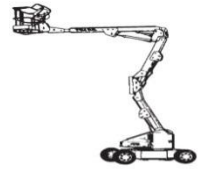




# LEADER ACCESS HIRE

17 LEADER STREET, P.O. BOX 100, SOMERTON, VIC. 3062  
TEL: 9305 3388 FAX: 9308 0199 EMAIL: leaderhire@ozemail.com.au  
ABN: 91 159 319 954



## ACCOUNT APPLICATION

*Please print this document, sign, initial (where indicated) and complete ALL PAGES by hand, scan and return to sender*

### THE APPLICANT

Full Legal Name of Applicant	
Trading Name of Applicant	Year Registered
ACN (if Applicant is a company)	ABN
Is the Applicant trustee of a trust? <input type="checkbox"/> Yes <input type="checkbox"/> No	Trust ABN (if yes)
Trust Name (if yes)	
Credit Limit Sought	
Type of Business	How long has the Applicant operated the business?
Has the Applicant (or any officers / partners / proprietors of the Applicant) at any time been the subject of an insolvency event? (including liquidation, administration, deed of company arrangement, receivership, bankruptcy, debt agreement or personal insolvency agreement) <input type="checkbox"/> Yes <input type="checkbox"/> No	

### APPLICANT CONTACT DETAILS

Trading Address of Applicant		
Suburb	State	Postcode
Postal Address of Applicant [As set out under Trading Address? <input type="checkbox"/> ]		
Suburb	State	Postcode
Registered Office of Applicant (if Applicant is a company)		
Suburb	State	Postcode
Applicant's Phone Number	Applicant's Fax Number	Applicant's Mobile Phone Number
Email Address of Applicant		

ACCOUNTS PAYABLE CONTACT FOR APPLICANT

Name of Accounts Payable Contact			
Email of Accounts Payable Contact			
Accounts Payable Contact Phone Number	Accounts Payable Contact Fax Number		

IF APPLICANT IS A NATURAL PERSON/PERSONS (ie sole trader(s)) – each proprietor/trader to complete

Full Name	Residential Address	Date of Birth	Home Phone Contact	Driver's Licence No

IF APPLICANT IS A COMPANY – each director of the Company to complete

Full Name	Residential Address	Date of Birth	Home Phone Contact	Company Office
				<input type="checkbox"/> Director <input type="checkbox"/> Secretary
				<input type="checkbox"/> Director <input type="checkbox"/> Secretary
				<input type="checkbox"/> Director <input type="checkbox"/> Secretary
				<input type="checkbox"/> Director <input type="checkbox"/> Secretary

APPLICANT TRADE REFERENCES

	Name of Trade Referee	Address	Phone Contact
1			
2			
3			
4			

# Leader Terms and Conditions of Hire

## 1. Definitions

**1.1** For the purposes of these Terms and Conditions:-

**Account Application** means the Leader Access Hire Account Application document completed by the Hirer upon the application with Leader for the hire of Equipment from Leader on credit, as varied by Leader from time to time

**Equipment** includes (but is not limited to) any and all elevated work platforms, vertical and scissor lifts, boom lifts, telehandlers, articles, machinery, motor vehicles and other plant and/or equipment hired by Leader to the Hirer and includes any and all affixed and/ or accompanying accessories.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**Hirer** is

- a. the Person identified in the Account Application as the Applicant requesting the provision by Leader of hire of Equipment on credit; or
- b. otherwise, the Person requesting the hire of Equipment from Leader, either directly or by their employee or agent

**Leader** is Leader Organisation Pty Ltd ACN 159 319 954, trading as Leader Access Hire, including its substitutes, successors and permitted assigns.

**Notice** include any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communications that may be given, or are required to be given, under the Terms and, unless expressly stated otherwise, all Notices must be:

- a. in writing (either by email or post); and
- b. signed — if the party is a company, then the Notice must be signed by the company's directors or solicitors; and
- c. left at an address, sent by prepaid ordinary post, sent by fax, or given in any other way permitted by law; and
- d. take effect from the earlier of the following:-
  - i. the time the Notice is received; or
  - ii. four (4) business days from the date of posting via Australia Post ordinary prepaid post

**Period of Hire** means the period commencing at the date and time that the Equipment is:-

- i. delivered to the Hirer by Leader; or
- ii. collected by the Hirer from Leader (whether from the Leader Address or any other address expressly authorized by Leader in writing); and continuing indefinitely until the date and time that either:-
  - iii. the Equipment is returned by the Hirer to Leader in the same condition (subject to any fair wear and tear) as it was hired (being no less than twenty four (24) hours from the date and time of commencement of the Period of Hire [subject to the exception in Clause 5.2 of the Terms]); or
  - iv. Leader confirms collection of the Equipment pursuant to Clause 3 of the Terms; or
  - v. Leader repossesses the Equipment pursuant to Clause 11.1 of the Terms; or
  - vi. the insurance company (in the event of the Equipment being stolen or damaged beyond repair)

confirms that the Equipment has been stolen or damaged beyond repair; or

- vii. Leader otherwise terminates the hire of the Equipment in writing pursuant to the Terms

**Person** means an individual, corporation, government or governmental agency, estate, trust, partnership, association or other legal or commercial entity or undertaking.

