



APPLICATION FOR COMMERCIAL CREDIT

14 day trading account

To: NS Earthmoving Pty Ltd (ACN 111 665 797) including, but not limited to any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called "NS Earthmoving") I/We the Customer named below (called variously "the Customer", "I/we" and "me/us" in this application) agree, declare and acknowledge that:

- a) If this application is accepted by NS Earthmoving all the provisions of the application (including the General Credit Terms) plus NS Earthmoving's Terms and Conditions of Trade as they appear on the website) plus NS Earthmoving's terms and conditions as they appear on the back of any invoice issued from time to time – or any other conditions or facility agreement or member agreement may be amended by NS Earthmoving from time to time (copies of these documents are available on NS Earthmoving's website at www.nsearthmoving.com.au ("Trading Terms")) will be binding on me/us; and
- b) I/We have been given and have read and understood NS Earthmoving's current Trading Terms prior to completing this application.

CUSTOMER (please BLOCK print)

Are you a: (tick):	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Private Co. (Pty Ltd)	<input type="checkbox"/> Public Co. (Ltd)	<input type="checkbox"/> Trust (or Trustee)	<input type="checkbox"/> Club/Inc/Assoc
Registered Name:						
Trading Name:						
If a Trust, name of Trustee:						
Registered Address:						
ACN:				ABN:		
Postal Address:					Post Code:	
Business Address:					Post Code:	
Telephone (Bus):			Mobile:			Facsimile:

OWNER/ DIRECTOR/ PARTNER/ SOLE TRADER DETAILS

 each person named authorizes consents to requests for credit reports (if more than 2, please attach separate page)

Full Name (1):				Residence (tick):	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage to:
Address:							
Telephone:			DOB:			Drivers Lic:	
Full Name (2):				Residence (tick):	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage to:
Address:							
Telephone:			DOB:			Drivers Lic:	
Has any director/owner/partner/sole trader: Previously been involved in a company which has been placed in to liquidation or administration? <input type="checkbox"/> Yes <input type="checkbox"/> No							
Previously held an account with NS Earthmoving <input type="checkbox"/> Yes <input type="checkbox"/> No							

TRADE REFERENCES

 (Excluding credit cards, fuel suppliers, landlords and/or power & phone)

Name:	PH:	Email:
Name:	PH:	Email:
Name:	PH:	Email:

DECLARATION FOR THE NATIONAL CONSUMER CREDIT CODE:

I/We (including all owners/directors) declare that the credit to be provided to me/us by NS Earthmoving is to be applied wholly or predominately for:

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

IMPORTANT
You should **only** sign this declaration if this loan 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.

By signing this application, I/We (including all owners directors) declare that the credit to be provided to me/us by NS Earthmoving is to be applied wholly or predominately for business purposes or investment purposes other than investment in residential property. I/We acknowledge that by signing this declaration I/We may **lose** protection under the National Credit Code

CREDIT REPORTING AND STATEMENT OF NOTIFIABLE MATTERS

NS Earthmoving's Statement of Notifiable Matters and Credit Reporting Policy, together with the consents and authorisations given by the customer and/or its owners/directors upon completing this application are published on NS Earthmoving's website at www.nsearthmoving.com.au. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting NS Earthmoving's Privacy Officer on 0438 755 077

PRIVACY AND COLLECTION NOTICE (APP 5)

NS Earthmoving's Collection Notice and Acknowledgement pursuant to the Privacy Act 1988 (APP 5), and Privacy Policy are published on NS Earthmoving's website at www.nsearthmoving.com.au. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting NS Earthmoving's Privacy Officer on 0438 755 077

ESTIMATED MONTHLY PURCHASES	
REQUESTED LIMIT	

REPRESENTATION WARRANTY & ACKNOWLEDGEMENT:

I/WE HEREBY REPRESENT AND WARRANT that the information set out in this application is true and correct AND ACKNOWLEDGE that NS Earthmoving will rely upon the information provided and is hereby induced to grant credit to me/us

Each owner/director authorises and consents to requests for credit reports as detailed on NS Earthmoving's website at www.nsearthmoving.com.au

I/We agree to be bound by the Trading Terms set out above and by the terms set out in this application and on NS Earthmoving's website at www.nsearthmoving.com.au and warrant that the information given by me/us in this application is true and accurate and warrant I/We have disclosed all information relevant to this application.

