

P & D CRANES AUSTRALIA PTY LTD

ACN 107 882 306 ABN 58 107 882 306

46 Standing Drive
Traralgon VIC 3844

(03) 9768 2790

accounts@pdcranes.com.au

www.pdcranes.com.au



APPLICATION FOR COMMERCIAL CREDIT

The applicant described in **Part 1: Customer Information** ("Customer," "you," "your") applies to P & D Cranes Australia Pty Ltd ACN 107 882 306 ("PD Cranes," "we," "us," "our") to supply Services on credit on the terms of this Application for Commercial Credit ("**Credit Application**"), which incorporates the attached **Part 2: Privacy Statement, Part 3: Credit Facility Terms, Part 4: National Credit Code Declaration, Part 5: Terms of Trade, and Part 6: Deed Poll of Guarantee and Indemnity.**

Please ensure that all parts of this Credit Application have been completed and signed prior to submitting your application to us. A failure to complete or sign any part of this Credit Application may result in delays in processing your application or the rejection of your application.

Upon our acceptance of your application in writing, we may agree to supply Services to you on credit on the terms contained in this Credit Application.

PART 1: CUSTOMER INFORMATION

CUSTOMER DETAILS

Name of Legal Entity:			
Business Type (please select):	<input type="checkbox"/> Pty. Ltd. Company	<input type="checkbox"/> Individual / Sole Trader	<input type="checkbox"/> Corporation as Trustee
	<input type="checkbox"/> Public Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other (Please Specify):
Individual(s) as Trustee(s)			
Trading Name (if any):			
Name of Trust (if applicable):			
ACN (if applicable):		ABN:	
Registered Address:			
Business Address:			
Postal Address:			
Business Telephone:		Email Address:	
Date Business Commenced:		Nature of Business:	
Estimated Monthly Purchases: \$		Monthly Credit Requested:	\$
Primary Contact:			Telephone:
Email Address:			
Accounts Payable Contact:			Telephone:
Email Address:			

DETAILS OF DIRECTORS / PARTNERS / SOLE TRADER

Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	
Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	
Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	

Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	

TRADE OR BUSINESS REFERENCES

Business Name:		Telephone:	
Email Address:			

Business Name:		Telephone:	
Email Address:			

Business Name:		Telephone:	
Email Address:			

PART 2: PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications, and disclosures under or in relation to the *Privacy Act 1988* (Cth) ("Act").
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation, or notification, whether contained in our Credit Application or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement will prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- We may collect personal information about you and the Guarantor(s) (if any) for our primary purposes, which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes, and direct marketing.
- You and the Guarantor(s) (if any) consent to us collecting, using, and disclosing personal information (including sensitive information) for both our primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- We may collect, and may already have collected, Information from you and the Guarantor(s) (if any), other credit providers, credit reporting bodies, and other third parties for the purposes of our functions and activities including, but not limited to, credit, sales, marketing, and administration. If the Information was not collected by us, it may restrict or impede upon us trading with, extending credit to, continuing to extend credit to, or extending further credit to you.
- You and the Guarantor(s) (if any) consent to us obtaining and making disclosure of Information about you and the Guarantor(s) (if any) from and to a credit reporting body, and/or another credit provider for a commercial credit related purpose, and/or a credit guarantee purpose, and/or a consumer credit purpose, and/or another related purpose. We hereby notify you and Guarantor(s) that we may use and disclose credit eligibility information under section 21G of the Act.
- We may provide your and the Guarantor(s)' (if any) personal information to any or all of the credit reporting bodies nominated below. We intend to disclose default information to any or all of the credit reporting bodies listed below. You and the Guarantor(s) consent to such disclosure. Our credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what we may disclose, and your and the Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820	Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: (07) 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: (03) 9699 0100
---	--	---	--	--
- We may disclose Information to, and about you, and you and the Guarantor(s) (if any) hereby acknowledge that you consent to the disclosure of such information to our subsidiaries, employees, agents and related bodies corporate, past, present, or prospective credit providers of yours and the Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link in countries including Germany and countries in Asia.
- By reason of your and the Guarantor(s)' (if any) consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to our dealing with your and the Guarantor(s)' Information.
- A full copy of our privacy policy and credit reporting policy can be obtained from our website (details above) or by making a request in writing directed to our privacy officer. Our privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how we will deal with any such complaint.
- You and the Guarantor(s) (if any) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to us within fourteen (14) days of receipt of this privacy statement that its terms are not accepted, continuing to trade with us after receipt of this privacy statement or, if the Guarantor(s) are directors of yours, by not taking steps to prevent you from continuing to trade with us after receipt of this privacy statement.

