



P: 07 54967000  
 F: 07 54967888  
 ABN: 88 623 702 369  
 www.earthforcehire.com.au  
 PO Box 971 Morayfield QLD 4506

**Drotts, Bobcats, Mini Excavators , Tight Access,  
 Combinations, Excavators, Trucks & Trailers.  
 Also Suppliers of Sand, Soils & Gravels.**

**CREDIT APPLICATION**

Company Name (The Applicant).....

Company ACN Number.....

Trading Name or Business Name (if applicable).....

Business Registration No.....

Business ABN Number.....

Business Ph No..... Fax No.....

Mobile Nos.....

Address.....

Are You a                      Sole Trader                      Partnership                      Company                      Trust Company

Names of Owners (if Sole Trader & Partnership) or Names of Directors (if company)

1. Full Name.....Date of Birth.....Home Ph.....

Home Address.....Drivers Licence No.....

2. Full Name.....Date of Birth.....Home Ph.....

Home Address.....Drivers Licence No.....

3. Full Name.....Date of Birth.....Home Ph.....

Home Address.....Drivers Licence No.....

Credit Limit Required. \$.....

1. The Applicant hereby applies to Earthforce Plant Hire Pty Ltd for a credit account.
2. Should this application be accepted by Earthforce the applicant agrees that the credit account shall be subject to the terms of this applications and the usual terms and conditions of trade, a copy of which is contained herein and which the applicant has read and understands.
3. Earthforce hereby advises that, pursuant to section 18E (8) of the Privacy Act 1988 information disclosed in this credit application may be disclosed to a credit reporting agency. Under section 18E(8) (c) of the Privacy Act 1988 Earthforce is allowed to give a credit reporting agency personal information about your credit application. Information which may be given to an agency is covered by Section 18 E (1) of the Act and includes identity particulars (as permitted by the Privacy Commissioners determination issued under Section 18 E (3), the fact that you have applied for credit and the amount, the fact that Earthforce is a credit provider to you, payments that become overdue by more than sixty (60) days and for which collection action has commenced, advice that payments are no longer overdue, cheques drawn by you which have been dishonoured more that once, in specific circumstances that in the opinion of Earthforce, you have committed a serious credit infringement, that credit provided to you by Earthforce has been paid or otherwise discharged. Pursuant to S 18 K (1) and 18 N (1) personal information from a credit reporting agency or a credit provider for the purpose of assessing this application for commercial credit (including information as to credit worthiness), and agree to that agency or provider providing that information to Earthforce for that purpose. You Further agree to the terms of the commercial credit agreement to which this application may lead.

DATED this.....Day of.....20.....

SIGNATURE OF AUTHORISED OFFICER OF APPLICANT.....

PRINT NAME OF AUTHORISED OFFICER.....

Please provide 3 trade references, contact names and phone numbers.

1..... Contact person..... Phone number.....

2..... Contact person..... Phone number.....

3..... Contact person..... Phone number.....



## TERMS & CONDITIONS OF TRADE

### 1. INTERPRETATION

- a. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female in neuter gender and vice versa.
- b. Earthforce shall mean Earthforce Pty Ltd its successors and assigns.
- c. "Customer" shall mean the person named as the "Applicant" on the credit application annexed hereto.

### 2. OFFER & ACCEPTANCE

- a. Any quotation made by Earthforce is not an offer to sell or to provide services. Earthforce shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by Earthforce within thirty (30) days of receipt by Earthforce of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Earthforce and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- b. Insofar as service supplied by Earthforce are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited to (a) the supplying of the services again; or (b) the payment of the cost of having the services supplied again.

