

# APPLICATION FOR COMMERCIAL CREDIT

Effective 1 February 2025



**FLEXIHIRE**  
EQUIPMENT HIRE SPECIALISTS

("the Applicant") hereby applies for credit with **FLEXIHIRE PTY LTD ACN 010 108 559** ("the Supplier").

## Applicant

Structure: ☐ Company ☐ Sole Trader ☐ Partnership ☐ Other

Company name

Postal address  Post code

Business address  Post code

Type of business  Year commenced  Date of registration

Drivers licence (soletrader /partnership)  ABN   
(copies must be attached)

Expiry date

Affiliated or parent companies  ACN

## Accounts Payable Contact

Contact name

Phone no.  Mobile

Fax no.  Email address

## Owners / Directors / trustee

1

Full name

Position

Residential address  Post code

Phone no.  Date of birth

Driver's licence no.  Car registration no.

Expiry date

2

Full name

Position

Residential address  Post code

Phone no.  Date of birth

Driver's licence no.  Car registration no.

Expiry date

# APPLICATION FOR COMMERCIAL CREDIT

## General Information

Estimated monthly purchases \$

Do you require purchase order numbers to be recorded on your invoices? ☐ Yes ☐ No

Any other information which may help in assessing your Agreement?

Damage Waiver (see below) ☐ Request for damage waiver exemption and attach your certificate of currency with Flexihire noted as an interested party

### IMPORTANT

Damage waiver will be charged until a current Certificate of Currency for plant and equipment stating the company name and insurance figure is presented to Flexihire. Please refer to **Section 9 & 10** of the **Terms and Conditions**.

## Miscellaneous

Previous trading name

Delivery address  Post code

## References

1

Full name

Address  Post code

Phone no.  Fax no.

2

Full name

Address  Post code

Phone no.  Fax no.

3

Full name

Address  Post code

Phone no.  Fax no.

## Trading Terms

### STRICTLY 30 DAYS FROM EOM

Failure to pay the account by the due date may result in Credit being suspended until the total amount owing is paid.

## Application, trading terms and credit information agreement

The Applicant, with full knowledge of the provisions of the Privacy Act 1988, hereby consents to:-

1. Disclosing/obtaining from a credit (reporting agency) (credit provider) information of a personal nature;
2. Obtaining a report containing information of personal credit, commercial activities and/or commercial credit worthiness;

\*A In this disclosure Agreement, "the Applicant" company includes all Directors and in the case of a non-incorporated business, includes all partners, trustees, office holders etc.

\*B Information of a personal nature includes:-

- Identification particulars
- The fact that you have applied for credit and the amount
- The fact that "the Supplier" is a current credit provider to you
- The fact that payments are overdue in excess of 14 days
- Advice that payments are no longer overdue
- Serious credit infringements
- The fact that credit provided to you has been paid or otherwise discharged.

The Applicant(s) agree to notify the Supplier in writing within 7 (seven) days of any changes to their Corporate or Business structure.

**I/WE** the undersigned are duly authorised to enter into this Application and have read the attached Terms & Conditions and understand and agree to be bound by same and hereby certify that the all particulars are correct.

**Signature of Director**

Full name

Position

Date

Residential address

Post code

Date of birth

**Signature of Director**

Full name

Position

Date

Residential address

Post code

Date of birth

## Terms and Conditions

### Flexihire

For the provision of products and hire services by Flexihire Pty Ltd ACN 010 108 559 trading as Flexihire (we/us/our).

These Terms and our Quote form the basis of our Agreement with you.

#### 1. Acceptance and Term

- (a) You agree to be bound by this Agreement if, after having received a copy of the Agreement, you:
- (i) sign and return a Quote or Credit Application;
  - (ii) make payment of any amount in the Quote; or
  - (iii) otherwise instruct us (whether verbally or in writing) to provide the Products or Equipment as outlined in the Quote.
- (b) The Agreement continues for the Term unless terminated sooner under clause 13.

#### 2. Hire and Delivery

##### 2.1 Hire of Equipment

- (a) We agree to hire the Equipment to you for each Hire Period.
- (b) An amendment of the Hire Period is subject

to our approval and may be subject to a Quote revision.

- (c) Subject to the Quote, daily hire rates for Equipment include 8 hours of operation per day with use beyond this time incurring Additional Fees.

##### 2.2 Hire period

- (a) The Hire Period commences upon the earlier of when:
- (i) you take possession of the Equipment;
  - (ii) we deliver the Equipment to your Site; or
  - (iii) as otherwise agreed;
- and continues until the earlier of:
- (iv) when you obtain an Off-hire number from us pursuant to clause 7.2 (subject to access being granted to collect the Equipment); or
  - (v) when the Equipment is back in our possession.

