Hireways authority to direct debit my valid credit card to clear my balances owed when payment on my Hireways account is due.
4. I/We understand Hireways may debit funds in advance for period in excess of expected rental term, and refund any overcharge upon return of equipment.
5. I/We are duly authorised to execute this application on behalf of the Hirer.

<p>1. Name: (Please print) _____</p> <p>Title/Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>2. Name: (Please print) _____</p> <p>Title/Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
<p>3. Name: (Please print) _____</p> <p>Title/Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>4. Name: (Please print) _____</p> <p>Title/Position: _____</p> <p>Signature: _____</p> <p>Date: _____</p>

***This document must be signed by each Director or Partner, or by the Sole Trader***

# GUARANTEE AND INDEMNITY

TO: Hireways  
9 Woodthorpe drive, Willetton WA 6155

IN CONSIDERATION of you ("Hireways") supplying or continuing to hire equipment, goods or services ("Plant") at our/my request to

\_\_\_\_\_ Pty Limited ("Hirer")

of \_\_\_\_\_ ("Address of Hirer")

\_\_\_\_\_  
(Please print full name of Guarantor 1)

\_\_\_\_\_  
(Please print full name of Guarantor 2)

\_\_\_\_\_  
(Please print full address of Guarantor 1)

\_\_\_\_\_  
(Please print full address of Guarantor 2)

I/WE the above described person/s ("Guarantor") agree with Hireways as follows:

1. The Guarantor guarantees the due and punctual:
  - a) Payment by the Hirer to Hireways of all moneys ("Moneys") which the Hirer may now or in the future be liable to pay to Hireways actually or contingently on any account; and
  - b) Observance and performance by the Hirer of the Hirer's obligations ("Obligations") under the set out in the Master Hire Agreement for supply of the Plant by Hireways to the Hirer on credit;  
And indemnifies Hireways against all loss (including unpaid Moneys) and damage suffered or incurred by Hireways by reason of the failure by the Hirer to pay the Moneys or to observe the Obligations.
2. If there is more than one guarantor, "Guarantor" means all of them collectively and each of them individually and the Guarantor's covenants are joint and several. "Co-surety" includes any other person named as Guarantor or who otherwise guarantees payment of the Moneys.
3. This deed is a continuing and irrevocable guarantee and indemnity until the Guarantor is expressly released by Hireways and it is not discharged by any intermediate payment or settlement of accounts.
4. The Guarantor's obligations under this deed are unconditional and not affected by anything which might otherwise affect them under the law relating to sureties including:
  - a) Any change in the legal capacity, rights or obligations of the Guarantor, the Hirer, a Co-surety or any other person; or
  - b) The fact that, in relation to any of the Moneys or any security, guarantee or indemnity for them, Hireways;
    - i) Obtains a judgment against the Hirer, a Co-surety or any other person; or
    - ii) Gives up, releases, varies or exchanges or fails to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity; or
    - iii) Grants time or any other concession to, or compounds or compromises with, or does or omits to do anything which affects the obligations of the Hirer, a Co-surety or any other person to Hireways or to the Guarantor; or
    - iv) Receives any dividends out of the estate or assets of the Hirer, a Co-surety or any other person for any reason; or
  - c) The fact that any security, guarantee or indemnity held or taken by Hireways is void, defective or informal or ranks after any other security or obligation for any reason; or
  - d) The death, mental or physical disability or insolvency of the Hirer, a Co-surety or any other person; or
  - e) A variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of Products) given to the Hirer whether with or without the Guarantor's consent or knowledge; or
  - f) The fact that any Moneys may not be recoverable from the Hirer, a Co-surety or any other person for any reason; or
  - g) The cessation of business by any firm or partnership which the Hirer or the Guarantor comprises or any change in its members.
5. The obligations of the Guarantor under this deed are principal obligations and Hireways is not required to take action first against the Hirer or make demand first against the Hirer or to marshal its security.
6. The Guarantor must not prove or claim in the assets of the Hirer in competition with Hireways if the Hirer is made bankrupt, wound up or makes a deed of arrangement, composition or compromise in satisfaction of its debts or (being a natural person) dies. If directed by Hireways the Guarantor shall lodge a proof of debt and must hold any distribution or payment received on trust for Hireways.
7. The Guarantor charges as beneficial owner and as trustee of every trust all the Guarantor's land (including land acquired in the future) in favour of Hireways to secure the payment of the Moneys and the performance and observance of the Guarantors covenants under this deed. In this clause "trust" means each trust for which the Guarantor holds land as trustee.
8. This deed is binding on the Guarantor and the Guarantor's executors, administrators and successors.
9. The Guarantor shall pay all Hireways' costs, fees and expenses associated with this deed and the enforcement of this deed and all stamp duty on this deed
10. A signed certificate from Hireways stating the amount of the Moneys payable or any other matter or fact is proof of that amount or other matter or a fact as at the date stated unless the Guarantor proves to the contrary.
11. The Guarantor fully understands the risks associated with this deed and freely elects to execute this deed.
12. This deed is governed by the laws of Victoria and the applicable laws of the Commonwealth of Australia. The Guarantor submits to the non-exclusive jurisdiction of the courts of that state of the Commonwealth of Australia elected by Hireways.