I/We understand that I/We need not give any of the personal information requested in this application. However without this information it may not be possible for NS Earthmoving to process this application or provide me/us with an appropriate level of service. By signing this application I/We authorise NS Earthmoving to collect, hold, use, and disclose my/our personal information in the manner set out in this application and/or NS Earthmoving's Privacy Policy and Credit Reporting Policy (as may be amended from time to time). I/We acknowledge having read and understood NS Earthmoving's Privacy Policy and Credit Reporting Policy and that I/We am/are aware that copies of those policies are available on NS Earthmoving's website at www.nsearthmoving.com.au or in an alternative form and free of charge from NS Earthmoving's Privacy Officer upon request.

APPLICATION:

Upon NS Earthmoving allowing me/us to trade on credit, I/we agree, declare and acknowledge that NS Earthmoving's Trading Terms as published on NS Earthmoving's website apply to all my/our dealings with NS Earthmoving and I/we hereby agree to comply with the Trading Terms.

CUSTOMER CONTACT DETAILS

Purchasing Contact Name:	
Phone:	
Mobile:	
Email:	
Accounts Payable Contact Name:	
Phone:	
Mobile:	
Email:	

BUSINESS DETAILS

Type of business:	
Est:	How long have directors/ shareholders been appointed?
Subsidiary/Related entity:	
Are the business premises owned or leased?	<input type="checkbox"/> Owned <input type="checkbox"/> Leased
If leased, what is the term?	
Bank:	Branch:
Acc No:	
Is the Customer willing to produce on request copies of its latest balance sheet and profit and loss statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No



GENERAL CREDIT TERMS

For the full terms and conditions, refer to the Terms and Conditions of Trade on NS Earthmoving's website at www.nsearthmoving.com.au

1. **Payment:** The Customer must pay for all purchases within fourteen (14) days of the date on which the invoice is generated, or within any alternative credit period granted in writing by NS Earthmoving. Amounts payable by the Customer under these Credit Terms must be paid in full without deduction, retention or set-off of any kind and for any reason.
 2. **Interest and Administration fee:** NS Earthmoving is entitled to charge the Customer:
 - (a) interest on amounts not paid within the credit period specified by NS Earthmoving at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by NS Earthmoving, in its discretion; and
 - (b) if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by NS Earthmoving of the loss, costs and expenses which shall be incurred by reason of the Customer's default in payment and the recovery thereof.
 3. **GST:** Each amount payable by the Customer under these Credit Terms in respect of a Taxable Supply by NS Earthmoving is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999 (Cth).
 4. **Withdrawal or Variation of Credit:** NS Earthmoving may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for a Commercial Trading Account, that Application will not be in derogation of but in addition to any previous general credit terms existing except as notified by NS Earthmoving (or any of its related entities, subsidiaries and assigns and as Trustee of any Trust) in writing.
 5. **Charge over Customer's Property:** As security for payment to NS Earthmoving of all moneys payable by the Customer and for the Customer's obligations generally under these Credit Terms, the Customer charges in favour of NS Earthmoving the whole of the Customer's undertaking, property and assets (including without limitation all of the Customer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer's attorney to do all things necessary to create and register each such charge. Upon demand by NS Earthmoving, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to NS Earthmoving to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that NS Earthmoving may execute such mortgage or other instrument as the Customer's attorney pursuant to the appointment of NS Earthmoving as the Customer's attorney set out in these Credit Terms.
 6. **Suspension or Ceasing of Supply:**
 - (a) NS Earthmoving may in NS Earthmoving's complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Credit Terms.
 - (b) Without limiting clause 6(a), if an Event of Default occurs, NS Earthmoving may, without prejudice to NS Earthmoving's other rights, call up moneys owed to NS Earthmoving by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
 7. **Liability of NS Earthmoving:** NS Earthmoving will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by NS Earthmoving, its employees, contractors or agents.
 8. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer.
 9. **Notification of Change of Details:** The Customer will provide written notice to NS Earthmoving of any change in the Customer's structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.
 10. **Continuing Guarantee:** All guarantees under or related to these Credit Terms will be continuing guarantees and will terminate only with NS Earthmoving's written agreement.
 11. **Set-Off:** NS Earthmoving may at any time set-off amounts owed by NS Earthmoving to the Customer against amounts owed by the Customer to NS Earthmoving.
 12. **Property:**
 - (a) Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to NS Earthmoving in full. Risk in the Products passes to the Customer at the time of delivery.
 - (b) The Customer holds the Products as fiduciary bailee and agent for NS Earthmoving and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by NS Earthmoving until payment of all moneys owed by the Customer to NS Earthmoving. If an Event of Default occurs, then without prejudice to NS Earthmoving's other rights, NS Earthmoving may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
 - (c) If the Customer sells any of the Products supplied while money is owed to NS Earthmoving, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
 - (d) If the Products are resold, or goods and/or services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for NS Earthmoving. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to NS Earthmoving at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without NS Earthmoving's prior written consent.
 - (e) If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for NS Earthmoving. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to NS Earthmoving and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
 13. **Personal Property Securities Act (Cth) 2009 ("PPSA"):**

