

APPLICATION FOR CREDIT ACCOUNT AND AGREEMENT

EMJC Earthmoving & Plant Hire and (the Client) as named below understand this is a contract and the document comprises the credit application and the Company's terms and conditions attached to it. This application may include a guarantee/s which must be completed in full, in order to process this application. If you sign the document you will be bound by its terms. You should read the terms of this document carefully and seek legal advice about its terms.

I/We hereby apply for a Credit Account and submit the following information:

Business Name:	<input type="text"/>		
ABN:	<input type="text"/>		
Trading Address:	<input type="text"/>		
Suburb:	<input type="text"/>	Postcode:	<input type="text"/>
Postal Address:	<input type="text"/>	Postcode:	<input type="text"/>
Business Phone:	<input type="text"/>	Business Fax:	<input type="text"/>
		Mobile:	<input type="text"/>
Email Address:	<input type="text"/>		
Nature of Business:	<input type="text"/>		
Date commenced:	<input type="text"/>		

BUSINESS STRUCTURE

SOLE TRADER / PARTNERSHIP (Business is not incorporated and does not have an ACN)

Registered Trading Name:
 ABN:

Personal details for all registered proprietor's of the trading name (if more than three please attach details)

1. Full Name: Home Ph: Date of Birth:
 Residential Address Postcode:

2. Full Name: Home Ph: Date of Birth:
 Residential Address Postcode:

3. Full Name: Home Ph: Date of Birth:
 Residential Address Postcode:

COMPANY / INCORPORATED ASSOCIATION

Type: Pty Ltd (Proprietary Limited) Ltd (Limited – Public Company)

Company Name:
 ACN:
 Date of incorporation: Director's names:

Note: If a personal / director guarantee is required, these should be included with this form and must be signed by all directors of the company.

TRUST

Registered Trust Name:
 Trust Type: Trustee:
 Trustee Address: Postcode:

CREDIT DETAILS

All accounts are strictly 30 days from date of invoice unless otherwise agreed in writing.

Estimated amount of credit per month \$

Person to contact regarding payment of account:

1. Name:	<input type="text"/>	Position:	<input type="text"/>	Phone:	<input type="text"/>
2. Name:	<input type="text"/>	Position:	<input type="text"/>	Phone:	<input type="text"/>
3. Name:	<input type="text"/>	Position:	<input type="text"/>	Phone:	<input type="text"/>

TRADE REFERENCES

Please list three trade references with which you have a credit account with.

By listing a reference you authorise us to contact them to discuss your trading history and to verify your details.

1. Business Name:	<input type="text"/>	Date account opened:	<input type="text"/>		
Contact Name:	<input type="text"/>	Phone:	<input type="text"/>	Fax:	<input type="text"/>
Trading Address:	<input type="text"/>		Postcode:	<input type="text"/>	
2. Business Name:	<input type="text"/>	Date account opened:	<input type="text"/>		
Contact Name:	<input type="text"/>	Phone:	<input type="text"/>	Fax:	<input type="text"/>
Trading Address:	<input type="text"/>		Postcode:	<input type="text"/>	
3. Business Name:	<input type="text"/>	Date account opened:	<input type="text"/>		
Contact Name:	<input type="text"/>	Phone:	<input type="text"/>	Fax:	<input type="text"/>
Trading Address:	<input type="text"/>		Postcode:	<input type="text"/>	

DECLARATION BY / FOR AND ON BEHALF OF THE APPLICANT/S / CLIENT (Please read carefully before signing)

1. I/We declare and warrant that the applicant/s are neither bankrupt or insolvent and have not committed any act of bankruptcy or traded whilst insolvent within the previous three years.
2. I/We authorise the Company to conduct credit and financial checks on the Client (and any guarantors) as deemed necessary at any time, and consent to such checks for the purposes of the Privacy Act 1988, and consent to disclose such information to credit reporting or recovery agents.
3. I/We acknowledge and agree to the General Terms of Trade that accompanies this Application for Credit and agree to be bound by the General Terms and Conditions of Trade upon signing the document.
4. I/We acknowledge that the Client and each of the Guarantors have received a complete and legible copy of this Agreement and Terms and Conditions before signing it.
5. I acknowledge and warrant that I am duly authorised to sign and make this application.

Applicant 1

Name: Date: Witness: Date:

Signature:
Applicant

Signature:
Witness

Applicant 2

Name: Date: Witness: Date:

Signature:
Applicant

Signature:
Witness

TERMS & CONDITIONS

1. Interpretation

1.1 In these terms and conditions:

- a. "The Company" means the entity stated in the Application for Credit and any related body corporate as defined in the Corporations Act 2001 and its successor's and assigns.
- b. "Client" means the entity stated in the Application for Credit, its successors and assigns and any other person offering to contract with the Company on these terms and conditions or, where such person is acting in the course of employment, such persons as employer.

2. Agents

2.1 The Company shall be at liberty to retain any of its authorised agents or any other entity it sees fit and at the sole discretion of the Company and the Client consents to disclosure of information about the Client or its contacts to these agents.