EXECUTED as a deed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED by:

\_\_\_\_\_  
Guarantor 1 (Print Name)

\_\_\_\_\_  
(Signature)

In the presence of:

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
(Print Name)

SIGNED by:

\_\_\_\_\_  
Guarantor 2 (Print Name)

\_\_\_\_\_  
(Signature)

In the presence of:

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
(Print Name)

## MASTER HIRE AGREEMENT

This is an agreement between Hireways, and the Hirer identified in the *Application for Commercial Credit Account and Master Hire Agreement (Credit Application)* or the *Hirer Identification and Master Hire Agreement (Cash Identification)* (as the case may be). This document states the terms on which Hireways will hire Plant to the Hirer now or in the future.

### **1. Definitions**

1.1. In these Conditions:-

- a) **"Commencement Date"** means the date and time when the Hirer takes possession of the Plant.
- b) **"Plant"** means equipment including any kind of equipment suitable for earth moving including but not limited to water trucks, air compressors, tippers and all other tools, consumables, accessories and parts.
- c) **"Hire Charge"** means the amount shown in (or calculated in accordance with) the Hire Schedule payable by the Hirer to hire the Plant.
- d) **"Hire Period"** means the period between the Commencement Date and the Termination Date.
- e) **"Hire Schedule"** means a document which Hireways may require the Hirer to sign (or accept in a way Hireways requires) including particulars of Hirer, Plant and Hire Period and such other information as Hireways may decide to require.
- f) **"Termination Date"** means the date and time when the Hirer must return the Plant to the possession of Hireways.
- g) Any terms defined in the Credit Application, Cash Identification or the Hire Schedule shall have the same meaning in this Master Hire Agreement.

### **2. Agreement to Hire and Hire Period**

2.1. If the Hirer wishes to hire Plant the Hirer must compete and sign (or otherwise accept in the manner required by Hireways) a Hire Schedule and such other documents as Hireways may require.

2.2. Hireways agrees to rent and the Hirer agrees to take the Plant on hire for the Hire Period in accordance with the terms of this document and the Hire Schedule.

Any alterations to the Hire Period must be approved by Hireways in writing prior to the Termination Date.

2.3. Unless otherwise agreed by Hireways, the minimum Hire Charge shall be for a period of 1 X day (8 hours).

2.4. The Hirer acknowledges that Hireways has rights to the Plant and title of the Plant will remain with Hireways. In no circumstances will the Plant be deemed to be a fixture.

2.5. Each Hire Schedule is not a separate contract but forms a part of this agreement, together with any other contractual documents. Hireways may in its absolute discretion decline to hire Plant to the Hirer at any time.

### **3. Hire Charges**

3.1. The Hirer shall make payment of the hire of the Plant in accordance with the rates specified in the Hire Schedule. Hireways in its sole discretion may charge on a daily rate, weekly rate, 4+ weekly rate basis (or any other basis).

3.2. In the event that the Hire Charge is not completed on the Hire Schedule, the standard rates published by Hireways, which can be accessed at Hireways' premises, shall apply.

3.3. Additional rental charges will apply if equipment usage exceeds 8 hours per day/ 40 hours in any 1 week.

3.4. Where meters are mounted on the Plant they may be used by Hireways to determine the time the Plant was in use by the Hirer unless otherwise stated in the Hire Schedule. Where the meter is found not to be working either during or at the Termination Date then Hireways will estimate the hours used and the onus is on the Hirer to prove otherwise.