PART 3: CREDIT FACILITY TERMS

Term

1. This Credit Agreement commences on the date we accept your completed Credit Application in writing and notify you of your credit limit and continues until such time as it is terminated in accordance with these Credit Facility Terms.
2. The decision to grant you a credit facility is solely at our discretion.

Credit limit

3. Any credit approval limit noted in this Credit Agreement or on any form, invoice, or document issued by us to you is for your convenience only and will not be read as a commitment, promise, or warranty by us to extend any level of credit to you.
4. You are liable to pay all amounts due to us, regardless of whether you have exceeded your credit limit.

No obligation to supply on credit

5. We reserve the right to refuse to supply you with Services on credit (even if you have not exceeded your credit limit), without having to provide reasons to you for doing so.

Payment terms

6. Until we notify you that you have been granted a credit facility with us, all Services performed by us must be paid for on a performance basis.
7. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by us in writing).
8. If you default in the payment of any money due to us pursuant to these Credit Facility Terms, then in addition to any other rights which may be conferred upon us by law or equity, we will be entitled to charge you interest on such money at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full. For clarity, this rate of interest will also apply to any judgment debt owing by you.
9. Any sums owed to us by you under this Credit Agreement will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever (including by way of cash retention).
10. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

Suspension and cancellation of credit facility

11. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.
12. We reserve the right to close your account without notice to you if you do not use your credit facility for a period of twelve (12) months.

Liability for purchases

13. You are liable for all purchases made using your credit facility. We are not responsible for confirming the authority of persons using your account. You are solely responsible for ensuring there is no unauthorised use of your account.

Retention of title

14. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific contract or on any other account whatsoever):
 - (a) title in the Goods does not pass to you;
 - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
 - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
 - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
15. Your liability to us will not be discharged by the operation of clause 14(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
16. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
17. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 16 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
18. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell such Goods.
19. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPS Act.

Personal Property Securities Law

20. You acknowledge that by assenting to this Credit Agreement, which constitutes a security agreement for the purposes of the PPS Act, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
21. You undertake to do anything that is required by us:
 - (a) so that we can acquire and maintain one or more perfected security interests under the PPS Act in respect of the Goods (and their proceeds);
 - (b) to register a financing statement or financing change statement; and
 - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPS Act.
22. Unless you have obtained our prior written consent, you undertake not to:
 - (a) register a financing change statement in respect of a security interest contemplated or constituted by this Credit Agreement; and
 - (b) create, or purport to create, any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.

23. You:

- (a) waive your right under section 157 of the PPS Act to receive a copy of the verification statement relating to a security interest contemplated or constituted by this Credit Agreement;
 - (b) agree that to the extent permitted by the PPS Act, the following provisions of the PPS Act will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - (c) agree that the following provisions of the PPS Act will not apply and you will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
24. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by this Credit Agreement is, to the fullest extent possible under the PPS Act, perfected in accordance with Part 2.2 of the PPS Act.
 25. Notwithstanding section 275 of the PPS Act, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPS Act, unless compelled by law to disclose such information.
 26. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 or 128 of the PPS Act, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
 27. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 26 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
 28. You agree to accept service of any document required to be served, including any notice under this Credit Agreement or the PPS Act or any originating process, by prepaid post at any address nominated in this Credit Agreement or any other address later notified to us by you or your authorised representative.
 29. You further agree that where we have rights in addition to those under Part 4 of the PPS Act, those rights will continue to apply.

Charge over property

30. You charge in our favour all of your estate and interest in any real property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
31. You charge in our favour all of your estate and interest in any personal property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
32. As security for the payment of the amount of your indebtedness to us from time to time, you irrevocably appoint as your duly constituted attorney our company secretary from time to time to execute in your name and as your act and deed any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia (even though you may not have defaulted in carrying out your obligations hereunder) upon written notice and demand to you (in the event that there is no default by you in carrying out its obligations hereunder).
33. Where you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest (including a security interest as defined in the PPS Act) over or in respect of real or personal property, those charges, mortgages, or other security interests and the terms which directly or indirectly create rights, powers, or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Credit Agreement and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Provision of further information

34. You undertake to comply with any reasonable written requests made by us from time to time to provide us with further documents and information we may require for the purpose of assessing your creditworthiness.
35. If you are a corporation (with the exception of a public listed company), you must advise us of any alteration to your corporate structure (for example, by changing directors, shareholders, or your constitution). In the case of a change of directors or shareholders, we may ask for your directors to sign a guarantee and indemnity.

