

## CREDIT APPLICATION FORM

COMPANY INFORMATION			
Company name		Date business commenced	
Trading Name			
ACN		ABN	
Type of Business	<input type="checkbox"/> Sole proprietorship <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Trustee		
Phone		Fax	
Email		Mobile	
Registered company address City, State, Post Code	Mailing Address		
Website		How long have you been the current owner?	
What Industry is the business involved in?			
Is the customer premises leased	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>If Yes</b> , give name and address of Landlord and Landlord's agent:	

CONTACT INFORMATION			
<b>HIRER CONTACT</b>			
NAME	EMAIL	PHONE	FACSIMILE
<b>MAINTENANCE CONTACT</b>			
NAME	EMAIL	PHONE	FACSIMILE
<b>ACCOUNTS PAYABLE CONTACT</b>			
NAME	EMAIL	PHONE	FACSIMILE

PARTNER/SOLE TRADER/DIRECTOR DETAILS	
<b>Names of directors and shareholders (if company) / partners (if partnership) / sole trader (if sole trader)</b>	<b>Position</b>

### TRUSTS

Is the Hirer involved or associated in any way with a Trust (whether Family Trust or Unit Trust)?  Yes  No

Name of Trust

Copy of Trust Deed attached?  Yes

### INSOLVENCY

Has the Hirer or any of its directors been insolvent or involved in any way with an insolvent (liquidation, receiver, Administrator, bankruptcy or Part X etc.)?

Yes  No **IF YES**, provide full details:

### BANK DETAILS

Bank

Branch

Telephone

Banked with since

### BUSINESS/TRADE REFERENCES

Company name

Phone

Fax

E-mail

Company name

Phone

Fax

E-mail

Company name

Phone

Fax

E-mail

### BUSINESS PURPOSE

Will credit be used wholly or predominantly for commercial, business and/or investment purposes (or both) and not for the Hirer's personal, domestic or household purposes?  Yes

### CREDIT LIMIT

\$ \_\_\_\_\_

### CREDIT INFORMATION AND PRIVACY ACT 1988 (CTH)

The Hirer irrevocably authorises Axle Hire, its servants and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Hirer from time to time, including making of enquiries with persons nominated as trade references, bankers and credit providers of the Hirer and Credit Reporting Agencies ("the Sources") and including personal credit and consumer credit information. The Hirer hereby authorises the Sources to disclose to Axle Hire all information concerning the Hirer within their possession or control. The Hirer agrees that the information provided on this Customer Application Form concerning the Hirer and any relevant trading information arising from any dealings between the Hirer and Axle Hire may be disclosed to a Credit Reporting Agency, credit provider or any other interested person for the primary purpose of checking or recording the creditworthiness of the Hirer, and for purposes related to the hire of Goods by Axle Hire to the Hirer.

## AGREEMENTS

1. The Hirer warrants to Axle Hire that the information in this Customer Application Form provided by or on behalf of the Hirer is true and correct, and to notify Axle Hire upon any material change to such representations occurring.
2. The Hirer agrees to notify Axle Hire immediately upon the Hirer becoming aware of any material risk to the solvency of the Hirer.
3. The Hirer acknowledges having read and received a copy of Axle Hire's standard Conditions of Hire, and the terms of those Conditions are deemed to be incorporated into this Customer Application Form.
4. This Customer Application Form is to be read with and supports any Contract and Security Agreement entered into with Axle Hire in relation to the Hirer.

## GUARANTEE (MANDATORY)

Warning this is an important document you should see you own lawyer or advisor before signing it.

If I execute this agreement as the person responsible for payment on behalf of the Renter, I guarantee the due and punctual payment of all monies payable under this agreement. This Guarantee and Indemnity shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Owner by the Renter and all obligations herein have been fully paid, satisfied and performed.

<b>GUARANTOR/S DETAILS:</b>		<b>WITNESS</b>	
Full Name		Full Name	
Address		Address	
Signature		Signature	
Date		Date	

<b>GUARANTOR/S DETAILS:</b>		<b>WITNESS</b>	
Full Name		Full Name	
Address		Address	
Signature		Signature	
Date		Date	

## CONDITIONS OF HIRE

THESE CONDITIONS OF HIRE will apply to the hire of all Goods by the Hirer from Axle Hire (present or future) and will take precedence over all other contract documents with the exception of Contract Schedules and Special Conditions (which will take precedence over all contract documents).

