

# CONFIDENTIAL CREDIT APPLICATION

Acrow Group of Companies & Associated Entities



## Completing and Submitting this Document

Thank you for applying for credit facilities with the Acrow Group. For your application to be processed, it is necessary to complete and sign both parts of this document: the **Confidential Credit Application** and the **Personal Guarantee and Indemnity Agreement**. Return this document (completed, signed and witnessed) to Acrow Group at [creditapplications@acrow.com.au](mailto:creditapplications@acrow.com.au) and post original to PO Box 99, VIRGINIA, QLD, 4014.

### ALL APPLICANTS TO COMPLETE

Trading name

Full legal name

Business operates as  Trustee  Company  Sole trader  Partnership

ACN

ABN

Acting in its own right and/or as Trustee for (Name of Trust)

Postal address

Business address

Phone - Business ( ) - After hours ( ) - Mobile

Email Accounts email

Year Business Commenced Nature of Business Contracting/Building Licence No.

Estimated Credit Amount Required Per Month \$

### DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership), DIRECTORS (If Proprietary Company)

(1) Full Name

(3) Full Name

Date of Birth / /

Date of Birth / /

Home Address

Home Address

Drivers Licence no.

Drivers Licence no.

Residence  Owned  Rented

Residence  Owned  Rented

Phone

Phone

(2) Full Name

(4) Full Name

Date of Birth / /

Date of Birth / /

Home Address

Home Address

Drivers Licence no.

Drivers Licence no.

Residence  Owned  Rented

Residence  Owned  Rented

Phone

Phone

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## ACKNOWLEDGEMENT AND EXECUTION

I / We certify that:

- a) the above information is true and correct and that I am authorised to make this application for credit.
- b) I / We authorise the use of my personal information as detailed in the Privacy Act clause overleaf.
- c) I / We have read and understand the TERMS AND CONDITIONS OF SALE and the TERMS AND CONDITIONS OF HIRE below of the Acrow Group which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions.
- d) I / We have sought proper legal advice in respect of the Credit Account Application and the TERMS AND CONDITIONS OF SALE and the TERMS AND CONDITIONS OF HIRE.

**ALL DIRECTORS, SOLE TRADERS AND BUSINESS PARTNERS MUST SIGN BELOW AND ALL SIGNATURES MUST BE WITNESSED BY AN INDEPENDENT WITNESS, THIS CANNOT BE ANY SPOUSES OR FAMILY MEMBERS.**

### 1. Signed, sealed and delivered on behalf of the Customer

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

### 2. Signed, sealed and delivered on behalf of the Customer

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

### 3. Signed, sealed and delivered on behalf of the Customer

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

### 4. Signed, sealed and delivered on behalf of the Customer

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

# CONFIDENTIAL CREDIT APPLICATION



## Acrow Group of Companies & Associated Entities

### GENERAL TERMS AND CONDITIONS OF SALES AND HIRE

These terms and conditions will apply to Goods supplied to the Customer or Hirer on credit by the Supplier.

#### **Definitions:**

In these terms and conditions:

**"Customer"** means the party making the application for credit for the purchase of the Goods from the Supplier.

**"Goods"** means all Goods and services including but not limited to all formwork and scaffolding materials and associated services, agreed to be supplied by the Supplier to the Customer under any contract, agreement, arrangement or understanding between the Supplier and the Customer, and includes services.

**"Guarantor"** means that person (or persons), or entity, who agrees to be jointly and severally liable for the debts of the Customer on a principal debtor basis.

**"Hirer"** means the party making the application for credit for the hiring of the Goods from the Supplier.

**"Property"** means all real and personal property owned by the Customer or Guarantor now or in the future, whether owned solely or jointly.

