



COMMERCIAL CREDIT APPLICATION

This is an application for a commercial credit account ("Credit Application") with Max Hire Pty Ltd ("Company") and includes the attached Guarantee and Indemnity and Rental Terms.

Please return your completed Credit Application and Guarantee and Indemnity forms to:
PO Box 164, Clayton VIC 3168 or by email to credit@maxhire.com.au

CUSTOMER DETAILS (the "Customer" or "Applicant")

Business Details

Sole Trader Company Partnership Trading Trust Other (specify) _____

Name of Proprietor / Company / Partnership / Trustee _____

ACN _____ ABN _____
(ensure ABN of trust is given if Applicant is a trading trust)

Trading / Business Name (if any) _____

If Applicant is a trading trust, what is the name of the trust? _____

Type of trust?: Discretionary Unit **Please provide a copy of the Trust Deed.**

Name of Parent Company (if Applicant is a subsidiary) _____

Main Business Activity _____ Industry Segment _____

Date Business Commenced ____/____/____ No. Employees _____

Estimated Monthly Trade (\$) _____ (Note this is not the credit limit)

Customer Contact Details

Postal Address _____ Postcode _____

Business Address _____ Postcode _____

Telephone (____) _____ Mobile _____ Fax (____) _____

Email Address _____

Primary Contact Name (Mr / Mrs / Ms) _____ Telephone (____) _____

Accounts Payable Name (Mr / Mrs / Ms) _____ Telephone (____) _____

Has Applicant or an associated entity or person traded with the Company before? Yes No

If yes, please provide account name and number: _____

FINANCIAL DETAILS

Please attach a copy of your latest financial statements to enable the Company to assess your financial position.

If you lease or hire purchase, what are your total monthly commitments? \$ _____

Do you operate a Purchase Order No. system? Yes No

Preferred method of receiving invoices? Post Email address _____



TRADE REFERENCES Please provide details of three (3) major suppliers

Business Name _____	Phone Number _____
Contact Person _____	Job Title _____
Email Address _____	
Business Name _____	Phone Number _____
Contact Person _____	Job Title _____
Email Address _____	
Business Name _____	Phone Number _____
Contact Person _____	Job Title _____
Email Address _____	

DETAILS OF DIRECTORS / SOLE TRADERS / PARTNERS / TRUSTEES

Please complete details of all directors (including where Applicant is acting as trustee of a trading trust) /sole traders/partners/individual trustees of Applicant below or attach separate page

Full name (as on Driver's Licence) _____ Date of Birth ____/____/____

Position / Occupation _____ Driver's Licence No. _____

Residential Address _____ Postcode _____ Owned Rented

Full name (as on Driver's Licence) _____ Date of Birth ____/____/____

Position / Occupation _____ Driver's Licence No. _____

Residential Address _____ Postcode _____ Owned Rented

Full name (as on Driver's Licence) _____ Date of Birth ____/____/____

Position / Occupation _____ Driver's Licence No. _____

Residential Address _____ Postcode _____ Owned Rented

IF APPLICANT IS A COMPANY, INCLUDING A COMPANY ACTING AS TRUSTEE OF A TRADING TRUST, PLEASE HAVE DIRECTORS COMPLETE ATTACHED GUARANTEE AND INDEMNITY.

CREDIT APPLICATION TERMS AND CONDITIONS

General

- By signing this Credit Application, the Customer acknowledges that: (a) it has read, understood and agrees to these Credit Application Terms and Conditions and the attached Rental Terms, as varied in accordance with their respective terms; and (b) the Rental Terms will govern any and all rentals of equipment from the Company except as otherwise agreed.
- The Company may accept or reject the Credit Application in its absolute discretion. If it accepts the Credit Application, the Company will: (a) establish an account for the Customer and will specify a credit limit for the account; and (b) notify the Customer, at which point the account will be activated. Nothing in these Credit Application Terms and Conditions nor the acceptance of the Credit Application by the Company compels the Company to provide goods or services to the Customer on credit terms or otherwise.
- The Customer and the person signing on behalf of the Customer each warrant that: (a) the information provided in this Credit Application is true and correct and acknowledges that the Company will rely on that information in deciding whether to grant a credit account and/or deal with the Customer; (b) the signatory is duly authorised to sign the Credit Application on behalf of the Customer; (c) the credit account is required for the Customer's business or commercial purposes and will not be used for personal, domestic or household purposes; (d) the Customer is solvent and is able to pay its debts as and when they fall due and is not aware that the Customer has any unsatisfied judgements, arbitral awards, pending judgements or orders which may impact this application or the Customer's ability to repay the credit offered.
- If the Customer is a body corporate the Company may, at any time before or during the operation of the account, require one or more of the Customer's directors and/or officers to guarantee repayment of all amounts the Customer owes the Company in the form of the Guarantee and Indemnity included in this Credit Application. If a director or officer who has provided such a Guarantee and Indemnity vacates his or her office, the Customer must notify the Company in writing within 7 days. The Company may require a replacement

Guarantee and Indemnity from another director or officer specified by the Company, in which case, the replacement Guarantee and Indemnity must be provided within 7 days of the request from the Company.

