

Martino Enterprises Pty Ltd trading as

MEH Plant and Equipment

318 Cormack Road
WINGFIELD SA 5013
Phone: 08 7231 5950
email: accounts@mehhire.com.au

To: MEH Plant and Equipment Pty Ltd ACN 605009872

1. **COMPANY NAME:**

2. **TRADING NAME:**

3. **ABN:**

4. **BUSINESS ADDRESS:**

..... Postcode:

POSTAL ADDRESS: (If different from above)

.....

..... Postcode:

5. **CREDIT LIMIT REQUEST:** \$.....

6. **DATE BUSINESS COMMENCED:** **How long Current Owner?**

APPLICATION: The Customer applies for a Credit Account and agrees that the Terms and Conditions of Trade on page 5 will govern all dealings between the Customer and MEH Plant and Equipment

MEANS & ABILITY: The Customer warrants that it is solvent and has the future ability to pay all of its debts as & when they fall due

ACCEPTANCE: MEH Plant and Equipment will be deemed to have accepted this Application if it allows the Customer to trade with it on credit

OTHER DIVISIONS: The Customer agrees that this Application relates to all dealings with

7. **ACCOUNTS PAYABLE CONTACT DETAILS:**

Name:

Phone:

Email:

8. **Are Order Numbers Required** (If so, the supply of such is the client's responsibility) Yes No

9. **Please tick if Damage Waiver is NOT required** – See conditions of hire
*Please send through a copy of your 'Hired in Plant Insurance Certificate'

How many Days worked per Week?

5 6 7

How many Hours worked per Day?

12hrs 24hrs

CREDIT INFORMATION: The Customer and the person completing this application irrevocably authorise MEH Plant and Equipment, its servants & agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer and the person completing this application from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer and credit provider or Credit Reporting Agency and including personal credit and consumer credit information (hereinafter called "the information sources"). The Customer and the person completing this application hereby authorise the information sources to disclose to MEH Plant and Equipment such information concerning the Customer and the person completing this application which is within their possession. The Customer and the person completing this application agree that the information provided on the Credit Application concerning the Customer and the person completing this application & any relevant trading information arising from ant dealings between the Customer & MEH Plant and Equipment may be disclosed to a Credit Reporting Agency or any other interested person.

10. TRADE REFERENCES:

Company: Contact:

Address:

Phone: Email:

Company: Contact:

Address:

Phone: Email:

Company: Contact:

Address:

Phone: Email:

11. ALL PROPRIETORS OR DIRECTORS:

Full Name:

Address: **Postcode:**

Phone: **Email:**

Full Name:

Address: **Postcode:**

Phone: **Email:**

INSOLVENCY: Has the Customer or any of its directors or partners been insolvent or involved in any way with an insolvent (liquidation, receiver, Administrator, bankruptcy etc)?

Yes No

GUARANTEE

I/We, being Director/s and/or Guarantor(s) of the above Company, request MEH Plant and Equipment (the "Owner") to enter into hire agreements from time to time with the Company and in consideration of the owner so doing

I/We (jointly and severally) unconditionally guarantee to the owner the due payment by the Company of all moneys payable to the Owner by the Company of all its obligations under any such hire agreements to the intent that should the Company default I/We shall pay such moneys and all loss or damage to the Owner on demand.

I/We (jointly and severally) unconditionally and irrevocably agree to indemnify and keep indemnified the Owner against all loss, damage, costs and expenses whatsoever which the Owner may suffer or incur as a result of any default on the part of the Company in relation to its obligations under any hire agreements. My/Our obligations are principal obligations and the Owner shall not be required first to proceed against the Company. This guarantee is continuing and irrevocable until the whole of the Company's obligations have been paid or satisfied, and shall

not be affected in any way by the Owner granting time, credit or any indulgence to the Company. This guarantee and indemnity shall bind My/Our personal representatives.

I/We by the execution of this application agree to all terms and conditions as shown on the following page of this application and consent to MEH Plant and Equipment seeking information from another credit provider or credit reporting agency about my consumer credit worthiness in relation to an application for commercial or consumer credit.