- (b) The Hire Period continues irrespective of whether the Equipment is being used, except where we agree to a Stand-down or Off-hire of the Equipment.

##### 2.3 Collection and Delivery of Equipment

- (a) You agree to make payment for any Delivery Fees to and from the Site:

- (i) as specified in the Quote;
- (ii) as incurred as a consequence of enforcing our rights under this Agreement; or
- (iii) as advised from time to time acting reasonably.

- (b) Where Equipment is being delivered or collected from your Site, you must grant proper access to enable timely delivery and collection from the Site.

- (c) Unless otherwise agreed, we will deliver Equipment to the kerb alignment adjacent to the Site. The delivery vehicle will only enter the Site at the absolute discretion of the driver and at your risk.

- (d) You acknowledge and agree that if delivery cannot be affected due to a Site issue or because you request for delivery to be delayed:

- (i) you will be responsible for the reasonable costs relating to the return and re-delivery of the Equipment, in addition to the original Delivery Fees; and
- (ii) we will provide you with notice of the delivery failure, set out anticipated additional costs and provide instructions



for rescheduling delivery.

- (e) Delivery times and dates are estimates only and we do not take responsibility for the failure or delays in delivery of the Equipment.
- (f) We will endeavour to update you of any delay in the delivery or collection of the Equipment as soon as reasonably possible.
- (g) The Equipment is at your risk from the time it is delivered to your Site until it has been returned to us. Whilst the Equipment is at your risk, you are responsible for any loss or damage to it which is not considered (in our reasonable discretion) fair wear and tear.

### 3. Your obligations and responsibilities

#### 3.1 Usage and maintenance

At all times during the Term, you must:

- (a) maintain the Equipment in good order, condition and repair (subject to fair wear and tear);
- (b) only allow persons who are properly trained and competent, and if applicable, who hold current and requisite licences to use or operate the Equipment (Operators);
- (c) ensure that all Operators only use the Equipment for the purpose for which the Equipment is intended to be used and in accordance with applicable usage guidelines we may provide;
- (d) ensure that all Operators wear suitable clothing and protective equipment and that no Operators are under the influence of any substances;
- (e) operate, maintain and store the Equipment with due care and diligence and in compliance with our and the manufacturer's instructions and recommendations;
- (f) not make any alteration, addition or attachment to the Equipment without first obtaining our consent;
- (g) keep the Equipment under your control and refrain from selling or sub-letting the Equipment;
- (h) comply with all relevant Laws, regulations and rules governing or relating to the operation of the Equipment;
- (i) not take the Equipment outside of the state in which it was hired without our prior written consent; and
- (j) not do, cause or allow to be done any act or omission which may endanger the safety or condition of the Equipment.

#### 3.2 Consumable items

We may provide certain consumable items as part of the initial delivery of Equipment. Maintaining a supply of consumables does not form part of our ongoing obligations under this Agreement and may be provided at your request for an Additional Fee.

#### 3.3 Inspection

- (a) You must inspect all Equipment upon delivery and notify us of any damage or defects in the Equipment within 24 hours of delivery.
- (b) You consent to us inspecting the Equipment upon reasonable notice during the Hire Period and you consent to us entering the premises of your Site to do so.

#### 3.4 Ownership of Equipment

- (a) During the Term, you must not:
  - (i) dispose of the Equipment;
  - (ii) declare a trust over the equipment;
  - (iii) create or permit the creation or existence of any other interest in the equipment (except in favour of Flexihire); or
  - (iv) part with possession of the equipment, without our consent.

### 4. Servicing and repairs

- (a) We carry out cleaning, servicing and

maintenance work on the Equipment at the end of every Hire Period (Servicing) at our cost.

- (b) You acknowledge and agree that:

- (i) Servicing does not include:
  - (A) any work necessary to repair the Equipment or rectify any damage including the replacement of any parts of the Equipment which would not be considered fair wear and tear;
  - (B) re-fuelling the Equipment (if applicable) to the level it was originally provided to you;
  - (C) pumping out waste tanks or refilling water tanks; and
  - (D) cleaning of overly soiled Equipment; and

- (ii) you are solely responsible for all costs arising under 4(b)(i) which we will charge as Additional Fees.

