

APPLICATION FOR COMMERCIAL CREDIT

Date	
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Applicant

Please tick	Sole trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Incorporated company <input type="checkbox"/>
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Trading name	
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Registered name	
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ACN	ABN	
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Trading address	
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Postal address	
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Contact person	Tel (b/h)	
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Fax (b/h)	Email	
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Name of bank	Branch	
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Account no.	BSB	
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Date business commenced	Purchase order no.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Credit limit required	\$
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Details of ALL partner/director

Name	DOB	
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Address	Drivers licence	
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Title	Mobile	
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Name	DOB	
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Address	Drivers licence	
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Title	Mobile	
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Trade references

Name	Tel	
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Address	Fax	
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Name	Tel	
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Address	Fax	
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Name	Tel	
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Address	Fax	
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Sales representative	
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TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) of the date of invoice. Erect Safe Access (ABN 83 609 416 668) and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.
3. Any claims for credit by the Applicant must be made within fourteen (14) days of receiving the Supplier's invoice.

Charges

4. Hire Charges are calculated by either multiplying the number of days in the hire period by the daily rate or by application of the weekly rate.
5. The Supplier may in its discretion, charge additional hire for periods during which the goods are being delivered to or collected from the Applicant or during which the Supplier is unable to deliver or collect the goods through no fault of its own.
6. The Supplier reserves the right to revise its schedule of hire rates and related charges without notice. The Supplier may also revise its hire rates and related charges in circumstances where such charges increase as a result of non-disclosure by the Applicant, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by the Supplier.

Jurisdiction

7. The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
8. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
9. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

10. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
11. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
12. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
13. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

14. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

15. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
16. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.
17. A contract is formed when the Supplier has received an order and either sends the Applicant a written acceptance or despatches the goods pursuant to the order.

Retention of title

18. The Applicant agrees that at no time shall the property and title in the goods pass to the Applicant and the Supplier retains the legal and equitable title in those goods at all times.
19. The Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
20. If the Applicant parts with possession of or deals with the goods in breach of clauses 18, 19 and 28(f), the Applicant acknowledges that: (a) the Supplier has not authorised the dealing and the dealing does not extinguish the security interest granted under this agreement; and (b) the security interest continues in the goods and attaches to any proceeds arising from such dealing. The proceeds will be held by the Applicant on trust for the Supplier absolutely.

21. The Applicant's rights to the goods under this agreement shall automatically cease if a receiver is appointed over any of the assets or the undertaking of the Applicant or if a winding up order is made against the Applicant or if the Applicant goes into voluntary administration or liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of creditors or makes any arrangements or composition or commits any act of bankruptcy or where the Applicant is in default of any of its obligations to the Supplier.
22. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 20 hereof unless and until the funds held on trust are remitted to the Supplier.
23. The Applicant agrees that the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
24. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 23. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
25. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
26. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 23. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
27. The Applicant grants a security interest in the goods to the Supplier under the *Personal Property Securities Act 2009* ("PPSA") to secure the punctual repayment of amounts owed by the Applicant under this agreement, and such security interest attaches when the Applicant takes possession of the goods.

Use of goods

28. The Applicant must:
 - (a) ensure that the Applicant or an authorised person is available to accept the goods upon delivery;
 - (b) ensure the goods are used:
 - (i) for the purpose for which it was designed by the manufacturer;
 - (ii) by the Applicant or an authorised person having the appropriate qualifications, training and licences to operate the goods (such as licences required for boom type Mobile Elevated Work Platforms over 11m in height); and
 - (iii) in accordance with all applicable laws and regulations in a skilful, safe and tradesman like manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;
 - (c) notify the Supplier immediately if the goods break down, malfunctions or are damaged and immediately stop using the goods and take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the goods;
 - (d) not undertake any repair to the goods without the consent of the Supplier;
 - (e) maintain and return the goods to the Supplier in good repair and condition and ensure that a check of battery water levels, fuelling, greasing, oiling and proper servicing of the goods is carried out on a daily basis;
 - (f) not transfer, assign, encumber, loan or sell the goods and must not (except for the purpose of returning the goods) remove the goods or allow it to be removed from the site address notified to the Supplier for use of the goods without the written consent of the Supplier;
 - (g) not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the goods or, in any other manner interfere with the goods; and
 - (h) accept full responsibility for the safe-keeping of the goods, and indemnify the Supplier for all loss, theft or damage to the goods resulting from an negligence, failure or omission of the Applicant.
29. The Applicant acknowledges that:
 - (a) it accepts deliver of the goods in "as is" condition unless it indicates otherwise at the time of delivery;
 - (b) it is liable for all flat and/or damaged tyres and the replacement cost of missing harnesses, generators etc;
 - (c) it understands the safe and proper use of the goods and has received adequate training in its operation and use;
 - (d) the Supplier may inspect, report or remove (in the event of any default of the Applicant) the goods at any time and access to the goods must be granted for that purpose;
 - (e) if the Supplier is collecting the goods at the expiration or earlier determination of the hire period, the goods must be left in an appropriate, easily identified and accessible area; and
 - (f) the Supplier will not be deemed to have accepted return of the goods in good repair and condition until such time as the goods have been fully inspected by the Supplier at its depot following its return.
30. The Supplier is not a common carrier and does not accept the obligation or liability of common carriers. The Supplier may refuse the handling, lifting and or carriage of goods for any person in its discretion and without being bound to give reason for such refusal.