5. If the Customer is a trust, the Customer acknowledges that the trustee is liable on the account and that in addition the assets of the trust will be available to meet the payment of the account. Unless the Customer has disclosed in the Credit Application that it is a trust, the Customer acknowledges that it holds the account (and purchases goods and services) in its own capacity and not as trustee of any trust.
6. The Customer must notify the Company within 7 days of any change of the Customer's constitution, ownership, membership or control, or any change of address or contact information. The Company may require a new Credit Application to be completed as a result of the change in the Customer's details.
7. The Customer's credit account and credit limit are subject to cancellation or variation by the Company at any time. These Credit Application Terms and Conditions otherwise continue to apply to all transactions between the Customer and the Company.
8. These Credit Application Terms and Conditions are governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Security and PPSA

9. In these Credit Application Terms and Conditions, "PPSA" means the *Personal Property Securities Act 2009* (Cth) (as amended), and the following words have the meanings given to them respectively in the PPSA: collateral, financing change statement, financing statement, interested person, purchase money security interest, registration, security agreement, security interest and verification statement.
10. In order to secure the Customer's due and punctual performance of all its obligations to the Company (including the payment of all monies owing) under these Credit Application Terms and Conditions, the Rental Terms or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property and all present and after-acquired property.
11. On the Company's request, the Customer must at its cost execute any documents and do all things required by the Company to more fully document or better secure a charge arising under clause 10 on such terms as the Company sees fit or to register a charge or security interest in respect of any of the Customer's real and personal property including, without limitation, effecting and maintaining registrations on the Personal Property Securities Register established under section 147 of the PPSA ("PPSR"). The Customer also consents to the Company lodging caveats in respect of any of the Customer's real property.
12. The Customer appoints the Company or an authorised officer of the Company to be its attorney for the purpose of executing and registering such documents.
13. The Customer consents to the Company registering a financing statement or financing change statement in respect of security interests (including purchase money security interests) created or contemplated by any security agreement between the Company and the Customer at any time. The Customer agrees to sign any documents, provide information or do anything else the Company requires to effect and maintain its registrations on the PPSR, perfect its security interests, register financing statements or financing change statements or otherwise preserve the Company's priority position. The Company may recover from the Customer the costs incurred by the Company in registering, maintaining and enforcing such security interests.
14. The Customer waives its right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest.
15. The Customer must not without the Company's prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by a security agreement between the Company and the Customer; or (b) register, or allow to be registered, in a third party's favour a financing statement or financing change statement regarding any collateral in respect of which the Company has a security interest.
16. The Customer and the Company agree (to the extent the PPSA permits) not to disclose information of the kind described in section 275(1) of the PPSA to an interested person (or any other person nominated by an interested person), unless specifically agreed otherwise. However, if the Company wants or needs to disclose any particular information, the Customer authorises the disclosure by the Company of that information under section 275(7)(c) of the PPSA.
17. The Customer and the Company agree to contract out of the following enforcement provisions referred to in section 115(1) of the PPSA (to the extent they would otherwise have applied to the enforcement of a security interest arising under or in connection with a security agreement): section 95 (to the extent it requires the Company to give notices to the Customer); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143.
18. The Customer and the Company agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)).
19. The Company has absolute discretion as to the manner in which it applies money it receives from the Customer.

Privacy Notice

20. The Customer consents and authorises the Company (subject always to law) to: (a) make such enquiries as the Company may require as to the credit worthiness of the Customer and the Customer agrees to assist the Company as required from time to time; (b) give information about the Customer to a credit reporting agency for the purpose of obtaining a consumer credit report about the Customer and/or allowing a credit reporting agency to create or maintain a credit information file containing information about the Customer; (c) obtain a consumer credit report about the Customer from a credit reporting agency for the purposes of assessing the Customer's Credit Application and/or collecting overdue payments relating to commercial credit owed by the Customer to the Company; (d) give a person who is a guarantor, or is considering becoming a guarantor, a credit report containing information about the Customer for the purposes of the guarantor deciding whether to act as a guarantor; and/or providing the guarantor with information about the guarantee; and (e) exchange information about the Customer with other credit providers named in this Credit Application or named in a consumer credit report about the Customer for the purpose of assessing the Credit Application and the credit worthiness of the Customer, notifying other credit providers of a default by the Customer or exchanging information with other credit providers as to the status of the credit facility.
21. The Customer understands that the information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth) as amended or replaced.
22. The Company will collect the personal information that is provided by the Customer in the completed Credit Application. The personal information is collected by the company to assess the Customer's Credit Application with the Company and to administer and enforce the Credit Application, to provide and market services to the Customer and to assist the Company in the collection of overdue payments. If the



Max Hire Pty Ltd ABN 40 123 987 093

Customer does not provide the personal information requested then the Credit Application will be rejected by the Company. The Company may disclose the personal information to other related entities, to credit reporting agencies and to Caterpillar Inc and its related entities in Australia, Singapore and the United States of America.

- 23. The Company's Privacy Policy contains information about how the individual may access the personal information about that individual that is held by the Company and seek correction of such information if required. It also contains information about how the individual can complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the Company and how the Company will deal with the Complaint. A copy of the Company's Privacy Policy can be obtained on request or by visiting www.maxhire.com.au.
- 24. For any privacy related enquiries, please contact: Max Hire Pty Ltd, Company Secretary, Phone: (03) 9566 0666, email: privacy@maxhire.com.au.

CUSTOMER ACKNOWLEDGEMENT AND SIGNING

By signing below, the Customer acknowledges that it has read, understood and agrees to be bound by the Credit Application Terms and Conditions and acknowledges the contents of the Privacy Notice, constituted by clauses 20 to 24 above, as required by the *Privacy Act 1988 (Cth)* as amended.

Signed for and on behalf of the Customer by: Authorised Officer(s) Sole Trader Partners

Signature

Signature

Name

Name

Title

Title

Date

Date



GUARANTEE AND INDEMNITY

BACKGROUND

This Guarantee and Indemnity relates to the Credit Application submitted by the customer named below (“**Customer**”) to Max Hire Pty Ltd ACN 123 987 093 (“**Company**”).