Guarantor(s) Name:

Guarantor(s) Name:

Signature:

Signature:

Date:

Date:

A HIRE ACCOUNT, IF GRANTED, DOES NOT OBLIGE MEH PLANT AND EQUIPMENT TO SUPPLY ANY GOODS.

ACCOUNTS ARE DUE AND PAYABLE WITHIN THIRTY (30) DAYS OF THE DATE OF INVOICE. THIS HIRE ACCOUNT MAY BE CANCELLED/SUSPENDED/VARIED WITHOUT NOTICE IF ACCOUNTS ARE NOT PAID BY THE DUE DATE.

Signed for and on behalf of Pty Ltd in agreeance of terms and conditions of hire and pursuant to Section 127(1) of the Corporations Law by:

Signature:.....

Signature:

Full Name:

Full Name:

Position:

Position:

Date:

Date:

IMPORTANT NOTICE: If you sign this Agreement to Guarantee and Indemnify you may be required to pay someone else's debts. You should ensure that you understand its terms. If necessary, seek independent professional advice.

TERMS OF SUPPLY

Martino Enterprise Pty Ltd (A.B.N. 97 605 009 872) trading as MEH Plant & Equipment (**MEH**) may from time to time agree to supply to you a variety of goods and services. Irrespective of whether you sign a copy of these Terms, any goods and services MEH agrees to supply to you will be supplied on these Terms:

1. EXCLUSION OF IMPLIED WARRANTIES

- 1.1 THE ONLY CONDITIONS AND WARRANTIES BINDING ON MEH IN RESPECT OF THE STATE, QUALITY OR CONDITION OF THE GOODS AND SERVICES SUPPLIED BY MEH TO YOU, OR IN RESPECT OF ANY ADVICE, RECOMMENDATIONS OR INFORMATION SUPPLIED BY MEH (OR MEH'S EMPLOYEES, SERVANTS OR AGENTS) TO YOU, ARE THOSE IMPOSED AND REQUIRED BY LAW TO BE BINDING ON MEH (INCLUDING THE COMPETITION AND CONSUMER ACT 2010 (CTH) AND APPLICABLE STATE FAIR TRADING LAWS). ALL OTHER CONDITIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, IN RESPECT OF THE GOODS AND SERVICES WHICH MAY APART FROM THIS CLAUSE BE BINDING ON MEH, **ARE HEREBY EXPRESSLY EXCLUDED AND NEGATED.**
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2. LIMITATION OF LIABILITY

- 2.1 TO THE FULLEST EXTENT PERMITTED BY LAW, MEH'S LIABILITY (IF ANY) ARISING FROM A BREACH OF ANY APPLICABLE CONDITIONS OR WARRANTIES WILL, AT MEH'S OPTION, BE LIMITED TO, AND COMPLETELY DISCHARGED BY, IN THE CASE OF GOODS, EITHER THE SUPPLY BY MEH OF EQUIVALENT GOODS OR THE REPAIR OR REPLACEMENT BY MEH OF THE GOODS SUPPLIED TO YOU, AND IN THE CASE OF ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES, THE SUPPLYING OF THE ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES AGAIN.
- 2.2 EXCEPT TO THE EXTENT ALREADY SET OUT IN THIS CLAUSE, MEH WILL HAVE NO LIABILITY (INCLUDING LIABILITY FOR NEGLIGENCE OR RECKLESSNESS) TO ANY PERSON FOR ANY LOSS OR DAMAGE (CONSEQUENTIAL OR OTHERWISE) SUFFERED OR INCURRED BY ANY PERSON IN RELATION TO ANY GOODS, ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES SUPPLIED BY MEH (OR ANY OF MEH'S EMPLOYEES, OFFICERS OR AGENTS). WITHOUT LIMITING THE GENERALITY OF THIS LIMITATION, MEH WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE RESULTING FROM ANY FAILURE, DEFECT OR DEFICIENCY OF ANY KIND IN ANY GOODS, ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES.
- 2.3 MEH WILL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.
- 2.4 ANY VALID CLAIM BY YOU AGAINST MEH MUST BE PRESENTED IN WRITING TO MEH WITHIN A REASONABLE TIME, AND IN NO EVENT LONGER THAN 60 DAYS AFTER THE SUPPLY OF THE GOODS OR SERVICE. NO ACTION MAY BE MAINTAINED BY YOU AGAINST MEH UNLESS A TIMELY WRITTEN CLAIM HAS BEEN GIVEN UNDER THIS CLAUSE, AND UNLESS SUCH ACTION IS COMMENCED WITHIN 9 MONTHS AFTER THE SUPPLY.

