

Email application to accounts@ceshire.au

APPLICATION FOR CREDIT ACCOUNT

Customer Details

Company Name:	
Trading Name:	
ABN:	
Trading Address:	
Postal Address:	
Main Contact:	
Phone No:	Email:
Accounts Contact:	
Phone No:	Email:

Director(s) / Partner(s) / Individual(s) Details

Full Name	Residential Address	Years in Industry	Phone No

Is the applicant a subsidiary of another company? ☐ Yes ☐ No

If Yes, name of business _____ ABN: _____

Address: _____

Credit Limit Requested: \$_____ per month.

Trade References (Minium of three to be supplied)

Supplier	Contact	Email	Telephone No	Monthly spend (AVG)

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the Terms and Conditions of the hire of Compact Earthmoving Solutions (CES Hire) which form part of and are intended to be read in conjunction with this credit application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a Director / Shareholder (owning at least 15% of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

Application Agreement

In consideration of your opening a Credit Account in the applicant's name and allowing the applicant to purchase goods on credit, the applicant agrees to be bound by the Terms and Conditions of Trade / Hire.

Signature 1: _____ Date: _____

Print Name: _____ Position Held: _____

Signature 2: _____ Date: _____

Print Name: _____ Position Held: _____

Witness to Client Signature: _____ Full Name: _____

Email application to accounts@ceshire.au

CES Hire Office Use Only:

Application reviewed and approved: ☐ Yes ☐ No

Name: _____ Date: _____

Signature: _____ Customer No: _____

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

Approved Credit Account means the credit facility provided by CESHire whereby the Client has been authorised and approved by CESHire to hire the Equipment on credit extended by CESHire in accordance with the terms and conditions applying to the Credit Account.

Attachments means any accessories or attachments parts provided by CESHire for use with the Equipment.

CESHire means Compact Earthmoving Solutions (ABN 60 092 467 621) its successors and permitted assigns, employees and authorised agents.

Charges means any and all amounts payable by the Client to CESHire in accordance with these terms and conditions.

Claim means any claim, action, proceeding or demand, however arising, whether by breach of contract, tort, negligence equity or otherwise, whether present, future, fixed or unascertained, actual or contingent.

Client means the person or entity (and where more than one of them each person(s) and/or entity(ies) jointly and severally), hiring the Equipment from CESHire and bound these terms and conditions.

Credit means credit advanced by CESHire to the Client for to be repaid by the Client at a future date that is at least 30 days after the month in which the credit was granted.

Credit Terms and Conditions means the Credit Account Terms and Conditions set out in Schedule 1 attached to these terms and conditions which the Client agrees will apply to the hire of Equipment provided by CESHire to the Client on Credit

Day is a reference to the period from 6am to 6pm.

Equipment means any machinery, plant or equipment (and includes any Vehicle or Truck unless specifically excluded) hired by the Client from CESHire, including all accessories and any Attachments used in connection with the Equipment provided by CESHire in relation to the Client's hire of Equipment.

Guarantor means any Guarantor guaranteeing performance of the Client's obligations under these terms and conditions.

Hire Contract means the Contract between the Client and CESHire specifying particulars of the Equipment hired to which these terms and conditions are attached.

Hire Documents means the following documents containing the terms and conditions of the contract between the Client and CESHire in the following order of precedence, as applicable:

- (a) The Hire Contract;
- (b) These terms and conditions;
- (c) Credit Account Application;
- (d) Any Personal Guarantee / Corporate Guarantee; and
- (e) any other document(s) required by or referred to by CESHire as forming part of the Hire Documents from time to time.

Hire Fees means the fee for hire of the Equipment calculated by reference to the Hire Period and the applicable Hire Rates and in accordance with these terms and conditions.

Hire Period means the period the Equipment is hired by the Client as set out in the Hire Contract and any extension or variation to that period in accordance with these terms and conditions.

Hire Rates means the hourly rate payable for hire of the Equipment calculated in accordance with these terms and conditions.

GST means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth (**GST Act**).

Light Vehicle means a utility vehicle or other road vehicle hired or otherwise made available by CESHire for use by the Client in connection with the Client's hire of Equipment.

Loss means:

- (a) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
- (b) liability;
- (c) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
- (d) cost or expense including legal costs on a full indemnity basis;

Major Breakdown means failure of a major component of the Equipment, for example, engine, hydraulic pumps, drive motors, differentials etc.

CESHire's Authorised Representative means the Managing Director of CESHire.

CESHire's Depot means CESHire's address as specified on the Hire Contract.

Operator means the Operator of the plant and equipment hired by the Client supplied by CESHire to operate the Equipment.

Security Bond means any additional amount or an amount required by CESHire from the Client as security for safe return of the Equipment or to otherwise secure the Client's obligations under these terms and conditions including any amounts paid as per clause 9.3

Services means supply of Equipment with an Operator for hire by the Client and related services (including the Works) performed by the Operator for the Client by CESHire and supply of goods incidental to the performance of the Services.

Shift means a daily Hire Period of 8 hours, or less as determined by CESHire.

Truck means a tipper truck, or other similar type of truck hired by the Client from CESHire subject to these terms and conditions but excludes a Light Vehicle.

Weed and Seed Cleaning means a higher standard of cleaning required for certain Equipment for the purpose of complying with an industry standard.