### 1. DEFINITIONS

**"Act of Insolvency"** means a receiver or receiver and manager or an agent for a mortgagee in possession is appointed over any asset of the Hirer or over the Hirer itself, the Hirer passes a resolution or makes a decision to wind up, commits an act of bankruptcy, an order is made by a court for the winding up of or the appointment of a liquidator or administrator to the Hirer, the Hirer enters into a compromise arrangement with any creditor (including by way of voluntary administration), receives a statutory demand with which it does not comply, is deemed to be insolvent pursuant to the Corporations Act, enters into a composition, deed of assignment or deed of arrangement under Part X of the Bankruptcy Act (or equivalent) with creditors, or the Hirer does anything which is analogous to those events.

**"Axle Hire"** means Truckworld Rental Australia Pty Ltd T/A Axle Hire A.C.N. 611 846 747 A.B.N. 14 611 846 747 and includes its permitted assigns and successors in title.

**"Bank Holiday"** means a day when banks are not open for business.

**"Business Day"** means a day which is not a Saturday, Sunday, public holiday or Bank Holiday in the State where the Goods are hired.

**"Commencement Date"** means the date of commencement of the Hire Term stated in the Hire Contract.

**"Conditions"** means these Conditions of Hire.

**"Contamination"** means exposure to or contamination with a substance which is capable of causing Damage or harm which would not occur if the Goods were not exposed to the substance;

**"Damage"** means any harm or injury resulting in impairment or loss of value, amenity, usefulness or function of the Goods or any part of them, which is not Fair Wear and Tear, and includes Damage resulting from Contamination.

**"Default Interest"** means interest calculated daily at the rate of 15% per annum on the outstanding balance of monies payable by the Hirer pursuant to the Hire Contract which are not paid on or before the due date for payment, calculated from the date such charges become overdue and continuing until payment.

**"Environmental Laws"** means all legislation regulating or relating to the environment, including the use or protection of the environment.

**"Fair Wear and Tear"** means deterioration in the repair, working order and appearance of the Goods that naturally and inevitably occurs as a result of normal (but not careless) use, repair and maintenance of the Goods in the manner permitted by the Hire Contract.

**"Goods"** means the goods described in the Hire Contract.

**"Good Industry Practice"** means the exercise of that degree of care, skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced person carrying out a task or obligation in a safe manner which complies with all laws, standards and practices applicable to the task or obligation, in the same or substantially similar circumstances;

**"Hirer"** includes, where the context permits, the servants, agents, invitees and contractors of the Hirer.

**"Hire Charge"** means the charge or charges payable by the Hirer pursuant to Clause 4.

**"Hire Contract"** means any Tax Invoice or Contract to which these Conditions apply, including any separate Security Agreement.

**"Hire Term"** means the period stated in the Hire Contract or, if no period is specified, an indefinite period.

**"Hour Meter"** means the equipment in the Goods which is used to measure the amount of use by reference to hours.

**"Insurance Policies"** means the policies of insurance required to be taken out by the Hirer pursuant to the Hire Contract.

**"Location"** means the place of first delivery of the Goods by Axle Hire to or for the Hirer pursuant to the Hire Contract and any other usual location of the Goods during the Term as stated in the Hire Contract;

**"Loss"** means claims, actions, suits, demands, costs, expenses, liabilities, loss and damage, including all legal costs and expenses, on an indemnity basis.

**"Major Repairs"** means any unscheduled repairs or replacements to engines, differentials, chassis, transmissions, load frames and hitches;

**"Measured In Measured Out"** is a wear measure and reflects the difference between measurements of useful life of components of the Goods taken on the Commencement Date or during the Hire Term and on the end of the Hire Term to determine use. For example, the Measured In Measured Out reference in respect of tyres is tread depth;

**"Minor Repairs"** means any repairs to the equipment which are not Major Repairs, but not including Preventative Maintenance (but may include repairs discovered during Preventative Maintenance).

**"Minimum Use"** means the minimum use, expressed in hours, distance or other measure stated in the Hire Contract, that the Goods are deemed to be used by the Hirer over a calendar month or other period stated in the Hire Contract, even if the actual use is less than Minimum Use. If the actual usage is greater than Minimum Use, Hire Charges will apply based on actual use.

**"Monthly Service Report"** means the form provided to the Hirer by Axle Hire for the reporting of servicing and repair in relation to the Goods, which form may be changed or substituted by Axle Hire in its discretion from time to time.

**"OEM"** means original equipment manufacturer.

**"Owner"** means Truckworld Rental Australia Pty Ltd T/A Axle Hire A.C.N. 611 846 747 A.B.N. 14 611 846 747 and includes its permitted assigns and successors in title.