### 5. Payment of Fees and Deposit

#### 5.1 Fees

- (a) You agree to pay us all Fees as specified in the Quote and these Terms.
- (b) Unless otherwise specified, all Fees are exclusive of GST.
- (c) Our Fees are not subject to deduction for any reason whatsoever, including but not limited to, inclement weather or industrial disputes, subject to clause 7.1.
- (d) We reserve the right to amend our Hire Fees upon 10 Business Days' notice to you, before the end of each Hire Period, in accordance with any change to our standard pricing for the Equipment. Any variation in the Hire Fees will only become applicable from the commencement of the next Hire Period. If you do not accept the change in Hire Fees, you must return the Equipment to us upon expiry of your then current Hire Period.

#### 5.2 Payment terms generally

- (a) You must pay us all amounts outlined in our tax invoices in the manner and within the time specified without set-off, counterclaim, holding or deduction.
- (b) Payments made via a credit card may incur a payment processing fee where charged by our third-party payment processors.
- (c) If you fail to make payment of any amount in accordance with sub-clause (a), we may:
  - (i) charge you interest on any overdue amount which will begin accruing on the first day that payment is overdue at the then current Commonwealth Bank overdraft interest rate plus 3% per annum;
  - (ii) charge you for any costs and expenses incurred in collecting any outstanding Fees from you including debt collection and legal costs;
  - (iii) immediately suspend the hire of any Equipment to you while any amount remains outstanding; and
  - (iv) collect the Equipment at your cost.

#### 5.3 No Account – payment terms

- (a) Subject to sub-clause 5.4, we may require full payment of the Fees, including the Hire Fees and Delivery Fees, as outlined in the Quote, before we provide the Equipment.
- (b) Where you are required to pay in full upfront, we will issue you with a tax invoice promptly following your acceptance of the Quote.
- (c) Where payment for the Fees has not been made in full, we will invoice you at the time set out in the Quote, or as we otherwise reasonably determine.

#### 5.4 Account – payment terms

- (a) Where you have an Account with available credit, we will issue our tax invoice to you at

the end of each calendar month, or at such other times we reasonably determine.

- (b) Unless otherwise specified, our payment terms will be 30 days from the end of the month in which it was issued.

#### 5.5 Deposit

- (a) You must pay the Deposit in the amount and in the manner specified in the Quote.
- (b) The Deposit will be applied by us against any amount owing to us under this Agreement, following the issue of our invoice/s to you.
- (c) You acknowledge and agree that any deposit paid by you to us may be applied as follows:
  - (i) firstly, towards payment of any costs, charges, expenses or outgoings incurred by or paid by us;
  - (ii) secondly, in or towards payment of any interest owing to or payable by you; and
  - (iii) thirdly, in or towards payment of any Fees due and owing to us.

#### 5.6 Additional Fees

- (a) In addition to the Hire Fees, you agree to pay:
  - (i) all Additional Fees for servicing and repairs in accordance with clause 4(b)(i);
  - (ii) any applicable Loss and Damage Waiver in accordance with clause 9;
  - (iii) Delivery Fees in accordance with clause 2.3;
  - (iv) fees for additional usage of the Equipment in accordance with clause 2.1(c);
  - (v) any charges for loss of plant, tools or accessories supplied under this Agreement;
  - (vi) any charges for wages or payment of an operator of the Equipment supplied by us (where applicable);
  - (vii) any charges for replacement consumable items in accordance with clause 3.2; and
  - (viii) costs of collection and delivery in accordance with clause 2.3,

pursuant to our current Fee Schedule or in accordance with our then prevailing rates.

### 6. Account

#### 6.1 General

- (a) Upon completion of a Credit Application and Guarantee (where applicable) we may in our sole discretion determine whether to accept you for an Account.
- (b) Upon acceptance, we will advance you credit for the Equipment or Products up to the amount agreed in the Credit Application.
- (c) Your approved credit may be reviewed, altered or withdrawn at any time, without prior notice to you and at our absolute discretion.
- (d) We will have no liability or responsibility for any loss, however arising, incurred by you due to a review, alteration or withdrawal of your credit.
- (e) You must notify us of any change in ownership, legal name, or address of any entity with an Account within 7 days of the change occurring.

#### 6.2 Guarantee

- (a) A guarantee provided under a Credit Application will be subject to the further terms outlined in our Guarantee and Indemnity form.
- (b) In any action, proceeding or claim brought or made against any guarantor pursuant to this Agreement, a certificate signed by us shall be prima facie evidence of the outstanding amount owed by you and also of the amount owed by any guarantor.
- (c) We may make demand upon and commence proceedings against a guarantor without any obligation to first make demand to you.