Works means the works performed for the Client by the Operator using the Equipment as set out in these terms and conditions including without limitation, excavation, digging, transport of goods, etc.

2. AGREEMENT TO HIRE EQUIPMENT & ENTER INTO HIRE CONTRACT

2.1 By submitting a Hire Request to CESHire the Client agrees to be bound by these terms and conditions and agrees that these terms and conditions will apply to all Equipment hired by the Client on and from the first date the Client submits a Hire Request to CESHire unless otherwise agreed by CESHire in writing.

2.2 The Client agrees that these terms and conditions override any other terms and conditions provided by the Client, whether before or after the Client is taken to have accepted to be bound by these terms and conditions in accordance with clause 2.1.

3. HIRING OF EQUIPMENT

3.1 Hire of Equipment is to be done by the Client contacting CESHire's Booking Department and submitting a Hire Request to hire Equipment from CESHire.

3.2 A Hire Request should specify:

- (a) the type and quantity of Equipment including any Attachments and or additional services the Client requires.
- (b) the day, date, start time & estimated finish time the Equipment & Operator will be required onsite.
- (c) the general description of the tasks and scope of the Works the Client will be requiring the Operator to complete.
- (d) details about conditions on the Site(s) ie; sand, clay, limestone, rock, demolition, confined space, caustic, shallow water etc. (disclosing site conditions will determined should CESHire elect to supply Services or decline supply for the job task).
- (e) if the Client has a preferred Operator based on prior Services performed by an Operator (preferred Operator will be subject to availability).
- (f) the site location and details of any specific site induction or competency tickets required for the jobsite or job tasks.
- (g) If the client requires the equipment to be delivered to and collected from the clients site, or both.
- (h) Details of the parking location (which must be supplied on or offsite free of charge) for the delivery vehicle whilst Equipment and Operator are onsite.
- (i) details of the contact person to report to onsite including their personal mobile telephone number and email address.

3.3 If CESHire can satisfy a Hire Request CESHire will issue confirmation (either verbally, by text message or by email at CESHire's election) to the Client. Confirmation will include the applicable Hire Rates, an estimate of the Hire Fees and any other Charges payable in relation to a Hire Request. The Client agrees that the actual Charges payable may vary as a result of any changed circumstances, or in accordance with these terms and conditions.

3.4 CESHire reserves the right to change the Hire Rates or amend any confirmation in the event of any change to the scope of the Works the Equipment and Operator are required or the Site.

3.5 A weed and seed Equipment Hire Request will require the hire of the Equipment for a period prior to the Client receiving custody of the Equipment in order to conduct Weed and Seed Cleaning.

3.6 If the Client intends the Equipment to be used in any place where the Equipment must be registered, including under a license other than a restricted concession code 4,01 type license, then it is the Client's sole responsibility to ensure that this requirement is communicated to CESHire with sufficient notice prior to the commencement of the Hire Period to allow CESHire to facilitate any further registrations (at the Client's cost) as required, if legally available.

4. CHARGES

4.1 In exchange for CESHire hiring the Equipment to the Client the Client agrees to pay:

- (a) the Hire Fees calculated in accordance with these terms and conditions;
- (b) all Charges; and
- (c) any other amounts payable in accordance with these terms and conditions.

5. MINIMUM CONDITIONS

5.1 The Client must provide a safe work site in accordance with the Work Health and Safety Act 2020 (WA) and all other Applicable Laws.