**PPSA** means the *Personal Property Securities Act 2009* (Cth)

**PPSR** means the Personal Property Security Register as defined in the PPSA

**Price List** means Leader's published price list for the hire of the Equipment, as varied by Leader from time to time

**Terms** means these Terms and Conditions of Hire, as varied by Leader from time to time

**The Leader Address** is 17 Leader Street, Somerton in the State of Victoria 3062.

**1.2** In the Terms, unless the context otherwise indicates, a reference to a party includes that party's executors, administrators, successors and permitted assigns.

**1.3** The singular includes the plural and vice versa and any gender includes any other gender.

## 2. Rental of Equipment

**2.1** Leader agrees to rent Equipment to the Hirer for the Period of Hire and pursuant to the Terms

**2.2** In consideration of the rental provided by Leader pursuant to Clause 2.1 of the Terms, the Hirer agrees to pay Leader upon request:-

- a) the relevant rental charge (either at a rate agreed between Leader and the Hirer or otherwise as set out in the Price List) for the Period of Hire of the Equipment hired from Leader pursuant to Clause 2.1 of the Terms; and
- b) any damage waiver fee, pursuant to Clause 8 of the Terms; and
- c) any charges for delivery and/or collection of the Equipment; and
- d) any reasonable costs of fuel and other consumables provided with the Equipment by Leader and consumed by the Hirer; and
- e) any applicable credit card surcharge levied upon Leader for credit card payments made by the Hirer; and
- f) any other duties, stamp duty, fees, outgoings, penalties, fines, demands, tolls, charges or costs imposed by any authority on or in connection with the hire of the Equipment; and
- g) any reasonable cleaning costs incurred as a result of a failure of the Hirer to comply with their obligations under Clause 6.1 d) of the Terms; and
- h) any applicable GST on the items listed in Clause 2.2 a) to g) inclusive above

**2.3** The Hirer agrees that Leader may charge a reasonable cancellation fee where the Hirer:-

- a) books the hire of Equipment with Leader; and
- b) subsequently cancels that hire within twenty four (24) hours of the anticipated commencement of the Period of Hire.

**2.4** For the avoidance of doubt, the Hirer agrees that Leader may render a charge to the Hirer under Clause 2.2 a) of the Terms up to and including the actual end date and time of the Period of Hire for the Equipment, even where the actual end date and time of the

Period of Hire exceeds the originally contemplated end date and time anticipated by Leader and the Hirer at the commencement of the Period of Hire.

## 3. Delivery and Collection of Equipment

**3.1** The time of delivery of the Equipment by Leader will be at the exclusive discretion of Leader.

**3.2** Where delivery of the Equipment is effected by Leader:-

- a) to an address nominated by the Hirer as the delivery address for the Equipment; and
- b) on a date specified by the Hirer as suitable for delivery

and Leader is unable at the time of delivery (after making reasonable enquiries) to either:-

- c) gain access to the address specified by the Hirer under Clause 3.2 a) of the Terms; or
- d) leave the custody of the Equipment with the Hirer or an authorised employee or agent of the Hirer

the Hirer agrees that:-

- e) Leader may effect delivery by leaving the Equipment near or outside the address nominated by the Hirer under Clause 3.2 a) of the Terms; and
- f) delivery pursuant to Clause 3.2 e) of the Terms constitutes delivery of the Equipment for the purposes of determining the commencement of the Period of Hire under the Terms

**3.3** The Hirer agrees to return the Equipment to the Leader Address at the Hirer's expense, unless prior arrangements have been made with Leader for the collection of the Equipment by Leader.

**3.4** Where collection of the Equipment by Leader is arranged by the Hirer pursuant to Clause 3.3 of the Terms, Leader will endeavor to collect the Equipment within a reasonable period of any such request.

**3.5** For the purposes of determining the end of the Period of Hire, provision by Leader to the Hirer of Notice of a pick-up number confirming the date and time of collection of the Equipment will constitute the sole conclusive evidence of collection of the Equipment by Leader.

**3.6** The Hirer accepts liability for the Equipment:-

- a) after delivery is effected by Leader pursuant to Clause 3.2 e) of the Terms; and
- b) at all material times up to the end of the Period of Hire of the Equipment as defined in the Terms (even where the Hirer has otherwise ceased operational use of the Equipment).