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

**"Supplier"** means any entity of the Acrow group who supplies the Goods, including but not limited to, Acrow Formwork & Construction Services Limited ABN 36125893465, Acrow Holdings Pty Ltd ABN 23145589797, Acrow Formwork and Scaffolding Pty Ltd ABN 35004284806, Natform Pty Ltd 73002189933, Unispan Group Pty Ltd ABN 79131921116, Unispan Australia Pty Ltd ABN 84 099939287, Benchmark Scaffolding and Edge Protection Pty Ltd ABN 98 163 412 888, MI Scaffold Pty Ltd ABN 93 158 507 021 and any of their successors, subsidiaries, affiliates, associates, or related body corporate, related entities or assigns.

### **TERMS AND CONDITIONS OF SALE**

1. **General** These Terms and Conditions of Sale constitute the entire agreement between the Supplier and the Customer concerning the sale of the Goods by the Supplier to the Customer and shall prevail over all conditions appearing on any document of the Customer. The credit allowed by these terms and conditions to the Customer is the higher of the amount advised to by Supplier to the Customer or the amount of credit extended by the Supplier to the Customer, the estimated credit limit as notified by the Customer is only an estimate and cannot be relied upon by the Customer.
2. **Quotations** A quotation given by the Supplier shall not constitute an obligation to sell and no contractual relationship shall arise until the Customer's order has been accepted in writing by the Supplier.
3. **Price** Unless advised otherwise in writing by the Supplier, the Customer shall in addition to prices quoted or charged, be responsible for all applicable taxes and statutory charges including but not limited to GST.
4. **Payment Terms** Invoices shall be paid within 30 days from the date of the invoice issued to the Customer. Goods requiring special design and manufacture shall be paid for on the following basis: 10% on acceptance of order, 20% on completion of drawings, 60% on completion of manufacture, 10% thirty days after delivery of the Goods unless advised otherwise by the Supplier.
5. **Suspension** The Supplier may suspend performance in the event that any part of the Customer's account is overdue and may at its discretion charge interest at the rate of 10% per annum on such monies due but unpaid.
6. **Delivery and Risk** Signed delivery dockets will be conclusive proof of delivery of the Goods in good and acceptable condition from the Customer. Risk in the Goods shall pass to the Customer on delivery.
7. **Title** Title in the Goods shall not pass to the Customer until the full price has been paid to the Supplier. If prior to transfer of title, the Customer sells, or gives possession to a third party of, the Goods or uses the Goods in some process, then the Customer must first obtain the consent of the Supplier and will hold the proceeds of such sale or process in trust for the Supplier and will ensure all steps are taken by the Customer to secure the Goods including the lodgment of a PPSR Registration as against any third party with possession of the Goods.
8. **Default** If the Customer breaches these terms of sale, fails to make payment to the Supplier when due, enters into insolvency or bankruptcy or enters into a deed of arrangement or composition with its creditors, the Supplier may without prejudice to its other rights, retake possession of the Goods from the Customer's site and/or suspend further deliveries. The Customer shall indemnify and keep the Supplier indemnified against all costs and liabilities incurred by the Supplier arising from its entry on the Customer's site and/or suspending the delivery of Goods in exercise of the Supplier's rights. Any amount not paid by the due date will, at the discretion of the Supplier, incur interest at the rate of 10% per annum. In the event of default, the Customer shall be liable to pay all legal costs and expenses (including commissions paid by the Supplier to any commercial or mercantile agent) incurred by the Supplier in connection with the recovery of any overdue amounts and all amounts owing by the Customer will immediately become due and owing in the event of default.
9. **Customer Obligations and Warranties** The Customer agrees and warrants that:
  - (a) It will pay by the due date, without any deduction or setoff, the price charged by the Supplier for Goods supplied to the Customer;
  - (b) It will advise the Supplier in writing of any changes in the business structure as shown in this application within (2) business days of such change occurring. The Customer shall remain liable for all Goods supplied until the time that the Supplier has accepted a fresh credit application and released the Customer in writing;
  - (c) is not entitled to any credit facilities until it receives notice in writing by the Supplier stating that credit facilities have been

given in accordance with the terms and conditions contained herein. Until the Customer receives such notice, any Goods that are supplied by the Supplier to the Customer shall be on the basis of cash upon delivery of Goods only.