- 5.2 If in the sole discretion of the Operator or a manager, representative or supervisor of CESHire, any part or all of the Services the Client requires the Operator to perform are unsafe or unreasonably risky, CESHire's Operator will not be obliged to perform the task and may cease all Works until safety concerns are rectified.
- 5.3 If Equipment is in a position where it cannot be removed from the Site under its own power, the Hourly Fees continue to apply whilst the safety concerns are being rectified the Hourly Fees will continue to be incurred per hour until the Equipment can be moved under its own power.
- 5.4 The Client is responsible for supplying all labour to set out, observe, instruct, and supervise all Works conducted for the Client.
- 5.5 It is the Client's sole responsibility to check all Works within one (1) hour after they have been performed by the Operator to be satisfied that they are in accordance with the Client's requirements. If the Client fails to notify CESHire of any alleged defects within an hour after the Works are performed the Works will be deemed free from defects.
- 5.6 CESHire will not be liable to the Client for any inaccuracies or defects in relation to any part or all the Works conducted by any Operator.
- 5.7 Unless contrary to the provisions of any laws, CESHire will not be obliged to reperform any of the Works performed by an Operator. Any decision to reperform any part of the Works will be at CESHire's sole discretion.
- 5.8 It is Client's responsibility to locate and/or expose all service infrastructure and obstructions prior to commencement of the Works. CESHire will not be liable for any damage to property, foundations, retaining walls, cables, utility services etc. when an Operator is complying with the instructions or directions given by the Client, the Client's agents, or employees.
- 5.9 Prior to CESHire commencing the Works, the Client must advise CESHire of the precise location of all underground mains & services on the Site, and clearly mark the same on a plan of the Site. The underground mains & services the Client must identify include (but are not limited to) the following;
- (a) electrical services;
 - (b) gas services;
 - (c) sewer services;
 - (d) pumping services;
 - (e) sewer connections;
 - (f) sewer sludge mains;
 - (g) water mains;
 - (h) irrigation pipes;
 - (i) telecommunication cables;
 - (j) fibre optic cables;
 - (k) oil pumping mains; and
 - (l) all other services that may be on site.
- 5.10 The Client further agrees to comply with the Australian Communication Industrial Form and Industrial Code for external communications cable network which will include contacting Telstra by way of Before You Dig Enquiry Services.
- 5.11 Operators will take reasonable care to avoid damage to any underground services.
- 5.12 CESHire's business booking hours are Monday to Friday 7am to 5pm. Normal plant operating hours on site are Monday to Friday between 6am to 6pm.
- 5.13 Minimum hire period & charges for Wet Hire of Equipment is:
- (a) For 14 tonne excavators and above: no less than eight (8) hours per Day; and
 - (b) For all other Equipment: no less than four (4) hours per Day, Monday to Friday (excluding Public Holidays, weekends, before 6am or after 6pm on weekdays)
 - (c) For Public Holidays, weekends, and if before 6am or after 6pm on a weekday: no less than eight (8) hours for all Equipment.
- 5.14 Minimum attachment charges apply to all Attachments of;
- (a) two (2) hours; and
 - (b) additional continuous usage is charged in fifteen (15) minute increments.
- 5.15 Transportation charges include:
- (a) a minimum hire charge for up to one (1) hour of transportation within the metropolitan area; and
 - (b) travel outside of the first hour which will be charged on the actual time taken, the rate used for calculating travel charges will be equal to that charged for bucket rate of the plant item hired, multiplied by 1.25. (Alternatively, a fixed cost for travel charges is available at time of booking plant). (Please note: A minimum Operators daily travel charge of sixty dollars (\$60.00) + GST will apply for all days an Operator attends a worksite were equipment is not transported by the vehicle driven on that day by that Operator)
- (c) Transportation/float charges and Operator travel charges apply for Equipment which is eight (8.0) ton and larger. Such charges are variable depending on time and distance travelled, charges are available on application.
- 5.16 After hour's charges cover:
- (a) an additional one hundred dollars (\$100.00) call out fee for an emergency or after hours call out bookings.
 - (b) an additional twenty-five dollars (\$25.00) per hour will apply to hourly hire rates on a Saturday.
 - (c) an additional thirty-five dollars (\$35.00) will apply to hourly hire rates on Sundays, public holidays & after hours, (including but not limited to, callouts, night Shifts, and/or between the hours of 6pm and 6am daily).
 - (d) an additional five hundred dollars (\$500) for a day/night Shift transition fee. This transition fee will be payable where Operators are required to transition from a day Shift to a night Shift for short term hires less than 3 days, when they lose the next day's Shift because they have worked the night Shift and are required to take the following day off.
- 5.17 The Client agrees that there will be additional items supplied by the Client or increased costs if the Site is outside the Perth Metropolitan area. Such additional costs shall include (without limitation) additional costs for:
- (a) A Surcharge on the Hire Rate of Equipment and Operator;
 - (b) Travel, transportation, accommodation, lodging and meals for Operators;
 - (c) Servicing and Repairs;
 - (d) Replacement of Ground Engagement Tools (GET); and
 - (e) Fuel and lubricants.
- 5.18 In order to hire weed and seed Equipment, the Client must hire it for a minimum period of three (3) Days and is not able to stand down the Equipment during this period.
- 6. HIRE FEES, HIRE PERIODS & HIRE RATES**
- 6.1 The Client will incur Hire Fees as soon as the Hire Period commences or immediately upon the Equipment leaving CESHire's depot whilst in transit.
- 6.2 The Client's liability for Hire Fees includes:
- (a) the whole period the Equipment is in the Client's custody, possession or control, until the Equipment has been returned to CESHire's depot and the Client's obligations as set out in clause 11 have been satisfied.
 - (b) any period that the Equipment is unable to be hired out by CESHire, due to it requiring repairs as a result of damage sustained while in the Client's custody, possession or control.
- 6.3 CESHire reserves the right to vary the Hire Rates or supply fees (i.e. landfill, tip fees or soils etc.) at any time. The Client will be given no less than seven (7) days written notice of CESHire's intention to vary the Hire Rates including the date on which they come into effect.
- 6.4 If the Client wishes to extend the Hire Period, it must notify CESHire as soon as possible and in any event before expiry of the Hire Period.
- 7. ADDITIONAL CHARGES**
- 7.1 The Client must pay any Charges to CESHire in accordance with these terms and conditions which may include at CESHire's discretion:
- (a) in relation to weed and seed Equipment, additional Charges for:
 - (i) Weed and Seed Cleaning;
 - (ii) the preparation of the Equipment; and/or
 - (iii) CESHire's completion of the Client's or a third party's documentation, as requested by the Client;
 - (b) a markup on any goods or services supplied by CESHire, which shall be a percentage (%) of the cost of the Good(s) or Service(s) to CESHire at CESHire's discretion;
 - (c) any surcharges, levies, excises or duties as a result of increases to the price of goods and/or services to be provided by CESHire or which CESHire may become liable in relation to the hire of the Equipment, and which may be temporary or permanent;
 - (d) any other amounts incurred by CESHire arising from the Client's hire of the Equipment.
- 7.2 Unless the Client has an Approved Credit Account, any Charges payable by the Client (other than Hire Fees) in accordance with these terms and conditions are due and payable by the Client to CESHire on demand without deduction or set-off whatsoever.
- 7.3 CESHire reserves the right to increase or vary the amount of any markup, margin, surcharge or levy recoverable from the Client in accordance with this clause, upon seven (7) days' notice in writing to the Client of any change.
- 8. GST**
- 8.1 Any amount stated as payable under these terms and conditions is