Customer Name _____ ACN _____

Trading Name (if different from above) _____ ABN _____

This Guarantee and Indemnity is between the Company and the person(s) stated below (“**Guarantor(s)**”):

Full name _____ Date of Birth ____/____/____

Residential Address _____ Driver’s Licence No. _____

Full name _____ Date of Birth ____/____/____

Residential Address _____ Driver’s Licence No. _____

TERMS OF GUARANTEE AND INDEMNITY

1. The Guarantor(s) jointly and severally unconditionally and irrevocably guarantee to the Company the due and punctual: (a) payment by the Customer of all monies actually or contingently owing now or in the future to the Company by the Customer either alone or jointly or severally with another person on any account whatsoever (“**Amounts Due**”), including without limitation in respect of goods or services supplied (or to be supplied) to, or equipment rented (or to be rented) by, the Customer; and (b) performance by the Customer of all of its obligations contained or implied in any contract or agreement with the Company (“**Customer Obligations**”), including without limitation all obligations contained in the Company’s Credit Application Terms and Conditions and Rental Terms.
2. If the Customer defaults in payment of the Amounts Due, the Guarantor(s) must pay that money to, or as directed by, the Company, in full without set-off, counterclaim or deduction, immediately on demand.
3. This Guarantee and Indemnity is a continuing guarantee and indemnity for all Amounts Due and all Customer Obligations.
4. The Guarantor(s)’ obligations are principal obligations and are not ancillary or collateral to any other right or obligation. The Company may enforce the Guarantor(s) obligations without first being required to proceed against the Customer, exhaust any remedy it may have against the Customer, or enforce any security it may hold with respect to the Amounts Due or the Customer Obligations.
5. The liability of the Guarantor(s) is absolute and unconditional, and not affected by anything which, but for this clause, might abrogate, prejudice, avoid or affect it at law or in equity, including without limitation: (a) the release, waiver, disclaimer, amendment, compounding, compromise, relinquishment, variation, replacement or discharge (either in whole or in part), or an agreement to do so, of the Amounts Due, the Customer Obligations, the obligations of a Guarantor under this Guarantee and Indemnity or other arrangements now or from time to time in force between the Customer and the Company or any other persons, with or without the knowledge of the Guarantor(s); (b) any judgement or right which the Company may have or exercise against the Customer, the Guarantor(s) or any other person; (c) any agreement between the Company and the Customer becoming wholly or partly unenforceable; (d) any change in the constitution, ownership, management or directors of the Customer; (e) an omission or mistake by, or negligence of, the Company; (f) the Customer or the Guarantor(s) becoming insolvent or bankrupt or subjected to any similar process, including liquidation or voluntary administration; (g) the Company consenting to any assignment by the Customer for the benefit of creditors or to any deed or scheme of arrangement or deed of composition under the bankruptcy laws; (h) by reason of any security held or taken by the Company to secure the Customer’s or Guarantor(s)’ indebtedness being void, defective or informal, or the failure of the Customer or Guarantor(s) to provide appropriate security.
6. Until the Amounts Due have been irrevocably paid, and the Customer Obligations performed, in full, the Guarantor(s) agree: (a) in the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement, scheme of arrangement or other administration in insolvency of the Customer, that the Guarantor(s) will not, without the Company’s prior written consent, lodge any proof of debt or similar claim for any debt or liability to the Guarantor(s) on any account whatsoever, nor enforce any security held by the Guarantor(s) in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for the Company; (b) on request by the Company, to lodge a proof of debt or similar claim in any such administration and enforce any such security and execute all such documents that the Company may require to enable the Company to have and receive the benefit of or arising from such proof, claim or security; (c) that the Guarantor(s) will not be entitled to share in any security held or money received by the Company or, without the prior written consent of the Company, exercise any right of subrogation to the Company in respect of any security or money; (d) to not take any steps to enforce a right or claim against the Customer in respect of any money paid by the Guarantor(s) to the Company under this Guarantee and Indemnity; (e) to not exercise any rights as surety in competition with the Company; and (f) that the Guarantor(s)’ liability under this Guarantee and Indemnity is that of principal debtor.
7. If an amount paid by the Customer to the Company is later avoided or the Company considers that it must, or should (acting reasonably) by way of compromise, pay that amount to another person under any law, the Company’s rights under this Guarantee and Indemnity will be reinstated as if the payment had not been made.
8. The Guarantor(s) waive, in favour of the Company, all rights whatsoever against the Company and the Customer and any other person, estate and other assets so far as necessary to give effect to anything contained in this Guarantee and Indemnity.

