

Credit Account Terms and Conditions

Definitions

BK Civil Group means BK Hire Pty Ltd ABN 99 153 715 578 trading as BK Civil Group.

Credit Application means the credit application process for the provision of Our Equipment on Wet and Dry Hire and includes a formal Application for Credit Account.

Credit Account Terms and Conditions means these Credit Account Terms and Conditions.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special, or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Customer means You, or the party making this Credit Application.

Dry-Hire means plant, machinery, vehicles, and equipment are provided without fuel or Operator supplied.

Equipment means the buildings, machinery, plant, Vehicles, equipment, and other goods listed in the Hire Agreement including parts, tools, accessories, and attachments.

Goods means any goods supplied by the Supplier being building or construction materials, building or construction products and all related or ancillary goods, materials, or products.

Guarantor each person specified as a guarantor in the Credit Application and giving a guarantee by signing the Credit Application.

Hire Agreement means the Hire Agreement relating to the hire of Equipment and includes any Credit Application, Guarantee & Indemnity, Hire Delivery Docket, Float Movement Record Sheet, special terms or other documentation attached to any of the documents mentioned.

Insolvency Event means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Loss means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

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

Privacy Policy means the BK Civil Group Privacy Policy which is available on our website www.bkcivil.com.au.

Real Property means all real property interests held by the Customer now or in the future, including equitable interests.

Related Bodies Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Security Interest means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation, as defined within the PPS Act.

Services means any services provided by the Supplier being the supply of building or construction services, the supply of building or construction products and all related or ancillary services in addition to the hire of Our Equipment.

Supplier means Us, in connection with the supply of any Equipment or Services, making supply to the Customer.

Vehicle means Equipment that is a truck, utility, bus, trailer etc including accessories and attachments.

We/Us/Our means BK Hire Pty Ltd ABN 99 153 715 578 trading as and referred to as BK Civil Group, the owner of the Equipment.

Wet-Hire means plant, machinery, Vehicles, and equipment are provided with fuel and Operator supplied.

You/Your means the person/s, partnership, trustee of a trust, company, or entity (including agents, employees, or contractors) hiring Our Equipment, as listed in the Hire Agreement or Credit Application.

1.0 General

1.1 These terms, together with any Credit Application completed and submitted to the Supplier by the Customer:

1.1.1 form a legally binding contract between the Customer and the Supplier,

1.1.2 apply to every Hire Agreement between the Customer, the Supplier, and any guarantor (where applicable),

1.1.3 unless expressly stated to the contrary, can only be varied by written agreement between the Customer, the Supplier, and any guarantor (where applicable).

2.0 Credit Terms

2.1 The Supplier may provide Equipment to the Customer once this Credit Application has been completed, signed by the Customer and any guarantor (where applicable) and approved by the Supplier.

2.2 If the Customer submits a Credit Application to Us, the Customer irrevocably authorises Us, our employees, contractors, and agents to make such inquiries as we deem necessary to investigate the creditworthiness of the Customer from time to time.

2.3 The granting of credit is entirely at the Supplier's sole discretion and the Supplier may withdraw or vary credit at anytime.

2.4 No representation has been made by the Customer or any person on the Customer's behalf that this Credit Application will be accepted or approved by the Supplier.

3.0 Price and Payment

3.1 Payment is due in accordance with *Section 3.0 Payment for Your Hire – BK Civil Group Terms & Conditions of Hire OPS-F04*.

3.2 Amounts received by the Supplier may be applied at the Supplier's absolute discretion. This includes payment of any interest, costs or expenses incurred on the Customer's account, before being applied against any outstanding amounts owed to the Supplier by the Customer.

3.3 If the Customer defaults on a payment, the Supplier may take all necessary actions as outlined in their entirety in *Section 18.0 If You Default - BK Civil Group Terms & Conditions of Hire OPS-F04*.

4.0 Overdue Accounts and Security

4.1 In addition to the Terms outlined in *Section 22.0 Security - BK Civil Group Terms & Conditions of Hire OPS-F04*, and subject to the Supplier's discretion, any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia's Cash Rate. This rate will be calculated daily and compounded monthly. In no circumstances will the interest charged exceed 20% per month.