- stated exclusive of GST unless otherwise specified.
- 8.2 The Client acknowledges the amounts stated in these terms and conditions and any Hire Documents are to be increased to reflect any GST, or other taxes and/or duties which may be applicable (which are to be paid by the Client) unless otherwise stated.
- 9. PAYMENT**
- 9.1 Unless and until the Client has received written confirmation from CESHire's Authorised Representative confirming that the client has an Approved Credit Account, the Client must make payment of all Charges and any other amounts payable under these terms and conditions in accordance with this clause 9.
- 9.2 Upon the Client having an Approved Credit Account, or if CESHire agrees that the Client can hire the Equipment on Credit, then the Client agrees the provision of Credit is subject to the Client complying with any additional Credit Account Terms and Conditions including as set out in Schedule 1.
- 9.3 Payment of any amount by the Client to CESHire before commencement of any Hire Period is held by CESHire as payment on account for payment of any amounts payable by the Client to CESHire pursuant to these terms and conditions.
- 9.4 CESHire will be entitled to apply any payments from the Client towards any amounts payable by the Client pursuant to these terms and conditions, any balance remaining upon expiry or termination of the Hire Contract will be refunded to the Client.
- 9.5 Unless otherwise agreed with CESHire in writing, the Client must pay the Hire Fees set out in the Hire Contract in advance of the Equipment being made available to the Client. The Hire Fees may be paid by the Client providing valid credit or debit card details to CESHire and CESHire successfully charging the credit or debit card account, or by receiving payment in cleared funds via electronic funds transfer to CESHire's nominated bank account.
- 9.6 By supplying credit card details to CESHire the Client:
- (a) authorises CESHire to charge the credit or debit card with the whole amount of any Charges due and payable by the Client from time to time in accordance with these terms and conditions;
 - (b) authorises CESHire to charge and hold the whole amount of any Security Bond or any amount held in accordance with clause 9.3 ;
 - (c) warrants and represents to CESHire that the Client is the named holder of the account attached to the credit or debit card, or is otherwise authorised by the named holder(s) of the relevant account to provide the credit or debit card details to CESHire for payment of the Charges; and
 - (d) warrants and represents to CESHire that CESHire is authorised to deduct the Charges payable by the Client from time to time in accordance with these terms and conditions, such authority will continue after termination of the Hire Contract.
- 9.7 If no credit card is provided the Client must make payment of all Charges as directed by CESHire from time to time.
- 9.8 The Client is not entitled to set off against or deduct from any Charges any sums owed or claimed to be owed by CESHire to the Client.
- 9.9 Invoices issued by CESHire must be paid in full and strictly by the due date for payment stated on the invoice, or if no date stated within 30 days of the date of the Invoice.
- 9.10 The Client is not relieved of the obligation to make payment of any amount due and payable in accordance with these terms and conditions, notwithstanding that the Client has raised a dispute in relation to the Charges.
- 9.11 CESHire reserves the right to charge interest on any Charges due and not paid, at the rate of 2.5% per annum calculated daily, and compounded monthly on the overdue balance up to the date that payment in cleared funds is received.
- 10. DELIVERY & COLLECTION OF EQUIPMENT**
- 10.1 If the Client has requested that Equipment be delivered to, or collected from the Client, the Client must:
- (a) specify the location for delivery and collection of the Equipment; and
 - (b) provide a flat, level unloading and loading area for the Equipment to be unloaded or loaded by CESHire.
- 10.2 CESHire may refuse to deliver or collect the Equipment if any of the requirements in clause 10.1 are not met, or for any reason if it is not satisfied with condition of the delivery or collection location.
- 10.3 Delivery or collection of Equipment is subject to the discretion of CESHire a case by case basis. The Client agrees that additional costs will be payable for delivery or collection of Equipment, including (but not limited to, fuel costs, transportation costs, labour costs, etc.
- 11. CLIENT'S OBLIGATIONS DURING THE HIRE PERIOD**
- 11.1 Without limiting the Client's general obligation to take care of the

Equipment, as soon as the takes custody, possession or control of the Equipment and for the whole Hire Period, or such other period that the Equipment remains in the Client's custody, possession or control, the Client must:

- (a) monitor site conditions including asphalt surface temperatures to ensure the Operator's use, travelling or parking of the Equipment causes damage to, or is damaged by asphalt surfaces;
 - (b) ensure that the Operator will not cause the Equipment to be exposed to any caustic or corrosive substance, such as cyanide, salt water, acid or other corrosive materials whilst being operated during the Hire Period;
 - (c) if the Equipment is kept on Site overnight, take all necessary precautions to protect the Equipment against theft, burglary, vandalism and any other foreseeable risks of damage or harm including inclement weather, fire, tempest, storm or other natural disaster;
 - (d) if the Equipment is kept on Site overnight, when the Equipment is not in use, keep the Equipment in a safe and secure location behind locked gate or entryway, which is not accessible by the general public in a location not the subject of extreme or abnormal acidity, or environmental conditions which could damage the Equipment;
 - (e) ensure that if the Equipment is required to be registered with any Government Agency as a condition of being used on any road, verge or other area, then it is properly registered and is only used in accordance with the requirements of the registration;
 - (f) take all reasonable care to inform the Operator or CESHire's personnel of any hazards onsite (including taking precautionary steps such as enquiries with Before you Dig) locate or otherwise be completely aware of all necessary structures and obstructions prior to commencing any excavation, earthworks, demolition or otherwise using the Equipment, and take all precautions to avoid any damage to any surrounding property, foundations, retaining walls, cables, utility services etc;
 - (g) supply and erect temporary barricades or fencing as required for the works on Site.
- 11.2 Without prejudice to any other rights under these terms and conditions at law, or in equity, the Client agrees to indemnify and keep CESHire indemnified against any Loss incurred by CESHire arising from the Client's failure to comply with its obligations under this clause.
- 11.3 CESHire will as soon as reasonably practicable after receiving notice of a Major Breakdown attend the location of the Equipment to diagnose and repair the Equipment. If the Equipment cannot be repaired within a reasonable time CESHire will arrange for replacement Equipment to be provided to the Client.
- 11.4 In the event of a breakdown or failure of the Equipment, which in the opinion of CESHire is the result of the effluxion of time or fair wear and tear, CESHire will at its cost restore the Equipment to working order as quickly as reasonably possible or provide replacement Equipment at CESHire's discretion.
- 11.5 The Client acknowledges and agrees that CESHire will not be liable to the Client for any Loss or Claim as a result of any Equipment being unavailable during a Hire Period due to a breakdown, and that the Client's sole remedy is for CESHire to provide replacement Equipment for the Operator to perform the Works.
- 12. DEFAULT**
- 12.1 Any failure or delay by CESHire at the commencement of the Hire Period to deliver the Equipment to the Client or to otherwise make the Equipment available to the Client does not entitle the Client to treat the Hire Contract as repudiated.
- 12.2 The Client will be in default of these terms and conditions if the Client:
- (a) fails to make payment of any amounts due and payable within seven (7) days of the due date for payment or within 7 days after receiving demand from CESHire for payment;
 - (b) has exceeded any approved credit limit on any Approved Credit Account provided by CESHire or is otherwise in breach of the terms of any approved Credit Account;
 - (c) becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
 - (e) is otherwise in breach of any of its obligations under these terms and conditions.
- 13. CONSEQUENCES OF DEFAULT**
- 13.1 If the Client is in default of in accordance with clause 16 above, such

default being capable of remedy, CESHire may at its discretion issue a notice to the Client (**Default Notice**) setting out:

- (a) the nature of the Default(s);
- (b) what must be done to remedy the Default(s); and
- (c) the time by which the Default must be remedied

13.2 If the Client has failed to comply with a Default Notice; or the default is incapable of remedy then CESHire may, without further notice to the Client and without prejudice to any other rights or remedies available to CESHire under these terms and conditions, at law or in equity:

- (a) terminate the Hire Contract with immediate effect;
- (b) cancel any Approved Credit Account;
- (c) take steps to immediately repossess the Equipment as per clause 14;
- (d) suspend or terminate further hire of Equipment to the Client, and cancel all or any part of any hire by the Client which remains unperformed; and
- (e) demand immediate payment of any Charges due and payable by the Client whether or not they are due and payable as at the date of the default as a debt due by the Client to CESHire.

13.3 The Client acknowledges and agrees that CESHire will not be liable to the Client for any Claim, or Loss suffered by the Client arising from CESHire exercising its rights under this clause.

13.4 The Client indemnifies, keeps indemnified and holds harmless CESHire against any Claim or Loss arising as a result of CESHire's exercise of its rights under these terms and conditions, at law or in equity.

13.5 Clauses 13.3 and 13.4 survive termination of this Agreement.

14. REPOSSESSION OF THE EQUIPMENT

14.1 The Client hereby authorises CESHire to enter onto any land and into any premises or property owned or under the control of the Client (or as an invitee of the Client where the land, premises or property is not owned or under the control of the Client) where the Equipment may be located or stored for the purposes of repossessing the Equipment if:

- (a) Any amounts due and payable have not been paid the Client has failed to comply with a demand for payment by CESHire within seven (7) days of demand being issued;
- (b) CESHire reasonable opinion the Client is not complying with its obligations under these terms and conditions such that the Equipment is being damaged, or is likely to suffer damage at the place where it may be stored on Site;
- (c) In CESHire's reasonable opinion it necessary to preserve or protect the Equipment or preserve CESHire's rights under these terms and conditions; or
- (d) If Equipment is left on Site or as part of extended ongoing hire or Works.

14.2 In addition to any other Charges which might be payable at the time CESHire repossesses the Equipment, CESHire reserves the right to recover from the Client all costs and expenses incurred by CESHire arising out of the repossession of the Equipment, including but not limited to the costs of transporting such Equipment from the location where it was housed at the time of repossession.

