

GENERAL TERMS AND CONDITIONS AND SECURITY AGREEMENT

IN CONSIDERATION of Logistic Carters Australia Pty Ltd ACN 662 340 678 ABN 50 662 340 678 (hereinafter referred to as "LCA") providing commercial credit facilities to the party completing the application (hereinafter referred to as "the Client") annexed to these conditions:

- (i) "LCA" means Logistic Carters Australia Pty Ltd ACN 662 340 678 ABN 50 662 340 678, its successors and assigns or any person acting on behalf of and with the authority of Logistic Carters Australia Pty Ltd ACN 662 340 678 ABN 50 662 340 678.
- (ii) The Client acknowledges and agrees that the following applies to and forms part of any contract for the supply of Services and/or Goods provided by LCA and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Client. Any request from the Client to LCA for the supply of Services and/or Goods shall constitute acceptance of these general terms and conditions.
- (iii) The Client acknowledges that where the Client consists of more than one party or entity, liability shall be joint and several.
- (iv) These terms and conditions, including any Credit Limits set by LCA, are effective from the date of acceptance by the Client and may be amended or superseded from time to time by notice given by LCA by any means. Unless or except specifically excluded herein, LCA and the Client retain any rights and remedies available to them in any prior or pre-existing agreement.
- (v) "Services" means all Services and/or Goods supplied by LCA to the Client, or ordered by the Client but not yet supplied, and includes Services and/or Goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which LCA may intend to register a Security Interest and where the context so permits the terms "Services" and "Goods" shall be interchangeable for other.
- (vi) "Price" shall mean the cost of the Services and Goods as referred to in LCA's price lists, prepared quotes & or specific arrangements and shall be subject to change from time to time without notice.

1 Personal Property Securities Act (2009)

- 1.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 1.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Services and/or Goods and/or collateral account – being a monetary obligation of the Client to LCA for Services and/or Goods – that have previously been supplied and that will be supplied in the future by LCA to the Client.
- 1.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which LCA may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 1.3(a)(i) or 1.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, LCA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of LCA;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of LCA;
 - (e) immediately advise LCA of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 1.4 LCA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 1.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 1.6 The Client waives its rights as a Grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 1.7 Unless otherwise agreed to in writing by LCA, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 1.8 The Client shall unconditionally ratify any actions taken by LCA under clauses 1.3 to 1.5.
- 1.9 Subject to any express provisions to the contrary (including those contained in this clause 1) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

2 Privacy

- 2.1 The Client agrees for LCA 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 LCA.
- 2.2 The Client agrees that LCA 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.
- 2.3 The Client consents to LCA being given a consumer credit report to collect overdue payment on commercial credit.
- 2.4 The Client agrees that personal credit information provided may be used and retained by LCA for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 2.5 LCA 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.
- 2.6 The information given to the CRB may include:
 - (a) personal information as outlined in 2.1 above;
 - (b) name of the credit provider and that LCA 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 LCA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of LCA, 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).
- 2.7 The Client shall have the right to request (by e-mail) from LCA:
 - (a) a copy of the information about the Client retained by LCA and the right to request that LCA correct any incorrect information; and
 - (b) that LCA does not disclose any personal information about the Client for the purpose of direct marketing.
- 2.8 LCA 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 this contract or is required to be maintained and/or stored in accordance with the law.
- 2.9 The Client can make a privacy complaint by contacting LCA via e-mail. LCA 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.

3 Price and Payment

- 3.1 At LCA's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by LCA to the Client in respect of Services performed or Goods supplied; or