3.5. The Hire Charge does not include cartage, fuel, blade wear, tip wear (rippers, cultivators, etc.) as set out in the current product information at Hireways' premises, along with all saleable and consumable items.

3.6. In addition to the Hire Charge, the Hirer shall pay:-

- a) For any consumables, fuel or trade materials;
- b) For any replaceable parts of Plant such as (but not limited to) 'teeth' and cutting edges on buckets and chisels on rock breakers, which in the sole discretion of Hireways has undergone rapid wear as a result of the Hirer's use;
- c) For any reasonable costs incurred by Hireways to remedy the breach of the Hirer's obligations including but not limited to cleaning and repairing of the Plant upon return;
- d) Any applicable levies, taxes (i.e. gst), fines penalties and any other government charges arising out of the Hirer's use of the Plant during the Hire Period; and
- e) The Damage Waiver charge, being 12% of the total Hire Charge (Compulsory unless by prior arrangement).

3.7. Hireways may amend the Hire Charge or any related charges payable under a particular Hire Schedule by giving the Hirer at least seven (7) days' notice in writing before the change occurs. In the event, notice is given advising that the Hire Charge will be increased, the Hirer may, at its cost, return the Plant to Hireways, or request that it be collected by Hireways, before the increase in the Hire Charge commences.

3.8. The Hirer acknowledges and agrees that where the Hire Period exceeds a period of two calendar months then in the event of the Hirer purporting to terminate this agreement before the Termination Date the Hirer shall pay to Hireways liquidated damages calculated in either of the following manner to be decided at the sole discretion of Hireways:

- a) 20% of the whole of the Hire Charge paid or payable by the Hirer to Hireways from the Commencement Date to the date of the said purported termination it being agreed by the parties that having regard to the length of the period of hire such liquidated damages properly reflect the reasonable losses of Hireways in the event of early termination; or
- b) Such sum being the whole of the Hire Charge.

3.9. In the event that the Hirer also hires an operator of the Plant the hire charges of the operator in accordance with the Hire Charge specified in the Hire Schedule and the charge out rate as specified in the Hire Schedule per operator, and will be charged by the hour.

### **4. Payment of Hire Charges**

4.1. Except where Hireways dispenses with this requirement a deposit and/or bond as specified in the Hire Schedule shall be paid by the Hirer to Hireways by the Commencement Date.

4.2. "30 day account" Customers must make payment of the invoice issued by Hireways within 30 days of the date of the invoice. Invoices will be issued on a monthly basis.

4.3. Hirers that are not "30 day account" Customers (Credit Card account customers) must make payment of the invoice issued by Hireways prior to the Commencement Date.

4.4. In the event of default by the Hirer in the payment of any amount due, the Hirer shall be liable to pay interest on the gross amount outstanding at the rate of 2.00% per month calculated daily from the date on which payment was due until the date on which payment is received in full.

4.5. For Trade Customers, credit may not be extended on overdue accounts at Hireways' discretion.

- a) In this clause:

- (i) The expression "GST" means any tax in the nature of a tax on the supply of goods and services;
- (ii) The expression "Supply" means any form of supply whatsoever and includes any supply within the meaning of any legislation imposing or relating to the imposition of a GST.

- b) Where any Supply under this agreement is or becomes subject to a GST an amount equal to the GST paid or payable in respect of the Supply shall be added to the consideration for that supply under this agreement and must be paid at the same times.
- c) Each party agrees to do all things, including providing invoices and other documents necessary to assist the other party to claim any credit, set-off or refund of any GST paid or payable under this agreement.

4.6. Any contract agreed to with the customer is considered to be a contract in accordance with the Building and Construction Industry Security of Payment Act 2002 (or any subsequent enactment).

#### 5. Responsibilities of Hirer

5.1. Risk in the Plant passes to the Hirer on delivery of the Plant and remains with the Hirer until the equipment is collected by or returned to Hireways. Subject to clause 7 below, the Hirer is liable to Hireways for any and all loss or damage to, or caused by, the Plant or its operation and all costs incurred in respect of the Plant including the cost of repairing or replacing the Plant at the full new replacement cost, salvage costs and rental charges incurred while the equipment is repaired or replaced.