3. SUPPLY

- 3.1 MEH agrees to supply, and you agree to purchase, goods and services in the manner and at the times provided in these Terms.
- 3.2 You will not be entitled to cancel an order after acceptance by MEH without MEH's written consent, which MEH can withhold at its complete discretion.

4. DEFINITIONS

- 4.1 In these Terms:
- (a) A reference to you includes your employees, servants, agents or contractors;
 - (b) **Business Day** means any day that is not a Saturday, Sunday or public holiday in South Australia;
 - (c) **Equipment** means all plant and equipment to be hired out by MEH;
 - (d) **GST** has the same meaning as 'goods and services tax' under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (e) **MEH** means Martino Enterprises Pty Ltd (A.B.N. 97 605 009 872) trading as MEH Plant and Equipment and the term includes all employees, servants and agents or contractors working for MEH.

5. YOUR OBLIGATIONS AND ACCEPTANCE OF EQUIPMENT

- 5.1 You acknowledge that you have inspected the Equipment and:
- (a) Are satisfied that the equipment is in good and substantial order, repair and condition;

- (b) Are satisfied the equipment is fit for purpose as designed; and
- (c) Are aware that, if required by law, the Equipment is to be operated by a trained and licensed person.

5.2 You agree that:

- (a) On a daily basis and at your own expense you will complete daily checks, clean and maintain the Equipment and notify MEH of any substantial repair and service when required; and
- (b) Allow MEH the right to access and inspect the Equipment for the view of carrying out repairs, service or thing which may in MEH's opinion be required to be done to protect MEH's rights in the Equipment.

6. EXTENSION OF TIME

- 6.1 If MEH is delayed in the supply of Equipment, MEH will notify you as soon as MEH is aware of an actual or expected delay.
- 6.2 MEH will give you details of the circumstances giving rise to the delay, the anticipated duration of the delay, and the steps that MEH intends to take to minimise the delay.
- 6.3 On receipt of a notice of delay, you will extend the time for the supply of the Equipment by a reasonable period if the delay is beyond MEH's reasonable control and MEH has used (or is using) reasonable efforts to minimise the delay.
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7. CHARGES, PAYMENTS AND INTEREST

- 7.1 All rates are subject to change without notice.

- 7.2 All rental agreements must be signed by you or on your behalf, and the name of the recipient of the Equipment must be recorded.
- 7.3 All cash on delivery (COD) transactions must have a minimum deposit plus delivery charge applied and paid for in advanced of the hire term.
- 7.4 Credit accounts are available to approved clients only, at MEH's complete discretion.
- 7.5 MEH's trading terms for all credit accounts are strictly 30 days, end of month.
- 7.6 MEH will not permit 7 day accounts in any circumstances.
- 7.7 For any overdue accounts, MEH reserves the right to charge interest at a rate of 5% per month and accrued daily if payment is not received by its due date.
- 7.8 You will be liable for all costs and expenses (including legal costs on an indemnity basis) incurred by MEH in the collection of any due account, or incurred by MEH due to any breach or default of these Terms, and you must pay the sum to MEH immediately on notice or demand.
- 7.9 You may not withhold from any payment or offset against any payment due to MEH any amount in respect of any amount owed by or claim against MEH.
- 7.10 Any payments tendered by you will be applied as follows:
 - (a) Firstly, as reimbursement for any collection costs incurred by MEH, including but not limited to legal costs;
 - (b) Secondly, to satisfy any other obligation that is not secured;
 - (c) Thirdly, in payment of any interest charged to you in accordance with these Terms;
 - (d) Fourthly, to satisfy or partly satisfy the oldest portion of MEH's hire charges,or, despite the foregoing, any manner MEH sees fit.