The parties agree that if, prior to formally approving credit, the Supplier grants to the Customer time to pay for any Goods supplied, it does so on these terms and conditions.

If the Customer fails to comply with these obligations or makes any misrepresentation to the Supplier, credit facilities may be withdrawn. In such case, all charges to the Customer's account will become due and payable immediately.

10. **Returns** The Supplier will accept return of Goods within 14 days of delivery, subject to payment of a service charge or restocking fee by the Supplier and provided that the Goods are in the condition as delivered to the Customer. No return of specially designed or manufactured goods will be accepted by the Supplier.

11. **Security** As security for the obligations and liabilities of the Customer, the Customer hereby charges all of its rights, title and interest (whether joint or several) in any Property or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions including, but not limited to, the payment of any money ("**Charge**").

Where the Customer is a Trustee, the Customer shall be liable on the account and in addition the assets of the Trust shall be available to meet payment of any monies due and owing to the Supplier and the Customer is bound in its own capacity and in its capacity as trustee. Without limiting the generality of the Charge, the Customer agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier to register a mortgage security over any Property.

The Customer shall indemnify the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such mortgage documents. The customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Property.

The Supplier may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit that the Customer give such security or additional security as the Supplier shall in its discretion think fit. The Supplier shall be entitled to withhold supply of Goods or further credit until such security or additional security is obtained.

12. **Personal Property Securities Act 2009 ('PPSR')** In this clause 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings given to those by the PPSA. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:

- (a) Constitute a security agreement for the purpose of the PPSA; and
- (b) Create a security interest in favour of the Supplier over:
  - (i) The Goods (and their proceeds) previously supplied by the Supplier to the Customer; and
  - (ii) All of the Goods (and their proceeds) to be supplied (whether by sale or hire) by the Supplier to the Customer in the future;
  - (iii) all of the Customer's present and after acquired Property.

The Customer acknowledges that the security interest granted by the Customer to the Supplier shall constitute a purchase money security interest as defined in Section 14 of the PPSA. The Customer acknowledges and agrees that the Supplier will register its security interest in the goods and their proceeds as a purchase money security interest on the register. The Customer also undertakes to:

- (c) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
  - (i) Register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register and otherwise do all things necessary and required by Supplier to ensure this security interest is a perfected security interest under the PPSA;
  - (ii) Register and/or submit any other document required to be registered and/or by the PPSA; or
  - (iii) Correct a defect in a statement;
- (d) Indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing and Goods charged thereby;
- (e) Not register a financing change statement in respect of a security interest without the prior written consent of the Supplier; and
- (f) Not 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 without the prior written consent of the Supplier; and
- (g) Immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Customer hereby waives its rights to receive notices under sections 96, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. The Customer waives its rights as a grantor and/or a customer under sections 142 and 143 of the PPSA. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

- 13. **Brochures** Illustrations of the Goods in the Supplier's brochures and catalogues are not to be taken as exact representations of the Goods.
- 14. **Cancelled or Varied Orders** The Supplier reserves the right to charge for the cost of materials used or purchased and the cost of labour incurred and all other costs associated with any order cancelled or altered by the Customer.
- 15. **Licenses and Approvals** The Customer shall be responsible for obtaining all licenses, consents, permits and approvals in connection with the use of the Goods.
- 16. **Limited Warranty** The Supplier warrants that the Goods will be free from defects and of merchantable quality. All other warranties, expressed or implied, are hereby excluded.
- 17. **Limitation of Liability** Notwithstanding anything else contained in these Terms of Sale, the Supplier shall under no circumstances be

liable to the Customer in connection with the Goods for any loss of use, loss of profit or consequential loss, whether arising in negligence or otherwise. To the extent permitted by law, the Supplier's liability to the Customer is limited to the repair or replacement of the Goods.