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## 7. Stand-down and Off-hire requests

### 7.1 Stand-down

- (a) Upon your request, we may in our sole discretion agree to grant a Stand-down request for the Equipment, according to the following terms:
- (i) the Stand-down request must be made by 10:00am on the day of the Stand-down. Stand-downs cannot be applied retrospectively;
  - (ii) you remain responsible for the security of the Equipment and all loss or damage to Equipment while it is stood down;
  - (iii) Stand-downs do not apply to fixed plant including (but not limited to) site accommodation, containers, fencing, barriers, wired power generation; and
  - (iv) Stand-downs will be subject to the terms of our Stand-down policy as available on our website or upon request.
- (b) Upon acceptance of your Stand-down request we will issue you with a Stand-down number.

### 7.2 Off-hire

- (a) Upon your request, we may in our sole discretion agree to grant an Off-hire request for the Equipment, according to the following terms:
- (i) the Off-hire request must be made before 9:00am on the Off-hire Date and provide appropriate access for collection of the Equipment;
  - (ii) where the Equipment is not made available for delivery or you retain possession of the Equipment past the agreed Off-hire Date, the Off-hire period will be cancelled and you will be charged Hire Fees for the full Hire Period; and
  - (iii) you remain responsible for the security of the Equipment and all loss or damage to Equipment until back in our possession.
- (b) Upon acceptance of your Off-hire request we will issue you with an Off-hire number.

## 8. Equipment

### 8.1 Equipment breakdown

- (a) If any Equipment breaks down or becomes unsafe to use during the Hire Period you must:
- (i) immediately cease using the Equipment;
  - (ii) immediately notify us of the issue;
  - (iii) take all necessary steps to prevent injury to any Operator as a result of the condition of the Equipment;
  - (iv) take all necessary steps to prevent further damage to the Equipment; and
  - (v) not attempt to repair the Equipment without our written consent.
- (b) If the Equipment breaks down or becomes unsafe to use (through no act or omission of the customer or an Operator including misuse, recklessness and negligence), we will:
- (i) repair the Equipment or provide suitable alternative Equipment when reasonably possible; and
  - (ii) request the Equipment be returned to our possession to carry out repairs; or
  - (iii) Off-hire the Equipment until repaired or replace.
- (c) If the Equipment breaks down or becomes unsafe due to any act or omission of the customer or Operator, you will be liable for:
- (i) all costs of repair or replacement of the Equipment; and
  - (ii) all Hire Fees for the duration of the Hire Period including while the Equipment is being repaired or replaced.

### 8.2 Lost, stolen or damaged Equipment

- (a) If the Equipment is lost, stolen or damaged, you must notify us in writing of the acts and

circumstances giving rise to the loss, theft or damage of the Equipment within 5 Business Days of the event occurring, and you will remain liable for all Hire Fees up to and including the day that we are notified.

- (b) If the Equipment is lost, stolen or damaged due to any act or omission of the customer or Operator, you will be liable for:
- (i) all costs of repair or replacement of the Equipment; and
  - (ii) all Hire Fees for the duration of the Hire Period including while the Equipment is being repaired or replaced.
- (c) Where you have paid the Loss and Damage Waiver, your liability under this clause will be limited to the amount payable in accordance with clause 9(d).

### 8.3 Remote Site Attendance

- (a) Where the Equipment is taken to a location that is more than 150km from the nearest Flexihire branch (Remote Site). An Additional Fee will apply at \$95 per hour, per person required to attend the Remote Location and conduct any services, maintenance or repairs on the Equipment.
- (b) An additional charge will also apply for each kilometre over the 150km allowance travelled to attend the Remote Site at the rate of \$2.00 per kilometre.
- (c) Where we reasonably incur additional charges for freight, accommodation, airfares and other relevant charges to attend to a breakdown or repair of Equipment on a Remote Site, you acknowledge and agree that we will pass those additional charges onto you which will be payable by you upon invoice.

## 9. Loss and Damage Waiver

- (a) You may seek to limit your liability arising out of loss, theft and damage to the Equipment, by paying a Loss and Damage Waiver fee, covering loss, damage or destruction to the Equipment caused by, theft or burglary, accident or collision, fire, storm or flooding.
- (b) The Loss and Damage Waiver fee will be calculated as 12% of the total Hire Fees and will be automatically added to your invoice.
- (c) A Loss and Damage Waiver will be charged to you for the Equipment Hire Period unless you provide us with a certificate evidencing an insurance policy over the Equipment in accordance with clause 10.
- (d) In the event of a claim under the Loss and Damage Waiver, you must:
- (i) notify us in accordance with clause 8;
  - (ii) where applicable, provide a written police report within 5 Business Days of the event and any other written or photographic evidence requested by us; and
  - (iii) pay to us 50% of the cost of the repair or replacement of each item of Equipment up to the value of \$5,000 per item.
- (e) The Loss and Damage Waiver will not apply in circumstances where:
- (i) the cause was due to your or the Operator's negligence or breach of this Agreement;
  - (ii) the cause was due to a contravention of any laws, codes, regulations or actions contrary to the instructions of the manufacturer regarding the operation of the Equipment;
  - (iii) the loss or theft was due to failing to secure the equipment;
  - (iv) the cause was due to the misuse, abuse, overloading or incorrect loading of the