## 4. Hirer's Warranties

**4.1** The Hirer warrants to Leader that the Hirer:-

- a) has provided information in the Account Application that is true and correct in every respect and is not misleading in any way (including, but not limited to, any omission in completion of the Account Application by the Hirer);
- b) will provide Notice to Leader (within seven (7) days of such a change) of any change in the structure, management or legal entity of the Hirer specified in the Account Application including (but not limited to) any change in director(s), management, partnership or trustee or change of the trading and/or registered and/or mailing address of the Hirer;
- c) has not relied upon Leader's skill or judgment (or upon any representations made by or on behalf of Leader by their

- agents or employees) in making their selection of the Equipment;
- d) will only use the Equipment for its intended purpose and in accordance with specifications for the Equipment provided by the manufacturer and/or Leader;
  - e) will maintain, store and transport the Equipment with due care and diligence and strictly in accordance with any instructions provided by the manufacturer and/or Leader;
  - f) will (at all material times during the Period of Hire) only allow the Equipment to be operated by individuals properly and validly authorised, licensed and certified to use the Equipment (including, but not limited to, valid and current holders of required driver's licenses, operator's licenses or certificates of competency for the Equipment);
  - g) holds and will continue to hold at all material times during the Period of Hire (including for transportation of the Equipment) current policies of insurance relevant to the possession and operation of the Equipment (including, but not limited to, worker's compensation insurance and public liability insurance);
  - h) will not permit operation of the Equipment by anyone other than the Hirer without the express written permission of Leader;
  - i) will strictly comply with all relevant Commonwealth, State and Local Government occupational health and safety laws and regulations relating to the proper operation and use of the Equipment;
  - j) will not use the Equipment (nor make the Equipment available for use by any other party) for any illegal purpose;
  - k) will not repair, alter or modify the Equipment in any way (nor permit another party to repair, alter or modify the Equipment) without the prior written consent of Leader;
  - l) will not remove the Equipment from the State of Victoria without the prior express written consent of Leader;
  - m) will report any damage to and/or loss of the Equipment to Leader immediately upon becoming aware of such damage or loss;

#### **5. Leader's Warranties**

**5.1** The Hirer will fully examine the Equipment at the commencement of the Period of Hire for the purposes of determining if the Equipment provided by Leader is of acceptable quality and fit for the Hirer's purposes

**5.2** Insofar as the Hirer (upon conducting the inspection defined in Clause 5.1 of the Terms) determines that the Equipment is not of acceptable quality and/or not fit for the Hirer's purpose, the Hirer must immediately:-

- a) terminate use of the Equipment; and
- b) return the Equipment to the Leader Address or arrange for collection of the Equipment by Leader; and
- c) provide Notice to Leader of the basis upon which the Hirer asserts that the Equipment is not of acceptable quality and/or fit for purpose

**5.3** Insofar as Leader determines (in their absolute discretion and upon compliance by the Hirer with Clause 5.2 of the Terms) that the Equipment returned by the Hirer is not of acceptable quality and/or fit for purpose, Leader warrants to provide the Hirer with a suitable replacement for the Equipment

**5.4** If the Hirer:-

- a) retains the Equipment following the inspection detailed in Clause 5.1 of the Terms; or
- b) the steps detailed in Clause 5.2 of the Terms are not undertaken by the Hirer

within twenty four (24) hours following the commencement of the Period of Hire of the Equipment

then the Hirer acknowledges and agrees that the Hirer has accepted the Equipment as being of acceptable quality and fit for the Hirer's purposes

**5.5** Subject to Clauses 5.1 – 5.3 and any statutory rights which cannot be excluded by Leader (including under the Australian Consumer Law), all warranties, conditions, guarantees and terms in relation to the state, quality or fitness of the Equipment and of every other kind whether expressed or implied by use, statute or otherwise are expressly excluded by Leader.

#### **6. Hirer's Obligations**

**6.1** The Hirer agrees that, during the Period of Hire of the Equipment, they will:-

- a) use the Equipment in a skillful and professional manner at all times;
- b) not misuse the Equipment;
- c) not use or permit the use of the Equipment in an illegal manner (including by the Hirer's servants, employees or agents);
- d) keep the Equipment clean and free of all foreign matter at all times (at the Hirer's own expense);
- e) maintain the Equipment in good repair and condition;
- f) indemnify Leader for:-
  - i. any breach of the Terms committed by the Hirer's servants, employees or agents; and
  - ii. any injury and/or fatality arising from the Hirer's possession, use, maintenance, storage or transport of the Equipment.