5.2. The Hirer must:-

- a) Prior to entering into this agreement determine, using the Hirer's sole judgment, the condition, suitability and fitness of the Plant for the purpose for which the Hirer requires the Plant;
- b) Use the Plant in a skillful and proper manner and only for the purpose and within the capacity for which it was designed;
- c) Ensure that the Plant is operated by a suitably qualified and (where necessary) licensed operator, used within its rated capacity and in accordance with the operators manual and Hireways instructions (Minimum operating age- 18 years old)
- d) Comply at its own expense, with all industrial and occupational health and safety laws, both state and commonwealth, which may apply to the Plant;
- e) Prior to entering into this agreement, take out at its own cost and maintain for the Term policies of insurance for third party and public liability, indemnity cover of not less than the full new replacement cost of the Plant, and any other policies which may be directed by Hireways from time to time;
- f) Provide all operators of the Plant with appropriate and prudent safety clothing and equipment and all manuals and instructions (written and oral) for the safe operation of the Plant;
- g) At its own expense, clean, fuel, lubricate, check water and oil and keep the Plant in good condition;
- h) Not undertake any repair, servicing, alteration, modification or tampering with the Plant without the prior written consent of Hireways.
- i) Not alter or make any additions to the Plant, including, without limitation, alter, make any additions to, deface or erase any identifying mark, plate or number or any clock, or meter.
- j) Acknowledge that pre-arranged major servicing may be carried out by Hireways during normal working hours during the Hire Period;
- k) Replace all flat and/or damaged tyres or tracks;
- l) Store the Plant safely and securely and protected from theft damage seizure or loss;
- m) In the event that any repair or servicing appears necessary to the Plant the Hirer shall:
  - (i) Immediately cease using the Plant;
  - (ii) Take all steps necessary to prevent injury occurring to any persons or property as well as to the Plant;
  - (iii) Advise Hireways immediately, initially by telephone and forthwith thereafter in writing (by facsimile transmission or by email); and
  - (iv) Not repair or attempt to repair the Plant.
- n) Accept full responsibility for, and indemnify Hireways against all claims in respect of death or injury to persons, and/or loss or damage to property, arising out of the delivery, use, servicing, storage or possession of the Plant during the Hire Period however arising, whether from negligence of the Hirer or any other person including, without limitation, where the Plant is being operated for any reason by Hireways, its servants or agents;
- o) Retain possession of the Plant at all times and shall not, without Hireways' prior written consent, part with the possession of the Plant or in any way assign the benefits of this agreement or the use of the Plant to any third party; Plant must not be removed from original location including transportation out of Australia without written permission from Hireways.
- p) Accept responsibility and fully reimburse Hireways for the cost of freight to retrieve Plant which Hireways (in its sole discretion) deems to be abandoned or is not being properly safeguarded; forthwith on request by Hireways advise Hireways of the whereabouts of the Plant and allow Hireways (its agents, servants or contractors) to inspect and test the Plant and for such purposes the Hirer hereby gives irrevocable consent and licence to Hireways (its servants agents and contractors) to take possession of and remove the same and as agent of the Hirer, enter upon any premises where the Plant or any part of the same may be; and
- q) On termination of this agreement, ensure that the Plant is in the same clean condition and good working condition as at Commencement Date. A cleaning charge and fuel top up may apply if necessary.
- r) Pay to Hireways all or any costs and expenses incurred enforcing Hireways' rights and the Hirer's obligations hereunder including, but not limited to, any cheque fees, any legal fees and disbursements incurred by Hireways for any court proceedings taken against the Hirer by Hireways.

5.3. In the event that the hire includes the hire of an operator to operate the Plant, the Hirer acknowledges that:

- a) The operator will be under the Hirer's direction and control and will comply with all reasonable and lawful directions of the Hirer;
- b) Hireways will not seek to direct or supervise any of the work being undertaken by the operator;
- c) Hireways will not be liable for any acts or omissions of the operator provided that the operator is acting under the Hirer's direction and control; and
- d) The Hirer must not allow any other person to operate the Plant without Hireways' prior consent.

