



## Credit Application and Hire Agreement Terms as at 2 July 2018

### APPLICATION AND ACCOUNT

1. The person or entity described on any credit application or enquiry ("the Customer") makes application to TFH Hire Services Pty Ltd ACN 128 947 759 as trustee for the TFH Hire Trust ABN 30 063 810 679 ("the Supplier") for the extension of credit terms by the Supplier to enable the Customer to hire the Plant and/or Equipment and/or obtain the Services from the Supplier on the Terms and Conditions set out in this Agreement.
2. The Customer warrants to the Supplier that:
  - (a) it is able to pay all debts as and when they become due and payable;
  - (b) there current or threatened actions against the Customer for non-payment of debt or the imposition of any process pursuant to the Corporations Act 2001 or the Bankruptcy Act 1966.
3. Where the Customer is applying for credit as a trustee of a trust, the trustee warrants that:
  - (a) it is currently and validly appointed in that capacity;
  - (b) it has a right of indemnity against the assets of the trust; and
  - (c) it has the authority to enter into this agreement
4. The Customer is aware of and consents to the Supplier seeking details about the Customer's financial affairs and trading history from any financial institution, trade referees or credit agency. See the Privacy Policy on the Supplier's website ([www.tfh.com.au](http://www.tfh.com.au)) regarding our dealings with the personal information sought.
5. The Customer acknowledges that the Supplier may accept (either wholly or on additional conditions) or refuse this application for credit and, if credit is granted, amend or withdraw such credit at any time at its sole discretion.
6. The Customer agrees to pay all accounts within the approved trading terms advised by the Supplier at the time of approval.
7. If the Customer fails to conduct the account within the approved trading terms then the Supplier may take any and all of the following actions in its absolute discretion:
  - (a) Withdraw any and all credit facilities operated by the Customer on any account whatsoever;
  - (b) remove all Equipment from all sites without notice;
  - (c) cancel or suspend the provision of any of the Services;
  - (d) retake possession of all Plant wherever situated
8. Further consequences of failure to conduct the account within the approved trading terms will be that:
  - (a) All invoices and any other amounts payable pursuant to this Agreement will become immediately due and payable regardless of the due date stated on any invoice;
  - (b) A late payment fee will be charged for each invoice from the date of default to the date of payment at a flat rate of \$16.50 (inclusive of GST) per month;
  - (c) 7 days after the default, any remaining unpaid invoices will be referred for collection and a collection referral fee of \$66 (inclusive of GST) will be charged and payable by the Customer;
  - (d) Any dishonoured payments will incur a fee of \$22.00 (inclusive of GST) payable on demand; and
  - (e) Interest will accrue on all overdue amounts at the rate of 4 per cent above the Cash Rate most recently published by the Reserve Bank of Australia or as prescribed by any Supreme Court of Queensland Practice Direction made pursuant to the Civil Proceedings Act 2011, or any successor legislation to it, whichever is the greater.
9. This Agreement applies to the exclusion of all other terms and conditions which may purport to be imposed or imported by the Customer in any Purchase Order, Order Confirmation or any other documentation provided by the Customer, unless such additional terms have expressly been agreed to in writing by the Supplier.

### TERMS & CONDITIONS OF HIRE

#### 10. DEFINITIONS

**"ACL"** means Australian Consumer Law.

**"Agreement"** means this Agreement any Guarantee, and any variations and alterations made in accordance with this Agreement.

**"Bins"** means the skip bins, caged bins or related products hired to the Customer pursuant to the Hire Agreement

**"Buildings"** means demountable buildings, site sheds and other related products hired to the Customer pursuant to this Agreement.

**"Consumer"** has the meaning given to that term in ACL.

**"Equipment"** means

- (a) In relation to Equipment Hire, the equipment specified in Hire Documents including, but not limited to, Buildings, Fencing, Bins, panels, concrete bases/blocks and clamps, crowd control barriers, mesh, braces, ground bars, extensions, scrim, gate wheels, shade cloth/weed mats, barb wire, dog proofing, corflute, handrails, event flooring, gates, water barriers, portable toilets, site sheds, Supplier signage and other accessories;
- (b) In relation to Plant Hire, the plant, machinery (b) or other equipment, not referred to in (a), specified in the Hire Documents;
- (c) In relation to Waste Disposal means commercial and/or trade waste management equipment installed by the Supplier on the Premises

**"Event Customer"** means a customer who requires Equipment, other than Plant for a fixed short-term period for a party, festival or similar event with a pre-determined dismantle and removal date.