The Customer grants to NS Earthmoving a "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

 - (a) In consideration of NS Earthmoving supplying the Products to the Customer at the request of the Customer, the Customer by signing these Credit Terms:
 - (i) grants to NS Earthmoving a "Purchase Money Security Interest" ("PMSI") in all Products supplied by NS Earthmoving to the Customer from time to time as security for payment of the purchase price of the Products;
 - (ii) grants to NS Earthmoving a "Security Interest" ("SI") in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) from time to time as security for payment of any amount owed by the Customer to NS Earthmoving and as security for the performance by the Customer of the obligations set out in these Credit Terms;
 - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Credit Terms will come into existence subject to the PMSI and SI granted herein and these Credit Terms without the need for any further action or agreement by any party;
 - (iv) acknowledges that the Customer has received valuable consideration from NS Earthmoving and agrees that it is sufficient;
 - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by NS Earthmoving to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
 - (b) NS Earthmoving reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Credit Terms.
 - (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by NS Earthmoving at NS Earthmoving's complete discretion, and may, where applicable, be charged to the customer's credit account with NS Earthmoving.
 - (d) The Customer must promptly, on request by NS Earthmoving, execute all documents and do anything else reasonably required by NS Earthmoving to ensure that the PMSI and SI created under these Credit Terms constitutes a perfected security interest.
 - (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which NS Earthmoving has any PMSI and/or SI without the prior written consent of NS Earthmoving and will immediately notify NS Earthmoving if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
 - (f) The Customer must not allow the Products to become accessions or commingled with other goods unless NS Earthmoving has first perfected any PMSI or SI that NS Earthmoving has in relation to the Products.
 - (g) If NS Earthmoving perfects any PMSI and/or SI that NS Earthmoving has in relation to the Products, the Customer must not do anything that results in NS Earthmoving having less than the security or priority granted by the PPSA that NS Earthmoving assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
 - (h) The Customer irrevocably grants to NS Earthmoving the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if NS Earthmoving has cause to exercise any of NS Earthmoving's rights under Chapter 4 of the PPSA, and the Customer will indemnify NS Earthmoving for any claims made by any third party as a result of such exercise.
 - (i) The Customer acknowledges and agrees that:
 - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Credit Terms;
 - (ii) The Security Agreement created by these Credit Terms may only be reinstated on the terms considered appropriate by NS Earthmoving at its complete discretion.
 - (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Credit Terms, and the Customer waives its right to:
 - (i) not have goods damaged or be inconvenienced any more than necessarily incidental if NS Earthmoving removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to NS Earthmoving for the retention of the accession under s.97 PPSA;
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA;
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA;
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Credit Terms under s.157 PPSA.
14. **Effect of Other Terms:** These Credit Terms are supplemented by the Trading Terms on NS Earthmoving's website at www.NSEarthmoving.com and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and NS Earthmoving.
15. **Expenses:** The Customer must pay to NS Earthmoving any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by NS Earthmoving in connection with the entry into these Credit Terms, the exercise or attempted exercise of any power, right or remedy under these Credit Terms and/or the failure of the Customer to comply with these Credit Terms.
16. **Service of Notices and Documents:** All notices or documents required to be given to NS Earthmoving for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by NS Earthmoving to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by NS Earthmoving to the Customer by pre-paid ordinary post to any one of the following addresses:-
 - (a) the last address for the Customer known to NS Earthmoving;
 - (b) if the Customer is a Company, the registered office or principal place of business; or