- Equipment or any of its components;
- (v) damage was caused during transport of the Equipment except where transported by us;
  - (vi) damage was caused by exposure to corrosive or caustic substances;
  - (vii) damage was caused by use of the Equipment in a non-standard environment including use on or near water and seawater, beaches, wharves, bridges, vessels or barges;
  - (viii) your obligations in clause 3.1 were not complied with; or
  - (ix) the damage relates to tyres, glass, paintwork, cords, cables, steels, liquid fuel tanks, blades or any other tools or accessories.

## 10. Insurance

- (a) Where you elect not to pay the Loss and Damage Waiver, you must take out and maintain a policy of insurance that covers loss or damage to the Equipment during the Hire Period for not less than the full new replacement cost of the Equipment.
- (b) You must provide a certificate of currency of the relevant insurance, evidencing US as an interested party upon our request.
- (c) You will be responsible for the payment of any excess and shortfall for repair or replacement costs following any insurance payout.

## 11. Warranties & indemnities

### 11.1 Indemnity

You indemnify us and keep us indemnified against:

- (a) any Loss we suffer as a result of or in connection with damage (other than fair wear and tear) or destruction to the Equipment whether by fire, theft, accident, seizure, confiscation or otherwise;
- (b) all other Loss, including any fines or penalties, incurred as a result of or in connection with the Equipment or your possession, use, maintenance, repair or storage of it; and
- (c) any Loss suffered by us arising as a consequence of your breach of this Agreement.

### 11.2 Warranties

You warrant and represent to us that:

- (a) if you are a body corporate:
  - (i) you are duly incorporated and validly existing under the Corporations Act 2001 (Cth);
  - (ii) you have full power and authority to enter into, observe and perform the terms of this Agreement; and
  - (iii) you are not insolvent or under administration and are in a financial position to fulfil your obligations under this Agreement;
- (b) if you are an individual:
  - (i) you have full power and capacity to enter into, observe and perform the terms of this Agreement; and
  - (ii) you are not bankrupt and are in a financial position to fulfil your obligations under this Agreement;
- (c) this Agreement constitutes legal, valid and binding obligations enforceable against you in accordance with its terms;
- (d) no event has occurred or is continuing to occur which gives rise or might, with the passing of time or giving of notice, or both, give rise to Termination under clause 13; and
- (e) no information that you have supplied to us in relation to this Agreement contains any material misstatement of fact or omits to state a material fact.





## 12. Liability

- (a) Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Agreement, for Loss to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.
- (b) To the extent permitted by Law, we will not be liable to you for any Consequential Loss suffered or incurred by you under or in connection with the Agreement even if we were appraised of the likelihood of such loss arising.
- (c) Unless otherwise required by law, the liability of us for any breach of the Agreement in contract and/or in tort (including negligence) is limited at our option to:
  - (i) the replacement or repair of Equipment supplied; or
  - (ii) the supply of equivalent Equipment; or
  - (iii) the amount paid by you to us pursuant to the Quote.
- (d) Unless otherwise required by Law, and subject to sub-clause (d), our liability for any breach of the Agreement in contract, tort (including negligence) or equity is limited to the amount paid under an insurance policy held by us, less any excess.

## 13. Termination

### 13.1 Termination

- (a) Either party may terminate the Hire Agreement with 7 days' notice by serving a written notice on the other party if:
  - (i) the other party breaches the Hire Agreement and fails to remedy within 7 days of notification; or
  - (ii) the other party becomes insolvent or bankrupt, or executes a personal insolvency agreement, enters into liquidation, administration or receivership or ceases to carry on business.
- (b) We may terminate this Agreement and/or any Hire Period at any time by giving you at least 5 days' written notice.
- (c) We may terminate this Agreement and/or any Hire Period with immediate effect if necessary, to address a serious and imminent risk to health or safety.
- (d) For the avoidance of doubt, the termination of the Hire Period for a specific piece of Equipment does not affect the operation of this Agreement.