Corporations

36. If you are a corporation, you warrant and represent to us that all of your directors have signed this Credit Agreement.

Partnerships

37. If you enter into this Credit Agreement in your capacity as a partnership, you warrant and represent to us that all partners have signed this Credit Agreement.
38. If you are a partnership, you must not alter your partnership (for example, adding or removing partners or altering its partnership agreement) without notifying us in writing.

Trustees

39. If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
 - (a) you enter into this Credit Agreement in both your capacity as trustee and in your personal capacity;
 - (b) you have the right to be reasonably indemnified out of trust assets;
 - (c) you have the power under the trust deed to sign this Credit Agreement; and
 - (d) you will not retire as trustee of the trust or appoint any new or additional trustee without advising us and having the new or additional trustee sign an agreement on substantially the same terms as this Credit Agreement.
40. You must give us a copy of the trust deed upon request.

Insolvency

41. If you become insolvent, to the extent permitted by law, you remain liable under this Credit Agreement for payment of all liabilities incurred hereunder. You remain liable under this Credit Agreement even if we receive a dividend or payment as a result of you being insolvent.

Indemnity

42. You are liable for and indemnify us from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by you in the performance or observance of your obligations under this Credit Agreement.
43. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives termination of this Credit Agreement.
44. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred upon us by this Credit Agreement.

Costs

45. You are responsible for your own legal, accounting, and business costs in connection with the execution of this Credit Agreement. You must also pay for all stamp duty and other taxes payable on this Credit Agreement (if any).
46. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Application of payments

47. Subject to clauses 48 and 49, payments by, or on behalf of, you will be applied by us as follows.
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 17, 27, 42, and 46.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 8.
 - (c) Thirdly, in payment of any outstanding Tax Invoices (or part thereof) in an order determined by us in our sole discretion.
48. To the extent that payments have been allocated to Tax Invoices by us in our business records, we may allocate or retrospectively reallocate payments in any manner whatsoever at our absolute discretion, including in a manner inconsistent with clause 47 herein.
49. Payments allocated (or reallocated) under clause 47 or 48 will be treated as though they were allocated (or reallocated) in the manner determined by us on the date of receipt of payment.

Notices

50. A notice or other communication connected with this Credit Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee as set out in this Credit Agreement, or sent by email or fax to the email or fax number of the addressee.

Termination

51. If:
 - (a) a Party commits a material breach of this Credit Agreement and fails to remedy that breach within seven (7) days of receiving notice from the other Party requiring it to do so; or
 - (b) an Insolvency Event occurs in relation to a Party, then the other Party may terminate this Credit Agreement by written notice to that Party, in which case this Credit Agreement will terminate immediately.
52. Each Party expressly waives any rights it may have to terminate this Credit Agreement other than as contemplated by clause 51.
53. Each Party acknowledges that the other Party may terminate this Credit Agreement under clause 51 without considering the impact of the termination on the other Party.
54. On termination of this Credit Agreement, accrued rights of a Party are not affected.

Assignment

55. Neither Party may assign, transfer, or novate its rights or obligations under this Credit Agreement without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

56. A waiver of any provision or breach of these Credit Facility Terms will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of these Credit Facility Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

57. If any provision of these Credit Facility Terms is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these Credit Facility Terms. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Variation of Credit Facility Terms

58. Any proposed variation to these Credit Facility Terms by you must be requested in writing and we may refuse any such request without providing reasons to you for doing so.
59. For clarity, no proposed variation of these Credit Facility Terms will be binding upon us, unless varied in writing and agreed by an authorised officer of ours. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
60. You agree that these Credit Facility Terms may be amended by an authorised officer of ours at any time by written notice to you. Subject to clause 61, after fourteen (14) days of receipt of the written notice of the amendments, the amendments will be deemed agreed by you.
61. If you do not agree with the amendments proposed by us, you must notify us in writing, within fourteen (14) days from receipt of the written notice, that the amendments are not agreed to. We will then be at liberty to suspend your credit facility until such time as an agreement can be reached.

