



## APPLICATION FOR 30 DAY TRADING ACCOUNT

NAME OF APPLICANT/COMPANY: \_\_\_\_\_

TRADING NAME: \_\_\_\_\_

POSTAL ADDRESS: \_\_\_\_\_

STATE: \_\_\_\_\_ POST CODE: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

STATE: \_\_\_\_\_ POST CODE: \_\_\_\_\_

BUSINESS PHONE NUMBER: (\_\_\_\_) \_\_\_\_\_ FAX NUMBER: (\_\_\_\_) \_\_\_\_\_

MOBILE NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

IS BUSINESS ADDRESS OWNED OR RENTED? \_\_\_\_\_

PHONE NUMBER: (\_\_\_\_) \_\_\_\_\_ FAX NUMBER: (\_\_\_\_) \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ SALES: \_\_\_\_\_ ACCOUNTS: \_\_\_\_\_

NATURE OF BUSINESS: \_\_\_\_\_ WHEN WAS BUSINESS ESTABLISHED: \_\_\_\_\_

A.B.N: \_\_\_\_\_ ACN: \_\_\_\_\_

(Please Circle) COMPANY                  PARTNERSHIP                  SOLE TRADER

**DIRECTORS/SOLE TRADER DETAILS:**

FULL NAME	CURRENT RESIDENTIAL ADDRESS	D.O.B	DRIVERS LICENCE NO.

**OTHER BUSINESS' CURRENTLY OR PREVIOUSLY ASSOCIATED WITH:**

NAME: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

ACN: \_\_\_\_\_ ABN: \_\_\_\_\_ BN: \_\_\_\_\_

STILL ASSOCIATED: (please circle) YES NO DETAILS: \_\_\_\_\_

TIME PERIOD OF ASSOCIATION: \_\_\_\_\_

**IS ANY PRINCIPAL OR COMPANY OFFICER CURRENTLY BANKRUPT OR DISCHARGED OF BANKRUTPCY?**

(Please Circle) NO YES (if yes please supply details) Date of Release \_\_\_\_\_

3 x TRADE REFERENCES: Please do not supply concrete, fuel or brick companies.

(EG Bunnings, Tradelink, Boral, CSR, etc)

NAME	PHONE NUMBER	EMAIL ADDRESS OR FAX NUMBER
1.		
2.		
3.		

ANTICIPATED MONTHLY PURCHASES UNDER THIS ACCOUNT (if approved): \$ \_\_\_\_\_

DOES YOUR COMPANY REQUIRE ORDER NUMBERS: (Please Circle) YES NO

## TRADING TERMS AND CONDITIONS OF HIRE

The following are M&K's Terms and Conditions for the hire of the Equipment. Please read the below Terms and Conditions carefully. It is a condition of the Hirer's hire of the Equipment that the Hirer complies with these Terms and Conditions.

### 1. EQUIPMENT HIRE

- 1.1 M&K agrees to hire the Equipment to the Hirer for the Hire Period on the Terms and Conditions and as set out in these Terms and Conditions and the Hire Schedule.
- 1.2 The Hire Period will commence on the time and date the Equipment arrives at the Hirer's site, plus applicable delivery charges as set out in Clause 2.
- 1.3 The Hire Period will cease when the Equipment is returned to M&K's custody and possession, subject to acceptance in accordance with the terms of this Agreement.
- 1.4 The Hirer is responsible for payment of all Hire Charges until the Equipment is returned to and accepted by M&K or an alternative arrangement is agreed by M&K.

### 2. DELIVERY AND REMOVAL EQUIPMENT

- 2.1 Unless otherwise agreed between M&K and the Hirer, Equipment attracts a one (1) hour delivery charge to sites within 30km radius of the Brisbane CBD and minimum hire is applicable (contact bookings office for full details). A carry over to the next day will attract a 0.5 travel charge for each additional day to sites within 30km radius of the Brisbane CBD. Trucks/Water trucks are a one (1) hour delivery charge every day to sites within 30km radius of the Brisbane CBD. 13 tonne to 30 tonne excavators and Rollers have a float fee (contact bookings office for pricing). Any sites out of the 30km radius of the Brisbane CBD will incur an extra delivery (contact bookings office for full charges).
- 2.2 M&K will not be liable to the Hirer for any late delivery, non-delivery, pick up or any Loss or damage occasioned to the Hirer for such late delivery or pick up or non-delivery of the Equipment.