### 13.2 Effect of Termination

- (a) Immediately on the termination of this Agreement and/or the Hire Period, we may take all steps necessary (including legal action) to recover the Equipment, including entering any site occupied by you. You expressly provide us with consent to enter any site or premises of the Customer to recover our Equipment.
- (b) If we are unable to repossess the Equipment after reasonable attempts, we may charge you for the replacement cost of the Equipment, which you must pay to us on demand.
- (c) Termination of this Agreement for any reason, and retaking possession of the Equipment, does not affect our right to recover any monies due under this Agreement or damages for breach of this Agreement, including but not limited to any Loss incurred by us for:
  - (i) repossessing, storing, insuring and registering the Equipment;
  - (ii) Hire Fees incurred until collection of the Equipment;

- (iii) any Additional Fees incurred; and
- (iv) repairs necessary to bring the Equipment to a saleable condition.

## 14. Security Registration

### 14.1 Registration over your property

- (a) You agree that immediately upon:
  - (i) the creation of your Account; or
  - (ii) your failure to adhere to the payment terms in clause 5,all amounts owing to us under this Agreement are a secured debt, with the security being a security interest in all your present and after-acquired property (including any proceeds from the sale of such property).
- (b) You agree that we may attend to registration of any of our security interests on the PPSR without notice to you.

### 14.2 Registration over Equipment

- (a) You agree that we may register a security interest over you in respect of the Equipment on the securities register without notice to you.
- (b) You consent to us affecting and maintaining a registration on the PPSR (in any manner we consider appropriate) in relation to any Security Interest contemplated or constituted by this Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment.

### 14.3 Registration generally

You agree that:

- (a) you will not register any Security Interest or that of any third party in the Equipment without our prior written consent;
- (b) the Equipment provided under this Agreement is collateral for the purposes of the PPSA;
- (c) this Agreement is a security agreement as defined in the PPSA;
- (d) you will assist us to register a Financing Statement or Financing Change Statement on the PPSR as a Security Interest pursuant to the PPSA;
- (e) you will not change your name, ACN or ABN or other details required on the PPSR, without notifying us;
- (f) you waive your rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to this Agreement;
- (g) you must pay our costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement;
- (h) You agree to sign any documents and provide all assistance and information to us required to facilitate the registration and maintenance of any security interest; and
- (i) unless otherwise agreed in writing the parties agree not to disclose information of the kind referred to in Section 275(1) of the PPSA to any interested person, or any other person requested by an interested person and you waive any right you may have but for this clause under Section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

### 14.4 Contracting Out

- (a) Section 115(1) of the PSSA allows for the contracting out of provisions of the PPSA and to the maximum extent permitted by Law, you agree that the following sections of the PPSA will not apply: Sections 95, 96, 118, 121, 125, 130, 132, 135, 142 and 143.
- (b) Section 115(7) of the PSSA allows for the contracting out of provisions of the PPSA and to the maximum extent permitted by Law,

you waive any rights they may have pursuant to, and hereby contract out of the following sections of the PPSA: Sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5) and 137.

## 15. Assignment

- (a) Subject to sub-clause (b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the other party.
- (b) The parties agree that if a party merges or amalgamates with another entity or otherwise sells or disposes of their business, the party may assign or novate this Agreement, to that other entity, provided that entity agrees to be bound by the obligations in this Agreement or to obligations equivalent in effect.

## 16. Notices

- (a) A notice must be:
  - (i) in writing; and
  - (ii) left at or posted by certified mail to the address or sent to the email address of the party to be notified, as varied by notice.
- (b) A notice is taken to have been given:
  - (i) if posted, on the third day after posting; and
  - (ii) if sent by email, on the next business day after it is sent unless the sender is aware that the transmission is impaired.
- (c) The addresses and emails of the parties are set out in the Quote to this Agreement.

## 17. General

- (a) This Agreement is binding on each party who executes it notwithstanding the failure of any other person named as a party to execute it.
- (b) This Agreement may be executed in any number of counterparts, each of which when executed and delivered constitute an original of this Agreement. All counterparts together constitute the same agreement.
- (c) Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.
- (d) These Terms may only be varied by a further written agreement signed by or on behalf of each of the parties.
- (e) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (f) If there is any inconsistency between these Terms and the Quote, the Quote will prevail to the extent of that inconsistency.
- (g) Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of these Terms which remain in force.
- (h) Time is of the essence in respect of each party's obligations under this Agreement
- (i) The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.
- (j) This Agreement is governed by the law in force in Queensland and each party submits to the non-exclusive jurisdiction of the courts of Queensland in relation to any proceedings that may be brought at any time relating to this Agreement. Each party irrevocably

# APPLICATION FOR COMMERCIAL CREDIT

waives any objection to proceedings being commenced in Queensland.