18. **Delays** The Supplier shall not be liable to the Customer for any costs, losses or damages caused by any delays in delivery, which are beyond the reasonable control of the Supplier.
19. **GST** If the Supplier has any liability to pay the Goods and Services Tax ('**GST**') on any goods or services supplied to the Customer, the Customer shall pay to the Supplier the amount of such GST or any other duty or statutory charge in connection with the sale of the Goods at the same time as payment is made for those goods or services.
20. **Privacy** The Customer authorises the Supplier to:
  - (a) obtain credit information about its personal or commercial credit worthiness from the bank or trade references disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee;
  - (b) use, disclose or exchange with other credit providers information about its credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
  - (c) disclose the contents of any credit report on the Customer to the Supplier's solicitors and mercantile agents.

If the Customer does not provide the personal information requested in the Credit Account Application, the Supplier may not

be able to process such application. The Supplier complies with the Australian Privacy Principles in relation to the collection and disclosure of information regarding individuals. The Supplier's Privacy Policy is accessible via its website at [www.acrow.com.au](http://www.acrow.com.au)

21. **Intellectual Property** Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.
22. **Entire Agreement** These terms and conditions of sale constitute the entire agreement between the Supplier and the Customer concerning the application for credit, the supply of Goods by the Supplier to the Customer and shall prevail over all conditions appearing on any document of the Customer.
23. **Jurisdiction** The parties agree that these terms and conditions of sale shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.

## TERMS AND CONDITIONS OF HIRE

1. **General** These Terms and Conditions of Hire constitute the entire agreement between the Supplier and the Hirer concerning the hire of the Goods by the Supplier to the Hirer, and shall prevail over all conditions appearing on any document of the Hirer. The credit allowed by these terms and conditions to the Hirer is the higher of the amount advised by the Supplier to the Hirer or the amount of credit extended by the Supplier to the Hirer, the estimated credit limit as notified by the Hirer is only an estimate and cannot be relied upon by the Hirer.
2. **Quotations** A quotation given by the Supplier shall not constitute an obligation to hire and no contractual relationship shall arise until the Hirer's order has been accepted in writing by the Supplier.
3. **Brochures** Illustrations of the Goods in the Supplier's brochures and catalogues are not to be taken as exact representations of the Goods.
4. **Cancelled or Varied Orders** The Supplier reserves the right to charge for the cost of Goods used or purchased and the cost of labour and transport incurred for any order cancelled or altered by the Hirer.
5. **Price** Unless advised otherwise in writing by the Supplier, the Hirer shall in addition to prices quoted or charged, be responsible for all applicable taxes and statutory charges including but not limited to GST.
6. **Invoicing** All invoices shall be paid by the Hirer to the Supplier within 30 days from the date of the invoice supplied to the Hirer. Any amount not paid by the due date will, at the discretion of the Supplier, incur interest at the rate of 10% per annum and is payable by the Hirer.
7. **Delivery** A representative may be appointed by the Hirer for the sole purpose of checking the quantity of material delivered and the time of delivery. If no representative is provided, the Hirer agrees that the Supplier shall be able to effect delivery and/or pick up of Goods at its absolute discretion without the necessity for a representative of the Hirer to be present. Conclusive proof of receipt of the quantity, date and description of Goods delivered, and delivery of the Goods in good condition will be evidenced by the delivery docket.
8. **Risk** Risk in the Goods shall pass to the Hirer at the time the Hirer takes delivery of the Goods.
9. **Authority** A signature of any officer, employee or agent of the Hirer may be taken by the Supplier and shall be sufficient evidence to the Supplier of the authority to sign on behalf of the Hirer.
10. **Return of Goods by Hirer** Unless the Supplier agrees otherwise in writing, the Hirer shall be responsible for the return of the Goods to the Supplier. At the same time as returning the Goods, the Hirer may provide a representative to check the quantity and description of Goods and time of return is as stated on the return docket. If no representative of the Hirer is provided, the return docket shall be conclusive evidence as to the quantity, description, date, condition, state of repair, and time of return. In all cases of returns whether by the Hirer or the Supplier, the Goods should be stacked, cleaned and sorted in the same manner as received when delivered. Any restacking and sorting will be at the cost of the Hirer. The Hirer agrees that it will return all Goods hired by it without any chemical, concrete, paint and hazardous or dangerous substances affecting the Goods. No damaged Goods will be accepted by the Supplier,

and the Supplier retains the discretion to continue to charge hire costs until the Goods is returned in a clean and safe condition.