3. Risk

3.1 Should the Company elect to post any goods or organise delivery of goods, the Client's risk of loss or damage to such good passes to the Client on the date and at the time that the goods were ordered, and it is the Client's responsibility to ensure these goods are insured and covered for their time in transit.

3.2 The Company will not be responsible for non-delivery or delay in delivery of any goods where such non-delivery or delay occurs, the Company may deliver the goods not delivered or delayed at any subsequent time and the Client must accept and pay for them.

4. Title of Property

4.1 In relation to goods supplied to the Client, ownership and property in the goods vests absolutely with the Company and does not pass to the Client UNTIL the Client:

- a. Pays for the goods in full;
- b. Pays in full all other monies owing or unpaid by the Client to the Company including monies in respect of goods previously or subsequently supplied to the Client by the Company.

4.2 In relation to goods supplied to the Client for which payment in full has not been received:

- a. The relationship between the Client and the Company shall be fiduciary;
- b. The Client will hold those goods as bailee for the Company;
- c. Where the Client sells those goods, the Client does so as fiduciary agent of the Company;
- d. When new goods or objects are formed with the Company's goods into other products or the goods are affixed to other objects, the Company will be given full ownership of such new goods or objects;
- e. Where the goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the goods, including insurance proceeds will be kept separately in trust for the Company;
- f. Where the goods are disposed of, the Client may only dispose of the goods in the ordinary course of its business on commercially reasonable terms;

g. The Client undertakes that until it delivers the goods to a third party, it will store the goods on its premises separately from its own goods, or those of any other person, and in a manner which makes the goods readily identifiable as the Company's goods.

5. Access

5.1 The Client irrevocably permits the Company or any person authorised by the Company in writing, upon giving reasonable notice to enter the Client's premises or at premises where the goods are reasonably believed by the Company to be held on the Client's behalf for the purpose of examining or recovering the goods. The Client also agrees to indemnify and hold the Company harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any goods, the subject of this Agreement.

6. Transactions contemplated by this Agreement

6.1 The Company's tender of delivery of goods and services under this Agreement is a condition of the Client's duty to accept the goods or services provided and, unless otherwise agreed, the Client's duty to pay for them.

7. Disputes

7.1 If the Client disputes any goods sold or services supplied by the Company are faulty or defective or disputes the Invoices the Company has issued, the Client must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.

8. Entire Agreement

8.1 This Agreement together with a completed Hire Agreement (where applicable) form the entire agreement between the parties and no regard shall be had to any other dealings. Any terms and conditions that may have been attached or embodied in any other document, tender, offer, quote, purchase order or included in correspondence are deemed to have been withdrawn in favour of these agreements. For the avoidance of doubt should there be any inconsistencies between the Hire Agreement and this Application for Credit Account and Agreement, the order of precedence shall be:

1. The "Hire Agreement"
2. The "Application for Credit Account and Agreement".

9. Payment

9.1 The Client agrees to pay all amounts due in clear funds within the Company's agreed timeframe but no later than 30 days from the date of invoice. The Client agrees that if it fails to pay in accordance with this clause, the Company may:

- a. Charge a late payment fee of 5% on all amounts paid after the due date;
- b. Charge interest on debts at 8% per annum from time to time;
- c. Recover all collections costs and expenses incurred in collecting overdue accounts on an indemnity basis;
- d. Withhold supply;
- e. Sue for the money owing on the goods or services provided.

9.2 In the event where this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amounts overdue.

10. Default

10.1 If the Client:

- a. Fails to pay for any goods or services on the due date; or
- b. Otherwise breached this agreement and failed to rectify such breach within seven days notice; or
- c. Cancel delivery of goods or services; or
- d. Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
- e. Allow a judgment or order to be enforced or become enforceable against the Client's property; or
- f. Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;

then the Company may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re- take possession of any or all of the goods the Company has supplied to the Client and:

- g. Resell the goods concerned;
- h. Terminate the agreement; and
- i. Sue for any monies owing.

10.2 The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Client or the Guarantor or both.

10.3 The Client and the Guarantor jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.

10.4 The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.

11. Charge

11.1 The Client charges in favour of the Company any land that it owns (or acquires after the date of this agreement) as security for any and all monies owed to

the Company and hereby authorises and consents to the Company registering a caveat over the land if the Client defaults in making payment of any amounts owing to the Company.

12. Right to amend terms and conditions

12.1 The Company reserves the right to amend terms and conditions of this agreement by giving the Client notice in writing of the amended terms and conditions to the Client's address as specified on the face of this agreement or as notified by the Client from time to time. The Client is deemed to accept any amended Terms and Condition unless it notifies the Company in writing within seven days of its objection to the proposed amendment to the Terms and Conditions.

13. Set-off

13.1 The Client agrees that:

- a. The Company may set-off any credit amount that the Company owes to the Client against any debt due by the Client to the Company at the Company's sole discretion;
- b. The Client is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Client might have against the Company without written agreement by the company.