4.2 The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent, and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 4.3.

4.3 As security for any amounts owing to the Supplier which become overdue, the Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property owned by the Customer.

4.4 A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement will be deemed as sufficient evidence of the amount so due or owing until the contrary is proven.

5.0 Delivery and Supply

5.1 The Supplier is not liable for any loss resulting directly or indirectly from failure to supply Equipment where:

5.1.1 the Supplier has insufficient Equipment to fulfil the Customer's order, or

5.1.2 the Supplier's Equipment is being repaired and/or replaced, or

5.1.3 the Supplier's Equipment is temporarily unavailable, or

5.1.4 the Supplier has determined that credit or Equipment should no longer be extended to the Customer, for whatever reason.

5.2 If an event occurs that is beyond the Supplier's reasonable control, as outlined in *Section 20.0 Force Majeure – BK Civil Group Terms & Conditions of Hire OPS-F04*, and this results in the Supplier not being able to meet an obligation to supply or deliver Equipment or Services to the Customer, the Supplier may cancel or rescind all or any part of the Credit Application or Hire Agreement.

6.0 GST

6.1 If applicable to the Customer's Hire Agreement and Credit Application, the Customer agrees to pay GST as outlined in *Section 27.0 GST – BK Civil Group Terms & Conditions of Hire OPS-F04*.

6.2 All amounts agreed to be paid by the Customer under or in connection with these Terms are exclusive of GST, unless otherwise specified.

- 6.3 If GST is levied or imposed on or in respect of any supply under or in connection with these Terms, then the amount payable for that supply is increased by the applicable rate of GST.
- 6.4 Payment of GST by the Customer is to be made at the same time and in the same manner as payment required under or in connection with these Credit Account Terms and Conditions.
- 6.5 In relation to each supply under or in connection with these Credit Account Terms and Conditions, the Supplier will provide the Customer with a tax invoice containing information as required by law.
- 7.0 Risk**
- 7.1 Equipment risk passes from the Supplier to the Customer upon delivery or collection and remains with the Customer until the Equipment is returned to the Supplier in accordance with an applicable Hire Agreement.
- 8.0 Retention of Title**
- 8.1 Despite the passing of risk, Equipment provided by the Supplier to the Customer remains the property of the Supplier, as outlined in *Section 17.0 We Own the Equipment - BK Civil Group Terms & Conditions of Hire OPS-F04*.
- 8.2 The Supplier is irrevocably entitled at any time to inspect the Equipment. The Supplier may elect to recover and retake possession of the Equipment at the Supplier's discretion if the Supplier forms a reasonable belief that there is a legitimate risk of:-
- 8.2.1 Damage to the equipment; or
- 8.2.2 Theft of the equipment.
- 8.2.3 To exercise this entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's sites, premises, or those of any third party without liability for trespass or any resulting damage and retake possession of any Equipment.
- 8.2.3.1 The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' sites or premises.
- 8.2.3.2 The Supplier and its agents agree to take all reasonable care in removing the Equipment from such premises or site but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises or sites caused by the removal of the Equipment.
- 9.0 Personal Property Securities Act 2009 & Related Regulations (PPSAct)**
- 9.1 The Credit Account Terms and Conditions constitute a security agreement.
- 9.2 The Customer acknowledges and agrees that this is a security agreement for the purposes of PPS Act, and the Supplier may register one or more Security Interests in the Equipment or in relation to the provision of credit in accordance with the Credit Account Terms and Conditions.
- 9.3 The Customer waives its right to receive any notices, including receiving notice of a verification statement, required under the relevant sections of the PPS Act outlined in their entirety as per *Section 15.0 Personal Property Securities Act 2009 & Related Regulations (PPS Act) - BK Civil Group Terms & Conditions of Hire OPS-F04*.
- 9.4 The Customer acknowledges that each security interest over the Equipment (or any proceeds) arising under these Credit Account Terms and Conditions is a purchase money security interest under the PPS Act to the extent that it secures payment of the amounts

owing in relation to the Equipment. The security interests arising under these Credit Account Terms and Conditions attach to the Equipment when the Customer obtains possession of the Equipment.