**"Fencing"** means all fencing including mesh fencing, hoarding, pool fencing, prestige fencing and other fencing accessories.

**"Hire Documents"** means



- (a) any quotation, estimate or acknowledgement of order produced by the Supplier in response to any request, purchase order, invitation or other enquiry by the Customer;
- (b) any documents created for the purpose of evidencing the delivery, collection, removal, addition or alteration of the Equipment; and
- (c) any documents produced by the Supplier in relation to any transaction entered into by the parties pursuant to this Agreement.

**"Hire Term"** commences on the date of delivery and installation of the Equipment and ends on either the date the Equipment is collected by the Supplier, or such earlier Off Hire Date.

**"Initial Hire Period"** means the hire term specified in the Hire Documents.

**"Insolvency Event"** means any action is proposed, threatened or commenced that has the object of any compulsory or voluntary process pursuant to the Corporations Act 2001, the Bankruptcy Act 1966 or any common law power resulting in the appointment of a receiver or other external controller to the property of any entity or the control and management of any entity.

**"Off Hire Code"** means a unique identifier code provided to the Customer as evidence of the Off-Hire Date.

**"Off Hire Date"** is the date on which the Customer notifies the Supplier in writing that the Customer no longer requires the Equipment.

**"Premises"** means the Premises of the Supplier as specified in the Hire Documents

**"Rates"** means the fees and charges payable by the Customer for the use of the Equipment pursuant to this Agreement, whether as contained in the Hire Documents or otherwise notified by the Supplier.

**"Rehire Period"** means that part of the Hire Term that automatically commences upon the end of the Initial Hire Period, unless the Customer notifies the Supplier that it wishes to cease its hire of the Equipment at or before the end of the Initial Hire Period.

**"Replacement Value"** means the total cost to the Owner, including all delivery and statutory charges of purchasing the relevant Equipment of an equivalent age and condition, excluding Equipment that is less than 12 months old which will be valued as new equipment

**"Services"** means the services specified in clause

**"Site"** means the site specified in the Hire Documents.

**"Special Waste"** means any, radioactive, volatile, flammable, explosive, biomedical, toxic, hazardous or which is otherwise classified by regulation as unsuitable for commercial trade waste facilities of the type operated by the Supplier; or reasonably excluded from Waste by the Supplier.

**"Suppliers Website"** means the universal resource locator ("URL") [www.tfh.com.au](http://www.tfh.com.au) or any successor URL, including forwarded or sub-domains.

**"Toilet"** means all portable toilets and related products hired to the Customer pursuant to the Hire Agreement.

**"Waste"** means effluent, portable toilet and septic waste generated by or in the possession of the Customer but excluding Special Waste (unless the Supplier has expressly agreed in writing to provide services in respect of Special Waste).

#### **TITLE AND OWNERSHIP**

11. Ownership in and title to the Equipment remains with the Supplier at all times and under all circumstances.

12. The Equipment shall at all times, be taken to be personal property of the Supplier and not fixtures, despite having been connected to an electricity point, gas supply outlet, plumbing connection or another appliance or otherwise affixed to land owned or occupied by the Customer or a third party.

13. The Customers right to use the Equipment is as a bailee only.

14. The Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.

15. Unless otherwise agreed by the Supplier, the Customer must identify and store the Equipment in a manner that clearly shows that it is the property of the Supplier.

#### **HIRE RATES AND PAYMENT**

16. The Rates for the applicable Hire Term shall be as set out in the Hire Documents.

17. The Rates for the use of the Equipment for the Initial Hire Period will be charged upon delivery and installation of the Equipment and will be due and payable by the Customer in accordance with the agreed payment terms.