### 3. DELIVERY

- a. Property in all Earthforce Plant Hire products supplied by Earthforce will not pass until payment of the invoiced price has been made in full.
- b. Any date quoted for delivery (the quoted date) is an estimate only and unless a guarantee shall be given by Earthforce in writing providing for liquidated damages for the failure to deliver by the quoted date Earthforce shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of Earthforce for failure to deliver on or before the quoted date. The customer shall accept and pay for the Services if delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- c. Earthforce shall not be liable to any customer or any other party for direct or indirect or consequential injury loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Earthforce or any other party, strike or any other industrial action be if of Earthforce or other party or any other cause whatsoever.
- d. Earthforce reserves the right to deliver by instalments. If delivery is made by instalments the customer shall not be entitled to (a) terminate or cancel the contract; or (b) to any claim, loss or damage howsoever arising failure by Earthforce to deliver any instalments on or before the quoted date.
- e. It is agreed that Earthforce shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages of machinery, or arising out of any other unexpected cause, or any cause beyond reasonable control of Earthforce.

### 4. PAYMENT

- a. Unless otherwise agreed in writing, payment terms are net cash thirty (30) days form the end of the month in which the services are invoiced to the customer.
- b. This term as to the payment shall be of the essence of the contract.

### 5. EXCLUSION OF LIABILITY

- a. Subject to the clause therein Earthforce shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage caused by the services provided by or on behalf of or in any arrangement with Earthforce or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of Earthforce its servants or agents.
- b. As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within fourteen (14) days notify Earthforce in writing of the same.

### 6. FORCE MAJEURE

If by reason of any fact circumstance, matter or thing beyond the reasonable control of Earthforce, Earthforce is unable to perform in whole or in part any obligation under this contract, Earthforce shall be relieved of that obligation under this contract to the extent and of the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.

### 7. DEFAULT

Upon the occurrence of default by the customer in compliance with the terms herein:

- a. Earthforce may at its discretion withhold further supplies of services or cancel the contract, or vary the terms of this contract without prejudice to its rights hereunder PROVIDED HOWEVER that Earthforce may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waive.
- b. The customer hereby authorises Earthforce or its agent to review its books and records, including all bank statements and other bank records to determine whether the customer is able to pay its debts as and when they fall due and the customer further irrevocably grants to Earthforce a licence to enter upon the customers premises for such purpose.
- c. Without prejudice to any other right or remedy the customer shall indemnify Earthforce against any costs, fees charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to Earthforce on an indemnity basis and all such costs shall be recoverable as a liquidated debt, at the option of Earthforce, may be recovered in the Minor Debts Court.
- d. The customer shall pay to Earthforce an administration fee of \$50.00 on the occurrence of every event of default as a liquidated debt being a genuine pre estimate of the loss of Earthforce in respect of such act of default, however such fee shall not preclude Earthforce from claiming any higher amount from the customer for any loss occasioned by such act of default.

### 8. CHANGE OF OWNERSHIP

The customer agrees to notify Earthforce in writing of any change of ownership of the customer or its business, or of directorships in the case of a corporate customer, or of any other change whatsoever affecting this agreement within seven (7) days form the date of such change and indemnifies Earthforce against any loss or damage incurred as a result of the customers failure to notify of any change.

### 9. LIEN CHARGE

The customer hereby charges all property, both equitable and legal of the customer in respect of any monies that may hereinafter by owing to Earthforce under this contract by the customer or otherwise and hereby authorise Earthforce or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the customer at any time, or to register this charge assets of the customer with the Australian Securities Commission.

### 10. JURISDICTION

This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of or in respect of the contract and/or the interpretation therein shall be brought only in the Courts of Brisbane in the State of Queensland and the customer irrevocably submits itself to the jurisdiction the courts of Brisbane in the State of Queensland. If the subject matter of any dispute arising hereunder is within the jurisdiction of the Queensland Building Tribunal then the Customer hereby elects not to have such dispute determined in the Queensland Building Tribunal but instead to have such dispute heard and determined either in the Magistrates District or Supreme Court according to the jurisdiction of each such court.



**DEED OF GUARANTEE AND INDEMNITY**

TO; Earthforce Plant Hire Pty Ltd (referred to as Earthforce)

Whereas in consideration of Earthforce agreeing to supply to the person who is named as "the Applicant" on the credit application annexed hereto (hereinafter called "the customer") with services from time to time, I/we the undersigned ("referred to as the guarantor") HEREBY JOINTLY AND SEVERALLY agree with Earthworkz as follows;

1. To guarantee and to be responsible to Earthforce for the due payment by the customer of all monies now or from time to time hereafter owing to or unpaid to Earthforce on any account or any matter whatsoever by the customer either directly or indirectly and either alone or jointly with any other person, firm and/or corporation, and including but without limiting the generality of the foregoing any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by Earthforce in enforcing payment by the customer of any such monies.