Governing law

62. You acknowledge and agree that this Credit Agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
63. The Parties to this Credit Agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

64. This Credit Agreement constitutes the entire agreement and understanding between the Parties in relation to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this Credit Agreement are merged in this Credit 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 Credit Agreement or constitutes any collateral agreement, warranty, or understanding.
65. Notwithstanding clause 64, in circumstances where there is a pre-existing written credit agreement ("**Original Agreement**") between the Parties, this Credit Agreement will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with this Credit Agreement, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by this Credit Agreement, in which case they will co-exist with this Credit Agreement, and, to the extent of any inconsistency, this Credit Agreement will prevail.

Definitions

66. Unless the contrary intention appears, in these Credit Facility Terms:

"**Credit Agreement**" means the Application for Commercial Credit, the Privacy Statement, these Credit Facility Terms, the National Credit Declaration, and the Terms of Trade.

"**Credit Facility Terms**" means these credit facility terms.

"**Customer**," "**you**," "**your**" means the person acquiring Goods or Services from us, as described in Part 1 of this Credit Agreement.

"**Goods**" means all goods supplied by us to you (and where the context so permits includes any supply of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"**Government Authority**" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental, or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Insolvency Event**" means any of the following events concerning a Party, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the other Party before it takes place and the implementation of the reconstruction, amalgamation, merger, or consolidation complies with the terms of the approval:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Party;
- (b) if the Party becomes bankrupt;
- (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Party;
- (d) if the Party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX of the *Bankruptcy Act 1966* (Cth);
- (e) the Party is unable to pay its debts when they become due and payable;
- (f) if the Party ceases to carry on business; or
- (g) if any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.

"**Parties**" means PD Cranes and the Customer, and "**Party**" means either one of them.

"**PD Cranes**," "**we**," "**us**," "**our**" means P & D Cranes Australia Pty Ltd ACN 107 882 306.

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

"**Services**" means all services supplied by us to you (and where the context so permits includes any supply of Goods).

"**Tax Invoice**" has the meaning given to this expression by the GST Act.

"**Terms of Trade**" means our terms of trade.

Interpretation

67. If there is any conflict or inconsistency between any of the documents which comprise this Credit Agreement, it is expressly agreed the order of precedence will be (in descending order of precedence):
 - (a) these Credit Facility Terms; and
 - (b) our Terms of Trade.
68. Unless the contrary intention appears, a reference to:
 - (a) this Credit Agreement or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
 - (b) the singular includes the plural and vice versa;
 - (c) "right" includes a benefit, remedy, authority, discretion, or power;
 - (d) "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
 - (e) "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
 - (f) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
 - (g) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
69. Headings are for convenience only and will not affect the interpretation of these Credit Facility Terms.
70. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
71. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
72. Where two or more persons are defined as a Party in these Credit Facility Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
73. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
74. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.

PART 4: NATIONAL CREDIT CODE DECLARATION

The Customer declares that the credit to be provided to it by P & D Cranes Australia Pty Ltd is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

IMPORTANT

You should **only** sign this declaration if this credit is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code

Signed on behalf of the Customer by:

Signature:		Title / Position:	
Name (please print):		Date:	

ACKNOWLEDGEMENT AND CUSTOMER SIGNATURE

You hereby apply for the opening of an account and provide the information set out in **Part 1 of this Credit Application** in support of your application.

By signing this Credit Application, you warrant and represent to us that:

- all information provided by you in support of your application is true and correct;
- you agree to the terms of the **Privacy Statement** contained in **Part 2 of this Credit Application**;
- you have read and understood the **Credit Facility Terms** contained in **Part 3 of this Credit Application**;
- you have executed the **National Credit Code Declaration** contained in **Part 4 of this Credit Application**;
- you have read and understood the **Terms of Trade** contained in **Part 5 of this Credit Application**;
- (if the Customer is a corporation) you understand the granting of a credit facility may, at our sole discretion, be conditional upon the Customer's directors executing the **Deed Poll of Guarantee and Indemnity** contained in **Part 6 of this Credit Application**;
- you understand that if your application is accepted, all parts of this Credit Application will apply to any provision of Goods and Services to you; and
- you have obtained, or had the opportunity to obtain, independent legal advice prior to signing this Credit Application.

By signing this Credit Application, you accept, and agree to be bound by, all parts of this Credit Application.