#### 6. Loss of or Damage to Plant

- 6.1. In the event that the Plant breaks down or becomes unsafe to use during the Hire Period, the Hirer must immediately notify Hireways (including the relevant police report), cease using the Plant and shall not repair or attempt to repair the Plant. The Hirer must also ensure that the Plant will not suffer further damage and that no person or property will be injured as a result of the damage to the Plant.
- 6.2. In the event that the plant is lost, damaged or stolen, the hirer must immediately notify and provide full details to Hireways. If outside of Hireways standard business hours a message should be left on the answering service or in the event of damage, the after-hours emergency line is available.
- 6.3. The Hirer accepts full responsibility for any loss or damage occurring to the Plant (other than damage arising as a consequence of a negligent act or omission by Hireways) for the Hire Period. The cost of any replacement or repairs resulting from loss or damage will be payable by the Hirer including the hire incurred while plant is repaired to a hireable state. The Hirer shall notify Hireways immediately if the Plant is lost or damaged and shall forthwith follow any reasonable request by Hireways relating to Hireways' enquiries into the loss and/or damage to the Plant.
- 6.4. Without limiting the generality of clause 6.3, the Hirer will be liable for the full cost of repairs to or the replacement of the Plant where the loss or damage has been caused by:-
  - a) Misuse abuse, or overloading including overloading of motors or any other part of the plant;
  - b) The Plant not stored in a safe place;
  - c) Contravention of the conditions of this contract;
  - d) Violation of any law or regulation;
  - e) Damage to tyres and tubes by punctures or cuts;
  - f) Lack of lubrication or other routine servicing by the Hirer;
  - g) Locating, using, loading, unloading transporting the Plant on or over water, wharves, bridges or vessels of any kind;
  - h) Damage caused by exposure to any corrosive substance, saltwater, toxic materials or unsafe electrical currents;

- i) Negligence of the Hirer where the Hirer has failed by intent or lack of due care to take all responsible precautions to protect the Plant from loss or damage;
- j) Consumption of alcohol and/or drugs;
- k) Circumstances where a claim has been made by or against a third party.

#### **7. Damage Waiver**

- 7.1. The Damage Waiver is a compulsory payment of the amount being 12% of the value of the total Hire Charge (unless agreed to be different by prior arrangement).
- 7.2. The Damage Waiver is non-refundable.
- 7.3. For the purpose of this clause, the term "Plant" does not include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass.
- 7.4. If the Hirer has acquired Rental Protection, then, subject to the clause the Hirer's liability for the loss or damage to the Plant caused by fire, storm, earthquake, collision, accident or theft is limited to \$2500 or 12% of the full new replacement cost of the Plant whichever is the greater. This applies per single incident.
- 7.5. Loss or damage to the plant during Loading/Unloading and during transport is not covered by the damage waiver.
- 7.6. The Damage Waiver does not apply to loss or damage if in the reasonable opinion of Hireways the loss or damage to the Plant has arisen from anything referred to in clause 6.4.

#### **8. Exclusion of Warranties**

- 8.1. Subject to this agreement and any express provisions contained herein all guarantees, conditions, warranties, terms, undertakings, or representations whether express or implied (by statute or otherwise) is excluded to the maximum extent permitted by law.
- 8.2. Nothing in this agreement excludes restricts or modifies any right or remedy or any guarantee term condition warranty undertaking inducement or representation implied by any legislation which cannot be excluded or limited.
- 8.3. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation which cannot be excluded, ('Non-Excludable Provision'), and Hireways may limit the Hirer's remedy for a breach of the Non-Excludable Provision, then Hireways' liability for breach of the Non-Excludable Provision is limited to (at Hireways' election):
  - a) In the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - b) In the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 8.4. Hireways shall not be liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Hirer have incurred, amounts that the Hirer is liable to its customers for or any loss suffered by third parties. No warranty or representation is given by Hireways as to the performance, state, fitness or capacity of the machine or as to the ability to perform any work for which it has been hired. Any warranty or representation (expressed or implied) as to the ability, fitness or capacity of the machine is expressly excluded.
- 8.5. The Hirer is liable for and will indemnify Hireways against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Hireways and any environmental loss, cost, damage or expense) in respect of personal injury, damage to tangible property, or a claim by a third party, in respect to this agreement. The Hirer's liability under this indemnity is diminished to the extent that Hireways' breach of the agreement causes the liability, claims, damage, loss, costs or expenses.
- 8.6. Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this agreement.
- 8.7. Hireways shall not be liable to the Hirer for any acts or omissions of any person supplied by Hireways where that person is acting under the Hirer's direction and control during the Term and shall be indemnified against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