#### **7. Payment by the Hirer for Rental of the Equipment**

**7.1** Leader will render a tax invoice to the Hirer setting out the applicable charges arising (pursuant to Clause 2.2 of the Terms) for the rental of the Equipment by Leader to the Hirer (pursuant to Clause 2.1 of the Terms)

**7.2** Any tax invoice rendered by Leader to the Hirer (pursuant to Clause 7.1 of the Terms) is due and payable and must be paid in full and without deduction by the Hirer:-

- a) thirty (30) days from the end of month in which the invoice is rendered (where the Hirer holds a current Account Application with Leader); or
- b) prior to or on the commencement of the Period of Hire for the Equipment (in all other instances)

**7.3** Where any tax invoice is:-

- a) rendered by Leader to the Hirer (pursuant to Clause 7.1 of the Terms); and
- b) any amount remains unpaid at the expiration of the relevant time period set out in Clause 7.2 of the Terms

the Hirer agrees that Leader may charge interest (calculated daily) at the rate set under the *Penalty Interest Rates Act 1983 (Vic)* (as varied from time to time) plus two (2) per cent on the unpaid amount.

#### **8. Damage Waiver Fee**

**8.1** Where the Hirer has made payment of the relevant damage waiver fee for the Equipment (and subject to Clause 8.2 of the Terms), Leader agrees to be responsible for the costs of repairs to and/or replacement of the Equipment for the Period of Hire.

**8.2** For the avoidance of doubt, the liability of Leader under Clause 8.1 of the Terms:-

- a) pertains only:-
  - i. to the Equipment against which the Hirer has paid the damage waiver fee; and
  - ii. for the Period of Hire of the Equipment; and

iii. where use of the Equipment by the Hirer fully and strictly complies with the Terms; and

b) is expressly excluded where the relevant repair and/or replacement sought by the Hirer relates to or arises directly or indirectly from:-

- i. any breach of Commonwealth, State or Local Government law, statute or regulation by the Hirer and/or their servants, employees or agents;
- ii. any misuse or abuse of the Equipment or willful or malicious act(s) against the Equipment by the Hirer and/or their servants, employees or agents;
- iii. any negligent and/or reckless use and/or overloading of the Equipment by the Hirer and/or their servants, employees or agents;
- iv. theft, loss or damage to tools and/or accessories supplied by Leader to the Hirer with the Equipment (including, but not limited to, hoses, drills, bits, grease guns, electric leads, tyres and tubes);
- v. failure by the Hirer to apply recommended lubrication to the Equipment during the operation period of the Equipment;
- vi. the failure of the Hirer to otherwise adhere to ordinary maintenance requirements that could otherwise be reasonably expected given the nature of the Equipment and the operation period of the Equipment;
- vii. any other act(s) that would otherwise void an insurance claim by Leader on the Equipment

**8.3** Other than as provided for in Clause 8.1 of the Terms, the Hirer agrees to otherwise be responsible for all loss or damage to the Equipment during the Period of Hire irrespective of the cause of the loss or damage (save for genuine fair wear and tear to the Equipment)

**8.4** The Hirer agrees that nothing in Clause 8.1 of the Terms is to be construed as an agreement by Leader to pay any compensation, damages or loss occasioned or alleged to have been occasioned whatsoever by the Hirer, either resulting from the repairs to and/or replacement of the Equipment or otherwise

#### **9. Ownership of the Equipment**

**9.1** The Hirer acknowledges and agrees that Leader and/or its associated entities retain title to the Equipment and any possession of the Equipment by the Hirer is as a mere bailee only

**9.2** The Hirer further acknowledges that they will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, on-hire or otherwise part with or attempt to part with the personal possession of the Equipment or otherwise deal with the Equipment, nor to conceal or alter the nature of the Equipment

#### **10. Indemnity**

**10.1** The Hirer agrees to indemnify Leader against any claim or loss arising from or related in any way to any dealing between Leader and the Hirer or anything arising as a result of any breach of the Terms

#### **11. Termination and Recovery by Leader upon Default**

**11.1** In the event that the Hirer commits any event of default under the Terms, the Hirer agrees that Leader may elect at their discretion to do any or all of the following:-

- a) immediately terminate the hire of the Equipment;
- b) repossess the Equipment from the Hirer;
- c) commence recovery action against the Hirer (including, but not limited to, mercantile agent recovery action, legal proceedings and lodgment of notifications

- or registrations of security against real or personal property) for any unpaid monies or amount(s) due and payable to Leader, either under the Terms or otherwise;
- d) terminate the future provision of hire on credit under the Account Application without liability to the Hirer or any third party