## 18. Interpretation

In this Agreement a reference to:

- (a) the singular (where the context permits) includes the plural and the plural includes the singular;
- (b) a person or entity includes an individual, a firm, a body corporate, a trust, estate, partnership; an unincorporated association, Government Authority, authority or undertaking;
- (c) a person includes that person's legal personal representatives, administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (d) the "personnel" of a party includes that party's employees, officers, directors, shareholders, agents and advisors;
- (e) the words "costs" and "expenses" includes reasonable charges, expenses and legal costs on a full indemnity basis;
- (f) the words "includes" and "including" and their derivatives are not words of limitation;
- (g) the meaning of any general language is not restricted by any accompanying example;
- (h) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (i) headings are for convenience only;
- (j) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day;
- (k) a reference to a Law includes that Law as amended or re-enacted, a statute, regulation, code or provision enacted in replacement of that Law, another regulation or other statutory instrument made or issued under that Law and any amendment made to that Law as a consequence of another statute, regulation, code or provision;
- (l) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement;
- (m) no party enters into this Agreement as agent for any other person; and
- (n) if a party comprises two or more persons the obligations and agreements bind and must be performed by each of them jointly and severally and may be enforced against any one or any two or more of them.

## 19. Definitions

In this Agreement, the following terms have the following meanings:

**Account** means a credit account approved by us enabling you to Hire Equipment from us without being required to pay us upfront in full.

**Additional Fees** means the fees payable by you, in addition to the Hire Fees, for any costs incurred by us according to clause 5.5(c)(iii), or any other clause of this Agreement.

**Agreement** means the agreement between you and us for the hire of Equipment which includes:

- (a) any Credit Application;
- (b) our Quote;
- (c) these terms and conditions;
- (d) and Guarantee and Indemnity;

**Business Day** means a day on which the banks are open for business other than a Saturday, Sunday or public holiday.

**Consequential Loss** means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of contract, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage.

**Credit Application** means the application for an Account in the form provided by us.

**Delivery Fees** means the fees payable by you for delivery or collection of the Equipment.

**Deposit** means the amount to be paid prior to our provision of the Equipment as set out in the Quote or as specified by us.

**Equipment** means the goods you wish to hire as specified in the Quote including any devices, tools or ancillary items (but excluding consumable items) affixed to or supplied with the goods specified in the Quote.

**Fees** means the Hire Fees, Additional Fees and any other fees specified in the Quote or otherwise notified to you from time to time.

**Fee Schedule** means the document outlining our Fees as updated by us from time to time.

**Financing Change Statement** means Financing Change Statement as defined in the PPSA.

**Financing Statement** means Financing Statement as defined in the PPSA.

**Guarantee and Indemnity** means a guarantee for the performance of your obligations under this Agreement given by a director or authorised representative in the form provided by us.

**Government Authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Hire Period** means the period we hire Equipment to you within the Term as specified in the Quote.

**Hire Fees** means the Fees payable by you for hiring the Equipment as specified in the Quote.

**Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

**Loss** means any damage, loss, cost, charge, expense or liability, however arising (including contractual, tortious, legal, equitable loss or loss pursuant to statute) and includes all Taxes and duties.

**Loss and Damage Waiver** means the fee payable by you in accordance with clause 9 to account for any loss or damage sustained to the Equipment.

**Off-hire** means, during the Term, the period after which you have notified us that you wish to end the Hire Period, where accepted by us in accordance with clause 7.1(b).

**Off-hire Date** means the date on which you provide notice that the Equipment is no longer required and we issue you with an Off-Hire number.

**Operator** means any employee, contractor or third-party operator who is operating the Equipment on your behalf.

**Products** means the goods you wish to purchase as specified in the Quote.

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

**PPSR** means the Personal Property Securities Register defined in the PPSA.

**Quote** means the documents setting out our offer of Equipment hire and supply of Products to you.

**Site** means the location you wish for Equipment to be delivered to as set out in the Quote or as otherwise notified by you and agreed to by us from time to time.

**Stand-down** means, during the Hire Period, the period after which you have notified us that you wish to temporarily pause the hire of the Equipment, and we have provided you with a Stand-down number in accordance with clause 7.1.

**Security Interest** means Security Interest within the meaning of the PPSA.

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by a Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above, but excludes any transfer duty.

**Term** means the duration of this Agreement specified in the Quote, or such further period as agreed by the parties in writing.