11. **Loss and Damage** The Hirer shall be responsible for all theft, loss and damage to the Goods, and the cost of replacement or repair will be charged to the Hirer at the Supplier's latest current list price.
12. **Hire Period** The hire period of the Goods shall commence from the day the Hirer takes delivery of the Goods until the day of return of the Goods, with both of these days charged as whole days. No allowance on hire will be made for holiday periods, weekends, inclement weather, industrial action, transport delays or Government interference. A minimum of four (4) weeks hire applies.
13. **Use on Site** The Hirer may use the Goods only on the site specified in the Hirer's order and may not transfer the Goods to any other site without the Supplier's written approval. The Hirer shall not erect any of the Goods in such a manner as to make it a fixture to land.
14. **Site Preparation** If the Supplier is to be responsible for erection of the Goods, the Hirer shall ensure that the site is cleared and ready for erection of the Goods and that the foundations, footings or the structure upon which the Goods is erected/connected must have adequate bearing and strength capacity to withstand and support all forces imposed on them from the Goods.
15. **Transport** Unless the Supplier agrees otherwise in writing, the Hirer is responsible for the cost of delivery and pick-up of the Goods to and from the Supplier's premises and where deemed necessary by the Supplier, the Hirer shall provide loading and unloading of the Goods at its own cost. It is the responsibility of the Hirer to correctly stack and load the truck in accordance to the limitations of the truck. The loading and unloading of the Goods collected by the Supplier is the responsibility of the Hirer.  
Transport charges as specified are for loading or unloading at designated site during the Supplier's normal business hours. Waiting time and delivery outside the Supplier's normal business hours will incur additional charges.  
Where the Hirer has requested delivery and adequate access is not provided such that delivery cannot be performed, the Hirer will be liable for all transport charges and/or waiting time.
16. **Hirer's Obligations** The Hirer shall:
  - (a) prior to use of the Goods, satisfy itself as to its condition and suitability for the purpose required;
  - (b) use the Goods in a skillful, proper and safe manner and only for the purpose and within the capacity for which it was designed and in accordance with the relevant Australian Standards;
  - (c) ensure the Goods are erected and dismantled by competently trained or certified persons as per Australian Standards in a manner that is specified by the Supplier in its General Assembly Recommendations;
  - (d) maintain and check the Goods regularly to confirm it is in good condition, fair wear and tear excepted;
  - (e) indemnify the Supplier against all claims and liabilities arising out of the use or servicing of the Goods;
  - (f) not sell, mortgage, sub-hire, pledge, lease or otherwise deal with any of the Goods unless the owner's written consent is obtained;
  - (g) not alter the Goods from the state in which it was hired; and
  - (h) ensure that all safety and operating instructions relating to the Goods are observed;
- (i) ensure that hazard identification, risk assessment and risk control measures are carried out on site for the installation of Goods and that all users are trained in the safe use of the Goods.
17. **Payment** The Hirer will pay to the Supplier on or before the due date as charged for such hiring amounts to be calculated as follows:
  - (a) In the case of material and labour supplied on a unit-hire basis - in accordance with the Schedules of rates from time to time published by the Supplier.
  - (b) In the case of material and labour supplied under lump sum and quoted rate arrangements in accordance with the Supplier's quotation.
  - (c) Provided that any such rates or quotation may be varied without notice to reflect increases in labour or material which occur during the hire.
18. **Termination** This Agreement may be terminated by either party giving one (1) month notice in writing to the other. If on termination any Goods remains in the possession of the Hirer, the hire charge shall continue until such Goods have been returned or until the Hirer has been otherwise determined.
19. **Collection by the Supplier** Where the Supplier has agreed in writing to collect the Goods, a request to the Supplier to collect the Goods must be received by the Supplier at least two days before collection shall be required. The Supplier will record evidence of the request for pick-up up on an ADVISE TO PICK UP docket. The Hirer must request an identifying pick-up advice number to evidence its request. Delays during pick-up or restacking for transport are to the Hirer's account.
20. **No Removal of Markings** The Hirer shall not remove, deface or cover up any plates or marks on the Goods indicating its ownership.
21. **Right of Inspection** The Supplier shall at all times have the right to inspect any of the Goods. The Hirer shall indemnify the Supplier for any damages arising out of the Supplier's entry of the site to inspect the Goods.
22. **Licenses and Approvals** The Hirer shall be responsible for obtaining all licenses, consents, permits and approvals in connection with the use of the Goods.
23. **Default** the Supplier reserves its rights to terminate this agreement at any time without notice to the Hirer, if the Hirer breaches these Terms and conditions of Hire, fails to make payments to the Supplier when due and payable, goes into insolvency or bankruptcy or enters into a deed of agreement or composition with its creditors. The Supplier may without prejudice to its other rights, retake possession of the Goods from the Hirer's premises and/or suspend further deliveries.  
Upon termination, the Supplier may continue to charge hire at the current rate until the Goods are returned to the Supplier's branch and/or charge the Hirer for repair of damages or cleaning of the Goods that may be required. The loading of Goods collected by the Supplier is the responsibility of the Hirer. The cost of repossession and transport of the Goods shall be borne by the Hirer. The cost of dismantling and stacking erected Goods, or stacking dismantled Goods by the Supplier will be to the Hirer's account.  
The Hirer will provide all necessary permission for the Supplier to enter the site to repossess the Goods and indemnify the Supplier for any damages arising out of the Supplier's entry of the site to remove the Goods. The Supplier's repossession of the Goods shall not affect the right of the Supplier to recover outstanding payments