I/We, the below named persons, are authorised to sign this Credit Application on behalf of the Customer.

Signature:		Witness Signature:	
Full Name (please print):		Witness Name (please print):	
Title / Position:		Date:	

Signature:		Witness Signature:	
Full Name (please print):		Witness Name (please print):	
Title / Position:		Date:	

OFFICE USE ONLY – FOR COMPLETION BY P & D CRANES AUSTRALIA PTY LTD

The Customer's application is accepted. Signed on behalf of P & D Cranes Australia Pty Ltd.

Signature:		Title / Position:	
Full Name (please print):		Date:	
Account No. / Reference:		Credit Limit Approved:	\$

PART 5: TERMS OF TRADE

Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Services and apply whenever Services are quoted for or performed by us for you.
2. Any terms or conditions included in, attached to, or referenced in your Order, or any other document provided by you (including any purchase order terms subsequently given to us by you) deviating from, or inconsistent with, these Terms, are expressly rejected by us and will not vary or supplement these Terms.
3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
4. Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict or inconsistency.

Quotations

5. Quotations made by us are estimates only and will not be construed as an offer or obligation to perform any Services.
6. Unless stated otherwise, quotations made by us:
 - (a) are exclusive of GST; and
 - (b) will remain valid for a period of thirty (30) days from the date of quotation.
7. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
8. Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Service Fee will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case:
 - (a) such Services will be deemed a variation and additional charges will apply and will be payable by you; and
 - (b) where the Services are valued by hourly rates (for each hour or part thereof that the Services are performed), you will be charged a minimum of four (4) hours for the Wet Hire of Equipment (even if the Services are completed in less than four (4) hours).
9. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 12.

Formation of Contract

10. You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
 - (a) confirm your acceptance of these Terms; or
 - (b) place an Order with us.
11. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to perform any Services for you at any time.
12. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence, if:
 - (a) we communicate our acceptance of your Order, whether in writing or by electronic means; or
 - (b) we perform any Services following receipt of your Order (or otherwise commence mobilisation of our Equipment).
13. For clarity, a Contract is formed at the location of ours where your Order is placed.

Service Fee and payment terms

14. In consideration for us performing the Services, you agree to pay to us the Service Fee. You will be liable to pay for mobilisation and demobilisation of the Equipment, unless otherwise agreed in writing.
 15. Subject to clause 16, the Service Fee payable for Services will be in accordance with our then prevailing price list/rates (as notified by us to you from time to time), as applicable as at the date the Services are performed.
 16. Where we have issued you a quotation, the Service Fee will be our quoted price (subject to clauses 6 and 26 to 29) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
 17. Unless we have granted you a credit facility, all Services performed by us must be paid for on a performance basis.
 18. Payment may be made by cash, Electronic Funds Transfer (EFT), Visa, and MasterCard credit cards. We reserve the right to change the payment methods that we accept at any time.
 19. You acknowledge that we will be at liberty to charge a payment surcharge for applicable transactions equal to our reasonable cost of acceptance.
 20. We reserve the right to require payment of a non-refundable deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 12, unless otherwise agreed in writing. For clarity:
 - (a) where we require payment of a deposit, we are under no obligation to perform any Services until the deposit has been received by us in cleared funds; and
 - (b) the deposit will be refundable in circumstances where:
 - (i) you are entitled to a refund under the Australian Consumer Law; or
 - (ii) you terminate a Contract because of our breach.
 21. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
 22. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
 23. Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever (including by way of cash retention).
 24. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.
- ### Default
25. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice (including any deposit required by us under clause 19), we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
 - (a) charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
 - (b) require you to pay, in advance, for the Services (or any part of the Services) which have not yet been provided; and
 - (c) suspend or cease the performance of any further Services.

Variations

26. If you request or direct that any Services be performed that are not strictly in accordance with our quotation or your Order, then such Services will constitute a variation.
27. A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.

28. You understand and agree that:
 - (a) all variations must be agreed in writing prior to the Services that are the subject of the variation being performed; and
 - (b) all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then prevailing price list/rates.
29. Notwithstanding clauses 26 to 28, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Service Fee, if:
 - (a) Services specified in your Order are varied from the Services specified in our quotation (or are otherwise varied following the formation of a Contract);
 - (b) there is any movement in the cost of performing the Services (including any actual increase in our costs in procuring or transporting the Equipment (including where pilot vehicles and/or a police escort is required or where it is necessary to temporarily remove power lines), and/or actual increases in labour in connection with the provision of Services by PD Cranes Personnel (such as loadings, penalties, and allowances);
 - (c) you require PD Cranes Personnel to be subject to Site specific requirements, such as medical requirements or inductions; or
 - (d) otherwise as provided for in these Terms.