18. Payment terms for hire of the Equipment are strictly cash on delivery (COD) unless the Customer has obtained an approved credit account with the Supplier.

19. If the Customer is a COD customer, valid credit card details must be supplied for additional charges and rehire amounts.

20. The Customer must object to any invoice, by notice in writing to the Supplier within 48 hours of the date of invoice, or the Customer is deemed to have accepted the invoice...

#### **PERIOD OF HIRE**

21. The Supplier agrees to hire the Equipment to the Customer for its exclusive use for the Hire Term.

22. The Customer must notify the Supplier in writing no less than seven (7) days prior to the end of the Initial Hire Period, that it wishes to either:

- (a) cease hire of the Equipment at the end of the Initial Hire Period; or
- (b) extend the Hire Term,

23. Unless otherwise agreed pursuant to clause 22 the Hire Term will be automatically extended in successive monthly terms at the rates specified in the Hire Documents until the Customer complies with clause 22 or this Agreement is otherwise lawfully terminated.

#### **FENCING & RELATED PRODUCTS**

24. AS 4687-2007 and the Suppliers engineering specifications apply to the installation and use of the Equipment. Compliance with the applicable standards and specifications requires accurate determination of which wind region as per AS 1170.2-2011, the Site is located in. It is the Customers responsibility to determine the appropriate wind region and to inform the Supplier prior to installation.

25. The Supplier accepts no responsibility and shall not be liable for any failure or malfunction of the Equipment as a result of the Customer failing to provide the correct wind region.

26. The Supplier reserves the right to refuse installation or alternatively levy additional Equipment and labour charges if the Supplier determines, in its absolute discretion, after a site assessment that a different wind region configuration is required.

27. The Suppliers signs will be placed on every third panel.

28. The Customer must not modify the installation or attach anything to the Equipment. If the Customer breaches this clause then all warranties in relation to the Equipment are immediately negated.



29. Upon completion of the hire, if the Equipment is not returned in good, clean workable order, then the Customer shall be liable for the costs of cleaning and repairs.

#### **Damage Waiver Fee**

30. A compulsory non-refundable damage waiver fee applies to all fencing products with mesh infill and is charged at 10% of the Rates.

31. The Damage Waiver is accepted by the Supplier as full and final satisfaction for all liability of the Customer for all costs incurred in repairing or replacing mesh infill only.

32. The Damage Waiver Fee is not charged for the following types of Customers (who shall remain liable for all damage):

- (a) Event Customers/Event Sites
- (b) Demolition Companies/Demolition Sites
- (c) Mining Companies/Mining Sites
- (d) Approved Customers

33. The Customer shall be liable for all loss and damage to Equipment not covered by the Damage Waiver.

#### **TOILETS & RELATED PRODUCTS**

34. The Customer acknowledges that they or their representative have received instructions on the use of the toilet and undertake to only use the toilet in accordance with those instructions.

35. Toilets will be serviced on a fortnightly basis; additional or alternate servicing will incur additional charges.

36. It is the Customers responsibility to ensure that the Equipment is accessible by the Supplier at all times. Any limitation or denial of access will incur an additional charge at the Suppliers discretion.

37. Toilets are to remain in the original installation position at all times. If the toilet is to be repositioned on the site, this shall only be carried out by the Supplier at the Customers cost.

38. If the toilet is vandalised or otherwise damaged, then the Customer must notify the Supplier immediately and cease usage of the toilet until the Supplier has repaired the damage. All toilets must be serviced and emptied prior to being moved, transported or returned.

39. Upon completion of hire, if the Equipment is not returned in good, clean workable order, then the Customer shall be liable for the costs of cleaning and repairs.

40. Any toilets knocked over on Site or graffiti, paint splatter or concrete splatter on the toilet will result in an additional cleaning fee payable by Customer.

#### **TEMPORARY BUILDINGS/SITE SHEDS**

41. The Customer shall ensure the Site is level, clear, defined and accessible prior to delivery. The Customer shall be responsible for connection of all services to the Building (if required) and for any specific wind tie down requirements for the site. Delivery and collection of the Building may be undertaken by the Suppliers agent on their behalf.