9. The Guarantor(s) indemnify the Company against all costs, claims, actions and liabilities of whatever nature (either actual or contingent), including legal costs on an indemnity basis, the Company suffers or incurs in connection with or arising in any way from: (a) a breach by the Customer of the Credit Application Terms and Conditions, the Rental Terms and any other agreement between the Customer and the Company; (b) the business relationship between the Customer and the Company; or (c) the preparation, enforcement or discharge of this Guarantee and Indemnity.
10. Any agreement, indemnity, warranty or representation by two or more persons is deemed to bind them jointly and severally. If there is more than one Guarantor, the Company in its absolute discretion may at any time proceed against any or all of them in respect of the Guarantor(s)' obligations under this Guarantee and Indemnity.
11. This Guarantee and Indemnity binds each of the persons executing it from when they execute it even if one or more of the persons named in this Guarantee and Indemnity does not execute or is not or ceases to be bound by it.
12. The Guarantor(s) must give written notice to the Company of any change to any details contained in this Guarantee and Indemnity within 5 days from the change occurring.
13. A certificate signed by an authorised officer of the Company stating any amounts owing by the Customer or Guarantor(s) to the Company will be conclusive evidence of that indebtedness.
14. In this Guarantee and Indemnity, "PPSA" means the *Personal Property Securities Act 2009* (Cth) (as amended), and the following words have the meanings given to them respectively in the PPSA: collateral, financing change statement, financing statement, interested person, registration, security agreement, security interest and verification statement.
15. Each Guarantor charges all of its legal and beneficial interest (present and future) in any and all real property and all present and after-acquired property. For the purposes of the PPSA, the Guarantor(s) acknowledge that this Guarantee and Indemnity may be a security agreement.
16. On the Company's request, each Guarantor must at its cost execute any documents and do all things required by the Company to more fully document or better secure a charge arising under clause 15 on such terms as the Company sees fit or to register a charge or security interest in respect of any of the Guarantor's real and personal property including, without limitation, effecting and maintaining registrations on the Personal Property Securities Register established under section 147 of the PPSA ("PPSR"). Each Guarantor also consents to the Company lodging caveats in respect of any of the Guarantor's real property.
17. Each Guarantor appoints the Company or an authorised officer of the Company to be its attorney for the purpose of executing and registering such documents.
18. The Company may register a financing statement or financing change statement in respect of any security interest created or contemplated by this Guarantee and Indemnity at any time. The Guarantor(s) agree to sign any documents, provide information or do anything else the Company requires to effect and maintain its registrations on the PPSR, perfect its security interests, register financing statements or financing change statements or otherwise preserve the Company's priority position. The Company may recover from the Guarantor(s) the costs incurred by the Company in registering, maintaining and enforcing security interests created or contemplated by the Guarantee and Indemnity.
19. The Guarantor(s) waive their right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest.
20. The Guarantor(s) must not without the Company's prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by this Guarantee and Indemnity; or (b) register, or allow to be registered, in a third party's favour a financing statement or financing change statement in respect of the collateral.
21. The Company and the Guarantor(s) agree (to the extent the PPSA permits) not to disclose information of the kind described in section 275(1) of the PPSA to an interested person (or any other person nominated by an interested person), unless specifically agreed otherwise. However, if the Company wants or needs to disclose any particular information, the Guarantor(s) authorise the disclosure by the Company of that information under section 275(7)(c) of the PPSA.
22. The Company and the Guarantor(s) agree to contract out of the following enforcement provisions referred to in section 115(1) of the PPSA (to the extent they would otherwise have applied to the enforcement of a security interest arising under or in connection with a security agreement): section 95 (to the extent it requires the Company to give notices to the Guarantor(s)); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143.
23. The Company and the Guarantor(s) agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)).
24. The Company has absolute discretion as to the manner in which it applies money it receives under the Guarantee and Indemnity.
25. Any demand or notice to be given to the Guarantor(s) under this Guarantee and Indemnity will be deemed to have been given if it is in writing and hand delivered or sent by ordinary prepaid post to the Guarantor(s)' address shown on this form (or any replacement address the Guarantor(s) have provided to the Company in writing) and any demand or notice is deemed to have been received by the Guarantor(s) on the day of hand delivery or, if posted, on the second business day after it is posted.
26. No failure or delay by the Company in exercising any right or remedy under this Guarantee and Indemnity constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy.
27. The Company does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Company.
28. Each Guarantor acknowledges that it has entered into this Guarantee and Indemnity freely and has taken or had an opportunity to take legal advice on the terms of this Guarantee and Indemnity and the consequences of signing it.
29. This Guarantee and Indemnity is governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Privacy Notice

30. Each Guarantor consents and authorises the Company to obtain from any person or company information about the Guarantor(s) which the Company may require for the purpose of assessing whether to accept the Guarantor(s) as a guarantor for the credit applied for by, or provided to, the Customer. The Guarantor(s) further irrevocably authorise the Company to provide to any third party information about the Guarantor(s) in response to credit references and enquiries or by way of information exchange with credit reference agencies, details



of this Guarantee and Indemnity and any subsequent dealings that the Guarantor(s) may have with the Company as a result of this deed being enforced by the Company.

- 31. The Company will collect the personal information that is provided by the Guarantor(s) in the Guarantee and Indemnity. The personal information is collected by the Company to assess each Guarantor's capacity to act as Guarantor of the Customer and to administer and enforce this Guarantee and Indemnity. If the Guarantor(s) do not provide the personal information requested then the Guarantor(s) will not be accepted to act as guarantor of the Customer and the Customer's application for a commercial credit account may be denied. The Company may disclose the personal information to other related entities, to credit reporting agencies and to Caterpillar Inc and its related entities in Australia, Singapore and the United States of America.
- 32. The Company's Privacy Policy contains information about how the Guarantor(s) may access the personal information about the Guarantor(s) that is held by the Company and seek correction of such information if required. It also contains information about how the Guarantor(s) can complain about a breach of the Australian Privacy Principles, or a registered APP Code (if any) that binds the Company and how the Company will deal with the complaint. A copy of the Company's Privacy Policy can be obtained on request or by visiting www.maxhire.com.au.
- 33. For privacy related enquiries, please contact: Max Hire Pty Ltd, Company Secretary, Phone: (03) 9566 0666, email: privacy@maxhire.com.au.

GUARANTOR(S) ACKNOWLEDGEMENT SIGNING

By signing below as Guarantor(s), I/we certify that I/we understand the terms of this Guarantee and Indemnity and acknowledge the contents of the Privacy Notice, constituted by clauses 30 to 33 above, as required by the *Privacy Act 1988* (Cth) as amended. In particular, I/we understand that if the Customer fails to make any required payments to the Company, the Company may recover the amount of these payments from me/us personally. In such case, the Company may, amongst other recovery rights, take a charge over any real property.

I/we certify that I/we have had the opportunity of taking independent legal advice in relation to the meaning and effect of this Guarantee and Indemnity.