### 3. OWNERSHIP

- 3.1 Notwithstanding M&K's interest in the Equipment (whether an owner or otherwise) M&K retains its interest in the Equipment at all times notwithstanding:
  - (a) the delivery of the Equipment to the Hirer;
  - (b) the possession and use of the Equipment by the Hirer; and
  - (c) any temporary attachment of the Equipment to any land or buildings to facilitate use of the Equipment,subject only to the rights of the Hirer as a mere bailee of the Equipment with a right only to use them in accordance with, and under, the terms of this Agreement..

### 4. FEES AND CHARGES

- 4.1 The Hirer must pay to M&K :
  - (a) all Hire Charges and other amounts stated in an invoice within thirty (30) days from the date of the invoice; and
  - (b) costs and expenses incurred in the exercise or attempted exercise by M&K of M&K 's rights under this Agreement, including collection agency fees (if permissible) and legal fees (calculated on a solicitor and own client basis).
- 4.2 Payment of invoices by credit card may incur a surcharge.
- 4.3 In the event that any payment is not received within the period specified in clause 4.1(a), then:
  - (a) Credit will not be extended; and
  - (b) Further credit will be withheld; and
  - (c) Interest will accrue on all unpaid amounts at the rate specified in the Guarantee & Indemnity
- 4.4 Invoices issued by M&K will, in the absence of manifest error, be deemed to be correct. Any discrepancies with any invoice must be notified to M&K within five Business Days of receipt, following which period the recipient waives all of their rights so far as they relate to disputing the invoice to the fullest extent permissible by law.
- 4.5 All Hire Charges will be as specified in M&K's schedule of fees and charges, and are subject to change at any time at the discretion of M&K.
- 4.6 The Hirer may request M&K to bear the cost of any tip fees, it may elect to pay any tip fees themselves. In the event that M&K is responsible for any tip fees, then these will attract a surcharge as set out in M&K's schedule of fees and charges.

### 5. GST

- 5.1 Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

### 6. WARRANTIES BY THE HIRER

- 6.1 The Equipment will, during and after the Hire Period, remain the exclusive property of M&K and nothing contained in this Agreement will confer on the Hirer any right or property or interest in and to the Equipment other than as bailee.
- 6.2 Except as provided in this Agreement, the Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with, the Equipment.
- 6.3 The Hirer warrants that the person signing this Agreement is properly authorised to bind the Hirer to this Agreement.
- 6.4 The Hirer agrees that:
  - (a) It has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment for the job the Hirer intends to use the Equipment for; and
  - (b) M&K has made no representations or given any guarantee or warranty that the Equipment is suitable for the Hirer's intended purpose.

### 7. OBLIGATIONS OF THE HIRER

#### 7.1 Hirer's Obligations

The Hirer undertakes that it will:

- (a) be responsible for the Equipment and shall use and shall keep the Equipment in good and substantial repair and condition;
- (b) operate the Equipment in a safe, skilful and proper manner and only for the purposes and within the capacity for which is was designed;
- (c) ensure persons operating the Equipment are suitably trained on its safe and propose use, qualified to use the Equipment and where necessary hold a current licence to use the Equipment.
- (d) accept full responsibility for any and all Loss and damage to the Equipment howsoever caused;
- (e) advise M&K of the precise location of the Equipment, and promptly grant access to it, at the request of M&K ;
- (f) immediately give notice to M&K if the Equipment is lost, damaged or destroyed;
- (g) comply with all the laws, regulations and instructions applicable to the use and operation of the Equipment;