42. The Customer is liable for all loss, theft or damage to the Building however caused for the duration of the Hire Period. It is the responsibility of the Customer to insure the Buildings against loss, theft or damage of any kind for the duration of the Hire Period.

43. In the event of any damage occurring to the Building or any accident occurring, in which the Building is involved, the Customer shall immediately notify the Supplier by telephone and in writing (fax or email).

44. The Customer shall at their own expense, keep the Building in good repair and cleanliness (except for reasonable wear and tear) throughout the Hire Period.

45. At commencement of hire, a Building Condition Report noting the general condition and particulars of existing damage to the Building (i.e. scratches, dents, abrasions, etc.) will be provided placed inside the building.

46. It is the Customer's responsibility to notify the Supplier of any discrepancies in the Building Condition Report, within 48 hours of delivery.

47. The Customer must first obtain the written consent of the Supplier for any relocation of any Building. The Customer shall be responsible for any damage caused to the Building in relocating.

#### **SKIP BINS**

48. Delivery, placement and pickup of the Bins is undertaken by the Supplier under the direct orders and control of the Customer, and the Customer indemnifies the Supplier against any loss, damage or injury as a result of the Supplier following those directions, including but not limited to damages caused to any person, property, driveway, pavement kerbing or other surfaces, pipe, pit, cover or underground services and including any penalty for breach of ordinance or regulation.

49. The Customer will pay on demand, any cost or expense incurred by the Supplier as a result of any of the events referred to in clause 48.

50. The Customer must ensure that: Asbestos, paints, oil/liquids, batteries and car/truck tyres are not placed in the Bins.

51. The Maximum weight limits for each Bin must be strictly complied with.

52. Bins that are overweight or contaminated with any of the items listed in clause 50 will NOT be collected or transported and the Customer will be required to remove the excess load and/or contaminants at its own expense prior to being collected.

#### **PLANT HIRE**

53. Where the Equipment constitutes Plant, the Customer agrees and acknowledges that:

(a) During the Hire Period the Equipment is at the Customers risk completely, including for theft, fire, flood and accident whether on a road or otherwise;

(b) The Equipment will only be operated by persons that are licenced, authorised to do so under relevant legislation and competent to operate the Equipment;

(c) The Supplier reserves the right to reject any person as an operator of the Equipment, in its absolute discretion.

(d) The Equipment will be used in accordance with all applicable safety standards and regulations, including road rules;

(e) The Supplier is not responsible for and will not supply any employee, servant or agent of the Supplier with the Equipment and the Customer is entirely responsible for ensuring that the Customer, its servants, agents or any person operating the Equipment with the authority of the Customer complies with these obligations.

(f) The Customer must effect and maintain its own insurance for loss or damage to the Equipment and caused by the Equipment or its operation and undertakes to notify the Supplier immediately in the case of any accident or event occasioning damage to the Equipment or a third party.

#### **WASTE DISPOSAL**



54. The Supplier will provide Services in accordance with this Agreement and the Customer agrees to obtain the Services from the Supplier, except that Customer will not be required to use the Supplier to the extent and for any period during which the Supplier is unable to provide the Services.

55. The Supplier will use all reasonable endeavours to perform the Services on the agreed days but during such hours as the Supplier shall determine.

56. From time to time the Supplier may need to vary the days upon which the Services are performed and in such cases the Supplier will provide prior notice to the Customer where reasonably practicable.

57. The Services will consist of:

- (a) Providing access to commercial trade waste disposal facilities for the Customer to dispose of the Waste;
- (b) Receiving and disposing of the Waste pursuant to this Agreement;
- (c) Any other services as may be agreed in writing between TFH and the Customer.

58. Title to all Waste vests in the Supplier on deposit in the Equipment. Title to Special Waste remains with the Customer, unless otherwise agreed in writing with the Supplier.

59. Where applicable, the Customer appoints the Supplier as its agent to give prescribed information about trackable wastes to any relevant administering authority.