**"Mobile Plant"** means any plant that is provided with some form of self-propulsion that is ordinarily under the direct control of an operator and includes (without limitation) earthmoving machinery (e.g. rollers, graders, scrapers, bobcats).

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)* and, where relevant, any other legislation in respect of it, and (where the context permits) phrases defined in the PPSA have the corresponding meaning when used in these conditions.

**"Preventative Maintenance"** means the daily and periodic servicing of the Goods using OEM parts and materials at regular intervals by qualified and experienced mechanics or engineers in accordance with the OEM's guidelines or recommendations (including for daily and pre-start inspections) and Good Industry Practice, and includes any specific requirements as set out in the Hire Contract.

**"Related Party"** means any person who enters into a Security Agreement.

**"Security Agreement"** means any Customer Application Form, Guarantee and Indemnity or other security agreement entered into by the Hirer or a Related Party in relation to a Hire Contract.

**"Security Interest"** means any security interest under the PPSA relating to the Goods and the Insurance Policies (including proceeds of Insurance Policies).

**"SMU Hour"** means an hour as measured by the Hour Meter, but if the Hour Meter becomes defective to any extent or for any reason, the number of SMU Hours will be an amount of time reasonably determined by Axle Hire in consultation with the Hirer to approximate the number of SMU Hours that would have been measured had the Hour Meter not become defective.

**"Undercarriage"** means the grouser plates, chains, sprockets, idlers, pins, bushes, bearings on tracked Goods.

### 2. INTERPRETATION

- (a) All references to money are Australian dollars unless stated otherwise.
- (b) Where a thing is to be done pursuant to the Hire Contract cannot be done because the day for the doing of the thing is not a Business Day, the time for doing that thing is extended until the following Business Day.
- (c) Where any reference to a person includes 2 or more persons, the covenants of those persons will be deemed to be joint and several.
- (d) Reference to legislation means such legislation as amended from time to time and if such legislation ceases to exist, then to any legislation which replaces or supersedes the repealed legislation.
- (e) Reference to legislation includes any relevant statute, regulations, bylaws, declarations and the like made under such legislation.

- (f) Words and phrases used in a Hire Contract and a Security Agreement have the same meaning as set out in these Conditions. In the event of inconsistency, these Conditions will take priority (subject to Clause regarding Special Conditions).

### 3. AGREEMENT TO HIRE

- (a) Axle Hire agrees to hire the Goods to the Hirer for the Hire Term and the Hirer agrees to take the Goods on hire for such period and to pay the Hire Charge for the Goods on the terms and conditions of the Hire Contract.
- (b) These Conditions are incorporated into every Hire Contract and Security Agreement.

### 4. HIRE CHARGE

- (a) The Hirer will pay the Hire Charge to Axle Hire from the earlier of the date when the Hirer takes possession of the Goods, when the Goods leave Axle Hire's premises or on the Commencement Date.
- (b) Subject to Clause 4(d), the Hirer must pay the Hire Charge until the Goods are returned to Axle Hire or until the end of the Hire Term (if it is a fixed period) in a condition which complies with the Hire Contract, whichever is the later. If the Goods are returned to Axle Hire in Damaged condition or condition which does not comply with the Hire Contract, liability for the Hire Charge will continue until Axle Hire has (using reasonable endeavours) repaired the Damage and put the Goods into a condition which complies with the Hire Contract.
- (c) The Hire Charge will be payable at monthly intervals as stated in the Hire Contract.
- (d) The Hirer's maximum liability pursuant to Clause 4(b) will be the greater of the Hire Charge for a period of 3 calendar months and 40% of the Hire Charge payable by the Hirer for the balance of the Hire Term, save that where the balance of the Hire Term is less than 3 months the maximum payment pursuant to Clause 4(b) will be the amount of the Hire Charge payable for the balance of the Hire Term.
- (e) If the Hire Charge is calculated on the basis of SMU Hour, the number of SMU Hours will be based on those recorded by the OEM monitoring system when available to Axle Hire.

### 5. HIRE TERM AND OWNERSHIP

- (a) The Hire Term can only be changed with the consent of Axle Hire (in Axle Hire's absolute discretion). Any variation to the Hire Term is only binding on Axle Hire if it is in writing signed by or on behalf of Axle Hire.
- (b) The Hirer acknowledges that Axle Hire owns the Goods and in all circumstances Axle Hire retains the title to the Goods (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Term). The Hirer's rights to use and possess the Goods are as mere bailee (on the terms of the Hire Contract) only.