#### **9. Signatory's Warranty as to Agency from Hirer**

- 9.1. Where this agreement is signed by a person on behalf of the Hirer (but the signatory is not the Hirer named in the schedule on the first page of this agreement):
  - a) The person signing the agreement warrants to Hireways that he or she has the full authority of the Hirer to enter into this agreement; and
  - b) The person signing this agreement on behalf of the Hirer shall remain personally liable hereunder until all obligations of the Hirer have been fully met or any monies due hereunder by the Hirer to Hireways have been paid; and
  - c) The person signing this agreement on behalf of the hirer acknowledges that Hireways enters into this contract in reliance upon the warranty given in clause 9.1.a) and the acknowledgment of personal liability set out in clause 9.1.b) hereof.

#### **10. Personal Property Securities Act ('PPSA')**

- 10.1. This clause applies to the extent that Hireways' interest in respect of a hire provided for in this agreement is a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.
- 10.2. Hireways may register any actual impending or likely security interest that arises under this Master Hire Agreement and in the Plant. The Hirer may not make any Claim against Hireways in respect of any registration even if it is determined that Hireways should not have registered a security interest. The Hirer must do anything (such as obtaining consents and signing documents) which Hireways requires for the purposes of:
  - a) Ensuring that Hireways' security interest in the Plant is enforceable, perfected and otherwise effective under the PPS Law;
  - b) Enabling Hireways to gain first priority (or any other priority agreed to by Hireways in writing) for its security interest; and
  - c) Enabling Hireways to exercise rights in connection with the security interest.
- 10.3. The rights of Hireways under this document are in addition to and not in substitution for Hireways' rights under other law (including the PPS Law) and Hireways may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Hireways' security interest will attach to proceeds.
- 10.4. To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Hireways to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Hireways to give a notice to the Hirer); section 129(2) and 129(3); section 132(3) (d)(contents of statement of account after disposal); section 132(4)(statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 10.5. To the extent they apply, the following provisions of the PPS Law; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Hireways. Hirer agrees that in addition to those rights, Hireways shall, if there is default by Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that Hireways may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or license.
- 10.6. The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security agreements prior to the date of this agreement.
- 10.7. The Hirer agrees that the following provisions of the PPS Law will not apply and the Hirer will have no rights under them: section 127; section 129(2) & (3); section 130(1), section 132; section 134(2); section 135, section 136(3), (4) & (5) and section 137.

- 10.8. Hireways and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer waives any right it may have had under section 275(7)(c) of the PPS Law to authorize disclosure of that information. The Hirer must do everything necessary on its part to ensure that section 275(6) (a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Hireways the benefit of section 275(6)(a) and Hireways shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- 10.9. The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Plant or register a financing statement in relation to the equipment other than with the express written consent of Hireways. The Hirer must not lease, hire, bail or give possession ('sub-hire') of the Plant to anyone else unless Hireways (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Hireways and must be expressed to be subject to the rights of Hireways under this agreement. Hirer may not vary sub-hire without the prior written consent of Hireways (which may be withheld in its absolute discretion).
- 10.10. The Hirer must ensure that Hireways is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Plant.
- 10.11. The Hirer must take all steps including registration under PPS Law as may be required to:
- Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - Enabling the Hirer to gain (subject always to the rights of Hireways) first priority (or any other priority agreed to by Hireways in writing) for the security interest; and
  - Enabling Hireways and the Hirer to exercise their respective rights in connection with the security interest.
- 10.12. To assure performance of its obligations under this agreement, the Hirer hereby gives Hireways an irrevocable power of attorney to do anything Hireways considers the Hirer should do under this agreement. Hireways may recover from Hirer the cost of doing anything under this clause 10, including registration fees.
- 10.13. The Hirer must notify Hireways of any change in change in writing of the Hirer's details set out in the Application for Credit.
- 10.14. For the purposes of section 20(2) of the PPS Law, the collateral is the Plant set out in any quote and or Master Hire Agreement. The quote or Master Hire Agreement is the security agreement for the purposes of the PPS Law.