60. The Customer warrants to the Supplier that it is a licenced controlled waste carrier and all Waste relating to the Services meets the specifications imposed by the relevant local authority as they pertain to commercial and/or trade waste facilities including quality profiles for Biological Oxygen Demand, Grease, Oils, Solids (suspended and dissolved), sulphates, kjeldahl nitrogen and phosphorous.

61. The Customer indemnifies the Supplier for all loss and damage, including penalties, fines, taxes or other levies that the Supplier suffers or incurs as a result of any breach of the warranty given in clause 60.

62. For the purposes of clause 61 any notice or correspondence to the Supplier from a competent authority stating an analysis of waste quality and any penalties, fines or levies in respect of it will be prima facie evidence of the facts and matters stated in such notice or correspondence.

63. In consideration of the sum of \$1.00, the Supplier grants the Customer a non-transferrable, non-exclusive licence to enter upon the Premises and remain there for the time required to complete the Services subject to the following conditions.

64. The Customer is only to have access to the commercial trade waste facilities identified by the Supplier and may only pass over those parts of the Premises that are necessary for the Customer to gain access to the commercial trade waste facilities.

65. The licence does not extend to any other parts of the Premises and the Customer will be taken to be trespassing in relation to its resting on or passing over any other part of the Premises.

66. The licence is immediately revokable by the Supplier at any time.

67. The Customer releases and indemnifies the Supplier from any and all liability in respect of the Customer's access to and entering upon the Premises, regardless of how such liability arises.

#### **USE OF EQUIPMENT AND DAMAGED OR MISSING EQUIPMENT**

68. The Customer shall at all times keep the Equipment in good working order and condition and will not in any way, repair or alter the Equipment without the prior written consent of the Supplier. The Equipment must at all times, only be used in a safe, lawful and skilful manner, strictly in accordance with its intended use and all applicable laws and regulations.

69. The Customer further warrants to obtain all permits required to satisfy all legislation including but not limited to planning, environmental, health and safety laws.

70. The Customer shall be responsible for any and all loss, damage or theft to the Equipment for any reason whatsoever, including liability to pay the costs for the repair or replacement of that Equipment, except damage which in the Supplier's sole and absolute discretion, is caused by reasonable wear and tear.

71. Any Equipment which is not able to be safely collected by the Supplier from the Site or which is not returned by the Customer to the Supplier at the end of the Hire Term, will be charged to the Customer as missing Equipment.

#### **DELIVERY, INSTALLATION AND REMOVAL**

72. The Supplier will only accept responsibility for defective or deficient Equipment if the Customer gives written notice of the alleged defect of deficiency within 48 hours of delivery.

73. The Customer accepts all liability for any interference by the Equipment with services supplied to the site.

74. Any document produced and signed by an officer of the Supplier purporting to determine any amount of Equipment that is installed, dismantled, damaged or missing and any dollar amounts of liability for those events is prima facie evidence of the facts and matters stated in the document. Unless the Customer notifies the Supplier in writing within 48 hours of being provided with the document, of any challenge, the Customer waives its right to dispute the document as evidence of the facts and matters stated in it.

#### **Exclusion of Warranties**

75. The Customer warrants and declares to the Supplier that its use of the Equipment is commercial in nature and that the Customer is not a Consumer.

76. To the extent permitted by law, the Supplier excludes all warranties, implied or express, in relation to the Equipment.

77. The liability of the Supplier is limited to:

- (a) In the case of goods, the replacement or repair of the goods or the supply of equivalent goods; or payment of an equivalent amount;

78. In the case of services, the supply of the services again; or the payment of the cost of having the services supplied again.

#### **Limitation of Liability**

79. Under no circumstances shall the Supplier be liable for any loss or damage howsoever caused (including as a result of a breach of contract or negligence of the Supplier, its servants, agents, employees, contractors and assigns), including indirect or consequential loss or damage, or any special, punitive or exemplary damages), arising out of, or in connection with the Customer's possession or use of the Equipment during the Hire Term, including but not limited to, death or personal injury or damages to tangible or intangible property of the Customer or any third party.

80. The Customer shall indemnify the Supplier against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis), whether incurred or awarded against the Supplier, arising out of or in connection with the Customer's possession or use of the Equipment during the Hire Term.