- (b) LCA's quoted Price (subject to clause 3.2) which shall be binding upon LCA provided that the Client shall accept LCA's quotation in writing within thirty (30) days of the date of the quotation.
- 3.2 LCA reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is required due to Goods not being ready at pick up, driver's difficulty with access or inclement weather; or
- (b) in the event of increases to LCA in the cost of Goods which are beyond LCA's control.
- 3.3 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by LCA, which is:
- (a) For regular account Clients, not later than thirty (30) days from invoicing;
- (b) For occasional Clients, payment upon delivery.
- 3.4 Payment must be made by either cash, bank cheque, electronic online banking.
- 3.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by LCA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to LCA an amount equal to any GST LCA must pay for any supply by LCA under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4 Default and Consequences of Default**
- 4.1 LCA reserves the right to suspend or withdraw credit facilities for any reason and at any time without notice.
- 4.2 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month and interest shall be calculated monthly at such a rate after as well as before any judgment.
- 4.3 If the Client owes LCA any money the Client shall indemnify LCA from and against all costs and disbursements incurred by LCA in recovering the debt including but not limited to internal administration fees, collection agent commission, legal costs on a solicitor and own Client basis, LCA's contract default fee, and bank dishonour fees.
- 4.4 Further to any other rights or remedies LCA may have under this contract, if a Client has made payment to LCA, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by LCA under this clause 4 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 4.5 Without prejudice to LCA's other remedies at law LCA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to LCA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to LCA becomes overdue, or in LCA's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by LCA;
- (c) the Client becomes insolvent or bankrupt, 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; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 5 Security and Charge**
- 5.1 In consideration of LCA agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 5.2 The Client indemnifies LCA from and against all LCA's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising LCA's rights under this clause.
- 5.3 The Client irrevocably appoints LCA and each director of LCA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 5 including, but not limited to, signing any document on the Client's behalf.
- 6 Title**
- 6.1 LCA and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid LCA all amounts owing to LCA; and
- (b) the Client has met all of its other obligations to LCA.
- 6.2 Receipt by LCA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 6.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 6.1:
- (a) the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to LCA on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for LCA and must pay to LCA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the production of these terms and conditions by LCA shall be sufficient evidence of LCA's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with LCA to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for LCA and must pay or deliver the proceeds to LCA on demand.
- (e) the Client should not convert or process the Goods or intermix them with other Goods but if the Client does so then the Client holds the resulting product on trust for the benefit of LCA and must sell, dispose of or return the resulting product to LCA as it so directs.
- (f) unless the Goods have become fixtures the Client irrevocably authorises LCA to enter any premises where LCA believes the Goods are kept and recover possession of the Goods.
- (g) LCA may recover possession of any Goods in transit whether or not delivery has occurred.
- (h) The Client will not charge or grant an encumbrance on Goods or give away any interest in the Goods while they remain the property of LCA.
- (i) LCA may start proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 7 Delivery**
- 7.1 LCA shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control, or if delivery is expressly requested and the address, date and time is arranged, in the event of Goods being delivered to an unattended address.
- 7.2 LCA is not a common carrier and therefore should any delay be caused either at pick up or upon delivery and any such delay lasts for longer than 1 hour then for every hour or part thereof the Client will be charged at \$120.00 per hour per Trailer Plus GST.
- 7.3 All times and dates specified for delivery are an estimate only.
- 7.4 The cost of any re-delivery and or storage of Goods will be at the Client's expense.
- 8 Cancellation**
- 8.1 Without prejudice to any other remedies LCA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions LCA may suspend or terminate the supply of Goods to the Client.
- 8.2 There will be no cancellation for specifically ordered Goods.
- 8.3 LCA will not be liable to the Client for any loss or damage the Client suffers because LCA has exercised its rights under this clause.
- 8.4 LCA may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Services are commenced by giving written notice to the Client. On giving such notice LCA shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to LCA for Services already performed. LCA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8.5 In the event that the Client cancels the delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by LCA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 8.6 Cancellation of orders for manufactured Goods made to the Client's specifications, or for non stock list items, will definitely not be accepted once production has commenced, or an order has been placed and a holding fee for such Goods will be charged to and payable by the Client.