### 8. LIABILITY AND INDEMNITY

- 8.1 Subject to the Hirer's statutory rights, M&K is not liable to the Hirer for any loss, damage, costs, expenses, damages (including for loss of use or enjoyment) or any other liabilities resulting from:
  - (a) any accident, breakdown or any other failure of the Equipment; or
  - (b) loss of or damage to the Hirer's or any third party's personal property, which includes, without limitation, personal property left in any Equipment.
- 8.2 Without limiting the foregoing, to the maximum extent permitted by law, M&K will not be liable for any indirect, special, incidental or consequential damage, or loss of profits or loss of earnings, suffered by the Hirer or any other person due to any breach of this agreement by M&K and the Hirer releases and indemnifies M&K (including for legal costs) from any such claim.
- 8.3 The Hirer indemnifies M&K against any liability or loss arising from, and any costs charges and expenses incurred in connection with:
  - (a) loss of or damage to or by the Equipment during the Hire Period, including property damage, injury or death caused directly or indirectly by the Equipment;
  - (b) any act or omission of the Hirer during the Hire Period resulting in Loss or damage to M&K , except to the extent caused by the negligence of M&K;
  - (c) a delay in payment of money under this Agreement; and
  - (d) any breach by the Hirer of an obligation under this Agreement.

### 9. EQUIPMENT LOST, STOLEN, DAMAGED

9.1 In the event that the Equipment suffers a major breakdown or becomes unsafe to use during the Hire Period (whether as a result of the Hirer's negligence or otherwise) the Hirer must:

- (a) immediately cease using the Equipment;
- (b) promptly notify M&K in writing as to the condition of the Equipment;
- (c) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

**10. GENERAL**

- 10.1 The parties will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other Party to carry out and effect the intent and purpose of this Agreement.
- 10.2 This Agreement shall be governed and construed in accordance with the laws of the State of Queensland.
- 10.3 Failure of a Party to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of that Party's rights or powers arising pursuant to this Agreement.
- 10.4 This Agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.

**11. DEFINITIONS**

11.1 In this document, unless the contrary intention appears:

**Agreement** means this agreement comprising the Hire Schedule, Special Conditions, Annexures and Appendices (if any) and these Terms and Conditions;

**Charges** means all amounts charged for hire of the Equipment as set out in M & K's schedule of fees and charges;

**Equipment** includes but is not limited to any item of plant, equipment, machinery or vehicle; any tools, accessories, parts items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle; and the means to transport the Equipment provided by M&K to the Customer during the Hire Period;

**Guarantee & Indemnity** means the guarantee and indemnity attached to this Agreement guaranteeing the performance of the Hirer under this Agreement which must be provided by the Guarantor;

**Guarantor** means the person(s) defined as the Guarantor(s) in the attached Guarantee & Indemnity;

**GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under this Agreement;

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Hire Charges** means the charges for hire of Equipment and associated charges as specified in M&K's schedule of fees and charges from time to time;

**Hire Period** means the period set out on the Hire Schedule as may be extended and includes the period up until the Equipment is returned to M&K;

**Hire Schedule** means the schedule dated on or about the date of this Agreement between M&K and the Hirer setting out the specific terms of the Equipment to be hired.

**Hirer** means and includes the Party specified as the Hirer in any Hire Schedule and any person tendering the Equipment for handling, lifting and/or carriage by the Equipment;

**M&K** means M&K Plant Hire (Aust) Pty Ltd ABN 98 663 963 060 as of 26 Smith Street Capalaba in the State of Queensland and includes its employees, agents or any subcontractors and their employees;

**Liability** means any Liability (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the Liability occurred including Liability for any consequential or indirect losses, economic losses or loss of profit;

**Loss** means all damage, loss, cost, and expense (including legal costs and expenses of whatsoever nature or description) howsoever arising including in contract, tort (including negligence), indemnity, under statute including any consequential or indirect losses, economic losses, loss of profits, loss of use, loss of contracts, business interruption, loss of revenue, financing costs or anticipated savings;

**Party** means a party to this Agreement;

**Terms and Conditions** means these terms and conditions.

**12. INTERPRETATION**

In this Agreement, unless the context indicates a contrary intention:

- (a) words denoting the singular number include the plural and vice versa;
- (b) words denoting individuals include corporations and vice versa;
- (c) a reference to any Party to this Agreement includes their executors, administrators, successors and permitted assigns including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) this Agreement will, if the Hirer comprises more than one person, bind such persons jointly and severally;
- (e) headings are for convenience only, and do not affect interpretation;
- (f) references to clause and sub-clauses are references to clauses and sub-clauses in this Agreement;
- (g) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) the word **includes** in any form is not a word of limitation;
- (i) a reference to this Agreement includes any subsequent variation of this Agreement; and
- (j) time is of the essence.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