### 6. INSPECTION AND WARRANTIES

- (a) Axle Hire will not be taken to have notice of any special or unusual requirements for the use of the Goods unless the Hirer has given notice of such requirements to Axle Hire in writing before the supply of the Goods.
- (b) Notwithstanding anything to the contrary contained in the Hire Contract or at law, the Hirer agrees that no warranties or conditions are expressed or implied in the Hire Contract as to the condition of the Goods or as to the suitability or fitness of the Goods for any purpose, and any such condition or warranty which is expressed or implied in the Hire Contract (including by legislation) is expressly excluded to the maximum extent permitted by law. If this clause causes the Hire Contract to be void or voidable at the discretion of the Hirer, this clause will be severed from the Hire Contract.
- (c) The Hirer must inspect the Goods and notify Axle Hire in writing of any defect in the Goods which requires rectification strictly within 24 hours of delivery of the Goods to the Hirer or the Location. Subject to such notification, the Hirer warrants to Axle Hire that the Hirer takes delivery of the Goods in clean and good and substantial order, repair and condition, and fit for the purpose of use required by the Hirer.
- (d) Nothing in the Hire Contract or these Conditions has the effect of restricting or modifying any right or remedy or any warranty, representation or term implied or imposed by any legislation which cannot be lawfully excluded or modified.

### 7. HIRER'S OBLIGATIONS

The Hirer must:

- (a) Do the things in relation to the Goods described in the Hire Contract against the heading "Responsibility" which are marked as the Hirer's responsibility;
- (b) Keep and maintain the Goods in a clean condition and substantially in the same condition as the Goods were in at the Commencement Date, Fair Wear and Tear excepted (subject to the express terms of the Hire Contract regarding service, maintenance and repair, and subject to Clause 10);
- (c) Supply all oil and lubricants necessary for, and to carry out, daily service and maintenance in accordance with Good Industry Practice, supply of uncontaminated fuel necessary for the operation of the Goods and replacement of consumable items including tyres (all to be matching brand and tread pattern as fitted at commencement of the Hire Term unless Axle Hire otherwise agrees in writing) and filters;
- (d) Carry out Preventative Maintenance in relation to the Goods in accordance with Good Industry Practice, and to supply quality uncontaminated consumables including oil, lubricants, filters, fuel and tyres (all to be matching brand and tread pattern as fitted at commencement of the Hire Term unless Axle Hire otherwise agrees in writing);
- (e) Return to Axle Hire the Monthly Service Report by the 3<sup>rd</sup> day of every month and provide to Axle Hire such other proof of Preventative Maintenance and repairs to the Goods as reasonably required by Axle Hire;
- (f) Repair any Damage caused to the Goods whilst in the possession or control of the Hirer (whether caused by the Hirer or any other person) to the extent to which such loss or Damage is not covered by insurance proceeds and is not Fair Wear and Tear;
- (g) Ensure that only OEM parts and materials (including lubricants and oils) or other parts and materials recommended by the OEM are used in connection with the service, maintenance and repair of the Goods;
- (h) Insure the Goods against loss by comprehensive causes for the value stated in the Hire Contract (or if none is stated than as advised by Axle Hire to the Hirer in writing from time to time) with an insurer and on terms approved by Axle Hire and naming Axle Hire as interested party on the insurance policy, and provide Axle Hire with proof of insurance (in the form of a Certificate of Currency) upon demand;
- (i) Insure Axle Hire and the Hirer against public liability for not less than \$20,000,000 per event and unlimited in the aggregate, noting the interests of Axle Hire and the Hirer on the policy, using an insurer and on terms approved by Axle Hire, and provide Axle Hire with proof of insurance (in the form of a Certificate of Currency) upon demand;
- (j) Direct the payment of insurance monies pursuant to any Insurance Policies to or as Axle Hire directs and in particular so that monies paid are not to be received by or be the property of the Hirer, and any monies so received by or on behalf of the Hirer are to be held by the Hirer on trust for Axle Hire in a separate identifiable bank account in the name of Axle Hire;
- (k) Charges in favour of Axle Hire the hirer's interest in and entitlement pursuant to the Insurance Policies with payment to Axle Hire of monies payable pursuant to the Hire Contract;
- (l) Comply with the terms of the Insurance Policies and immediately notify Axle Hire of any breach by the Hirer of the terms or the lapsing of those policies;
- (m) Report any Damage to or loss of the Goods to Axle Hire immediately upon such Damage or loss being sustained (noting also the Hirer's obligation to comply with reporting obligations pursuant to the Insurance Policies);
- (n) Repair any Damage caused to the Goods whilst in the possession or control of the Hirer to the extent such Damage is not covered by the Insurance Policies. The repair of Damage is to be to a standard acceptable to Axle Hire acting reasonably, having regard to Good Industry Practice;
- (o) Keep Axle Hire informed at all times of the Location;
- (p) Give Axle Hire access to the Goods for inspection and maintenance at any reasonable time after Axle Hire has given reasonable notice, but no notice will be required in the case of emergency or if Axle Hire reasonably suspects that the Goods are Damaged or that the Hirer has breached the Hire Contract;
- (q) Not use the Goods for any illegal purpose;
- (r) Only allow persons who are suitably qualified and inducted to operate or use the Goods, and ensure that such persons have and