DATED _____

EXECUTED AS A DEED

Signed, sealed and delivered by Guarantor in the presence of

Signature of Guarantor ←

Signature of Witness ←

Name of Guarantor (print)

Name of Witness

Occupation of Witness

Address of Witness

Signed, sealed and delivered by Guarantor in the presence of

Signature of Guarantor ←

Signature of Witness ←

Name of Guarantor (print)

Name of Witness

Occupation of Witness

Address of Witness



Max Hire Pty Ltd ABN 40 123 987 Max

RENTER PROTECTION

This document relates to the Rental Terms which govern any and all rentals of equipment by the customer named below (“Customer”) to Max Hire Pty Ltd (“Company”)

Customer Name _____

RENTER PROTECTION

In accordance with the Company’s Rental Terms available at www.maxhire.com.au and the Customer’s Credit Application with the Company, the Customer is liable for any and all loss or theft of, or damage beyond fair wear and tear to, any equipment on hire to the Customer.

However, the Customer’s liability for loss or theft of, or damage to, the equipment may be reduced through the Company’s ‘Renter Protection’ program. Renter Protection is an amount (which will be a percentage of the rental charges as determined by the Company from time to time) that the Customer will automatically be charged to reduce its liability to the Company in various circumstances. Renter Protection is not insurance, but can be of great benefit to the Customer.

Details and conditions of Renter Protection can be found in clause 10 of the Rental Terms.

APPLICATION TO REMOVE RENTER PROTECTION

If the Customer does not wish to acquire Renter Protection, it may apply to have it removed by completing and signing this form below. The Company may in its absolute discretion agree to remove Renter Protection by signing this form and returning a signed copy to the Customer.

If the Company agrees to remove Renter Protection, the Customer will not be charged for Renter Protection. In this event, however, the Customer will be fully liable for loss or theft of, or damage to, the equipment on hire in accordance with the Rental Terms.

The Customer requests Renter Protection be removed in accordance with the terms above and acknowledges and agrees that its liability for loss or theft of, or damage to, the equipment it hires will be as specified in the Company’s Rental Terms.

_____/_____/20
Signed for and on behalf of Customer** Date

**The Customer and the person signing for and on behalf of the Customer each warrant that the signatory is duly authorised to sign this Renter Protection removal application on behalf of the Customer

The Company agrees to remove Renter Protection for the rental of equipment by the Customer.

_____/_____/20
Signed for and on behalf of Max Hire Pty Ltd Date

RENTAL TERMS

1. DEFINITIONS

In this document:

“**Agreement**” has the meaning given in clause 2.1. “**Company**”

means Max Hire Pty Ltd ABN 40 123 987 093. “**Customer**”

means the person or persons, corporation, firm, organisation, trust or other entity hiring Equipment from the Company, as identified in the Rental Agreement.

“**Date Out**” means the date the Equipment is rented to the Customer, as specified in the Rental Agreement.

“**Equipment**” means the equipment rented by the Company to the Customer from time to time and includes any and all accessories, tools, attachments, machine control guidance devices, parts, manuals, instructions, packing and transportable materials, substitute and replacement equipment, unless indicated to the contrary in these Rental Terms.

“**Expected End Date**” means the expected end date of the rental of the Equipment by the Customer, as specified in the Rental Agreement.

“**GST**” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Location**” means the location specified in the Rental Agreement for delivery of the Equipment to the Customer.

“**Off Rent Number**” means the number given by the Company to the Customer when the Customer notifies the Company that the Customer no longer requires the Equipment.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth) (as amended), and in clauses 6.2 and 11 the following words have the meanings given to them respectively in the PPSA: collateral, financing change statement, financing statement, interested person, purchase money security interest, registration, security agreement, security interest and verification statement.

“**PPSR**” means the Personal Property Securities Register established under section 147 of the PPSA.

“**Rental Agreement**” means the rental agreement between the Company and the Customer containing information including but not limited to the Equipment the Customer has rented, the applicable rental rates and any other relevant charges, the Date Out, the address for delivery of the Equipment and the Expected End Date.

“**Rental Period**” in respect of an item of Equipment means the period from and including the Date Out until the Expected End Date, which may only be extended by one or more fixed periods by the Company on request by the Customer.

“**Renter Protection**” has the meaning given in clause 10.1.

2. AGREEMENT TO RENT

2.1 The Company agrees to rent the Equipment to the Customer for the Rental Period on the terms of these Rental Terms, any Commercial Credit Application properly completed by the Customer and returned to the Company (or submitted electronically) which the Company has accepted, and each Rental Agreement (the “**Agreement**”).

2.2 The Agreement constitutes the entire agreement between the parties. Unless agreed in writing by the Company, no other terms and conditions (including those contained in any purchase order) apply to the rental of any Equipment.

3. RENTAL AND OTHER CHARGES

3.1 The Customer will pay for the rental of the Equipment at the rental charge rates specified in the Rental Agreement for the full Rental Period.

3.2 If the Customer wishes to retain the Equipment past the Expected End Date, it must request agreement in writing from the Company to the extension prior to the Expected End Date.

3.3 If the Customer breaches the Agreement by retaining the Equipment past the Expected End Date, without prejudice to any other rights the Company may have, the Customer must pay the Company the rental charge rate for the period after the Expected End Date until the Customer obtains an Off Rent Number.

3.4 The Customer must notify the Company when it no longer wants to rent the Equipment and the Equipment is ready to be immediately returned to, or is ready for collection by, the Company. The Company will then issue the Customer with an Off Rent Number.

3.5 In some cases, the Customer will be charged for a minimum rental period, as notified to the Customer before the Rental Period begins.

3.6 If Equipment hired on a daily basis is used for more than eight hours in any day or if Equipment hired on a weekly basis is used for more than 40 hours in any week, then the Customer may be required to pay additional rental charges which, unless specified otherwise by the Company, will be calculated by multiplying the extra hours the Equipment has been used for by an hourly rate equal to one eighth of the daily rate for Equipment hired on a daily basis, or one fortieth of the weekly rate for Equipment hired on a weekly basis.