14.3 CESHire may but is not obliged to give at least 24 hours' notice to the Client of the time and date in which it intends to enter onto any land or premises owned, occupied or used by the Client for the purposes of repossessing the Equipment.

15. TERMINATION BY THE CLIENT

15.1 The Client may terminate hire of the Equipment anytime, by giving notice in writing to CESHire during usual office hours.

15.2 Upon termination by the Client, the Operator will not be required to perform any further Works and will remove the Equipment from the Site.

15.3 Notwithstanding termination by the Client, the Client agrees that it will still be liable to pay Hire Charges until the Equipment and the Operator have returned to CESHire's depot.

16. NO WARRANTY OR REPRESENTATION

16.1 CESHire makes no warranty or representation that the Equipment is of any particular condition or quality, has any particular class of registration; or that the Equipment is fit for any particular purpose, including the purpose for which it may have been hired. It is the Client's responsibility to request the appropriate Equipment required to complete the Works.

16.2 To the maximum extent permitted by law, any express or implied representations or warranties as to the condition or suitability of the Equipment to complete the Works, the Operator or the Equipment or the Operator generally are hereby excluded. It is the Client's responsibility to request the appropriate Equipment required to complete the Works.

16.3 CESHire makes no warranty or representation in respect of the skills

or abilities of the Operators operating the Equipment performing the Works save that the Operator will operate the Equipment to the standard expected of a reasonable person holding the same qualifications as the Operator.

17. CLIENT'S WARRANTIES & REPRESENTATIONS

17.1 The Client warrants and represents to CESHire that:

- (a) it has made its own enquiries with respect to the suitability of the Equipment, including any registrations the Equipment may be required to have if the Client intends the Equipment be used on public roads or thoroughfares.
- (b) it has relied on its own skill and judgment in determining the suitability of the Equipment having regard to the Client's needs.

18. CLIENT DISCLAIMER

18.1 The Client hereby disclaims any right to rescind or cancel the Hire Contract with CESHire or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by CESHire.

19. LIABILITY

19.1 CESHire will not be held liable for any Loss (including Consequential Loss) arising from or in connection with the Client's hire of the Equipment or these terms and conditions. If for any reason CESHire is found liable, then any liability will be limited to the value of the Charges.

19.2 The Client is not entitled to any damages or compensation from CESHire in relation to any Claim or Loss by reason of late delivery or breakdown of the Equipment, unavailability of the Operator, or inability of the Operator to perform the Works If CESHire agrees that the Works or any part of it is defective, then reperformance of the defective Works is the sole remedy available to the Client for any Works CESHire accepts as defective or incomplete, subject to any obligations imposed by law which cannot be excluded.

19.3 CESHire takes no responsibility for any goods transported by the Client using the Equipment and any goods, materials or items that are transported by the Client remain the sole responsibility of the Client.

19.4 Nothing in these terms and conditions affects the duty of the Client to mitigate damages after a breach of these terms and conditions by the Client.

19.5 Further to any other rights or remedies CESHire may have pursuant to these terms and conditions, if the Client has paid an amount to CESHire which is subsequently reversed, dishonoured or recovered by any creditor of the Client, the Client will remain liable to CESHire for the amount of the reversed transaction, and must reimburse CESHire for any additional costs or expenses incurred by CESHire arising from the reversed transaction.

20. INDEMNITY

20.1 The Client indemnifies, keeps indemnified and holds harmless CESHire against any Claim or Loss suffered by the Client or any third party arising from or in relation to the Client's hire of the Equipment including any Claim or Loss a result of any and all things arising from the Client's hire of the Equipment and/or the Operator performing the Works including without limitation:

- (a) Authorised or unauthorised operation of the Equipment by the Client's employees, agents, contractors, subcontractors or permitted assigns;
- (b) any personal injury to or death of any person arising from any use of the Equipment or the conduct of the Operators using the Equipment to perform the Works;
- (c) loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property);
- (d) any breach or failure by the Client (including the Client's personnel, permitted assigns, contractors agents, officers and employees) to comply with these terms and conditions;
- (e) any conduct of the Client, including negligent acts or omissions or wilful or reckless disregard of the Client's obligations and duties arising from the hire of the Equipment;

20.2 The provisions of this clause 20, and each and every indemnity, or provision giving rise to any right in favour of CESHire in these terms and conditions is a continuing indemnity, separate and independent from the other indemnities or obligations of a party, and which survives the expiry or completion of any Hire Period and termination of the Hire Contract and/or these terms and conditions.

20.3 It is not necessary for CESHire to incur an expense or make a payment before enforcing any indemnity under these terms and conditions or the Hire Contract.

21. TITLE

21.1 Nothing in these terms and conditions or the Hire Contract gives rise to the Client having any legal title or claim to ownership of the Equipment.

22. SECURITY AND CHARGE

22.1 Despite anything to the contrary contained herein or any other rights which CESHire may have arising from these terms and conditions, upon the Client failing to make payment to CESHire of any amount due and payable within seven (7) days of such amount becoming due and payable:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to CESHire or CESHire's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that CESHire (or CESHire's nominee) shall be entitled to lodge where appropriate an absolute caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should CESHire elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify CESHire from and against all CESHire's costs and disbursements including legal costs on a solicitor and own Client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint CESHire or CESHire's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1 including signing any document on the Client and/or Guarantor's behalf.