keep in place at relevant times all necessary and relevant licences, qualifications and training;

- (s) Ensure the Goods are used and operated lawfully, safely and in accordance with the intended use of the Goods as permitted by the Hire Contract only;
- (t) Not agree, attempt or offer to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with personal possession of or otherwise deal with the Goods nor create any workman's or other lien in respect of the Goods and to notify Axle Hire immediately upon any of those things occurring;
- (u) Store the Goods safely and securely at the Location or other temporary location as permitted by the Hire Contract and protected from theft, seizure, loss or Damage;
- (v) Not permit the Goods to become contaminated with any dangerous or hazardous materials. The Hirer must advise Axle Hire of any risk of Contamination as soon as the risk becomes apparent. Where Goods have been (or are likely to have been) contaminated, the Hirer must thoroughly decontaminate the Goods in accordance with Good Industry Practice and provide Axle Hire with details of the decontamination process. If Axle Hire, acting reasonably, is not satisfied with the decontamination process outlined by the Hirer, Axle Hire may require that the Goods be decontaminated again using a process reasonably determined by Axle Hire, at the cost of the Hirer;
- (w) Notify any person seizing or attempting to take possession or control of the Goods of Axle Hire's ownership of the Goods and to give immediate notice to Axle Hire of such circumstances;
- (x) Not conceal, modify, alter or tamper with the Goods, except to the extent that is usual or unavoidable for the performance of the Hirer's obligations pursuant to the Hire Contract;
- (y) Not affix the Goods or allow them to become affixed to any other property without the written consent of Axle Hire; and
- (z) Not to commit or allow any Act of Insolvency and to notify Axle Hire immediately upon an Act of Insolvency occurring.

#### **8. OWNER'S OBLIGATIONS**

Axle Hire must do the things in relation to the Goods described in the Hire Contract against the heading "Responsibility" which are marked as Axle Hire's responsibility.

#### **9. HIRER'S ACKNOWLEDGEMENTS**

The Hirer acknowledges that:

- (a) Axle Hire holds title to the Goods at all times and that the right of the Hirer to possess the Goods arises as a mere contractual bailee only;
- (b) The Hirer has no right to purchase the Goods from Axle Hire at any time (unless expressly stated in the Hire Contract);
- (c) Any information provided by the Hirer to Axle Hire for the purposes of or in connection with the Hire Contract is true and correct at the time that it was given to Axle Hire and remains correct at the Commencement Date and throughout the Hire Term;
- (d) The Hirer has not relied upon any representations or warranties made or given by Axle Hire regarding the description, performance, adequacy or suitability of the Goods for any purpose;
- (e) Anything affixed to the Goods by the Hirer or any other person becomes the property of Axle Hire upon affixation unless agreed in writing by Axle Hire prior to affixation;
- (f) The Hirer makes its own enquiries and assessments in relation to the suitability of the Insurance Policies to cover the Hirer for Loss and Damage to the Goods and liability pursuant to the Hire Contract, including in relation to the coverage of Insurance Policies for Loss or Damage to the Goods arising out of single vehicle accidents, incidents involving animals including livestock, theft, misuse, fire, water damage, cyclones, storms, floods, tides, force majeure or acts of God, and arising out of the use of the Goods on mine sites or access roads to mine sites or unformed roads or tracks; and
- (g) Axle Hire accepts no responsibility or liability whatsoever for loss or damage or injury to any person or property arising out of the use of the Goods by any person whilst the Goods are in the possession or control of the Hirer.