Order cancellations

30. You may not cancel an Order (or any part of an Order) once a Contract has been formed, and performance of the Services cannot be deferred except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation or deferral, including mobilisation and demobilisation costs, third party hire fees, cartage, and any other incidental expenses we suffer or incur.

Performance of Services

31. Prior to the commencement of the Services, you must:
 - (a) provide us and PD Cranes Personnel with such information that we determine may reasonably be required to perform the Services; and
 - (b) provide us with all relevant information and documents relating to your requirements (including Site access requirements, irregular terrain, and safety requirements);
32. You acknowledge and agree that:
 - (a) any estimate for performance or completion of the Services provided by us is an estimate only and is not a contractual commitment;
 - (b) unless specified by us in writing, we make no warranty or representation that we will be capable of performing or completing the Services within any timeframe specified by you;
 - (c) you are not relieved from any obligation arising under any Contract of which these Terms form part by reason of any delay in the performance or completion of the Services;
 - (d) you must comply with the reasonable directions of PD Cranes Personnel in relation to the use and operation of the Equipment;
 - (e) we may suspend or cease performance of the Services at any time upon written notice to you if, in the reasonable opinion of PD Cranes Personnel, it would be unsafe for any person for us to perform (or continue to perform) the Services.
33. You must ensure that the Site is suitable to accept the weight of laden Equipment, as may be deemed necessary by us.
34. You must at all reasonable times during the performance of the Services permit PD Cranes Personnel to have free, clear, and unrestricted access to the Site to enable us to fulfil our obligations without unreasonable interruption, impediment, delay, or obstruction.
35. If free, clear, and unrestricted access to the Site is not available to us and PD Cranes Personnel in accordance with clause 34, we reserve the right to suspend or cease the provision of Services upon the provision of notice to you. For clarity, if we exercise our rights under this clause you will be liable for payment of the Service Fee in respect of any Services already performed.
36. Without limiting clauses 33 to 35, you are liable for and indemnify us from any and all costs, expenses, and penalties (including claims for liquidated damages) incurred as result of:
 - (a) PD Cranes Personnel being unable to gain suitable access to the Site;
 - (b) delays in the performance of the Services caused by interrupted or unsuitable Site access; and
 - (c) us recovering any Equipment from the Site in the event such Equipment becomes bogged, damaged, or otherwise immovable.
37. If we encounter any conditions at the Site or its surroundings ("**Conditions**"), which might impact on our ability to perform the Services, and which could not have been reasonably anticipated, we will notify you of the Conditions and obtain your instructions prior to performing (or continuing to perform) the Services. You acknowledge and agree that it is your responsibility to remedy the Conditions and that if any additional time or cost is suffered or incurred by us as a consequence of the Conditions, additional charges will apply and will be payable by you.

Unsafe conditions

38. If you make available access to the Site, you warrant to us that the Site is safe and that it complies with all relevant work health and safety laws and standards.
39. You acknowledge and agree that we may suspend or cease performance of the Services at any time if, in the reasonable opinion of PD Cranes Personnel, it would be unsafe to any person or detrimental to the Equipment for PD Cranes Personnel to operate the Equipment (or to continue to operate the Equipment).

Title

40. You acknowledge that we own the Equipment and in all circumstances we retain title to the Equipment. In no circumstances will title to the Equipment pass to you.

Nature of relationship

41. For the removal of doubt, nothing in these Terms, or any Contract of which these Terms form part, is to be construed as giving rise to a relationship of agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

Indemnity

42. You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of:
 - (a) any default by you in the performance or observance of your obligations under any Contract of which these Terms form part; and
 - (b) loss of, or damage to, the Equipment however caused (including by lawful confiscation) other than as a result of an act or omission of PD Cranes Personnel.
43. Your liability to indemnify us will be reduced proportionally only to the extent that any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity.
44. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
45. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.