**\*APPLICATION CANNOT BE APPROVED UNLESS GUARANTEE IS ALSO SIGNED AND WITNESSED\***



## GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ BETWEEN:

\_\_\_\_\_ of \_\_\_\_\_

AND

\_\_\_\_\_ of \_\_\_\_\_

(Each, a "Guarantor and together, "the Guarantors")

AND

**M & K Plant Hire (Aust) Pty Ltd A.B.N. 98 663 963 060** of 26 Smith Street Capalaba in the State of Queensland ("M & K")

### BACKGROUND

- A. In consideration of the M&K, at the request of the Guarantors, agreeing to provide credit facilities as set out in the document called "Application for Thirty Day Trading Account" (the "Agreement") to which this Guarantee & Indemnity is annexed, to:

\_\_\_\_\_ ("the Debtor") the Guarantors have agreed to execute this Guarantee and Indemnity

1. The Guarantors hereby jointly and severally guarantee to M & K due payment of all moneys (including but not limited to interest and interest at the rate specified in the Agreement) that the Debtor may owe to M & K under the terms of the Agreement.
2. If for any reason (including but not limited to any provision of this Guarantee and Indemnity being found unenforceable) M & K is unable to recover funds owing to it from the Debtor under the Agreement, the Guarantors joint and severally indemnify M & K in respect thereof and all damages, costs, losses and expenses that M & K may suffer as a result thereof and notwithstanding that the Debtor may be wound up or subject to external administration chapter 5 of the *Corporations Act 2001 (Cwlth)*.
3. This Guarantee and Indemnity will be a continuing guarantee to M & K for the whole of the Debtors indebtedness or liability to M & K in respect of services supplied or to be supplied to the Debtor whether now or in the future, including interest on overdue accounts, debt recovery fees paid to a collection agency and legal costs on a solicitor and own client basis and disbursements of any attempt or attempts to recover payment from the Debtor or any Guarantor including (but not limited to) the costs of lodging and withdrawing caveats.
4. This Guarantee and Indemnity continues to bind the Guarantors despite any change in the Agreement or M & K's terms and conditions (as defined in the Agreement from time to time), any other trading terms with the Debtor and the grant of any time or indulgence to the Debtor without prior notification to the Guarantors, and this Guarantee and Indemnity will be enforceable without requiring M & K to first take any steps or proceedings against the Debtor.
5. To secure the payment of all moneys owing to M & K by the Debtor and/or the Guarantors, the Guarantors hereby charge all of the Guarantors' right, title and interest in any real or personal property that the Guarantors may own (both now and in the future) wherever located.
6. For the purposes of securing the Guarantors obligations under Clause 5 above, the Guarantors hereby appoint as the Guarantors' duly constituted attorneys any officeholder of M & K from time to time to execute in the name of the Guarantors (notwithstanding the Guarantors may not having defaulted in carrying out their obligations under this Guarantee and Indemnity) any real property mortgage, caveat or consent to any caveat M & K choose to register or

lodge against the Guarantors title to any real property in any state or territory of Australia, and any security interest or other similar instrument, and the Guarantors agree to indemnify and keep indemnified such attorney from and against all damages, costs, losses and expenses which such attorney may suffer or incur as a result of the exercise of the power contained in this Clause 6.

7. The Guarantors acknowledge that they have been granted the opportunity to read the Agreement and this Guarantee and Indemnity, and have sought, or had the opportunity to seek, the Guarantors own independent legal and financial advice in relation to the terms therein.
8. If any provision of this Guarantee and Indemnity is unenforceable in accordance with its terms, other provisions which are self – sustaining are, and continue to be, enforceable in accordance with their terms.
9. This Guarantee and Indemnity is governed by the laws of the State of Queensland and all disputes arising between M & K and the Guarantors will be submitted to the Courts of that jurisdiction, or such other Court as may have a jurisdiction to hear such matters.
10. Where this Guarantee and Indemnity is given by more than one person, the obligations contained in it take affect as joint and several obligations. No Guarantor will be released from liability under this Guarantee and Indemnity by reason of any other Guarantor not executing this Guarantee and Indemnity, or this Guarantee and Indemnity ceasing to be binding as a continuing security on any other Guarantor, and the release of any Guarantor from this Guarantee and Indemnity will not affect the liability of the other Guarantors.