81. The indemnity in Clause 80 above is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to incur an expense or make any payment before enforcing a right of indemnity conferred under this Agreement.

#### **TERMINATION BY THE SUPPLIER**

82. The Supplier may terminate this Agreement and immediately repossess the Equipment in any of the following events:

- (a) the Supplier's rights in the Equipment may or become prejudiced by any act or omission of the Customer.
- (b) the Customer is subject to an Insolvency Event;
- (c) the Customer breaches any provision of this agreement or fails to pay any amount owed to the Supplier on any account when such amount is due.

#### **RETENTION OF TITLE**

83. This Agreement constitutes a 'Security Agreement' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") and the Supplier's interest in the Equipment constitutes a 'security interest' for the purposes of the PPSA.

84. The Customer agrees that the Supplier retains a Purchase Money Security Interest ("PMSI") in the Equipment pursuant to this Agreement.

85. The Customer acknowledges that title to the Equipment always remains with the Supplier and consents to the supplier registering its PMSI interest in the Equipment.

86. The Customer irrevocably authorises the Supplier, its servants or agents, to enter upon any land or premises where the Equipment is present, whether or not by force, to recover possession of the Equipment and releases and indemnifies the Supplier, its servants or agents against all liability incurred, including to third parties, as a result of the Supplier exercising its rights pursuant to this clause.

87. To the extent permitted by PPSA the Hirer and the Owner agree that the following PPSA provisions do not apply to this Agreement:

- (a) Section 125 (obligation to dispose of or retain collateral);
- (b) Section 130 (notice of disposal), to the extent that a notice is required)
- (c) Section 132(3)(d) (contents of statement of account after disposal);
- (d) Section 132(4) (statement of account if no disposal);
- (e) Section 134 (2) (retention of collateral notice);
- (f) Section 135 (notice of retention);
- (g) Section 137 (persons entitled to notice may object to proposal);
- (h) Section 142 (redemption of collateral);
- (i) Section 143 (reinstatement of security agreement).

#### **SECURITY**

88. To better secure the Supplier, the Customer hereby charges any and all of its real property, wherever situate and existing at the date of this Agreement or acquired by the Customer after the date of this Agreement with all amounts that may be due and owing to the Supplier by the Customer on any account whatsoever.

89. The Customer consents to the Supplier registering the charge granted by clause 88 and executing its rights without further notice to the Customer.

90. The Customer hereby appoints any current director of the Supplier as its lawful attorney expressly for the purpose of executing any mortgage or other document necessary to perfect the security granted in clause 88.

#### **NOTICES**

91. Any notice required to be given to the Supplier pursuant to this Agreement must be sent to either the postal or email address published on the Supplier's Website or stated in the Hire Documents.

92. Any notice required to be given to the Customer pursuant to this Agreement must be sent to either the postal or email address stated on the first page of this Agreement.

93. Notices are deemed to have been received:

- (a) In the case of notices sent in the post, 3 days after they have been posted by the sending party; and
- (b) In the case of notices sent by email, the same day that the email was sent by the sending party.

#### **SEVERABILITY**

94. If any provision of this Agreement becomes unenforceable for any reason, then that provision shall be severed, and the remaining parts of the agreement shall be binding on the parties.

#### **LAW AND JURISDICTION**

95. This Agreement is governed by the law of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

#### **AMENDMENTS**

96. The Supplier may amend the terms of this Agreement by:

- (a) Giving the Customer notice in writing, including a copy of the amended terms; or
- (b) Notifying the Customer that amended terms are available for review on the Suppliers Website.

97. In either case, the amended terms will apply to this agreement mutatis mutandum on and from the expiration of 30 days after the notice is given.

#### **ASSIGNMENT**

98. The Customer may not transfer or assign its rights and obligations pursuant to this Agreement without the written consent of the supplier.

99. The Supplier may assign, transfer or novate its rights and obligations pursuant to this Agreement with or without notice to the Customer

**Please visit [tfh.com.au](http://tfh.com.au) to view our current Terms and Conditions of Hire. Effective Date: 2<sup>nd</sup> July 2018**