**11.2** For the purposes of Clause 11.1 of the Terms, an event of default includes (but is not limited to):-

- a) any failure whatsoever by the Hirer to pay any tax invoice rendered by Leader (pursuant to Clause 7.1 of the Terms) within the relevant payment terms applicable to that tax invoice (pursuant to Clause 7.2 of the Terms);
- b) any breach whatsoever by the Hirer of:-
  - i. the Hirer's Warranties (pursuant to Clause 4 of the Terms); or
  - ii. the Hirer's Obligations (pursuant to Clause 6 of the Terms); or
  - iii. Clause 9.2 of the Terms
- c) any commission by the Hirer of an insolvency event (including, but not limited to):-
  - i. non-compliance by the Hirer with a creditor's statutory demand or bankruptcy notice (whether served by Leader or otherwise);
  - ii. the filing against the Hirer of any winding up proceedings or creditors petition;
  - iii. the filing by the Hirer of a debtors petition;
  - iv. the proposition of or making of any deed of company arrangement, debt agreement or personal insolvency agreement by the Hirer (or any other arrangement or composition with the creditors of the Hirer affecting the rights of Leader);
  - v. the making of a winding up order or sequestration order against the Hirer; or
  - vi. any appointment of a receiver, manager, administrator, liquidator or trustee in bankruptcy to the affairs of the Hirer
- d) any failure of the Hirer to surrender the Equipment at the completion of the Period of Hire (upon provision of Notice by Leader requesting same)

**11.3** The Hirer agrees that Leader may exercise any or all of their rights under Clause 11.1 of the Terms notwithstanding that the Period of Hire for the Equipment previously agreed between Leader and the Hirer may not have otherwise ended

**11.4** For the purposes of effecting repossession of the Equipment under Clause 11.1 b) of the Terms, the Hirer agrees that:-

- a) Leader may lawfully enter into or upon any premises where the Equipment may be located to recover the Equipment from the Hirer;
- b) the Hirer will indemnify Leader for any costs and/or damages to any third party however caused arising from the collection of the Equipment; and
- c) any such recovery and determination of the Period of Hire will not prejudice the rights of Leader to further recover from the Hirer any additional claims, damages or expenses arising out of default of the Hirer or otherwise under the Terms

**11.5** In the event that Leader commences any action whatsoever under Clause 11.1 of the Terms, the Hirer agrees to indemnify Leader for all costs and expenses incurred by Leader and its Australian legal practitioners, mercantile agents and other parties acting on Leader's behalf in respect of anything instituted or

considered against the Hirer (including, but not limited to, costs of repossession of the Equipment, recovery of outstanding debt to Leader or otherwise)

## **12. Charge**

**12.1** To secure the Hirer's obligations to Leader under the Account Application and/or the Terms, the Hirer charges in favour of Leader all their estate or interest in any freehold or leasehold land wherever situated which the Hirer now has or may subsequently acquire.

## **13. Privacy Act**

**13.1** The Hirer consents and agrees to Leader (subject to Leader's obligations under the Privacy Act 1988 (Cth)) collecting, using and/or disclosing commercial and/or consumer information about the Hirer relating to (but not limited to):-

- a) the identity, credit history and solvency of the Hirer; and
- b) an assessment of the creditworthiness and risk of the Hirer for the purposes of enforcement of Leader's rights
- c) the seeking from or provision to a Credit Reporting Agency of personal information about the Hirer; and
- d) the contacting of any trade references or other credit providers and acquisition from them or provision to them of personal information in relation to the Hirer and its credit worthiness.

**13.2** The execution of the Account Application by the Hirer may be produced as conclusive evidence of the Hirer's consent to the matters set out in Clause 13.1

## **14. Force Majeure**

**14.1** If Leader is unable to perform (in whole or in part) any obligation under these Terms by reason of any fact, circumstance, matter or thing beyond the reasonable control of Leader:-

- a) Leader is relieved of that obligation under the Terms to the extent and for the period that it is unable to perform such obligation; and
- b) Leader will not be liable to the Hirer or any other party for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.

## **15. No Waiver**

**15.1** No delay by Leader in exercising any right or power under the Account Application or the Terms will operate as a waiver of that right or power.

**15.2** No single or partial exercise by Leader of any right or power under the Account Application or the Terms will preclude any other or further exercise of that right or power

## **16. Credit Limit**

**16.1** Any credit limit specified in the Account Application is an indication only of Leader's intention at the time of entering the Account Application.

**16.2** Leader may (at their absolute discretion) vary or withdraw the credit limit specified in the Account Application at any time without any liability to the Hirer or any other party

## **17. Review of Terms and Conditions**

**17.1** Leader reserves the right to review the Terms at any time.

**17.2** If there is to be any change to the Terms following any such review, the Hirer agrees that the relevant amendments will take effect from the date on which Leader notifies the Hirer of such change.