Limitation of liability

46. We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.

47. Subject to clauses 46, 48, 49, and 51, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
48. The limitation contemplated in clause 47 is an aggregate limit for all claims, whenever made.
49. Subject to clause 51, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part.
50. For clarity, and without limiting clauses 46 to 49, the Parties agree that clauses 46 to 49 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
51. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 46 to 49 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

Termination of Contract

52. We may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
- you fail to make payment of a deposit required by us or any amount owed to us as and when due;
 - you commit a material or persistent breach of these Terms and do not remedy the breach within seven (7) days of receipt of a notice identifying the breach and requiring its remedy; or
 - we are no longer able to, for whatever reason, perform the Services (or any part of the Services).
53. For clarity, termination of any Contract of which these Terms form part will not affect the rights which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

Costs

54. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Force majeure

55. We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.

Variation of Terms

56. No variation of these Terms, or any Contract of which these Terms form part, requested by you will be effective, unless varied in writing and agreed between the Parties. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
57. We may amend these Terms by notifying you in writing. The amended Terms will apply to any Order placed by you following us notifying you of the amendments.

Assignment

58. Neither Party may assign, transfer, or novate its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

59. A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

60. If any provision of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Entire agreement

61. Subject to clause 4, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

Governing law

62. These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of Victoria, and the laws of the Commonwealth of Australia in force in Victoria.
63. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Definitions

64. Unless the contrary intention appears, in these Terms:
- "Australian Consumer Law"** means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- "Business Day"** means a day that is not a Saturday, Sunday, or public holiday in Melbourne, Australia.
- "Contract"** means a contract for the performance of Services, as constituted by our quotation (if any), your Order, and these Terms.
- "Credit Facility Terms"** means our credit facility terms, as set out in the credit agreement executed by you (where applicable).
- "Customer," "you," "your"** means the corporation, partnership, person, or other entity acquiring Services from us.
- "Equipment"** means the plant, machinery, vehicles, and/or equipment (together with such accessories, tools, and associated items, as accompanies such things) used by us in performance of the Services.
- "Excluded Loss"** means any:
- consequential loss;
 - loss of revenues;
 - loss of reputation;
 - loss of goodwill;
 - loss of profits;
 - loss of bargain;
 - indirect loss;
 - special loss;
 - lost opportunities, including opportunities to enter into arrangements with third parties;
 - loss or damage in connection with claims against you by third parties; or
 - loss or corruption of data.
- "Force Majeure Event"** means any act of God, acts, decrees, or regulations of Government Authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.
- "Government Authority"** means:
- a government or government department or other body;
 - a governmental, semi-governmental, or judicial person; or
 - a person (whether autonomous or not) who is charged with the administration of a law.
- "GST"** has the meaning given to it by the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Normal Working Hours" means 07:00am to 3:30pm.

"Order" means a written or oral order placed by you offering to acquire Services from us.

"Parties" means PD Cranes and the Customer, and **"Party"** means either one of them.

"PD Cranes," "we," "us," "our" means P & D Cranes Australia Pty Ltd ACN 107 882 306.

"PD Cranes Personnel" means the person or persons employed or engaged by us to perform the Services (including those engaged by us to drive, operate, use, supervise, or transport the Equipment), as may be described in our quotation, invoices, work authorisation, job docket, or any other forms as provided by us to you, and may include drivers, operators, riggers, dogmen, supervisors, and any other personnel that may be required.

"Service Fee" means the price payable for our Services, as notified by us to you from time to time.

"Services" means all services performed by us and includes services performed on a Wet Hire basis (and where the context requires includes any supply of goods).

"Site" means the location at which the Equipment will be used and/or the Services performed.

"Tax Invoice" and **"Taxable Supply"** have the same meaning as in the GST Act.

"Terms" means these terms of trade.

"Wet Hire" means the hire of Equipment together with our Personnel to operate the Equipment.

Interpretation

65. If there is any conflict or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (in descending order of precedence):
- any additional terms or conditions contained in our quotation (where applicable);
 - our Credit Facility Terms (where applicable);
 - these Terms; and
 - any other documents issued by us.
66. Unless the contrary intention appears, a reference to:
- these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
 - a reference to a clause is a reference to a clause contained in these Terms;
 - the singular includes the plural and vice versa;
 - "right" includes a benefit, remedy, authority, discretion, or power;
 - "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
 - "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
 - a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
 - any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
67. Headings are for convenience only and will not affect the interpretation of these Terms.
68. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
69. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
70. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
71. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
72. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.