9 Jurisdiction

- 9.1 This agreement shall be construed in accordance with laws of the State of South Australia and, where applicable the Commonwealth of Australia and the Client submits to the non-exclusive jurisdiction of the courts in South Australia.
- 9.2 LCA shall have the exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

10 Acceptance

- 10.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.
- 10.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and LCA.
- 10.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

11 Errors and Omissions

- 11.1 The Client acknowledges and accepts that LCA shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by LCA in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by LCA in respect of the Services.
- 11.2 In the event such an error and/or omission occurs in accordance with clause 11.1, and is not attributable to the negligence and/or willful misconduct of LCA; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

12 Change in Control

- 12.1 The Client shall give LCA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, email address, change of trustees or business practice). The Client shall be liable for any loss incurred by LCA as a result of the Client's failure to comply with this clause.

13 Access

- 13.1 The Client shall ensure that LCA has clear, free and suitable access to enable delivery of Goods by laden trucks.

14 Service of Notices

- 14.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 14.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

15 Trusts

- 15.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not LCA may have notice of the Trust, the Client covenants with LCA as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of LCA (LCA will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

16 Force Majeure

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, COVID-19 pandemic or any other event beyond the reasonable control of either party.

17 Terms Specifically Applicable to the Hire of Goods Only

17.1 Hire Period:

- (a) the Hire Period shall commence from the time the Goods depart from LCA's premises, and will continue until the return of the Goods to LCA's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Client requests an extension of the Hire Period.
- (b) the date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- (c) no allowance whatever can be made for time during which the Goods are not in use for any reason, unless LCA confirms special prior arrangements in writing. In the event of breakdown of the Goods, provided the Client notifies LCA immediately, hire charges will not be payable during the time the Goods are not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

17.2 Client's Obligations:

- (a) The Client shall:
 - (i) satisfy itself on Delivery that the Goods are suitable for its purposes;
 - (ii) maintain the Goods as is required by LCA;
 - (iii) notify LCA immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Goods. The Client is not absolved from the requirements to safeguard the Goods by giving such notification.
 - (iv) use the Goods safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by LCA or posted on the Goods;
 - (v) keep the Goods in their own possession and control and shall not assign the benefit of this hire contract nor be entitled to take a lien, or grant any encumbrance over the Goods. This does not prevent the employees of the Client using the Goods;
 - (vi) not alter or make any additions to the Goods (including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on the Goods), or in any other manner interfere with the Goods, as doing so may undermine the structure and safety of the Goods. LCA will photograph, in detail, the Goods once erected as proof of this;
 - (vii) employ the Goods solely in their own work and not permit the Goods (or any part thereof) to be used by any other party for any other work;
 - (viii) not exceed the recommended or legal load and capacity limits of the Goods;
 - (ix) not use or place any illegal, prohibited or dangerous substance on the Goods;
 - (x) not fix the Goods (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold; and
 - (xi) on termination of the hire, deliver up the Goods, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to LCA.
- (b) Immediately on request by LCA the Client will pay:
 - (i) the new list price of any Goods (or any part thereof) that are, for whatever reason, destroyed, irrecoverable, or not returned to LCA;
 - (ii) all costs incurred in cleaning the Goods (including removing plaster, mortar, cement and/or concrete from the Goods) if the Goods are deemed by LCA (at their sole discretion) to be excessively dirty; and
 - (iii) all costs of repairing any damage to the Goods caused by the ordinary use of the Goods up to an amount equal to ten percent (10%) of the new list price of the Goods; or by the negligence of the Client or the Client's agent; or by vandalism, or (in LCA's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;