**DATED** \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**EXECUTED** as a Deed

**SIGNED BY [NAME]** (the Guarantor) on the \_\_\_\_\_ day )  
of \_\_\_\_\_ 20 in the presence of: )  
\_\_\_\_\_ )

.....  
Print Name: \_\_\_\_\_ Guarantor

**SIGNED BY [NAME]** (the Guarantor) on the \_\_\_\_\_ day )  
of \_\_\_\_\_ 20 in the presence of: )  
\_\_\_\_\_ )

.....  
Print Name: \_\_\_\_\_ Guarantor

**PRIVACY PROTECTION OF INFORMATION**

(Required to enable The Credit Provider to check your credit status)

**PLEASE READ: PRIVACY ACT 1998**

*Under the Privacy Act credit providers are regulated as to the way personal information about customers can be used. Certain information is required to enable The Credit Provider to access loan applications and applications to become guarantors and to administer any credit facility which is subsequently provided. The following tells you what information might be required and how the information might be used. Please read this carefully.*

Credit Provider: M & K PLANT HIRE (AUST) ABN 98 663 963 060

Applicant(s): Name 1: \_\_\_\_\_

Name 2: \_\_\_\_\_

Guarantor(s) Name 1: \_\_\_\_\_

Name 2: \_\_\_\_\_

The Applicant(s) and the Guarantor(s) authorise The Credit Provider (and any other Credit Provider which at any time provides or has any interest in the credit being contemplated by my/our Credit Application) to do any of the following:

Get Credit Information: To enable The Credit Provider to assess a Credit Application for commercial or personal credit The Credit Provider is authorised to get the following information about me/us from a credit reporting agency or other business or source that provides information about credit worthiness:

- personal credit information
- commercial credit information
- a credit report provided by a credit reporting agency used to report on overdue payments from me/us

Provide Information: The Credit Provider is authorised to give information to:

- any person who proposes to guarantee or has guaranteed repayment of any personal or commercial credit provided to me/us
- any person in connection with funding financial accommodation by means of an arrangement involving securitisation
- any person who is a signatory to any credit facility account provided to me/us

Exchange Information: The Credit Provider is authorised to give to and get from the following parties personal or commercial information about my/our credit worthiness, credit history or credit capacity:

- another credit provider, in particular The Credit Provider may acquire an opinion about my/our business, trade or profession
- any broker, financial consultant, accountant, lawyer or other advisor acting in connection with any financial provider or proposed to be provided to me/us
- a credit reporting agency or other business or source that provides information about credit worthiness (information that may be provided by The Credit Provider includes identity particulars, the fact that payments are overdue more than 60 days and collection action has commenced, advice that payments are no longer overdue, advice that cheques drawn by me/us have been dishonoured more than once, in specified circumstances, that in The Credit Provider's opinion a serious credit infringement has been committed by me/us, that credit provided to me/us has been discharged)

Use of Information: It is acknowledged that information obtained by The Credit Provider or me/us may be used for the following purposes:

- to assess an application for credit or to assess a person as guarantor
- to assist in avoiding any defaults under any credit obligations
- to tell other credit providers about defaults made by me/us
- to assess my/our credit worthiness

**It is acknowledged that the above authorities continue until the credit facility provided to the Applicant(s) is repaid in full and the credit facility terminated.**

I/We agree to the above disclosure to a Credit Reporting Agency.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

*Under Section 18E(8)(c) of the Privacy Act M & K PLANT HIRE (AUST) is allowed to give a credit reporting agency personal information about your credit application. The information which may be given to an agency covered by Section 18E(1) of the Act includes:*

- Identity particulars (as permitted by the privacy Commissioner's determination issued under section 18E(3))*
- The fact that you have applied for credit and the amount*
- The fact that M & K PLANT HIRE (AUST) is a current provider for you*
- Payment which becomes overdue more than 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 than once*
- In specific circumstances, that in the opinion of M & K PLANT HIRE (AUST) you have committed a serious credit infringement*
- That credit provided to you by M & K PLANT HIRE (AUST) has been paid or otherwise discharged*