22.2 The Guarantor guarantees to CESHire the due and punctual payment of all moneys and performance by the Client of all of its obligations under these terms and conditions and the Hire Contract. This guarantee shall be continuing and shall not be discharged by the winding up of the Client and shall bind the successors and legal personal representatives of the Guarantor.

23. DISPUTE RESOLUTION

23.1 If any dispute arises out of or in connection with the Hire Contract or the interpretation of its terms ("Dispute"), either party cannot commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that party seeks urgent interlocutory relief.

23.2 A party claiming that a Dispute has arisen under or in relation to the Hire Contract or these terms and conditions must give notice in writing to the other party specifying the nature of the Dispute.

23.3 On receipt of that notice by the other party, all of the parties must use all reasonable efforts to expeditiously resolve the Dispute.

23.4 If the parties have not resolved the dispute within fourteen (14) days of receipt of the notice referred to in clause 23.2, or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 23.5 and 23.5(b).

23.5 The arbitrator appointed to resolve the dispute will be:

- (a) either as agreed in writing by the Parties or failing agreement within seven (7) days of a request by any Party to do so, then;
- (b) as appointed by the President for the time being of the Law Society of Western Australia, or his nominee.

23.6 The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.

23.7 Any legal action between the Parties must be commenced in the jurisdiction of Western Australian.

23.8 Despite any other provisions in these terms and conditions, the Client agrees that if it disputes the amount in CESHire's invoice(s) the dispute may be referred a court of competent jurisdiction for determination without further demand or notice to the Client. If the court finds in CESHire's favour, the Client agrees to pay CESHire interest up to the date of judgement.

23.9 The Client also agrees to pay CESHire's legal costs (on a solicitor and own client basis) and debt recovery costs (if applicable).

24. NOTICES

24.1 Unless otherwise stated in the relevant Hire Document, any notice, Invoice or document relating to the Hire Contract is deemed to be served:

- (a) If sent by ordinary pre-paid post addressed to the Client:
 - (i) on the second business day after the date on which it was posted if posted within Western Australia; or
 - (ii) on the seventh business day after the date on which it was posted if posted interstate within Australia;
- (b) on the day on which it was sent – if it is sent by email transmission before or during normal business hours on a business day; or
- (c) on the next business day following the day on which it was

sent – if it is sent by email transmission after normal business hours on a business day or on a day other than a business day.

25. VARIATIONS

25.1 Any purported variation to these terms and conditions by the Client will be of no force and effect unless it is in writing signed by the Client and approved by CESHire's Authorised Representative.

25.2 CESHire may vary these terms and conditions at any time by giving the Client no less than seven (7) days written notice of the changes and the date the changes will take effect.

26. CAPACITY

26.1 Each party represents and warrants to the other that:

- (a) it has the power and authority to enter into the Hire Contract and to perform its obligations under the Hire Documents;
- (b) the execution of the Hire Documents has been properly authorised;
- (c) the Hire Contract constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy;
- (d) it will not represent that it is authorised to act on behalf of the other party, except where expressly authorised to do so in writing; and
- (e) it has and will maintain all licences, authorisations, consents, approvals and permits required by applicable laws and regulatory requirements in order to meet its obligations under the Hire Contract.

26.2 The Client must give CESHire fourteen (14) days written notice of any proposed changes to:

- (a) ownership of the Client;
- (b) the Client's legal entity name, trading or business name(s);
- (c) the nature of the Client's business;
- (d) the contact details for the Client (i.e. principal place of business, registered office address, email addresses etc.)

26.3 CESHire will not be bound by any statement, representation, conduct or any agreement entered into by any person other than CESHire's Authorised Representative.

26.4 Where the Client is a Trustee:

- (a) The Client warrants that it has full power and authority for the benefit purposes and objects of the trust to enter into the Hire Contract on behalf of the trust and that it shall be bound by these terms and conditions both personally and as trustee; and
- (b) The Client confirms that the Trustees shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of any amounts due and payable by the Client in accordance with these terms and conditions.

27. ELECTRONIC TRANSACTIONS

27.1 Anything required to be given in writing, including execution of the Hire Contract, may be done electronically in accordance with the provisions of the *Electronic Transactions Act 2011* (WA) or such other legislation, as amended or replaced from time to time.

28. PRIVACY & CREDIT REPORTING

28.1 CESHire will comply with its statutory obligations under the *Privacy Act 1988* (Cth) (**Privacy Act**) in relation to its dealings with Personal Information (as that term is defined in the Privacy Act).

28.2 The Client agrees for CESHire to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by CESHire.

28.3 The Client agrees that CESHire may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

28.4 The Client consents to CESHire being given a consumer credit report to collect overdue payment on commercial credit.