#### **10. RETURN OF GOODS**

Unless the Hire Contract expressly states otherwise, it is the Hirer's responsibility to return the Goods to Axle Hire's premises during normal

business hours, at the cost of the Hirer in a state of cleanliness, condition and repair which complies with the Hire Contract.

#### **11. ADDITIONAL CHARGES**

Axle Hire may require the Hirer to pay:

- (a) The reasonable costs of repair or replacement including any transport or recovery costs of the Goods in the event of the Goods or part of them being lost, Damaged or destroyed, or if the Goods are not returned to Axle Hire in the condition required by the Hire Contract;
- (b) The cost of refuelling, refilling lubricants and lubricating the Goods at the end of the Hire Term;
- (c) A reasonable cleaning fee in the event that the Goods are returned by the Hirer to Axle Hire in a condition which in the reasonable opinion of Axle Hire requires them to be cleaned before being made available for rent or sale to any other person;
- (d) The cost of carrying out Preventative Maintenance and any Damage resulting from the failure of the Hirer to carry out Preventative Maintenance as required by the Hire Contract;
- (e) If the Goods are a vehicle of 4 tonne or greater GVM or Mobile Plant, a charge based on Measured In Measured Out of the cost of consumable components of the Goods including (without limitation) tyres;
- (f) The reasonable cost of removing Contamination from the Goods;
- (g) Reasonable pick-up and delivery fees in respect of the delivery of the Goods to the Hirer and the collection of the Goods from the Hirer upon expiration of the Hire Term;
- (h) The reasonable cost of insuring the Goods with an insurer and on terms of Axle Hire's choice where the Hirer has not provided Axle Hire with a Certificate of Currency or other satisfactory proof of insurance of the Goods pursuant to the Hire Contract;
- (i) Any insurance excess or increased insurance premium resulting from a claim or claims against an Insurance Policy relating to an event which occurred during the Hire Term when the Goods are not in the possession of Axle Hire;
- (j) Fines for traffic or parking offences or fees and charges for impounding or confiscation relating to the Goods incurred during the Hire Term when the Goods are not in the possession of Axle Hire;
- (k) Reasonable legal fees on an indemnity basis and commissions, fees and expenses paid to mercantile agents and debt collectors, incurred by Axle Hire in connection with the enforcement of its rights under the Hire Contract or relating to the Hirer's default;
- (l) Default Interest, payable calendar monthly or at the same intervals as Hire Charges are payable (in the discretion of Axle Hire); and
- (m) An administration fee of 10% on any direct cost (excluding GST) incurred by Axle Hire pursuant to this clause.

#### **12. INDEMNITY, RELEASE AND EXCLUSIONS**

- (a) The Hirer indemnifies and agrees to keep indemnified Axle Hire from and against all Loss including in respect of property damage, personal injury and death arising out of or in relation to the breach of the Hire Contract or the use, possession or control of the Goods by the Hirer during the Hire Term, including but not limited to Loss or Damage arising out of the negligent or wilful act, omission or default of the Hirer or the Hirer's agents, contractors, employees or invitees.
- (b) The Hirer indemnifies and agrees to keep indemnified Axle Hire from and against liability for legal costs and expenses incurred by Axle Hire in relation to the breach of the Hire Contract by the Hirer and the enforcement by Axle Hire of its rights against the Hirer.
- (c) The Hirer releases Axle Hire from liability for Loss and Damage arising out of or in relation to the use, possession or control of the Goods by the Hirer or the Hirer's agents, contractors, employees or invitees, howsoever caused.
- (d) The Hirer releases Axle Hire from liability for any special, consequential or indirect loss, including loss of profits or revenue, business interruption, claims by customers of the Hirer and legal costs and expenses which arise in relation to any claim relating to the Hire Contract.
- (e) Axle Hire's liability to the Hirer for any Loss or Damage recoverable against Axle Hire is limited in the aggregate (for all claims) to the total of the Hire Fees paid or payable by the Hirer pursuant to the Hire Contract, regardless of whether such claims arise in contract, tort (including negligence), equity, under

statute, under indemnity, as a result of breach of the Hire Contract (including of any fundamental term) or otherwise.

- (f) The Hirer acknowledges that Axle Hire would not enter into the Hire Contract but for the indemnities and releases the subject of this clause and that one of the justifications for such indemnities and releases is Axle Hire giving the Hirer possession and control of the Goods.
- (g) All proportionate liability legislation, including Part 1F of the Civil Liability Act 2002 (WA) is excluded from the Hire Contract and these Conditions to the extent lawfully permitted, but nothing in this clause will prevent such exclusion where the effect of doing so would be to sever or result in the invalidity of any clause in the Hire Contract or in these Conditions.
- (h) The indemnities and releases in this clause survive termination of the Hire Contract and are continuing obligations and covenants.