14. Severance and Waiver

14.1 If any part of this agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed from the agreement and the severed part will not affect the validity and

enforceability of any remaining provisions. Any waiver of the Company's right under this agreement must be in writing and signed by an authorised representative of the Company.

15. Jurisdiction

15.1 The agreement shall be deemed to have been made in Western Australia and shall be interpreted in accordance with the Laws of Western Australia, Australia, and the parties submit to the exclusive jurisdiction of the Western Australia Courts.

16. Consumer Credit Code

16.1 The Client and Guarantors declare that the credit to be provided is to be applied wholly or predominantly for business purposes and not for personal, domestic or household purposes.

ACKNOWLEDGMENT.

I/We acknowledge that I/We have read and understood the contents of these terms and conditions.

Applicant 1

Name: Signature: Date:

Applicant 2

Name: Signature: Date:

Applicant 3

Name: Signature: Date:

PERSONAL GUARANTEE, INDEMNITY AND CHARGE

This Guarantee is made on:
Date

BETWEEN THE SUPPLIER: Sherona Pty Ltd as trustee for The EMJC Unit Trust, trading as EMJC Earthmoving & Plant Hire

AND THE GUARANTOR:

Guarantor Name

Guarantor Date of Birth

Full Residential Address

Home Phone

Mobile

Email

RECITALS

The Supplier and the Customer identified below have entered into an on-going supply agreement that commenced with a Credit Application submitted by the Customer on and in consideration of the Supplier agreeing at the request of the Guarantor to Supply goods and services to the Customer, the Guarantor hereby grants this Deed of Guarantee, Indemnity and Charge and agrees as follows:

THE CUSTOMER:

Full Company Name

ACN

TERMS OF THE GUARANTEE

1. Definitions and interpretation.

- 1.1 References to laws include regulations, instruments, by-laws, and all other subordinate legislation or orders made by any authority with jurisdiction in respect of this Guarantee.
- 1.2 If any part of this Guarantee is found to be void, unlawful or unenforceable then that part will be deemed to be severed from the document and the severed part will not affect the validity and enforceability of any remaining provisions.
- 1.3 The laws of the State of Western Australia apply to this Guarantee, and the parties submit to the exclusive jurisdiction of the Courts of Western Australia
- 1.4 Any change to this Guarantee MUST BE IN WRITING AND SIGNED by both parties.
- 1.5 An obligation imposed by this Guarantee on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- 1.6 The use of one gender includes the other and the singular includes the plural and vice versa.
- 1.7 This Guarantee is ongoing and binds that person's legal personal representative/ executor.

2. General

- 2.1 The undersigned Guarantor hereby:
 - a. Guarantees the due performance and obligations of the Customer to the Supplier and to be subject to and agrees to be bound by all terms and conditions contained in the agreement between them;

- b. Indemnifies and agrees to keep indemnified the Supplier from and against any and all damages, cost, losses and expenses which the Supplier may suffer or incur in any way out of or consequent upon or rising directly or indirectly out of the Agreement between the Supplier and the Customer, including costs and legal fees on a solicitor and own client basis;
- c. Acknowledges that the liability of the Guarantor will not be affected by the granting of time or other indulgence or concession to the Customer, or by the compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Company against the Customer or by any neglect or omission relating to sureties which would or might but for this provision release the Guarantor from their obligations;
- d. Acknowledges and agrees that the Supplier is at liberty to act as though the Guarantor is the primary debtor jointly and severally liable with the Customer, and the Guarantor waives all rights either at law or in equity or under any statute that the Guarantor might otherwise be entitled to claim or enforce as a defence to any action brought by the Supplier;
- e. Acknowledges that payment of Goods and Services Tax imposed by the Supplier by reason of supply of goods and services or both to the Customer shall also be guaranteed by the Guarantor.

- f. I authorise the Supplier to conduct such credit and financial checks as deemed necessary at any time, and consent to such checks for the purposes of the Privacy Act 1988, and consent to disclosure of such information to a credit reporting or recovery agents.

3. Charge

- 3.1 For the purpose of securing payment to the Supplier of all monies owing to it by the Customer, the Guarantor:
 - a. Hereby charges all of his/her beneficial interest in any real property in favour of the Supplier whether or not a demand has been made on the Customer or the Guarantor;
 - b. Agrees and consents to the Supplier registering a caveat over real property owned by the Guarantor to secure monies owing to the Supplier.

4. Warranties

- 4.1 The Guarantor gives the following warranties in the knowledge that the Supplier has relied on them in entering into this Deed of Guarantee:
 - a. That the Guarantor has read and understood this Deed;
 - b. That the Supplier has afforded the Guarantor full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under this Deed prior to the signing of this Deed;
 - c. That the Guarantor has sought and obtained such legal and accounting advice as they may have required before executing this Deed.

Please read carefully before signing and seek legal advice about the terms of this document

IN WITNESS THEREOF THIS DEED HAS BEEN EXECUTED ON THE DATE SET OUT ABOVE

Signed, sealed and delivered by the Guarantor in the presence of:

Name of Guarantor: Signature of Guarantor: Date: / /

Name of Witness: Signature of Witness: Date: / /