## **18. Entire Agreement**

**18.1** The Hirer agrees that the Terms:-

- a) shall apply to the exclusion of all others, including any terms and conditions of the Hirer; and
- b) constitute the whole agreement between the parties, unless otherwise agreed in writing.

## **19. Rights of Third Parties**

**19.1** The Terms do not, and are not intended to, confer any rights or remedies upon any person other than Leader and the Hirer.

## **20. Severability**

**20.1** If any provision of the Terms are prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Terms and rendered ineffective as far as possible without modifying the remaining provisions of the Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of the Terms.

## **21. Payment Claim**

**21.1** The parties agree that any invoicing issued by Leader under Clause 7 of the Terms constitutes a payment claim for the purposes of the *Building and Construction Industry Security of Payment Act 2002* (Vic)

## **22. PPSA**

**22.1** The Hirer grants a security interest (as defined in the PPSA) to Leader registrable on the PPSR in respect of any security interest arising under the Account Application and/or the Terms.

**22.2** For any security interest arising under the Account Application and/or the Terms, the parties agree that:-

- a) the Account Application and the Terms constitutes the security agreement; and
- b) the collateral is any of the Equipment hired by Leader to the Hirer after the Account Application is signed, adopted or accepted by the Hirer

**22.3** The Hirer may not, without Leader's consent, do or agree to do any of the following in respect of the collateral (as defined in 22.2 b) above):-

- a) sell, assign or otherwise dispose of the collateral;
- b) lease or license the collateral;
- c) part with possession of the collateral, other than by giving possession to Leader;
- d) change the nature of the collateral;
- e) move the collateral outside Australia;
- f) deal in any other way with the collateral or any interest in it, or allow any interest in it to arise or be varied (including, but not limited to, any further security interest under the PPSA)

**22.4** If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest created under Clause 22.1, the parties agree that (to the extent that the PPSA allows) that the following PPSA provisions will not apply to the enforcement of the security interest:-

- a) s.95 (to the extent that it requires Leader to give notice to the Hirer); s.96; s.121(4); s.125; s.127; s.129(2) and (3); s. 130; s.132; s. 132(3)(d); s.132(4); s.134(2); s. 135; s.136(3),(4),(5); s.137; s.142; s.143

**22.5** The Hirer waives their right to receive a verification statement under s.157 of the PPSA

## **23. Applicable Law**

**23.1** This agreement will be governed by and construed and interpreted in accordance with the laws of the State of Victoria.

**23.2** The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the state of Victoria.

PLEASE READ AND TICK EACH BOX BELOW PRIOR TO EXECUTION OF THE AGREEMENT

In executing this document, the Hirer agrees that:-

- they have received a copy of the current Leader Terms and Conditions of Hire
- they have had adequate opportunity to read and consider the Leader Terms and Conditions of Hire prior to execution of the Leader Access Hire Account Application
- where the Hirer had any queries regarding their responsibilities under the Leader Terms and Conditions of Hire, they have been advised to seek their own independent legal advice; and
- they otherwise understand and accept the conditions placed upon the Hirer under the Leader Terms and Conditions of Hire and the consequences placed upon the Hirer in the event of a default
- they warrant pursuant to the Leader Terms and Conditions of Hire that the Equipment hired must only be operated by individuals properly and validly authorized, licensed and certified to use the Equipment, according to all applicable laws (including, but not limited to, valid and current holders of required driver's licenses, operator's licenses or certificates of competency for the Equipment)

**EXECUTED AS AN AGREEMENT**

Signed by the Applicant (or, where the Applicant is a company, signed by the Applicant in accordance with s.127 of the *Corporations Act 2001* (Cth))

<div style="border: 1px solid black; width: 90%; margin: 10px auto; text-align: center;">(Applicant / Director 1 Print Name)</div>	)	)	<p>..... Signature</p> <p>Date:</p>
--	---	---	---

<div style="border: 1px solid black; width: 90%; margin: 10px auto; text-align: center;">(Applicant / Director 2 / Secretary Print Name)</div>	)	)	<p>..... Signature</p> <p>Date:</p>
--	---	---	---

<div style="border: 1px solid black; width: 90%; margin: 10px auto; text-align: center;">(Applicant Print Name)</div>	)	)	<p>..... Signature</p> <p>Date:</p>
---	---	---	---

**THIS IS AN IMPORTANT DOCUMENT- LEGAL ADVICE SHOULD BE OBTAINED**

Each guarantor should seek their own independent legal and/or financial advice on this document, as it may make them personally liable for the debts of the Hirer.

In executing this Deed of Guarantee and Indemnity, each guarantor agrees that they have otherwise read and understood each term of this document.