## Guarantee and Indemnity

**BETWEEN:** Flexihire Pty Ltd ACN 010 108 559 ("the Supplier") and all companies that are subsidiaries, successors, associates and related corporations of that Supplier (hereinafter referred collectively to as the "Supplier").

**AND:**   
(hereafter referred to as the "Guarantor/s").  
**Note:** Guarantor field should state Directors name rather than Company name

Each Guarantor covenants and undertakes in the Supplier's favour as follows:

(a) In interpreting this Guarantee:

- (i) the provisions in the relevant Agreement governing interpretation of the Agreement apply to the interpretation of this document; and
- (ii) a word or expression defined in the relevant Agreement has the same meaning given to it, when it is used in this document.

(b) Where two or more persons execute this Guarantee, the guaranties, indemnities, covenants and obligations in this Guarantee given or undertaken by the guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and The Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

(c) In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantor's request (testified by execution of this Guarantee) for Products sold or to be sold to the Applicant by the Supplier, each Guarantor guarantees:

- (i) the due and punctual performance by the Applicant of all the Applicant's obligations under the Agreements; and
- (ii) the due and punctual payment to the Supplier of all money the Applicant owes to the Supplier under the Agreements for:
  - (A) all goods sold and/or delivered;
  - (B) services rendered;
  - (C) goods hired as the Supplier may have supplied or as the Supplier may hereafter supply from time to time at the Applicant's request;
  - (D) all Additional Fees under the Terms and Conditions; and
  - (E) all other money owing by the Applicant under the Terms and Conditions.

(d) Each Guarantor, as a separate and additional obligation, indemnifies the Supplier against

all losses damages or expenses that the Supplier may suffer as a result of:

- (i) the Applicant's failure to pay any amount owing to the Supplier under the Agreement;
  - (ii) the Applicant's breach of any of its obligations under the Agreement;
  - (iii) any provisions of the Agreement that is not enforceable by the Supplier against the Applicant for any reason (including, but not limited to, any lack of capacity on the part of any party, illegality, in proper execution or authorisation, disclaimer of the Agreement by a liquidator of the Applicant);
  - (iv) the Applicant becoming insolvent;
  - (v) any payment made to the Supplier by or on behalf of the Applicant that is or becomes void or voidable; or
  - (vi) any money paid or payable by the Supplier under the Agreement which becomes irrecoverable from the Applicant by reason of any other fact or circumstance.
- (e) The Guarantor's obligations under this document remain in full force and effect until the Supplier confirms the release of the Guarantor in writing. The Guarantor's obligations under this document will not be abated, suspended, abrogated, varied or affected by any matter or thing whatsoever including, without limitation:
- (i) an Agreement or any of the Agreements end for any reason;
  - (ii) a variation to any of the Agreements occurs;
  - (iii) the Supplier grants any time or other indulgence or concession to the Applicant;
  - (iv) the Supplier releasing, abandoning, waiving, postponing or varying any of its rights against the Applicant or against any other Guarantor;
  - (v) the Guarantor ceasing to be a director, shareholder, principal or owner of the Applicant;

- (vi) the Applicant becoming insolvent, including but not limited to any disclaimer of the Agreement;
- (vii) the Supplier discharging or releasing the Applicant or a single Guarantor whether under an Agreement or this document; or
- (viii) the invalidity or enforceability of the provisions of an Agreement or any covenants and conditions on the part of any other person.

(f) This Guarantee binds each of the signatories to the full extent provided under this document notwithstanding that one or more of the persons named as Guarantor has not executed or may never execute this document or that the execution of this document by any one or more of such persons (other than the person sought to be made liable) is or may become void or voidable.

(g) The Guarantor waives all its rights as surety whether legal, equitable, statutory or otherwise, which may at any time be inconsistent with the Applicant's rights, powers and remedies under this document.

(h) A payment by the Applicant to the Supplier under the Agreement which is void or avoided by the operation of any statute will not discharge the Guarantor's liability in respect of that payment.

(i) Each Guarantor acknowledges and agrees that this Guarantee will be governed by the laws of the state in which you hire to Equipment from us, and each party submits to the non-exclusive jurisdiction of the Courts of Queensland. Each Guarantor submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this Guarantee.

(j) Any provision of this document that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this document which remain in force.

(k) The Guarantor warrants and agrees that it has received, read and had the opportunity to obtain advice in relation to the terms of this document.

**Signature of Guarantor**

Date signed

Full name

Residential address

Post code

Date of birth

**Signature of Witness**

Date signed

Full name

Residential address

Post code

Date of birth