8. SERVICING AND MAINTENANCE OF EQUIPMENT

- 8.1 MEH will service and maintain the Equipment.
- 8.2 You must ensure that the Equipment is available to MEH during MEH's business hours for service and maintenance and as required.
- 8.3 If you require MEH to maintain or service the Equipment outside of MEH's business hours, then you must pay MEH all costs and expenses incurred or chargeable by MEH for the out-of-hours servicing.
- 8.4 Any failure by MEH to maintain the Equipment or provide replacement equipment (if any) will not terminate the rental agreement in respect of the Equipment.
- 8.5 Notwithstanding any other clause of these Terms, you acknowledge that no warranty or condition expressed or implied is given by MEH as to the condition of the Equipment or as to the suitability or fitness of the Equipment for any purpose.

9. DURATION OF HIRE

- 9.1 If you request an extension to the hire period for any Equipment MEH may, at MEH's absolute discretion, grant an extension to the hire period, in which case these Terms will continue to apply for the extended hire period.
- 9.2 MEH may terminate the hire of any Equipment prior to the expiry of the hire period if you fail to pay the agreed hire fee, transport, repairs, damage waiver, fuel and GST or if you commit a breach of any of these Terms.
- 9.3 On the expiry or early termination of the hire period, you must immediately surrender and yield up the Equipment to MEH at your expense and in the same condition as it was at the start of the hire period, reasonable wear and tear excepted.
- 9.4 If the Equipment is not surrendered and yielded up to MEH, MEH may repossess the Equipment and the hire period will be deemed to be extended until such time as MEH gains possession. The cost of repossession will be chargeable to

10. THEFT AND DAMAGE WAIVER

- 10.1 You are responsible for any loss or damage to the Equipment.
- 10.2 At all times that the Equipment is in your possession, custody or control and at all times during the hire period, you must guard the Equipment against theft, damage or negligence.
- 10.3 Any Equipment that is stolen, damaged or not returned to MEH will be charged to you for its full replacement value.
- 10.4 MEH will charge a compulsory damage waiver of 12% plus GST of the rental charge to cover damage, theft and loss subject to the following excesses:
 - (a) Damage excess - \$2,000; and
 - (b) Theft/loss excess - \$10,000.
- 10.5 The damage waiver may be waived only if you elect and can provide MEH with documentation to MEH's satisfaction evidencing your current insurance coverage, including but not limited to a certificate of currency of your current insurance policy.
- 10.6 Unless transport of Equipment is undertaken by MEH, you are responsible for any damage to the Equipment in the course of transport or transit.

11. RISK AND LIABILITY

- 11.1 As and from the time you take delivery of the Equipment, all risk of and associated with the Equipment will pass to you and you must indemnify MEH and keep MEH indemnified against all losses, costs and expenses associated with or arising from the use or possession of the Equipment (including damage to the Equipment caused directly or indirectly by a third party) until the Equipment is returned to MEH.
- 11.2 To the full extent permitted by law, you release and discharge MEH and MEH's agents and employees from all claims and demands on MEH and any loss or damage whatsoever and whenever caused to you or your agents or employees, including but not limited by death of, or injury or damage to, any person or property, regardless of whether caused by MEH's negligence, fraud or a breach by MEH of these Terms.

12. STAND-DOWNS

- 12.1 You must contact MEH no later than 9:00am if you wish to invoke a period of Equipment stand-down.
- 12.2 You must receive confirmation of approval and a stand-down number from MEH before the stand-down becomes effective.

13. BREAKDOWN OR LOSS

- 13.1 You must report and provide full details to MEH of any breakdown or incident or failure to the Equipment within 2 Business Days of such occurrence, and subsequently return Equipment at your own expense if MEH requests you to do so.
- 13.2 You must not repair or attempt to repair the Equipment in the event of accident, breakdown or failure.
- 13.3 The hire period of Equipment will be deemed to be extended:

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- (a) if you are responsible for an accident, breakdown or failure to the Equipment - until the Equipment has been repaired and you have paid for the cost of the repair; and
- (b) If the Equipment is lost or damaged beyond repair - until you have paid to MEH the full replacement value of the Equipment.