28.5 The Client agrees that personal credit information provided may be used and retained by CESHire for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or

- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 28.6 CESHire may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 28.7 The information given to the CRB may include:
- (a) personal information as outlined in 28.1 above;
 - (b) name of the credit provider and that CESHire is a current credit provider to the Client
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and CESHire has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of CESHire, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 28.8 The Client shall have the right to request (by e-mail) from CESHire:
- (a) a copy of the information about the Client retained by CESHire and the right to request that CESHire correct any incorrect information; and
 - (b) confirmation that CESHire does not disclose any personal information about the Client for the purpose of direct marketing.
- 28.9 CESHire will destroy personal information upon the Client's request (by e-mail) or if it is no longer required, unless it is required in order to fulfil the obligations of these terms and conditions or is required to be maintained and/or stored in accordance with any Privacy Law.
- 28.10 The Client can make a privacy complaint by contacting CESHire via e-mail. CESHire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 29. GENERAL**
- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 29.2 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.3 These terms and conditions are governed by the laws of Western Australia and the parties submit to the jurisdiction of the courts of Western Australia and any courts having appellate jurisdiction from them.
- 29.4 CESHire may licence, assign or novate all or any part of its rights and/or obligations under this contract without the Client's consent. The Client authorises and appoints CESHire to act as its attorney with respect to any execution of any documents to give effect to any assignment or novation under this clause.
- 29.5 The Client must not license, assign or novate any or all of its rights and/or obligations under the Hire Contract without the prior written consent of CESHire which will not unreasonably be withheld.
- 29.6 If any provision of these terms and conditions is or at any time becomes void or unenforceable, the remaining provisions will continue in full force and effect and the parties agree that the void or unenforceable provisions shall be severed and rendered ineffective so far as possible without affecting the enforceability of the remaining provisions of the Hire Contract.

Schedule 1 – Credit Account Terms & Conditions

The provisions of this Schedule 1 apply in addition to the above General Terms and Conditions in circumstances where the Client hires Equipment on credit provided by CESHire.

30. CREDIT ACCOUNT

- 30.1 CESHire reserves the absolute right to vary, withdraw or put on hold the Client's credit account immediately in the event that the Client is in breach of the Hire Contract or these terms and conditions, and at any time upon 30 days' notice.
- 30.2 The Client must ensure that all details provided in the Credit Account Application are up to date at all times and notify CESHire of any changes as soon as practicable and in any event within fourteen (14) days of becoming aware of any notifiable change.
- 30.3 It is the Client's responsibility to ensure that the Client does not exceed any Approved Credit limit applicable to the Client's Credit Account.
- 30.4 CESHire shall have no liability for any Loss the Client incurs as a result of credit being withheld.

31. ADDITIONAL SECURITY – PERSONAL PROPERTY SECURITIES ACT

- 31.1 As consideration for CESHire approving the hire of Equipment on Credit, the Client agrees to grant additional security as set out in this clause in favour of CESHire to secure payment of the balance of any Approved Credit Account or other Credit granted by CESHire.
- 31.2 Defined terms in the Personal Property Securities Act 2009 (Cth) have the same meaning as the equivalent defined terms in this clause.
- 31.3 The Client acknowledges that these terms and conditions constitute a registrable Security Agreement which creates the following Security Interests in favour of CESHire in the following Collateral for the purpose of securing payments due to CESHire under the Hire Contract and these terms and conditions:
 - (a) a Purchase Money Security Interest in all Goods supplied by the CESHire to the Client from time to time; and
 - (b) a Security Interest in All of Client's Present and After Acquired Personal Property.
- 31.4 The Client accepts, acknowledges and agrees that:
 - (a) the Client waives its rights to receive notification of a Registration by CESHire;
 - (b) Pursuant to section 275(6) of the PPSA, the Client agrees CESHire is not required to disclose to an interested person information pertaining to CESHire's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- 31.5 The Client will:
 - (a) sign any documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) and/or assistance which CESHire may reasonably require to register or amend its Security Interest on the PPSR;
 - (b) indemnify CESHire against any costs the CESHire incurs in perfecting, maintaining and enforcing its Security Interests, its rights under this Agreement or at law generally;
 - (c) procure from any persons considered by the CESHire to be relevant to its security position, such agreement and waivers as CESHire may at any time reasonably require; and
 - (d) not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement in its own favour or in favour of a third party without CESHire's prior written consent.
- 31.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Client agrees, to the extent that s 115(1) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
 - (a) s 95 (notice of removal of accession), to the extent that it requires CESHire to give a notice to the Client;
 - (b) s 96 (when a person with an interest in the whole may retain an accession);
 - (c) s 121(4) (enforcement of liquid assets – notice to grantor);
 - (d) s 125 (obligation to dispose of or retain collateral);
 - (e) s 130 (notice of disposal of collateral), to the extent that it requires CESHire to give a notice to the Client;
 - (f) s 132(3)(d) (contents of statement of account after disposal);
 - (g) s 132(4) (statement of account if no disposal);
 - (h) s 135 (notice of retention of collateral);
 - (i) s 142 (redemption of collateral); and
 - (j) s 143 (reinstatement of security agreement).
- 31.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these terms and conditions apply, the Client agrees, to the extent that s 115(7) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Hire Contract:
 - (a) s 127 (seizure by higher priority parties – notice);
 - (b) s 129(2) and (3) (disposal by purchase);

- (c) s 132 (secured party to give statement of account);
- (d) s 134(2) (proposal of secured party to retain collateral);
- (e) s 135 (notice of retention of collateral);
- (f) s 136(3), (4) and (5) (retaining collateral free of interest); and
- (g) s 137 (persons entitled to notice may object to proposal).