under the contract and the Supplier reserves its right to pursue any additional remedies available to it.

In the event of default, the Hirer shall be liable to pay all legal costs and expenses incurred by the Supplier in connection with the recovery of any overdue amounts and all amounts owing by the Hirer will immediately become due and owing in the event of default.

24. **Security** As security for the obligations and liabilities of the Hirer, the Hirer hereby charges all of its rights, title and interest (whether joint or several) in any Property or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these Terms and Conditions of Hire including, but not limited to, the payment of any money ("**Charge**"). Where the Hirer is a Trustee, the Hirer shall be liable on the account and in addition the assets of the Trust shall be available to meet payment of any monies due and owing to the Supplier and the Hirer is bound in its own capacity and in its capacity as trustee.

Without limiting the generality of the Charge, the Hirer agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier to register a mortgage security over any Property. The Hirer shall indemnify the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such mortgage documents. The Hirer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any of the Property.

The Supplier may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit that the Hirer give such security or additional security as the Supplier shall in its discretion think fit. The Supplier shall be entitled to withhold supply of Goods or further credit until such security or additional security is obtained

25. **Limited Warranty** The Supplier warrants that the Goods will be of merchantable quality and free from defects. All other warranties, expressed or implied, are hereby excluded.

26. **Limitation of Liability** Notwithstanding anything else contained in these Terms and conditions of Hire, the Supplier shall under no circumstances be liable to the Hirer in connection with the supply of the Goods for any loss of use, loss of profit or consequential loss, whether arising in negligence or otherwise. To the extent permitted by law, the Supplier's liability to the Hirer is limited to the resupply of the Goods or Services.

27. **Delays** The Supplier shall not be liable to the Hirer for any costs, losses or damages caused by any delays in delivery or erection, which are beyond the reasonable control of the Supplier.