### 13. TERMINATION

- (a) If the Hirer defaults in the observance or performance of the Hire Contract, Axle Hire may without notice to the Hirer terminate the Hire Contract and take possession of the Goods.
- (b) Upon termination of the Hire Contract by Axle Hire, Axle Hire may take all steps necessary (including legal action) to recover the Goods, including entering any premises at which the Goods are kept, as agent of the Hirer. The Hirer expressly appoints Axle Hire as its agent and consents to Axle Hire entering any premises at which the Goods are kept for the purposes of this clause.
- (c) The Hirer releases Axle Hire from any liability for Loss or Damage suffered by the Hirer or any other party as a result of the reasonable exercise by Axle Hire of its rights to enter upon premises to take possession of the Goods. The Hirer agrees to indemnify and to keep indemnified Axle Hire from and against liability for Loss suffered by the Hirer or any third party in the exercise of such rights.
- (d) All obligations of the Hirer pursuant to the Hire Contract will survive termination of the Hire Contract, to the extent required for their observance, performance and enforcement.

### 14. GST

The Hirer must pay GST to Axle Hire on all taxable supplies made by Axle Hire to the Hirer pursuant to the Hire Contract at the same time as the Hirer is required to make payment in relation to the taxable supply. For the avoidance of doubt, any consideration expressed in the Hire Contract or these Conditions is exclusive of GST.

### 15. PPSA

- (a) The Hirer consents to Axle Hire effecting and maintaining a registration on the PPSA register (in any manner Axle Hire considers appropriate) of any Security Interest and the Hirer agrees to sign any documents, provide assistance and information to Axle Hire required to facilitate the perfection and maintenance of any such interest. Axle Hire may at any time register a financing statement or financing change statement in respect of a Security Interest. The Hirer waives the right to receive a verification statement in relation to any Security Interest.
- (b) The Hirer undertakes to:
  - (i) do anything (in each case, including executing any new document or providing any information) that is required by Axle Hire so that Axle Hire can acquire and maintain one or more perfected Security Interests in respect of the Goods and its proceeds, register a financing statement or financing change statement and to ensure Axle Hire's security position, and rights and obligations, are not adversely affected by the PPSA;
  - (ii) not register a financing change statement in respect of a Security Interest without Axle Hire's prior written consent, and;
  - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without Axle Hire's prior written consent.
- (c) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest and:
  - (i) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them; section 95 (to the extent 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 135; section 142 and section 143; and

- (ii) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer 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.

- (d) Unless otherwise agreed and to the extent permitted by the PPSA, the Hirer and Axle Hire agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any person. The Hirer waives any right the Hirer may have under section 275(7)(c) of the PPSA to authorise the disclosure of such information.
- (e) For the purposes of section 20(2) of the PPSA, the collateral is Goods including any Goods which are described in the Hire Contract and including anything affixed to such goods by the Hirer or any other person. The Hire Contract is a Security Agreement for the purposes of the PPSA.
- (f) Axle Hire may apply amounts received in connection with the Hire Contract to satisfy obligations secured by a Security Interest in any way Axle Hire determines in Axle Hire's absolute discretion.

### 16. SECURITY

- (a) The Hirer acknowledges and agrees that the hire of Goods by Axle Hire to the Hirer will create in favour of Axle Hire in the Goods:
  - (i) A Purchase Money Security interest (PMSI) pursuant to s.14 of the PPSA; and
  - (ii) A Security Interest (SI) pursuant to s.12 of the PPSA to secure to Axle Hire:
    - a) Full payment by the Hirer of all monies (including Hire Charges, interest and other monies ) payable to Axle Hire pursuant to the Hire Contract; and
    - b) The due and punctual performance by the Hirer of each and every obligation on the part of the Hirer arising pursuant to the Hire Contract.
- (b) The Hirer acknowledges and agrees that the hire to the Hirer of Goods on credit presently and in the future constitutes valuable consideration for the granting by the Hirer to Axle Hire of both a PMSI and/or a SI in collateral being:
  - (i) The Goods;
  - (ii) Any alteration, repair, improvement or attachment to the Goods; and
  - (iii) The Insurance Policies pursuant to Clause 7(k).
- (c) The Hirer acknowledges and agrees that all goods hired by Axle Hire to the Hirer shall be in the ordinary course of the business of Axle Hire and that the interest granted to Axle Hire by the Hirer in the collateral shall thereby constitute a Priority Interest pursuant to s.73 of the PPSA.
- (d) The Hirer agrees, on Axle Hire's request, to execute any documents and do all things necessary required by Axle Hire to register or otherwise perfect the Secured Interest and any other security granted by the Hirer to Axle Hire, and the Hirer irrevocably and by way of security appoints Axle Hire to be the Hirer's true and lawful attorney to execute and register such instruments.
- (e) The Hirer agrees to indemnify and keep indemnified Axle Hire against all Loss and Damage incurred by Axle Hire in connection with the exercise by Axle Hire of its rights in respect of any security and any secured property.