**DEED OF GUARANTEE AND INDEMNITY**

**GUARANTOR 1**

(Name)

(Address)

<input type="text"/>	<input type="text"/>
----------------------	----------------------

(State)

(Postcode)

<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------

(Home Phone)

(Work Phone)

(Mobile)

**GUARANTOR 2**

(Name)

(Address)

<input type="text"/>	<input type="text"/>
----------------------	----------------------

(State)

(Postcode)

<input type="text"/>	<input type="text"/>	<input type="text"/>
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(Home Phone)

(Work Phone)

(Mobile)

**GUARANTOR 3**

(Name)

(Address)

<input type="text"/>	<input type="text"/>
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(State)

(Postcode)

<input type="text"/>	<input type="text"/>	<input type="text"/>
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(Home Phone)

(Work Phone)

(Mobile)



AND

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(Company / Individual(s) Name)

--	--

(ACN)

(ABN)

("Hirer")

**OPERATIVE PROVISIONS**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Guarantee, including the background, unless the context otherwise requires:

- a) **Account Application** means the Leader Access Hire Account Application document completed by the Hirer upon the application with Leader for the hire of Equipment from Leader on credit, as varied by Leader from time to time
- b) **Hirer** means the legal entity identified in the Account Application as the Applicant for the provision of hire of Equipment by Leader on credit under the Account Application
- c) **Hirer's Obligations** means the due and punctual observance and performance by the Hirer of all its liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to Leader arising under or in connection with the Account Application and/or the Terms.
- d) **Guarantee** means this guarantee and indemnity.
- e) **Terms** means the Leader Terms and Conditions of Hire attached to the Account Application, as varied by Leader from time to time

**1.2 Interpretation**

In this Guarantee, including the background, unless the context otherwise requires:

- a) a singular word includes the plural and vice versa;
- b) words denoting individuals or entities include corporations, authorities, government and governmental agencies, and vice versa;
- c) words which suggest one gender include the other gender;
- d) headings are for convenience only and do not affect interpretation;
- e) reference to background, clauses and schedules are references to background, clauses and schedules of or to this Guarantee; and
- f) references to any agreement or document include that agreement or document as amended, novated, supplemented or replaced from time to time.

**2 Guarantee**

In consideration of Leader entering into the Account Application at the Guarantor's request, the Guarantor unconditionally guarantees the Hirer's Obligations.

**3 Nature of Guarantee**

This Guarantee:

- a) is a principal obligation and is not ancillary or collateral to any other right or obligation however created or arising;
- b) may be enforced against the Guarantor without Leader first being required to exhaust any remedy it may have against the Hirer or to enforce any security it may hold relating to the Hirer's Obligations;
- c) is a continuing guarantee for the whole of the Hirer's Obligations; and
- d) is absolute, unconditional and irrevocable, and remains

in full force and effect until the Hirer's Obligations have been irrevocably discharged in full despite any transaction or other thing (including a settlement of account or intervening payment).

**4 Interest**

- 4.1 The Guarantor must pay interest at the rate specified below on each part of the Hirer's Obligations which is a monetary amount from time to time owing under this Guarantee that is not paid when due, from the day on which it falls due.
- 4.2 Interest on any amounts referred to in paragraph 4.1 of this Guarantee accrues each day at the same rate and in the same manner as the Hirer is required to pay interest in respect of the Hirer's Obligations under the Account Application and the Terms both before and (as a separate, independent obligation) after any judgment.

**5 Guarantor's liability absolute**

- 5.1 The liability of the Guarantor is absolute and is not affected by any circumstance, act, omission, matter or thing which, but for this provision, might otherwise affect it at law or in equity.
- 5.2 Leader is under no obligation to marshal in favour of the Guarantor any security now or in the future held by Leader or any funds or assets that Leader may be entitled to receive or claim.
- 5.3 This Guarantee extends to cover the Account Application as amended, varied or replaced, either with or without the consent of the Guarantor.

**6 Limitations on Guarantor's rights**

Until the Hirer's Obligations have been irrevocably performed in full the Guarantor will not:

- a) be entitled to share in any security held or money received by Leader or exercise any right of subrogation to Leader in respect of any security or money;
- b) take any steps to enforce a right or claim against the Hirer in respect of any money paid by the Guarantor to Leader under this Guarantee; or
- c) exercise any rights as surety in competition with Leader.

**7 Insolvency of Hirer**

If the Hirer becomes insolvent, the Guarantor authorises Leader to prove for all moneys which the Guarantor has paid under this Guarantee and to retain and to carry into a suspense account and appropriate at the discretion of Leader any dividends received in the liquidation, bankruptcy or other insolvency of the Hirer and other moneys received in relation to the Hirer's Obligations until the Hirer's Obligations have been irrevocably performed in full.