Insurance levy and indemnities

31. Unless the Applicant provides to the satisfaction of the Supplier, evidence of insurance cover for the goods while in the Applicant's possession (with such evidence to be provided prior to the delivery/collection of the goods), the Supplier will arrange to take out insurance in respect of the goods while in the Applicant's possession at the Applicant's cost. Unless notified to the contrary, the cost of damage waiver is 12.5 percent of the hire charge.
32. The Applicant acknowledges that any insurance taken out by the Supplier in respect of the goods extends only to losses caused by fire, storm, earthquake, collision or accident only. Further, the Applicant acknowledges and agrees that insurance taken out by the Supplier in respect to any goods will not apply to:
 - (a) any loss or damage resulting from the Applicant's failure to comply with the obligations contained in clause 28 of these terms and conditions;
 - (b) any damage occasioned to the goods which is \$5,000 or less in value (excluding GST);
 - (c) damage or breakage to tyres, to any the goods; or
 - (d) damage caused by the use or operation of the goods in violation of any law, regulation or by-law; andthe Applicant remains liable for the costs of such damage in respect to any of these matters and indemnifies and holds harmless the Supplier to this extent.
33. The Applicant is liable for all excess and other costs associated with any insurance claim in relation to the goods and must meet any shortfall in repair or replacement of the goods following payment of any amount received under insurance, including any loss suffered to the Supplier as a result of not being able to hire the goods.
34. The Applicant acknowledges that subject to clauses 60 and 61 of this agreement:
 - (a) notwithstanding that title may not have passed, the goods shall be at the sole risk of the Applicant and the Supplier will not be liable for any claim the Applicant may incur or that may arise from any cause whatever including any fault or other defect in the goods; and
 - (b) the Supplier will not be responsible for and is released from all liability in respect of all such claims.
35. The Applicant shall accept full responsibility for, and indemnify the Supplier against all claims in respect of any injury to persons, or damage to property, arising out of the use of the goods during the hire period however arising, whether from negligence of the Applicant or the Supplier or otherwise and without limiting the foregoing whether or not the goods were being operated or transported by a servant of the Supplier or any other person for whose acts the Supplier might be or is held to be responsible in connection with the operation of the goods.
36. The Applicant shall indemnify the Supplier for any costs incurred in recovering the goods whether abandoned, unlawfully detained or otherwise.
37. The Applicant must ensure that the goods are returned to the Supplier in a clean state free of any dirt, mud, dust or debris. The Supplier will levy a cleaning charge on all goods returned unclean. The cleaning fee shall be a minimum of \$75 per item. The cleaning fee will be higher where the Supplier incurs additional cost or time in having the goods cleaned.

Cancellation of terms of credit

38. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
39. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

40. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

41. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
42. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

43. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

44. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
 - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to sign this agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
45. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

46. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
47. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

48. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

49. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
50. The Applicant waives its rights it would otherwise have under the PPSA:
 - (a) under section 95 to receive notice of intention to remove an accession;
 - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (e) under section 130 to receive a notice to dispose of goods;
 - (f) under section 132(2) to receive a statement of account following disposal of goods;
 - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - (j) under section 142 to redeem the goods;
 - (k) under section 143 to reinstate the security agreement; and
 - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

51. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

Costs

52. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
53. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 23 and 52.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 56.
 - (c) Thirdly, in payment of the outstanding invoice(s).