- (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
17. **Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.
18. **Application of Moneys Received:** If NS Earthmoving receives or recovers money in respect of a debt of the Customer, NS Earthmoving may use the money to pay off whichever debt or part of a debt NS Earthmoving chooses and is not compelled to apply the money as directed by the Customer or any other person.
19. **Indemnity:** The Customer will indemnify NS Earthmoving in relation to any direct or indirect loss, liability or damage suffered by NS Earthmoving or any other person as a result of the Customer's negligence or breach of these Credit Terms.
20. **Trusts:** These Credit Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
21. **Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.
22. **Severance:** Each clause, subclause and part of these Credit Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
23. **Waiver:** Any waiver by NS Earthmoving must be in writing signed by NS Earthmoving. In the event that NS Earthmoving elects not to exercise any of NS Earthmoving's rights arising in connection with these Credit Terms, NS Earthmoving's election will not constitute a waiver of any rights relating to any other breach of these Credit Terms.
24. **Amendments:** These Credit Terms may only be amended with NS Earthmoving's express written agreement.
25. **Assignment:** The Customer may not assign any agreement under these Credit Terms without NS Earthmoving's prior written consent.
26. **Application of Laws:** These Credit Terms are governed by the laws of the state as determined by NS Earthmoving in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by NS Earthmoving in its sole discretion), and the central courts of that state as having jurisdiction over these Credit Terms.
27. **Definitions & interpretation:** In these Credit Terms unless the context requires otherwise:
- (a) "Credit Terms" means these General Credit Terms.
 - (b) "Credit-related information" includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
 - (c) "Customer" means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities;
 - (d) "Event of Default" means any of the following events:
 - (i) the Customer fails to pay for any Products and Services in accordance with these Credit Terms and/or the Customer otherwise breaches these Credit Terms;
- (ii) if the Customer is in breach of any obligations under the Trading Terms and/or any other agreement between the Customer and NS Earthmoving;
 - (iii) the Customer ceases or threatens to cease carrying on business;
 - (iv) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer goes into liquidation, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs.
- (e) "Officer" means each director, secretary, credit manager and authorised representative of NS Earthmoving; and
- (f) "Privacy Act" means the *Privacy Act 1988 (Cth)* as amended from time to time.
- (g) "Products" includes all Products and Services supplied by NS Earthmoving to the Customer.
28. **Interpretation:**
- (a) In these Credit Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
 - (b) No provision of these Credit Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.

I/We agree to be bound by the General Credit Terms set out above and by the terms set out in this application and warrant that the information given by me/us in this application is true and accurate and warrant I/we have disclosed all information relevant to this application.