### 17. PRIVACY

Axle Hire will need to collect personal information about the Hirer. The Hirer consents to Axle Hire using (including disclosing) the Hirer's personal information in order to:

- (a) Carry out functions associated with the hire of the Goods to the Hirer, including but not limited to assessing the Hirer's creditworthiness, and sharing credit information related to the Hirer with credit reporting agencies for credit reporting and related purposes;
- (b) Provide services to the Hirer related to the hire of the Goods;
- (c) Prevent theft of Goods;
- (d) Enter into contracts with the Hirer or third parties;
- (e) Develop and identify markets for products and services which may interest the Hirer; and
- (f) To market to the Hirer and maintain a client relationship with the Hirer.

**18. SEVERANCE**

If any part of the Hire Contract is void or unenforceable, such part shall be severed from the Hire Contract and the remainder of the Hire Contract shall remain in full force and effect.

**19. GOVERNING LAW**

The Hire Contract will be governed by the laws applicable in the State of Western Australia and Axle Hire and the Hirer submit to the jurisdiction of the Courts in the State of Western Australia.

**20. ENTIRE AGREEMENT**

The Hire Contract comprises the entire agreement between the parties. No additional terms and conditions apply to the hire of the Goods unless agreed in writing by the parties.

**21. VARIATION**

Any variation of these terms and conditions must be agreed in writing by The Hirer and Axle Hire.

**22. NO WAIVER OF RIGHTS**

No delay or omission by a party to exercise any right, power or remedy available to that party under the Hire Contract will impair or waive any such right, power or remedy.

**23. SIGNING THE HIRE CONTRACT**

(a) Each person signing the Hire Contract or any document referred to in the Hire Contract for and on behalf of the Hirer warrants that he or she has the Hirer's authority to enter into the Hire Contract on the Hirer's behalf and grant Security Interests in connection

with it and is empowered to bind the Hirer to the Hire Contract and each Security Interest.

(b) Each person the subject of the preceding sub-clause agrees to indemnify and keep indemnified Axle Hire from and against all Losses incurred by Axle Hire arising out of such person not in fact having such authority.

**24. ASSIGNMENT**

The interest of the Hirer in the Hire Contract is personal to the Hirer and may not be assigned or otherwise dealt with by the Hirer without the consent of Axle Hire. Axle Hire may assign its interest in the Hire Contract to another party without the consent of the Hirer but must give notice of such assignment to the Hirer as soon as practicable after such assignment occurs.

**25. TRUST AND TRUSTEES**

If the Hirer enters into the Hire Contract in capacity as trustee for a trust, the Hirer warrants to Axle Hire that the Hirer is the presently appointed trustee of such trust, that the trust is legally constituted, that the Trustee has full power and authority to bind the Trust to this Hire Contract and that the Hirer shall be bound to the Hire Contract in its capacity as trustee of such trust, and also in its personal capacity. The Hirer agrees to give a copy of up to date trust deed to Axle Hire upon demand.

**26. SPECIAL CONDITIONS**

If there are Special Conditions on the Hire Contract, the Special Conditions will take priority over these Conditions and the Hire Contract in the event of inconsistency

**PERSON COMPLETING THIS CREDIT APPLICATION FORM**

Name		Position	
Address		Phone	
Facsimile		Mobile	
Signature		Date	

Each person signing on behalf of the Hirer REPRESENTS and WARRANTS that the information set out in this Application is true and correct and they are duly authorised to sign this Credit Application Form on behalf of the Hirer and to bind the Hirer and ACKNOWLEDGES that Axle Hire will rely upon and be induced by this Application to grant credit and/or to deal with the Hirer.

**APPROVAL BY AXLE HIRE (OFFICE USE ONLY)**

Name	
Position	
Signature	
Date	