Taxes and duty

54. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
55. If as a result of:
 - (a) any legislation becoming applicable to the subject matter of this agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

56. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

Set-off

57. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
58. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

59. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
60. In relation to the supply of goods, the Supplier's liability is limited to:
 - (a) replacing the goods or supplying similar goods;
 - (b) repairing the goods;
 - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
 - (d) providing the cost for having the goods repaired.
61. In relation to the supply of services, the Supplier's liability is limited to:
 - (a) supplying the service again; or
 - (b) providing for the cost of having the services supplied again.
62. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
63. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
64. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this

application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.

65. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
66. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
67. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
68. The Supplier may terminate this agreement and/or any Contract for any reason on 24 hours notice. This right of termination is in addition to any other rights under the agreement and does not exclude any right or remedy under law or equity.

Severance

69. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
70. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

71. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

72.

Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

73. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
74. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

75. This agreement together with any Contract and any special terms that apply to the specific Equipment the subject of a Contract constitutes the entire agreement between the parties relating in any way to its subject matter. The provision of or acceptance of a Contract shall not form a separate agreement but shall constitute part of this agreement. Subject to clause 13 all previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

Privacy Act

76. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form and accept the above Terms and Conditions on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

Signature		Signature	
Name (print)		Witness name (print)	
Position		Date	
Date			
Signature		Signature	
Name (print)		Witness name (print)	
Position		Date	
Date			

FOR COMPLETION BY THE SUPPLIER

The Applicant's credit application is accepted. Signed for and on behalf of the Supplier.

Signature		Position	
Name (print)		Date	

ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS
(supplier to nominate)

PRIVACY ACT 1988 AUTHORISATION

To enable the Supplier to assess the credit application or to review any existing credit, the Applicant and Guarantors authorise the Supplier to obtain:

- from a credit reporting agency a credit report containing personal information about the Applicant and Guarantors in relation to credit provided by the Supplier (section 18K(1)(a) of the *Privacy Act 1988*);
- a report from a credit reporting agency containing personal information about the Applicant and the Guarantors (section 18K(1)(b) of the *Privacy Act 1988*); and
- a report containing information about the Applicant's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier (section 18L (4) of the *Privacy Act 1988*).

The Applicant authorises the Supplier to provide certain personal information about the Applicant under section 18E(8)(c) of the *Privacy Act 1988*. The information which may be given to an agency is covered by section 18E(1) of the *Privacy Act 1988* and includes:

- the fact that application for credit has been made;
 - the fact that the Supplier is a credit provider to the Applicant;
 - payments which become overdue more than 60 days;
 - advice that payments are no longer overdue;
 - cheques drawn by the Applicant in excess of \$100 that have been dishonoured more than once;
 - in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
 - that the credit provided to the Applicant by the Supplier has been discharged.
- In accordance with section 18N(1)(b) of the *Privacy Act 1988*, the Applicant authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangement. The Applicant acknowledges that the information can include any information about the Applicant's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988*.

DEED OF GUARANTEE & INDEMNITY

To **Erect Safe Access Pty Ltd ABN: 83 609 416 668**

(Supplier)

Name		Address	
Name		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction

- The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the commonwealth of Australia which are in force in New South Wales.
- The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Consideration

- In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

- The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
- This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
- Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity 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.
- The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - any other security taken by the Supplier from the Applicant or from any other person;
 - any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
 - by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
 - any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

- In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
- In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

Insolvency of Applicant

- No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

Costs

- The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
 - the account of the Applicant;
 - this guarantee and indemnity;
 - any other security in respect of the indebtedness of the Applicant to the Supplier;
 - the preparation, completion and stamping of this deed; or
 - the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.
- The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
- The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

- The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
- The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

- If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Security/charge

- The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- This guarantee and indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Privacy Act

- The Guarantors agree to the terms of the *Privacy Act 1988* authorisation contained in this document.

Dated			
Signed, sealed and delivered by the guarantor	Signature		
	Name		
	Position		
	Witness signature		
	Name		
Signed, sealed and delivered by the guarantor	Signature		
	Name		
	Position		
	Witness signature		
	Name		