I/We understand that I/we need not give any of the personal information requested in this application. However without this information it may not be possible for NS Earthmoving to process this application or provide me/us with an appropriate level of service. By signing this application I/We authorise NS Earthmoving to collect, hold, use, and disclose my/our personal information in the manner set out in this application and/or NS Earthmoving's Privacy Policy and Credit Reporting Policy (as may be amended from time to time).

I/We acknowledge having read and understood NS Earthmoving's Privacy Policy and Credit Reporting Policy and that I/we am/are aware that copies of those policies are available on NS Earthmoving's website at www.nsearthmoving.com.au or in an alternative form and free of charge from NS Earthmoving's Privacy Officer upon request.

Executed by the Customer (where the Customer is a company, in accordance with S127(1) of the Corporations Act 2001 (Cth) by authority of its director/s):

Name: <input style="width: 90%;" type="text"/>	Position: <input style="width: 90%;" type="text"/>
Signature: <input style="width: 90%;" type="text"/> <small><i>By signing this document I warrant that I am an authorised representative of the Customer with the requisite authority to do so.</i></small>	Date: <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/>
Witness Name: <input style="width: 40%;" type="text"/>	Witness Signature: <input style="width: 40%;" type="text"/>
Witness Address: <input style="width: 90%;" type="text"/>	

Name: <input style="width: 90%;" type="text"/>	Position: <input style="width: 90%;" type="text"/>
Signature: <input style="width: 90%;" type="text"/> <small><i>By signing this document I warrant that I am an authorised representative of the Customer with the requisite authority to do so.</i></small>	Date: <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/>
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Witness Name: <input style="width: 40%;" type="text"/>	Witness Signature: <input style="width: 40%;" type="text"/>
Witness Address: <input style="width: 90%;" type="text"/>	

Name: <input style="width: 90%;" type="text"/>	Position: <input style="width: 90%;" type="text"/>
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Witness Name: <input style="width: 40%;" type="text"/>	Witness Signature: <input style="width: 40%;" type="text"/>
Witness Address: <input style="width: 90%;" type="text"/>	



GUARANTEE AND INDEMNITY

In consideration of NS Earthmoving agreeing at the request of the Customer named in the Application for a Commercial Trading Account of which this Guarantee forms part to sell products and/or services or give credit to the Customer from time to time, each person named as guarantor in the Schedule ("Guarantor") enters into this Guarantee in favour of NS Earthmoving in the following terms:

1. **Guarantee:** The Guarantor unconditionally and irrevocably guarantees to NS Earthmoving the due and punctual payment of the Guaranteed Moneys and agrees:
 - (a) on demand from time to time to pay an amount equal to the Guaranteed Moneys then due and payable, which amounts must be paid in full without deduction, retention or set-off of any kind and for any reason;
 - (b) any statement signed by an Officer certifying the amount of Guaranteed Moneys, or the money owing by the Guarantor under the Guarantee, is, in the absence of manifest error, binding and conclusive on and against the Guarantor;
 - (c) this Guarantee is a continuing guarantee and remains in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and is in addition to, and not prejudiced or affected by any other security or guarantee held by NS Earthmoving for the payment of Guaranteed Moneys;
 - (d) the liabilities of the Guarantor and the rights of NS Earthmoving under this Guarantee are not affected by anything which might otherwise affect such liabilities and rights at law or in equity;
 - (e) if any payment by the Guarantor under this Guarantee or the Customer is avoided, set aside, ordered to be refunded or reduced rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and NS Earthmoving is entitled to recover from the Guarantor the value of that payment as if that payment had never been made and this clause continues after this Guarantee is discharged; and
 - (f) NS Earthmoving may enforce this Guarantee without first having resort to any other guarantee or security in relation to the Guaranteed Moneys.
2. **Warranty:** Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to NS Earthmoving all information relevant to this Guarantee.
3. **Indemnity:** As a separate and independent obligation, the Guarantor agrees to unconditionally and irrevocably indemnify NS Earthmoving from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by NS Earthmoving in relation to the non payment or non recovery of the Guaranteed Moneys. NS Earthmoving need not incur any expense or make any payment before enforcing any right of indemnity.
4. **Notification of Change of Details:** The Guarantor will immediately provide written notice to NS Earthmoving of any change in the Guarantor's details set out in this Guarantee or the Application for a Commercial Trading Account.
5. **Waiver:** Any waiver by NS Earthmoving must be in writing. No failure or delay by NS Earthmoving to exercise any power, right or remedy under this Guarantee operates as a waiver, nor does any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. NS Earthmoving's rights and remedies under this Guarantee are in addition to any rights and remedies arising at law.
6. **Claim in Administration:** Until this Guarantee is released by NS Earthmoving, the Guarantor will not without NS Earthmoving's consent, prove in any Administration of the Customer in competition with NS Earthmoving or any related body corporate of NS Earthmoving.
7. **Continuing Guarantee:** All guarantees will be continuing guarantees and will terminate only with NS Earthmoving's written agreement.
8. **Application of Moneys Received:** If NS Earthmoving receives or recovers money in respect of debts of the Customer or anyone else, NS Earthmoving may use the money to pay off whichever part of those debts NS Earthmoving chooses and does not have to apply the money for the Guarantor's benefit.
9. **Charge and Security Interest:** As security for payment to NS Earthmoving of all moneys payable by the Guarantor and for the Guarantor's obligations generally under this Guarantee, the Guarantor charges in favour of NS Earthmoving the whole of the Guarantor's undertaking, property and assets (including without limitation all of the Guarantor's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.

The Guarantor irrevocably appoints each Officer as the Guarantor's attorney to do all things necessary to create and register each such charge. Upon demand by NS Earthmoving, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to NS Earthmoving to further secure payment of the money payable by the Guarantor. If the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Guarantor acknowledges that NS Earthmoving may execute such mortgage or other instrument as the Guarantor's attorney pursuant to the appointment of NS Earthmoving as the Guarantor's attorney set out in this Guarantee.

10. **Personal Property and Securities Act (Cth) 2009 ("PPSA"):** Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA. As security for payment to NS Earthmoving of all moneys payable by the Guarantor and for the Guarantor's obligations generally under this Guarantee, the Guarantor grants a "security interest" in favour of NS Earthmoving over all of the Guarantor's "personal property" both current and later acquired.

The Guarantor consents to NS Earthmoving registering a "financing statement" in the Personal Properties Securities Register to perfect the "security interest" created under this Guarantee. The Guarantor must promptly, on request by NS Earthmoving, execute all documents and do anything else reasonably required by NS Earthmoving to ensure that the "security interest" created under this Guarantee constitutes a "perfected" "security interest". The Guarantor acknowledges and agrees that: -

- (a) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to this Guarantee;
- (b) The "Security Agreement" created by this Guarantee may be reinstated on the terms considered appropriate by NS Earthmoving at its complete discretion.

The Guarantor acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of the "security interest" created under this Guarantee, and the Guarantor waives its right to: -

- (a) not have goods damaged or be inconvenienced any more than necessarily incidental if NS Earthmoving removes an "accession" under s.92 PPSA;
- (b) to receive notice of any intention to remove an "accession" under s.95(1)(a);
- (c) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to NS Earthmoving for the retention of the "accession" under s.97 PPSA;
- (d) to receive notice of a decision to enforce the "security interest" in "personal property" in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
- (e) to receive notice of the enforcement of liquid assets under s.121(4) PPSA;
- (f) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
- (g) to receive a Statement of Account if no disposal under s.132(4) PPSA;
- (h) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
- (i) to receive notice of a "verification statement" in relation to any "registration event" (including registration of a "financing statement" or a "financing change statement") relating to the "security interest" created under this Guarantee under s.157 PPSA.

11. **Trusts:** This document binds the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee.