PART 6: DEED POLL OF GUARANTEE AND INDEMNITY

To:	P & D Cranes Australia Pty Ltd ACN 107 882 306 and its related bodies corporate		(“PD Cranes”)
Full Name of Guarantor:		Address:	
Full Name of Guarantor:		Address:	

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

Consideration

1. In consideration of PD Cranes extending or agreeing to extend credit or further credit to the Customer at the Guarantors’ request (testified by the Guarantors’ execution of this Credit Agreement) for Goods sold or to be sold from time to time or Services provided or to be provided, the Guarantors guarantee payment to PD Cranes of all money which is now or at any time in the future becomes due and payable to PD Cranes by the Customer 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 Customer to PD Cranes arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

- The Guarantors agree to guarantee and indemnify PD Cranes against all losses damages or expenses that PD Cranes may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to PD Cranes (including, for the removal of doubt, any interest) whether for Goods sold, Services provided or otherwise or to observe the terms of any agreement between the Customer and PD Cranes, including costs on a full indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by PD Cranes to the Customer 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 PD Cranes.
- This guarantee and indemnity is 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 PD Cranes to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for PD Cranes, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 1 and 2 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 PD Cranes will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- PD Cranes will have the right to enforce this guarantee and indemnity, irrespective of whether PD Cranes has sought to recover the amounts guaranteed from the Customer and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors’ own. Further, PD Cranes may proceed against the Guarantors (or any one of them) 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 PD Cranes releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders, or owners of the Customer.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of PD Cranes against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - any other security taken by PD Cranes from the Customer or from any other person;
 - any waiver or indulgence, whether as to time or otherwise, given to the Customer 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 a Guarantor making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until PD Cranes has been paid in full.
- In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until PD Cranes has been paid in full.

Insolvency of Customer

10. No sum of money which the Customer pays to PD Cranes and PD Cranes 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 Customer by reason of the *Corporations Act 2001* (Cth), *Bankruptcy Act 1966* (Cth), 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 Customer.

Costs

- PD Cranes is at liberty from time to time to charge the account of the Customer with all costs, charges, and expenses, legal or otherwise that PD Cranes incurs in connection with:
 - the account of the Customer;
 - this guarantee and indemnity;
 - any other security in respect of the indebtedness of the Customer to PD Cranes;
 - the preparation, completion and stamping of this deed poll; or
 - the exercise or attempted exercise of any right, power or remedy conferred on PD Cranes under or by virtue of this deed;
 and the same will be part of the monies secured by this deed poll.

12. The Guarantors agree to pay PD Cranes’ costs and disbursements incurred in recovering monies secured by this guarantee and indemnity, including debt recovery agency fees and legal costs on a full indemnity basis.

Security/charge

- The Guarantors charge in favour of PD Cranes all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to PD Cranes, including all amounts referred to in clauses 1 and 2.
- The Guarantors charge in favour of PD Cranes all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to PD Cranes, including all amounts referred to in clauses 1 and 2.
- As security for the payment of the amount of the indebtedness to PD Cranes from time to time, the Guarantors irrevocably appoint as their duly constituted attorney PD Cranes’ 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 PD Cranes 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.
- This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed poll constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with PD Cranes 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 poll and will secure all indebtedness and obligations of the Guarantors under this guarantee and indemnity. PD Cranes may, at its election, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Variation

- The Guarantors authorise PD Cranes to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to PD Cranes, 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 PD Cranes making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors’ liability under this guarantee and indemnity.

Severance

20. 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.

Personal Property Securities Act

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of PD Cranes constitutes security interests pursuant to the PPS Act.
- 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.

Notices

23. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPS Act or any originating process, by prepaid post at any address nominated in the Credit Agreement or any other address later notified to PD Cranes by the Guarantors or the Guarantors’ authorised representative.

Jurisdiction

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

Privacy Act

26. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (Cth) contained in Part 2 of the Credit Agreement.

Definitions

27. Capitalised terms which have not been defined in this guarantee and indemnity have the meaning given to those terms in the Credit Facility Terms.

Executed as a Deed Poll on (Date):	
Signed, Sealed, and Delivered by the Guarantor	Signature:
	Full Name (please print):
	Title / Position:
	Witness Signature:
	Witness Name (please print):

Signed, Sealed, and Delivered by the Guarantor	Signature:
	Full Name (please print):
	Title / Position:
	Witness Signature:
	Witness Name (please print):