10.0 Change of Ownership

- 10.1 The Customer must give written notice to the Supplier at least 7 days before:
- 10.1.1 the transfer or sale of its business, or
- 10.1.2 a change of control or ownership occurs in relation to the Customer (including where there is a change in the shareholding so that a different person or persons will control the Board of Directors of more than 50% of the voting shares (except in the case of a Publicly Listed Company).
- 10.2 The Supplier may require a new Credit Application to be completed by the new owner/s or director/s and may, in its absolute discretion, change and/or terminate any existing Hire Agreement or Credit Application existing between the Supplier and the Customer and any guarantor (where applicable).

11.0 Limitation of Liability

- 11.1 Subject to clauses 11.2 and 11.3, the Supplier excludes all statutory guarantees and/or implied terms and warranties to the maximum legal extent and, to the extent that terms and warranties cannot be so excluded. At the Supplier's election, it limits its liability to:
- 11.1.1 the replacement of the Equipment or the supply of the equivalent equipment, and
- 11.1.2 the payment of the cost of replacing the Equipment or requiring equivalent equipment, in circumstances where such replacement is necessitated by breach of any of these Credit Application Terms and Conditions by the Customer or the Customer's agents.
- 11.2 Nothing in these Credit Account Terms and Conditions will exclude, restrict, or modify the application of any legislation, including any statutory guarantee, which by law cannot be excluded, restricted, or modified.
- 11.3 Anything in these Credit Account Terms and Conditions that purports to exclude or limit a term, warranty, statutory guarantee, or pre-contractual statement shall apply to the maximum extent permitted by law.

12.0 Indemnity

- 12.1 If the Customer or guarantor (where applicable) breaches any of these Credit Account Terms and Conditions it will be liable to and indemnify the Supplier against all costs, charges and expenses incurred resulting from the breach.
- 12.1.1 These include but are not limited to all legal costs, charges, disbursements, and expenses incurred on an indemnity basis.

13.0 Suspension or Termination

- 13.1 The Supplier may suspend or terminate the Customer's Credit Application at any time, without providing reason.

14.0 Notices

- 14.1 Any notice from one party to the other will be effective if served personally, by fax, email, post, or by any other means, to the registered office of a party or last known place of the Customer or email address last notified by the Customer. The notice will be deemed to have been received within two (2) days of posting, or immediately if served personally or by fax, email or any other electronic means provided there is a notice or report stating that it was sent in full and without error or was otherwise delivered to the recipient.

15.0 Other Covenants

- 15.1 A party's failure or delay in exercising a power or right does not operate as a waiver of the right. Exercising a power or right does not preclude its exercise in the future, nor the exercise of any other power or right.
- 15.2 Any provision of these Credit Account Terms and Conditions that, by nature, is intended to survive termination of these Credit Account Terms and Conditions will continue to operate after the Supplier/Customer relationship is terminated.
- 15.3 If any provision of these Credit Account Terms and Conditions