12. **Set-Off:** NS Earthmoving may at any time set-off amounts owed by NS Earthmoving to the Guarantor against amounts owed by the Guarantor to NS Earthmoving.

13. **Expenses:** The Guarantor must pay to NS Earthmoving all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by NS Earthmoving in connection with any entry into this Guarantee, the exercise or attempted exercise of any power, right or remedy under this Guarantee and/or the failure of the Guarantor to comply with any obligations under this Guarantee.

14. **Acknowledgement:** The Guarantor acknowledges that the Guarantor:

- (a) has entered into this Guarantee voluntarily;

- (b) has read and understood the nature and consequences of entering into this Guarantee;
- (c) has not signed this Guarantee on the basis of any representation of NS Earthmoving, NS Earthmoving's employees, agents or representatives or under the duress of any person; and
- (d) is entitled to seek independent legal and financial advice before signing this Guarantee.

15. **Joint and Several:** If there is more than one Guarantor, the obligations of each Guarantor are joint and several.

16. **Severance:** Each clause, subclause and part of this Guarantee is separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

17. **Amendments:** This Guarantee may only be amended with NS Earthmoving's express written agreement.

18. **Assignment:** The Customer may not assign this Guarantee without NS Earthmoving's prior written agreement.

19. **Application of Laws:** This Guarantee is governed by the laws of the state as determined by NS Earthmoving in its sole discretion. The Guarantor submits to and consents to the laws of the state (as determined by NS Earthmoving in its sole discretion), and the central courts of that state as having jurisdiction over this Guarantee.

20. **Definitions:** In this Guarantee unless the context requires otherwise:

Administration includes any administration or liquidation of a corporation, arrangement, receivership, receivership and management or anything similar;

Credit-related information includes "credit information", "credit reporting information" and/or "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.

Customer means the Customer named in the Application for a Commercial Trading Account of which the Guarantee and Indemnity forms a part;

Guarantee means this Guarantee and Indemnity;

Guaranteed Moneys means all Moneys which are, will or may be at any time in the future, owing or payable to NS Earthmoving by the Customer for any reason whatsoever including, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Customer would have been liable but for the Customer's Administration, the Customer and Guarantor will still be taken to be liable;

Officer means each director, secretary, credit manager and authorised representative of NS Earthmoving; and

Privacy Act means the Privacy Act 1988 (Cth) as amended from time to time.

and any term defined in the Credit Terms will have the same definition in this Guarantee.

21. **Interpretation:**

- (a) In this Guarantee unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of this Guarantee will be construed adversely against a party solely because the party was responsible for drafting the provision

PRIVACY AND COLLECTION NOTICE (APP 5)

NS Earthmoving's Collection Notice and Acknowledgement pursuant to the Privacy Act 1988 (APP 5), and Privacy Policy are published on NS Earthmoving's website at www.nsearchmoving.com.au

Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting NS Earthmoving's Privacy Officer on 0438 755 077

CREDIT REPORTING AND STATEMENT OF NOTIFIABLE MATTERS

NS Earthmoving's Statement of Notifiable Matters and Credit Reporting Policy, together with the consents and authorisations given by the customer and/or its owners/directors upon completing this application are published on NS Earthmoving's website at www.nsearchmoving.com.au. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting NS Earthmoving's Privacy Officer on 0438 755 077

SIGNED by each Guarantor in the presence of the witness whose names appear below:

DATED: this day of 20

Guarantor's Full Name:

Signature:

Witness Name (print):

Signature:

Witness Address:

Guarantor's Full Name:

Signature:

Witness Name (print):

Signature:

Witness Address:

Guarantor's Full Name:

Signature:

Witness Name (print):

Signature:

Witness Address:

Guarantor's Full Name:

Signature:

Witness Name (print):

Signature:

Witness Address:

IMPORTANT NOTICE: This is an important document. It may require you to pay someone else's debts. You should ensure that you read and understand the terms of this Guarantee and if necessary seek independent legal advice.