- (c) any lost hire charges LCA would have otherwise been entitled to for the Goods, under this, or any other agreement;
 - (d) the cost of fuels and consumables provided by LCA and used by the Client.
- 17.3 Operation of Hire Equipment: The Client warrants that at all times it will:
- (a) operate the Hire Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - (b) ensure persons operating or erecting the Hire Equipment are suitably instructed, trained and qualified in its safe and proper use and comply with all relevant laws relating to the use of the Hire Equipment;
 - (c) hold all licences, permits and approvals necessary to hire and use the Hire Equipment and that no restriction of any kind prevents the Client from entering into an agreement or arrangement for the hire of the Hire Equipment
 - (d) display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Hire Equipment;
 - (e) ensure all persons operating the Hire Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer of the Hire Equipment or LCA;
 - (f) ensure that no persons operating the Hire Equipment are under the influence of drugs or alcohol;
 - (g) conduct a job safety analysis prior to using the Hire Equipment at a site;
 - (h) insure the Hire Equipment during the Hire Period (if not electing the damage waiver);
 - (i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Hire Equipment; and
 - (j) comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession storage of the Hire Equipment.
- 17.4 Obligations of Client: In the event that the Hire Equipment breaks down or becomes unsafe to use during the Hire Period the Client must:
- (a) immediately stop using the Hire Equipment and notify LCA.
 - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Hire Equipment;
 - (c) take all steps necessary to prevent any further damage to the Hire Equipment; and
 - (d) not repair or attempt to repair the Hire Equipment without LCA's prior written consent.
- 17.5 Obligations of Wan LCA: In the event that the Hire Equipment breaks down or becomes unsafe to use (through no act or omission of the Client including misuse, recklessness and negligence), LCA will:
- (a) repair the Hire Equipment or provide suitable substitute Hire Equipment when reasonably possible after being notified by the Client;
 - (b) not impose a hire charge for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Hire Equipment; and
 - (c) not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Client arising from a breakdown of Hire Equipment, however caused, including as a result of LCA requiring time to assess, repair and/or replace the Hire Equipment.
- 17.6 The Client is responsible for the Hire Equipment and any accessory and tools during the Hire Period. If the Hire Equipment is lost, stolen or damaged during the Hire Period or becomes unsafe to use due to any act or omission of the Client, the Client is liable to LCA Access for and must indemnify LCA Access for:
- (a) The full cost of either:
 - (i) repairing the Hire Equipment; or
 - (ii) replacing the Hire Equipment with new equipment, as determined by LCA in its sole and absolute discretion;
 - (b) any other costs whatsoever arising from or in connection with the loss, theft or damage to the Hire Equipment; and
 - (c) any lost revenue to LCA arising from or in connection with the loss, theft or damage to the Hire Equipment.
- 17.7 The Client may elect to either pay a fee for loss, theft or damage of the Hire Equipment ("Damage Waiver Fee") or obtain insurance covering the full replacement value of the Hire Equipment. Where the Client elects to pay the Damage Waiver fee, LCA agrees to limit the Client's liability for loss, theft or damage to the Hire Equipment during the Hire Period if:
- (a) the Client submits to LCA within (five) 5 Business Days:
 - (i) a written Police report of the loss or damage to the Hire Equipment (unless LCA provides written confirmation that such report is not required); and
 - (ii) any other written or photographic evidence requested by LCA (which may include sworn statements and statutory declarations); and
 - (b) The Client pays to LCA the Damage Waiver excess which is the greater of:
 - (i) \$500.00 per item of Hire Equipment (or the actual cost of replacement or repair if less than \$500.00); or
 - (ii) the amount equal to 15% of the cost of the repairs (if the Hire Equipment can be repaired); or
 - (iii) the amount equal to 15% of the new replacement cost of the Hire Equipment (if the Hire Equipment is lost, stolen or damaged beyond repair).
- 17.8 The Damage Waiver fee will be automatically added to the Hire Charges and will appear on the invoice issued to the Client.
- (a) If the Client elects not to pay the Damage Waiver fee, it must take out and maintain a policy of insurance that covers Loss or damage to the Hire Equipment during the Hire Period for not less than the full new replacement cost of the Hire Equipment ("Hire Equipment Insurance").
 - (b) evidence in the form of a certificate of currency for the policy and any renewal must be given to LCA at its request and in any event no later than 7 days after the expiry date of the previous Certificate of Currency (where applicable).
 - (c) over-water, off-shore and underground mines: If required by LCA, the Client must also take out and maintain, for the duration of the Hire Period, insurance for Hire Equipment which will be used off-shore, over water or in underground mines. Such insurance cover must:
 - (c) Include LCA as an insured so that LCA is deemed a separate insured under the policy. Any non-disclosure or misrepresentation by one insured must not prejudice the right of the other insured to claim under any insurance policy.
 - (d) Cover LCA's liability as a principal in connection with the performance of the Hire Agreement; and
 - (e) Contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.
- 17.9 Even if the Client pays the Damage Waiver Fee, the Client is liable for and indemnifies LCA for all loss and damage to the Hire Equipment if:
- (a) the Client has paid the Damage Waiver Fee after the loss or damage occurred;
 - (b) LCA reasonably believes that the Client failed to take reasonable precautions to protect and secure the Hire Equipment;
 - (c) the Hire Equipment is, or is ordinarily, used offshore, over water or in underground mines or is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - (d) the loss or damage is:
 - (i) to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
 - (ii) glass, including breakage;
 - (iii) caused by vandalism, including graffiti on the Hire Equipment;
 - (iv) to hire equipment's paintwork;
 - (v) due to wrongful conversion of the Hire Equipment or any components of the Hire Equipment.
 - (e) the loss or damage was caused, or contributed to, by:
 - (i) a breach of the Hire Agreement;
 - (ii) an act or omission of the Client;
 - (iii) the use of the Hire Equipment in violation of any relevant laws or regulations or contrary to LCA's or the manufacturer's instructions;
 - (iv) a lack of, or faulty lubrication or general servicing of the Hire Equipment;
 - (v) the misuse, abuse, the overloading of or incorrect loading of the Hire Equipment or any of its components
 - (vi) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
 - (vii) an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.; and
 - (viii) the transport of the Hire Equipment, except where transported by LCA.
 - (ix) If the Client elects not to pay the Damage Waiver fee, it must take out and maintain a policy of insurance that covers Loss or damage to the Hire Equipment during the Hire Period for not less than the full new replacement cost of the Hire Equipment ("Hire Equipment Insurance").
- 17.10 Evidence in the form of a certificate of currency for the policy and any renewal must be given to LCA at its request and in any event no later than seven (7) days after the expiry date of the previous Certificate of Currency (where applicable).
- 17.11 Over-Water, off-shore and underground mines: If required by LCA, the Client must also take out and maintain, for the duration of the Hire Period, insurance for Hire Equipment which will be used off-shore, over water or in underground mines. Such insurance cover must:

- (a) include LCA as an insured so that LCA is deemed a separate insured under the policy. Any non-disclosure or misrepresentation by one insured must not prejudice the right of the other insured to claim under any insurance policy.
 - (b) cover LCA's liability as a principal in connection with the performance of the Hire Agreement; and
 - (c) contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.
- 17.12 Only to the extent that the hire of the Goods exceeds a twenty four (24) month hire period (or a ninety (90) day hire period with the right of renewal) shall clause 17.1 apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular Section 20.
- 17.13 No warranty is given by LCA as to the quality or suitability of the Goods for any purpose, and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless LCA in respect of all claims arising out of the use of the Goods.

18 General

- 18.1 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. 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.
- 18.2 Subject to clause 11, LCA shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by LCA of these terms and conditions (alternatively LCA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.3 LCA may elect to sub-contract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of LCA's sub-contractors without the written authority of LCA.
- 18.4 LCA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 18.5 The Client cannot licence or assign without the written approval of LCA.
- 18.6 The Client agrees that LCA may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for LCA to provide Services to the Client.
- 18.7 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

I have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

I warrant by signature attached or overleaf that the information given in support of this application is true and correct. I further warrant that I am authorised to sign on behalf of the Client and to bind the Client in contract.

Completing a Credit Application does not infer that credit will be Granted.

The document must be completed in full, with no alterations or deletions. Any such alterations or deletions will void the application and a new form will need to be completed. Small Business applicants are advised that, should any of the Terms or Conditions contained herein be considered by them to be 'unfair', they should contact LCA to further discuss and negotiate before proceeding with the application.

LCA reserves the right to refuse credit to any Applicant without explanation.

LCA reserves the right to suspend or withdraw credit facilities at any time without notice. Special Note: if the Client acts as, or is part of, a Trust/Nominee Entity then the provision of personal guarantee/s from the Trust Beneficiary/Beneficiaries is required to process this application.