3.7 In addition to the rental charges, the Customer must pay: (a) a charge for delivery and, if necessary, return of the Equipment; (b) all Equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used, during the Rental Period; (c) any taxes, including a sum equal to the amount of any GST payable by the Company on any taxable supplies made by the Company to the Customer under or in connection with the Agreement, any duties (including stamp duty), levies, charges, fines or imposts on or in connection with the Agreement; (d) any costs or expenses reasonably incurred by the Company in enforcing the Agreement, as a result of the Customer’s breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including cleaning costs and rental charges if the Equipment cannot be used, or can only be used on a limited basis as a result of the Customer’s breach); (e) any environmental charge or levy in respect of waste disposal specified in the Rental Agreement; (f) any Renter Protection payable under clause 10; and (g) any other costs payable under any other provision of this Agreement.

4. PAYMENT

4.1 If the Customer has a commercial credit account with the Company, the Customer must (unless otherwise expressly agreed in writing) pay all amounts that become due and payable under the Agreement within 30 days from the end of the month during which the invoice is issued.

4.2 If the Customer does not have a commercial credit account with the Company: (a) the Customer must pay the rental charges in full prior to the commencement of the Rental Period; and (b) the Customer authorises the Company to charge all amounts payable by the Customer under the Agreement to the Customer’s credit card or account details provided to the Company.

4.3 If the Customer fails to pay an invoice in full by the due date, the Company reserves the right to charge interest on the amount outstanding calculated on a daily basis and compounded monthly at an interest rate which is 7% greater than the Reference Rate published by the Australia and New Zealand Banking Group Limited or its successor as at the due date of payment. The Company’s right to charge interest is in addition to any other legal remedy the Company may have.

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- 4.4 All costs and expenses associated with recovering overdue amounts (including but not limited to legal costs on an indemnity basis) are to be paid by the Customer as a debt due and payable to the Company.
- 4.5 Despite anything in this Agreement to the contrary, any invoice issued in respect of this Agreement which is capable of constituting a claim for payment under the *Building and Construction Industry Security of Payment Act 1999* (NSW) and / or *Building and Construction Industry Payments Act 2004* (QLD) will be treated as such.
5. **INSURANCE**
- The Customer must take out and maintain policies of insurance providing: (a) cover for loss or theft of, or damage to, the Equipment during the Rental Period and until the Equipment is back in the possession and custody of the Company for the full new replacement value of the Equipment; and (b) third party and public liability indemnity cover of not less than \$10,000,000. The Customer will provide a certificate of currency for these policies on request.
6. **EQUIPMENT OWNERSHIP**
- 6.1 The Company retains ownership of the Equipment at all times. The Customer has the right to use the Equipment as bailee only, and subject always to the Customer's ongoing compliance with the Agreement.
- 6.2 Except as provided for in clause 11, the Customer must not sublet, transfer, assign, sell, charge, mortgage or create any type of security interest over, or otherwise deal with, the Equipment without the Company's prior written consent. It will be a condition of any consent given by the Company under this clause to a sublease of the Equipment that: (a) the Company approves the form of the sublease; and (b) the Customer takes all steps required at the Customer's cost, including registration on the PPSR, to ensure that any security interest arising under the sublease is enforceable, perfected and otherwise effective under the PPSA.
- 6.3 The Company and its representatives have the right (in the name of the Customer) to enter the Location at any time on reasonable prior notice to inspect, maintain and repair the Equipment. The Customer must assist the Company in exercising these rights. If the Company reasonably suspects that the Equipment is located on premises other than the Location, the Company or its agents may enter those premises as the Customer's agent to inspect, maintain and repair the Equipment.
7. **RESPONSIBILITY FOR EQUIPMENT AND ITS USE**
- 7.1 The Customer is fully responsible for the Equipment during the Rental Period and until the Equipment is back in the possession and custody of the Company and must ensure that the Equipment is stored safely and securely at all times.
- 7.2 Subject to clause 10, the Customer is liable for and indemnifies the Company against: (a) any and all loss or theft of, or damage beyond fair wear and tear to, the Equipment that occurs during the Rental Period and until the Equipment is back in the possession and custody of the Company, including any costs the Company incurs in recovering and repairing or replacing (at the full new replacement cost) the Equipment and rental charges for the period during which the Equipment is being recovered and repaired or replaced; and (b) any and all loss, damage, liability, claim, cost and expense of any kind, whether incurred by or awarded against the Company, arising from the Customer's breach of the Agreement or use of the Equipment.
- 7.3 The Customer is responsible for the cost of repairing or replacing flat or damaged tyres and for excessive or accelerated wear and tear to tyres and track gear which in the Company's opinion is caused by the particular use made of those tyres or track gear by the Customer.
- 7.4 The Customer is responsible for all wear and tear to blades, cutting edges, buckets, bucket teeth, rippers, ripper teeth and all other ground engaging tools on hire to the Customer.
- 7.5 The Company may, from time to time, enter the Customer's premises to inspect, copy or take extracts from the books, records and files of any kind relating in any way to the use of the Equipment, its location and any dealings with the Equipment by the Customer or any person.
8. **CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer agrees that it has satisfied itself before the Date Out as to the condition and suitability of the Equipment for the Customer's intended use. Subject to clause 14.2, the Company makes no representation or warranty as to the suitability of the Equipment for the Customer's intended use.
- 8.2 The Customer must ensure that the Equipment is: (a) operated safely by a suitably trained, licensed, experienced and (if necessary) certified operator, in accordance with all laws, the operator's manual and any instructions the Company gives; (b) used only for its intended purpose, in suitable terrain and in a manner which has regard to the Equipment's capabilities and limitations; (c) not used underground, in a mine or in an area where friable asbestos is present without the Company's prior written consent; (d) not used in, on or over water; (e) not removed from the Location without the Company's prior written consent; and (f) returned to the Company in the same clean condition and good working order it was in when the Customer received it.
- 8.3 The Customer must: (a) ensure that all safety information, operating instructions and notices supplied with the Equipment are attached to (or contained in) the Equipment, conveyed to and observed by any person using the Equipment and not defaced or removed from the Equipment; (b) ensure that all persons using the Equipment wear suitable clothing and protective equipment as required or recommended by the Company or the safety and operating instructions; (c) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment; (d) not use an hydraulic attachment that has not been supplied by the Company without the Company's prior consent; and (e) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the Company's instructions and the operator's manual.
- 8.4 The Customer must use best endeavours to prevent hazardous material (including asbestos) from contaminating the Equipment. Any apparent risk of contamination must immediately be notified to the Company. If Equipment may have been contaminated, the Customer must decontaminate it at its own cost and notify the Company of decontamination processes applied. If in the Company's reasonable opinion the Equipment has not been properly decontaminated or is incapable of effective decontamination, the Customer will be charged for the proper decontamination or the new replacement cost of the Equipment at the option of the Company.
- 8.5 The Customer warrants that all information provided to the Company is true and correct and that the signatory is duly authorised to sign the Agreement on behalf of the Customer. Any person signing any document forming part of the Agreement on behalf of the Customer: (a) warrants that he or she has the Customer's authority to contract with the Company on behalf of the Customer; and (b) indemnifies the Company against all losses, costs and claims incurred by the Company if that person does not have that authority.
9. **EQUIPMENT BREAKDOWN**
- 9.1 If the Equipment breaks down or becomes unsafe to operate, the Customer must: (a) immediately notify the Company; (b) stop using the Equipment and ensure it does not sustain any further damage; (c) prevent the Equipment from causing