**8 Settlement, discharge or release**

If an amount is applied against any of the Hirer's Obligations and Leader forms the opinion in good faith that it is obliged to pay the amount paid by the Guarantor to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- a) Leader's rights are to be reinstated and will be the same in relation to that amount as if the application or the payment or transaction giving rise to it, had not



been made; and

- b) the Guarantor must immediately do anything (including the signing of documents) required by Leader to restore to Leader any guarantee or security to which it was entitled immediately before that application or the payment or transaction giving rise to it.

**9 Indemnity**

If the whole or any part of the Hirer's Obligations are not enforceable against the Hirer by Leader for any reason whatsoever, and the Hirer's Obligations are not enforceable against the Guarantor as a surety, then:

- a) the Guarantor, as a separate and severable liability under this Guarantee, unconditionally and irrevocably indemnifies Leader in respect of the Hirer's Obligations;
- b) as a principal debtor, the Guarantor agrees to pay Leader, when demanded in writing, a sum equal to the amount of the moneys due and payable under to the Hirer's Obligations, or the losses and expenses of Leader resulting from the failure to perform the Hirer's Obligations; and
- c) for the purposes of this indemnity, this clause must be construed as if the moneys payable under the Hirer's Obligations were recoverable and the terms of this Guarantee apply as far as possible to this indemnity.

**10 Security**

10.1 To secure the obligations of the Guarantor to Leader under the Guarantee (including, but not limited to, the Hirer's Obligations), the Guarantor charges in favour of Leader all their estate or interest in any freehold or leasehold land wherever situated which the Guarantor now has or may subsequently acquire.

10.2 The Guarantor:-

- a) must not take, without the written consent of Leader, any security from the Hirer for or in connection with this Guarantee;
- b) must hold any security it does take from the Hirer in trust for Leader and as security for the liability to Leader under this Guarantee.

**11 Joint and Several Guarantee**

Where this Guarantee is given by more than one person, the obligations on the part of the Guarantor contained in this Guarantee take effect as joint and several obligations and references to the Guarantor take effect as references to those persons or any of them. This Guarantee binds each of the persons executing it notwithstanding that any Guarantor does not execute, or is not or ceases to be bound by this Guarantee, or Leader does not execute or only subsequently executes this Guarantee. A release by Leader of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.

**12 Leader's calculation**

A statement by an authorised representative of Leader as to the amount for the time being owing by the Hirer or the Guarantor to Leader or as to the interest from time to time payable is prima facie proof of the amount and/or interest owing at that time.

**13 Expenses**

The Guarantor must indemnify Leader against all reasonable expenses incurred by Leader in connection with the entry into, enforcement of, or the preservation of any rights under, this Guarantee including Leader's costs of debt collection, commission on debt collection, legal expenses on a full indemnity basis and any stamp duty.

**14 Assignment**

Leader may dispose of, declare a trust over, or otherwise create an interest in its rights under this Guarantee without the consent of any other party.

**15 Notices**

Any demand, notice or other communication under this Guarantee must be made in writing and signed, and may be sent to the addressee either by hand, mail, email or fax. If it is sent by email, it is taken to have been received upon successful transmission of the email. If it is sent by mail, it is taken to have been received either upon receipt or on the fourth business day following the day it is posted (whichever is earlier). If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and legible form.

**16 Waivers, remedies cumulative**

- 16.1 No failure or delay by Leader in exercising any right or remedy under this Guarantee 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.
- 16.2 The rights and remedies provided to Leader in this Guarantee are cumulative and are not exclusive of any rights or remedies provided by law.

**17 Governing law and jurisdiction**

- 17.1 This Guarantee is governed by and will be construed in all respects in accordance with the law of the State of Victoria.
- 17.2 The Guarantor submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria in respect of any proceedings in connection with this Guarantee.

**18 Severability of provisions**

Any provision in this Guarantee which is prohibited or unenforceable is to be severed to the extent necessary to make this Guarantee enforceable, unless it would materially change the intended effect of this Guarantee.

**SIGNED SEALED AND DELIVERED BY THE GUARANTOR(S) AS A DEED**

<p><b>SIGNED SEALED &amp; DELIVERED BY</b> )</p> <div style="border: 1px solid black; width: 80%; margin: 5px auto; text-align: center; padding: 2px;"> <p>(Print Name)</p> </div> <p>)</p>	<p>.....</p> <p>Signature</p>
<p>in the presence of:</p>	<p>Date:</p>
<p>.....</p> <p>Signature of witness</p>	
<p>.....</p> <p>Print name of witness</p>	

**SIGNED SEALED & DELIVERED BY**

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(Print Name)

in the presence of:

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Signature

Date:

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Signature of witness

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Print name of witness

**SIGNED SEALED & DELIVERED BY**

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in the presence of:

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Signature

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Signature of witness

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