28. **GST** The Hirer shall pay to the Supplier the amount of GST at the same time as payment is made for goods or services including any other applicable taxes and statutory charges.

29. **Entire Agreement** These terms and conditions of hire constitute the entire agreement between the Supplier and the Hirer concerning the hire of the Goods and shall prevail over all conditions appearing on any document of the Hirer.

30. **Jurisdiction** The parties agree that these terms and conditions of hire shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.

31. **Personal Property Securities Act 2009 ('PPSR')** In this clause 'financing statement,' financing change statement,' security agreement' and 'security interest' have the meanings given to those by the PPSA. Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that these terms and conditions:

- a. Constitute a security agreement for the purpose of the PPSA; and
- b. Create a security interest in favour of the Supplier over:
  - (i) The Goods (and their proceeds) previously hired by the Supplier to the Hirer; and
  - (ii) All of the Goods (and their proceeds) to be hired (whether by sale or hire) by the Supplier to the Hirer in the future;
  - (iii) all of the Hirer's present and after acquired Property.

The Hirer acknowledges that the security interest granted by the Hirer to the Supplier shall constitute a purchase money security interest as defined in Section 14 of the PPSA. The Hirer acknowledges and agrees that the Supplier will register its security interest in the Goods and their proceeds as a purchase money security interest on the register. The hirer also undertakes to:

- c. Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
  - (i) Register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register and otherwise do all things necessary and required by Supplier to ensure this security interest is a perfected security interest under the PPSA;
  - (ii) Register and/or submit any other document required to be registered and/or by the PPSA; or
  - (iii) Correct a defect in a statement;
- d. Indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing and Goods charged thereby;
- e. Not register a financing change statement in respect of a security interest without the prior written consent of the Supplier; and
- f. Not 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 without the prior written consent of the Supplier; and
- g. Immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

The Supplier and the Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Hirer hereby waives its rights to receive notices under sections 96, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. The Hirer waives its rights as a grantor and/or a customer under sections 142 and 143 of the PPSA. Unless otherwise agreed to in writing by the Supplier, the Hirer waives its right to receive a verification statement in accordance with section 157 of the PPSA.



# CONFIDENTIAL DEED OF GUARANTEE AND INDEMNITY



## Important to Note

As part of your application for credit, the **Personal Guarantee and Indemnity Agreement** must be completed and signed by all Directors, Sole Traders and Business Partners in the presence of Independent Witnesses (**not Spouses or Family Members**).

**Spouses of all Directors and Sole Traders and Business Partners are requested to also SIGN AS Guarantors in the presence of an independent Witness.**

Reference to the Customer in the following Deed of Guarantee and Indemnity also includes reference to the Hirer.

I/We (the '**Guarantor(s)**') have requested the Supplier to supply  
trading as \_\_\_\_\_ (the '**Customer**')

Business/ Company Name or Trust	Trading Name
of _____	With Goods on credit.
Address of Business	

Should the Supplier elect to do so:

1. I/We guarantee payment to the Supplier of the price charged by the Supplier for Goods supplied to the Customer from time to time, without any deduction or setoff whatsoever. I/We also guarantee payment of any other monies now or in the future owing by the Customer to the Supplier.
2. I/We indemnify the Supplier against all costs, losses and expenses which it incurs as a result of any default by the Customer. I/We agree to pay any stamp duty assessed on the Guarantee.
3. As security for the obligations and liabilities of the Guarantor(s), I/We HEREBY charge all of my/Our rights, title and interest (whether joint or several) in any Property or other assets capable of being charged, owned now or in the future.
4. My/our guarantee and indemnity under this Guarantee will not be affected:
  - (a) if the Supplier grants any extension of time or other indulgence to the Customer or varies the terms of the Customer's account (even if this increases my/our liability under this Guarantee);
  - (b) by the release of any Guarantors or if this Guarantee is or becomes unenforceable against one or more of the Guarantors; or
  - (c) any payment by the Customer being later avoided by law, whether or not I/ we have been given notice of these matters; or
  - (d) if the Customer is placed into administration or receivership or if the Guarantor/s are placed into bankruptcy;
  - (e) by the death of one of the other Guarantors named herein.
5. I/We agree that an application for credit made by the Customer is deemed to have been accepted from the date of the first invoice by the Supplier to the Customer and, without further notice to me/us, this Guarantee will extend to all liabilities from the Customer to that Supplier.
6. Without limiting the generality of the Charge in Clause 11 of the Terms and Conditions of Sale and clause 23 of the Terms and Conditions of Hire, I/We agree on request by the Supplier to execute any documents and do all things reasonably required by the Supplier to register a mortgage security over any Property. I/We shall indemnify the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of such mortgage documents.
7. If any payment made by or on behalf of the Customer is alleged to be void or voidable by any liquidator or like officer of the Customer under any law related to insolvency, I/We agree to indemnify the Supplier against any costs or losses it may incur in connection with such claim.
8. If the Guarantor(s) is a trustee of a trust, the Guarantor(s) enter this agreement in both the Guarantor's personal capacity and as a trustee of that trust.
9. This Guarantee and Indemnity extends to credit given to the Customer in the future by a company which is not now, but at the time that such credit is extended, has become a related body corporate of the Supplier and may in such case be enforced by the Supplier.
10. The Guarantor/s acknowledges that it shall be liable for all legal costs on an indemnity basis to which the Supplier may be put as a result of taking any steps to enforce in any way the Charge hereinbefore created. The Guarantor(s) also agree that the Supplier has a right to register a caveat against any real property owned by the Guarantor(s) as security for any monies outstanding monies due and owing to the Supplier.
11. This guarantee and indemnity are to be a continuing guarantee and indemnity and shall be irrevocable and shall remain in full force and effect until such time as the Customer shall have duly performed and discharged its obligations as aforesaid.
12. That notwithstanding the due completion of this agreement this clause and the guarantees and indemnities contained in this clause shall endure for the benefit of the Supplier and shall not merge in the transfer upon completion.
13. I/We agree that the laws of New South Wales govern this guarantee and indemnity. I/We unconditionally submit to the non-exclusive jurisdiction of the Courts of New South Wales in relation to this guarantee and indemnity, any dispute under or any transactions contemplated by this guarantee and indemnity.



## CONFIDENTIAL DEED OF GUARANTEE AND INDEMNITY

### ACKNOWLEDGEMENT AND EXECUTION AS A DEED

I / We certify that:

- a) the above information is true and correct and that I am authorised to provide this Guarantee and Indemnity.
- b) I / We have read and understand the TERMS AND CONDITIONS OF SALE and the TERMS AND CONDITIONS OF HIRE of the Acrow Group which form part of, and are intended to be read in conjunction with this Guarantee and Indemnity and agree to be bound by these conditions.
- c) I / We have been given an opportunity to seek legal advice in respect of the Credit Account Application and the TERMS AND CONDITIONS OF SALE and the TERMS AND CONDITIONS OF HIRE and this GUARANTEE AND INDEMNITY and have made ourselves aware of the financial position of the Customer.

**ALL DIRECTORS, SOLE TRADERS AND BUSINESS PARTNERS MUST SIGN BELOW AND ALL SIGNATURES MUST BE WITNESSED BY AN INDEPENDENT WITNESS AND THIS CANNOT BY ANY SPOUSES OR FAMILY MEMBERS.**

#### 1. Signed, sealed and delivered on behalf of the Guarantor

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

#### 2. Signed, sealed and delivered on behalf of the Guarantor

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

#### 3. Signed, sealed and delivered on behalf of the Guarantor

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date

#### 4. Signed, sealed and delivered on behalf of the Guarantor

Signature

Signature of Witness

Name of Signatory

Name of Witness

Print Title/Position

Date