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injury or damage to any person or property; and (d) not repair or attempt to repair the Equipment without the Company's prior written consent.

- 9.2 The Company will use reasonable endeavours to repair or replace the Equipment at the Company's discretion as soon as reasonably practicable after receiving notice under clause 9.1. If the Equipment has broken down or become unsafe to use as a result of the Customer's negligence or breach of the Agreement, the Customer will be liable for the costs associated with the repair or replacement of the Equipment and for the rental charges for the period during which the Equipment is being repaired or replaced.

10. RENTER PROTECTION

- 10.1 Renter Protection is an amount specified by the Company which is paid by the Customer to reduce the Customer's financial liability in the event of loss or theft of, or damage to, the Equipment. Renter Protection is not insurance.
- 10.2 Renter Protection must be paid by the Customer where the full new replacement cost of the Equipment as determined by the Company exceeds \$200, unless the Company has waived this requirement in writing. Waiver application forms are available on request.
- 10.3 For the purposes of this clause only, the term 'Equipment' excludes tools, accessories, parts, grease guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks, tyres or glass.
- 10.4 Subject to clause 10.5, where the Customer has paid Renter Protection, the Customer's liability for loss or theft of, or damage to, the Equipment is limited to the greater of \$200 or 10% of the repair cost of the Equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced).
- 10.5 The Customer's liability will not be limited under clause 10.4 if in the Company's reasonable opinion the loss or theft of, or damage to, the Equipment is caused by or arises from: (a) a breach of the Agreement by the Customer; (b) the Customer's negligent acts or omissions; (c) improper or illegal use of the Equipment (including failure to use the Equipment for its intended purpose); (d) transporting, loading or unloading (except where transported by the Company); (e) lack of lubrication or other normal servicing of the Equipment; (f) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment; (g) artificial electrical current or exposure to any corrosive substance or environment; or (h) use or location of the Equipment in, on or over water, on bridges, vessels or structures of any kind.
- 10.6 Additionally, if the Equipment is stolen, the Customer's liability will not be limited under clause 10.4 unless the Customer promptly reports the theft to the police and provides the Company with written evidence verifying that report.

11. PPSA

- 11.1 For the purposes of the PPSA, the Customer acknowledges that the Agreement may be a security agreement in respect of which the Equipment is the collateral.
- 11.2 The Customer consents to the Company effecting and maintaining registrations on the PPSR in respect of security interests (including purchase money security interests) created or contemplated by the Agreement in the Equipment and any proceeds from dealing in the Equipment.
- 11.3 The Company may register a financing statement or financing change statement in respect of a security interest at any time. The Customer agrees to sign any documents, provide information or do anything else the Company requires to effect and maintain its registrations on the PPSR, perfect its security interests, register financing statements or financing

change statements or otherwise preserve the Company's priority position as contemplated by the Agreement. The Company may recover from the Customer the costs incurred by the Company in registering, maintaining and enforcing security interests created or contemplated by the Agreement in the Equipment and any proceeds from dealing in the Equipment.

- 11.4 The Customer waives its right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest in respect of the Equipment.
- 11.5 The Customer must not without the Company's prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by the Agreement; or (b) register, or allow to be registered, in a third party's favour a financing statement or financing change statement in respect of the Equipment.
- 11.6 The Customer and the Company agree (to the extent the PPSA permits) not to disclose information of the kind described in section 275(1) of the PPSA to an interested person (or any other person nominated by an interested person), unless specifically agreed otherwise. However, if the Company wants or needs to disclose any particular information, the Customer authorises the disclosure by the Company of that information under section 275(7)(c) of the PPSA.
- 11.7 The Customer and the Company agree to contract out of the following enforcement provisions referred to in section 115(1) of the PPSA (to the extent permitted by section 115 and if they would otherwise have applied to the enforcement of a security interest arising under or in connection with the Agreement): section 95 (to the extent it requires the Company to give notices to the Customer); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143.
- 11.8 The Customer and the Company agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2).
- 11.9 The Company has absolute discretion as to the manner in which it applies money it receives under the Agreement.