14. PERSONAL PROPERTY SECURITIES ACT

- 14.1 Expressions used in these Terms have the same meaning as in the *Personal Property Securities Act 2009* (Cth) (the **PPSA**).
- 14.2 To the extent the hire of any Equipment constitutes a PPS lease:
- (a) It does not secure payment or performance of an obligation;
 - (b) The interest of MEH in the Equipment and all proceeds is a security interest and these Terms are a security agreement;
 - (c) You consent to MEH registering its security interest on the Personal Property Securities Register and agree to provide all assistance reasonably required by MEH to facilitate registration;
 - (d) You waive your right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded; and
 - (e) You and MEH agree that these Terms and all related information and documentation are confidential and will not be disclosed, except to the extent disclosure is permitted or required by this agreement or by law (other than section 275(1) of the PPSA).

15. TERMINATION

15.1 If you fail to pay MEH any amount under these Terms, MEH may:

- (a) Immediately terminate the hire arrangement between you and MEH by providing you with written notice of termination;
- (b) Terminate any credit facilities extended to you; and
- (c) Initiate legal action for recovery of any outstanding amounts owed by you and costs incurred (including but not limited to legal costs).

15.2 Time is of the essence in respect of the payment of amounts due to MEH by you.

15.3 You will be liable to MEH for all costs and expenses (including legal costs) incurred by MEH in the collection of any overdue account, or incurred by MEH due to any breach or default of these Terms, and you must pay the same to MEH immediately on notice or demand.

16. NATURE OF RELATIONSHIP

16.1 MEH will supply the Goods and Services as an independent contractor and neither MEH nor any of MEH's personnel will (unless otherwise agreed by MEH) be, or be deemed to be, in partnership or in a joint venture relationship with you, or your employee, servant or agent.

17. PRIVACY AUTHORITY

17.1 Where MEH agrees to provide Equipment to you on credit, you irrevocably authorise MEH to make such enquiries as MEH deems necessary or desirable to investigate your credit worthiness from time to time, including the making of enquiries of persons nominated as trade referees, your bankers or any other credit providers (the **Information Sources**).

17.2 You hereby authorise the Information Sources to disclose to MEH such information concerning you which is within their possession and which is requested by MEH.

18. CAPACITY

- 18.1 For the purposes of these Terms each party:
- (a) Expressly acts, covenants and binds on behalf of itself and on behalf of its related parties (including heirs, successors, permitted assigns, associated entities and legal personal representatives); and
 - (b) Covenants to procure (to the best of its abilities) the performance by each of its related parties of these Terms.
- 18.2 These Terms are not assignable by you with MEH's prior written consent, but they will apply to and bind your successors.

19. WAIVER

- 19.1 Any waiver or forbearance by MEH in regard to the performance of these Terms will operate only if in writing and will apply only to the specified instance, and will not affect the existence and continued applicability of these Terms.
- 19.2 No failure or delay on MEH's part in exercising any right, power or privilege under these Terms will operate as a waiver of any such right, power or privilege.

20. INVALID PROVISIONS

If any provision of these Terms are deemed or held to be illegal, invalid or unenforceable, these Terms will be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable. In all other respects these Terms will remain in full force and effect.

21. APPLICABLE LAW AND JURISDICTION

21.1 These Terms will be governed by and construed in accordance with the laws of South Australia and parties irrevocably submit to non-exclusive jurisdiction of the courts of South Australia in respect of any claim or dispute arising out of or in connection with these Terms.

22. COMPETITION AND CONSUMER ACT 2010

22.1 These Terms will be read subject to the *Competition and Consumer ACT 2010* (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other Commonwealth, Territory or State legislation insofar as such legislation maybe applicable and prevent either expressly or impliedly the exclusion or modification of any such term, condition or warranty, and MEH's liability will be limited to the maximum extent permitted by law.

-END OF TERMS-