#### **11. Termination of agreement**

- 11.1. Hireways may terminate this agreement, without notice, if the Hirer commits any breach of this agreement, or if the Hirer commits any act of bankruptcy, or being a company an application is made or resolution is passed for its winding up, entering into administration or a receiver is appointed to any of its assets, or if any execution or distress shall be levied upon the Plant, or if any judgment against the Hirer shall remain unsatisfied for 7 days or more, or if the Hirer makes an assignment or compromise for the benefit of its creditors, or it ceases to carry on business.
- 11.2. Hireways may terminate this agreement at any time for convenience by giving the Hirer 30 days' notice in writing.
- 11.3. Termination of this agreement does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination. In particular (but without limiting the generality of the foregoing) all or any monies due and payable hereunder by the Hirer to Hireways shall be paid in accordance with the terms and conditions hereof.
- 11.4. Upon termination of this agreement Hireways (its agents, servants or contractors) shall be entitled to take possession of the Plant and for this purpose the Hirer hereby gives irrevocable consent and license to Hireways (its agents, servants or contractors) to enter upon any land or premises of the Hirer, or any other place (as the agent of the Hirer) where the Plant may be located and the Hirer indemnifies Hireways in respect of any claims, damages or expenses made against or incurred by Hireways arising out of any action taken under this clause.

#### **12. Privacy Act**

Hireways may collect personal information about a Hirer and Hireways will treat this information in accordance with the Australian Privacy Principles. The information may be used and disclosed to third parties to provide services to the Hirer, to fulfil administrative functions associated with these services (eg. assessment of credit worthiness), to enter into Contracts with the Hirer or third parties and for marketing and client relationship purposes. Hireways may disclose the Hirer's information to Hireways' service providers and contractors from time to time to help provide and market Hireways' services to the Hirer. The Hirer consents to and authorizes Hireways to use and disclose the Hirer's personal information to third parties including any credit provider or credit reporting agency and to Hireways' service providers and contractors and affiliated companies from time to time, for the purposes outlined herein.

#### **13. Access and Inspection**

Hireways and its representatives have the right to enter the location at any time upon giving prior reasonable notice to the Hirer to inspect, maintain, repair and/or repossess the Plant.

#### **14. Stand Down/ Off Hire Conditions**

- 14.1. 50% Stand Down -may apply subject to; Plant availability/notification to Hireways before 9:00am on the day/stand down no. issued by Hireways/plant on daily or weekly hire only and not subject to a rent to buy agreement, and at Hireways discretion.
- 14.2. 100% Stand Down- may apply subject to: Breakdown, wet weather (over 6t only), public holidays and roster days off /notification to Hireways before 9:00am on the day/stand down no. issued by Hireways/plant on daily or weekly hire only and not subject to a rent to buy agreement, and at Hireways discretion.
- 14.3. Hire completion- Off Hire no. must be obtained before 9:00am on day of hire termination/Off Hire no. not to be requested by Hirer unless plant is ready for return to Hireways/The plant remains the responsibility of the Hirer until the return to Hireways.

#### **15. General**

- 15.1. No variation of these conditions shall be binding on Hireways unless signed by Hireways. The terms in this agreement may be changed by Hireways from time to time by Hireways giving notice of the change to the Hirer. Notice is deemed given (whether or not actually received) when Hireways does any of the following: (a) sends notice of the amendment to the Hirer at any address (including an email address) supplied by the Hirer; (b) publishes the amended terms on the Hireways Website; or (c) displays the amended terms at premises from which Hireways conducts hire operations.
- 15.2. Any document or notice to given to or served on the Hirer by Hireways may be served by leaving it at or posting it to the address of the Hirer stated in the Agreement.
- 15.3. If any of the terms or conditions of this agreement is or becomes void or unenforceable for any reason that part shall be severed from these conditions which shall remain in full force and effect.
- 15.4. If there is any conflict between these terms and conditions and the Hire Schedule, then the terms contained in the Hire Schedule shall prevail to the extent of the inconsistency.
- 15.5. This Agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals therefrom.
- 15.6. Time is of the essence for obligations of the Hirer under the agreement.
- 15.7. Time out is time used.
- 15.8. These terms and conditions comprise the entire agreement between the parties. No additional terms and conditions (including any terms contained in the purchase order) apply to the hire of the Plant unless agreed in writing by both parties.
- 15.9. These terms and conditions replaces and supersedes any and all rental terms and conditions that the Hirer may have previously been supplied by Hireways.