- is found to be invalid or unenforceable then it is deemed to be severed and the remainder of these Credit Account Terms and Conditions will remain valid and enforceable.
- 15.4 The Customer may not assign the benefit of these Credit Account Terms and Conditions except with the prior written consent of the Supplier.
- 15.5 Unless otherwise agreed in writing, the Supplier and the Customer acknowledge that these Credit Account Terms and Conditions constitute the entire agreement in relation to its subject matter of the Credit Application. However, this Credit Application must be read and construed in conjunction with any applicable Hire Agreement. All representations, communications, and prior agreements are superseded by these Terms. As outlined in *Section 25.0 Governing Law - BK Civil Group Terms & Conditions of Hire OPS-F04*, the agreement between Customer and Supplier is governed by the laws of the State of Queensland, and each party submits to the exclusive jurisdiction of that Court of that State.
- 16.0 Privacy Act**
- 16.1 The Supplier may exchange the Customer's personal and commercial credit information with third party entities to assess a Credit Application and to manage that credit. The Supplier can obtain credit information about the Customer from a credit reporting agency providing both consumer and commercial credit information.
- 16.2 To enable the Supplier to assess the Credit Application, the Customer authorises the Supplier:
- 16.2.1 to obtain from a credit reporting agency a credit report containing personal information about it and its guarantors (where applicable), and
- 16.2.2 to obtain a report from a credit reporting agency and other information in relation to its commercial credit activities, and
- 16.2.3 authorises the Supplier to give to and obtain from any credit provider named in the accompanying Credit Application and credit providers that may be named in a credit report issued by a credit reporting agency information about its credit arrangements.
- 16.2.4 The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other.
- 16.3 The Customer understands that the information can be used by the Supplier for the purposes of assessing its Application for Credit, assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by the Customer, and assessing the Customer's overall credit worthiness.
- 16.4 The Supplier may exchange the Customer's personal and credit information with any person who proposes to guarantee or has guaranteed repayment of any credit provided by a Customer or any joint borrowers.
- 16.5 The Supplier complies with the Australian Privacy Principles in all dealing with the Customer. The Supplier's Privacy Policy is available on its website and is also available upon request.
- 17.0 Guarantee and Indemnity**
- 17.1 The Customer consents to the Supplier disclosing credit eligibility information about the Customer to the Guarantor/s for the purpose of the Guarantor/s considering whether to offer to act as guarantor/s in relation to the credit applied for under these Credit Account Terms and Conditions or offer security for that credit.
- 17.2 The Guarantor/s consent/s to the Supplier being disclosed credit reporting information about the Guarantor/s by a credit reporting body for credit guarantee purposes.
- 17.3 If required by the Supplier and in its absolute discretion, a Customer that is a proprietary limited company or who is a corporate trustee of a trust, requires at least two directors or shareholders to enter into a Guarantee and Indemnity on Terms and Conditions satisfactory to the Supplier.
- 17.4 In consideration of the Supplier agreeing to grant the Credit Application to the Customer at the request of the Guarantor, the Guarantor enters into this guarantee (called 'Guarantee') in favour of the Supplier and its successors and assigns on the terms specified in this clause.
- 17.5 The Guarantor agrees to guarantee the payment of all accounts and charges and the observance and performance of all the Customer's obligations as specified in the Credit Application and applicable Hire Agreement, by the Customer, its permitted successors and assignees, in favour of the Supplier, its successors and assigns.
- 17.6 This Guarantee extends to claims by the Supplier:
- 17.6.1 for damages for breaches of covenants by the Customer
- 17.6.2 for breaches of any essential terms of the Credit Application and/or applicable Hire Agreement
- 17.6.3 for repudiation of the Credit Application and/or applicable Hire Agreement
- 17.6.4 for the Supplier's loss or damage in the event of the Customer abandoning or vacating the Equipment
- 17.6.5 in the event of the Supplier electing to enter a premise to retake Equipment or to terminate a contract in the event of breach or repudiation by the Customer;
- 17.6.6 for the Supplier's reasonable legal and other expenses of seeking to enforce obligations against the Customer and the Guarantor, recovering possession of the Equipment and terminating the contract in the event of breach or repudiation by the Customer, on a common fund basis, to provide full indemnity to the Supplier, and
- 17.6.7 for loss or damage consequent on a disclaimer or release of the Equipment on the Customer's insolvency, as if the Equipment had not been disclaimed or released.
- 17.7 The Supplier is entitled to require the Guarantor to pay to the Supplier any outstanding rent or other amount or to compensate the Supplier for any loss or damage without the Supplier having made any claim or instituted any proceedings against the Customer in respect of such claims or breaches.
- 17.8 The Guarantor agrees to indemnify and keep indemnified the Supplier in respect of all losses, damages or costs incurred or suffered by the Supplier through the Customer's breach or repudiation of the Credit Application and/or Hire Agreement or of any obligation under either agreements or arrangements.
- 17.9 This Guarantee and Indemnity imposes on each Guarantor, if more than one, joint and several liability, and remains binding on the Guarantors even if any Guarantor failed to execute this Credit Application or enter this Guarantee and Indemnity.
- 17.10 The Supplier may enforce this Guarantee and Indemnity against all or any of the Guarantors.