2. This Guarantee shall constitute a continuing guarantee to Earthforce for all monies which are now or may from time to time be owing or remain unpaid and shall not be affected by-

a. any variation or notification of the agreement between Earthforce and the customer extending credit to the customer or any other changes to the terms of such agreement, including any extension to the credit limit applied for by the customer and approved by Earthforce from time to time (and whether or not such agreed credit limit is exceeded at any time without approvals by Earthforce)

b. the winding up of the customer or the entry by the customer into a Deed of Company Arrangement whereby any debt due and owing by the customer to Earthforce is not recoverable

c. anytime or other indulgence granted by Earthforce to the customer or by any arrangement entered into whereby Earthforce rights are in anyway modified or no notice of the granting of any time or indulgence or of the entering into any arrangement need be given to the guarantor.

d. termination of the agreement between Earthforce and the customer for the provision of credit on account of the customer failing to inform Earthforce of any change of ownership of the customers business, shareholding or control in which event the guarantor agrees to guarantee all monies due and owing by any third party to Earthforce as a result of the continuance of services to the customer or the third party under the customers account until notification of such charge has been given to Earthforce and a new written agreement for the provision of credit has been entered into with the third party (including a guarantee and indemnity in the same terms as act out herein)

e. the payment by the customer of monies to Earthforce which are rendered void pursuant to the laws relating to bankruptcy, liquidation or administration of companies and no release, settlement or discharge which may have been given or made on the faith of such payment shall affect Earthforce right to recover such monies from the guarantor.

f. any legal limitation, disability or incapacity of the customer or any other circumstances whatsoever and any monies may recoverable from the guarantor or principal debtor.

3. The Guarantor hereby indemnifies Earthforce in respect of all amounts payable by the customer to Earthforce on account of services supplied by Earthforce to the customer, and all costs and interest which the customer may be required to pay Earthforce, and the indemnity hereby given is a separate covenant and shall not be affected by the appointment by the customer of an administrator under the provisions of the Corporations Law or any Deed of Company Arrangement entered into by the customer.

4. The guarantor shall be liable to Earthforce for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceedings for recovery under this guarantee.

5. It is expressly declared that notwithstanding the fact that this Deed of Guarantee and Indemnity may be intended or expressed to be executed and given by more than one person, the same shall in fact be a valid and effectual guarantee binding against such person or persons as shall execute the same forthwith upon their execution thereto and shall continue to be binding as against such person or persons, notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.

6. The guarantor hereby charges all property both equitable and legal of the guarantor in respect of any monies that may hereinafter be owing to Earthforce under this guarantee by the guarantor or otherwise and hereby authorise Earthforce or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the guarantor at any time.

7. This guarantee and interpretation of it shall be governed by the laws of the State of Queensland in force for the time being and from time to time, and the parties to this Deed of Guarantee and Indemnity irrevocably submit unconditionally to the jurisdiction of the Courts of Brisbane in the State of Queensland in respect of all claims, proceedings and matters arising out of or in respect to this Deed of Guarantee and Indemnity.

8. In this guarantee, unless the content otherwise requires the singular includes the plural and vice versa, and gender includes each of the other genders and works importing persons include firms, unincorporated bodies and corporations.

SIGNED, SEALED & DELIVERED THIS.....DAY OF.....20.....

Signature of Guarantor.....Signature of Witness.....

Print Full Name.....Print Full Name.....

Address.....Address.....

Signature of Guarantor.....Signature of Witness.....

Print Full Name.....Print Full Name.....

Address.....Address.....

Signature of Guarantor.....Signature of Witness.....

Print Full Name.....Print Full Name.....

Address.....Address.....

NOTE - YOU MAY WISH TO SEEK INDEPENDENT LEGAL ADVISE BEFORE SIGNING THIS DEED