12. SECURITY

- 12.1 Except where clause 18 applies, in order to secure the Customer's due and punctual performance of all its obligations to the Company (including the payment of all monies owing) under the Agreement or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property and all present and after-acquired property.
- 12.2 On the Company's request, the Customer must at its cost execute any documents and do all things required by the Company to more fully document or better secure a charge arising under clause 12.1 on such terms as the Company sees fit or to register a charge or security interest in respect of any of the Customer's real and personal property including, without limitation, effecting and maintaining registrations on the PPSR. The Customer also consents to the Company lodging caveats in respect of any of the Customer's real property.
- 12.3 The Customer appoints the Company or an authorised officer of the Company to be its attorney for the purpose of executing and registering such documents.

13. TERMINATION AND REPOSSESSION

- 13.1 The Company may terminate the Rental Agreement or the Agreement as a whole immediately on written notice to the Customer if: (a) the Customer breaches the Rental Agreement and fails to remedy that breach within 3 days of receiving notice to do so; (b) the Customer becomes insolvent, bankrupt, dies, ceases to carry on business, enters into

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- liquidation or administration or has a receiver appointed to any of its assets; (c) in the Company's reasonable opinion the Equipment is in imminent danger of destruction or material damage; or (d) if in the Company's reasonable opinion the Company's interest in the Equipment is likely to otherwise be adversely affected.
- 13.2 The Company's termination rights are in addition to any other rights or remedies the Company has under the Agreement or at law or in equity.
- 13.3 Following termination of the Rental Agreement by the Company or the receipt of an Off Rent Number by the Customer, the Company may take all necessary steps to repossess the Equipment. The Customer authorises the Company to enter the Customer's premises to enable the Company to repossess the Equipment. If the Company reasonably suspects that the Equipment is located on premises other than the Location, the Company or its agents may enter those premises as the Customer's agent to repossess the Equipment. The Customer indemnifies the Company from and against all costs, claims, actions and liabilities the Company suffers or incurs as a consequence of terminating the Rental Agreement or the Agreement or repossessing the Equipment, including legal costs on an indemnity basis.
14. **LIABILITY OF COMPANY**
- 14.1 To the maximum extent permitted by law, all warranties, conditions, representations and guarantees (whether express or implied) in respect of the Agreement or the Equipment are excluded. If a condition, representation or guarantee is imposed by law and is not able to be excluded, as far as the law permits the Company's liability for a breach of that condition, representation or guarantee will be limited to the repair or replacement of the Equipment (at the Company's election).
- 14.2 Nothing in this Agreement affects any rights or remedies the Customer may have under the Australian Consumer Law or any other law if, and to the extent that, those rights or remedies may not lawfully be excluded or modified.
- 14.3 The Company's liability for loss or damage, including consequential, special or indirect loss or loss of profits, arising under or in connection with the Agreement, whether in contract, tort (including negligence) at law or in equity, is excluded to the maximum extent permitted by law.
15. **PRIVACY**
- 15.1 The Company will comply with the Australian Privacy Principles (as amended or replaced) in all dealings with the Customer.
- 15.2 The Customer agrees and acknowledges that the Company will collect personal information about the Customer and may use and / or disclose that information to: (a) provide and market goods and services to the Customer; (b) assess the Customer's credit worthiness; and (c) assist the Company in the collection of overdue payments. If the Customer does not provide the personal information requested then the Company may refuse to enter into the Agreement. The Company may disclose the personal information to other related entities or to Caterpillar Inc and its related entities in Australia, Singapore and the United States of America.
- 15.3 The Company's Privacy Policy contains information about how the Customer may access the personal information about the individual that is held by the Company and seek correction of such information if required. It also contains information about how the Customer can complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the Company and how the Company will deal with the complaint. The Customer may obtain a copy of the Company's Privacy Policy by request or by visiting www.maxhire.com.au.
- 15.4 For privacy related enquiries, please contact: Max Hire Pty Ltd, Company Secretary, Phone: (03) 9566 0666, email: privacy@maxhire.com.au.
16. **VARIATION**
- Except where clause 18 applies, the Company may vary or replace the Agreement (including rental charges) at any time by giving notice to the Customer. Notice will be deemed to have been given by the Company to the Customer when the Company does any of the following: (a) publishes the varied Rental Terms on the Company's website www.maxhire.com.au; (b) sends written notice (including by e-mail) of the varied Rental Terms to the Customer; or (c) displays the varied Rental Terms at premises from which the Company conducts rental operations. Any subsequent rental of Equipment will be on the varied or replaced terms. No other variations to the Agreement can be made without the written agreement of the Company and the Customer.
17. **NO RELIANCE**
- Subject to clause 14, the Customer acknowledges that neither the Company nor any person acting on behalf of the Company has made any representation or other inducement to the Customer to enter into the Agreement and the Customer has not entered into the Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for any representations contained in this Agreement.
18. **EXCLUSIONS FROM CONSUMER CONTRACTS**
- If the Customer is an individual renting Equipment wholly or predominantly for personal, domestic or household purposes, clauses 12 and 16 will not apply to the Rental Agreement.
19. **GENERAL**
- 19.1 The Agreement is governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 19.2 If any part of the Agreement becomes void or unenforceable then that part is severed so that all parts which are not void or unenforceable remain in full force and effect.
- 19.3 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 19.4 Any indemnity under the Agreement is independent and survives termination of this document.
- 19.5 Time is of the essence in respect of the Customer's obligations under the Agreement.