

**CONFIDENTIAL**



# **LUXTON PLANT PTY LTD**

**ABN 14 004 772 785**

## **Customer Account Application**

Customer Information, Guarantee, Privacy Consent and  
Terms and Conditions of Hire of Plant

P O Box 4069, Dandenong South, VIC 3164

P O Box 1180, Echuca VIC 3564

Telephone: 1300 LUXTON (1300 589 866)

Fax: (03) 9554 3740

Website: [luxtonplant.com.au](http://luxtonplant.com.au)

# How to Complete these Forms

## 1. **Please read all documents carefully**

- Part 1: Credit Application
- Part 2: Personal Guarantee
- Part 3: Privacy Act Consent Form
- Part 4: Terms and Conditions of Hire of Plant

**IMPORTANT:** *If you do not understand any part you should seek legal advice*

## 2. **Credit Application**

- Complete all of parts 1,2, 6, 7 and 8
- If you are applying for yourself, complete part 3
- If you are applying for your company, complete part 4
- If you are applying as a trustee (corporate or individual), complete part 5
- Read part 9 carefully
- Sign in the appropriate sections of part 10
  - If you are a sole trader, you must sign
  - If you are applying as a partnership, all partners must sign
  - If you are applying for your company, all directors must sign
  - If you are applying as individual trustee, all individual trustees must sign
  - If you are applying for a company trustee, all directors must sign

**IMPORTANT:** *By signing, you are agreeing to be bound by the Terms and Conditions of Hire of Plant*

## 3. **Personal Guarantee**

- If you are a sole trader or partnership, you need not sign this form
- If you are applying for your company, all directors and the directors' spouses must sign
- If you are applying as a trustee, all trustees must sign
- For more than 4 Guarantors, additional Guarantors must sign a copy of the form
- Each signature must be witnessed by an independent witness

**IMPORTANT:** *All parties who sign the guarantee may become personally responsible instead of, or as well as, the Applicant to pay all amounts which the Applicant owes Company as well as Company's costs and expenses in enforcing the guarantee and interest.*

*If the Applicant does not pay you must pay. This could mean you lose everything you own. Before signing, each guarantor should:*

- obtain independent legal advice
- consider obtaining independent financial advice
- make his or her own enquiries about the credit worthiness, financial position and honesty of the Applicant.

## 4. **Privacy Act Consent Forms**

- If you are a sole trader you must sign this form
- If you are a partnership, all partners must sign this form
- If you are applying for your company, all directors must sign
- If you are applying as individual trustees, all individual trustees must sign
- If you are applying for a company trustee, all directors must sign

## 5. **When finished**

- When all parts have been signed, please return all parts of the original document consisting of all 9 pages by mail to P O Box 4069, Dandenong South VIC 3164 addressed to the Company Accountant.
- For any queries relating to this application please contact the Company Accountant at the numbers shown above.

**LUXTON PLANT PTY LTD  
PART 1: CREDIT APPLICATION**

**1. THE APPLICANT**

Applicant Name: \_\_\_\_\_  
ACN: \_\_\_\_\_ ABN: \_\_\_\_\_  
Trading Name (if different from applicant): \_\_\_\_\_ Date business commenced: \_\_\_\_\_  
Principal business address: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Position: \_\_\_\_\_  
Invoicing Contact: \_\_\_\_\_ Email: \_\_\_\_\_  
Tel No. \_\_\_\_\_ Fax No: \_\_\_\_\_ Email: \_\_\_\_\_

**2. OPERATING STRUCTURE**

Tick appropriate  Pty. Ltd.  Sole Trader  Corporation as Trustee  
 Public Co.  Partnership  Individual(s) as Trustee

If an individual / sole trader, please complete part 3

**3. INDIVIDUAL / SOLE TRADER DETAILS**

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Drivers License Number: \_\_\_\_\_  Copy of Drivers License Attached

If a company or partnership, please complete part 4

**4. DIRECTOR, PARTNER AND INDIVIDUAL TRUSTEE DETAILS**

Please provide details of all directors (for company or corporate trustee), partners or individual trustees

1) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

2) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

3) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

If more than 3 please attach details, If a trustee, please complete part 5

**5. TRUST DETAILS**

Name of Trust: \_\_\_\_\_ ABN: \_\_\_\_\_  
Type (tick appropriate)  Family/Discretionary  Unit  Other (Details \_\_\_\_\_ )

If a unit trust, please provide details of all unitholders

1) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

2) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

3) Name: \_\_\_\_\_ Address \_\_\_\_\_  
Drivers License No \_\_\_\_\_ Date of Birth \_\_\_\_\_

If more than 3 please attach details

**6. APPLICANT'S FINANCIAL DETAILS**

Estimated Monthly purchases \$ \_\_\_\_\_ Monthly Credit required: \$ \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_

Business Premises:  Owned  Leased

If leased, from whom: \_\_\_\_\_

## 7. BUSINESS HISTORY

For all of the directors, partners, trustees or sole trader:

Have any been declared bankrupt?  Yes  No If yes, details: \_\_\_\_\_

Have any been involved in business that have failed or been liquidated:  Yes  No

If yes, details: \_\_\_\_\_

Names of related or subsidiary companies or partnerships: \_\_\_\_\_

\_\_\_\_\_

## 8. TRADE/BUSINESS REFERENCES

Please provide trade references from three (03) major suppliers who provide credit (fuel and utilities are not excepted)

1. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Email: \_\_\_\_\_

2. Name \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Email: \_\_\_\_\_

3. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Email: \_\_\_\_\_

## 9. TERMS OF CREDIT

Credit will not be provided until Luxton Plant Pty Ltd ("Luxton Plant") accepts this application and has provided written confirmation to the Applicant.

If Luxton Plant accepts this application, the provision of goods and services and credit facilities to the Applicant are subject to the Terms and Conditions of Hire of Plant attached.

## 10. EXECUTION

By signing this application for credit, the Applicant:

- Acknowledges having been provided with Terms and Conditions of Hire of Plant and having read and understood them
- Acknowledges that it has been advised to seek legal and financial advice prior to signing this Application
- Agrees that the Terms and Conditions of Hire of Plant apply to the provision of goods and services to it by Luxton Plant

***If company or corporate trustee – signed for and on behalf of the Applicant***

Name of authorised person: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***If sole trader, partnership or individual(s) as trustee***

***If partnership or individual(s) as trustee - all partners and individuals must sign***

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*If more than 4 directors or individuals, please have additional directors/individuals sign a copy of this page*

**PART 2: DEED OF GUARANTEE AND INDEMNITY**

TO: Luxton Plant Pty Ltd ("Luxton Plant"). In consideration of Luxton Plant at the request of

- (Name) \_\_\_\_\_ of (Address) \_\_\_\_\_  
 (Name) \_\_\_\_\_ of (Address) \_\_\_\_\_  
 (Name) \_\_\_\_\_ of (Address) \_\_\_\_\_  
 (Name) \_\_\_\_\_ of (Address) \_\_\_\_\_

as the Guarantor ("Guarantor") agreeing to

- supply or continue to supply goods or services to \_\_\_\_\_ ("Customer"),  
or
- provide credit to the Customer; or
- grant an indulgence outside Company's agreed credit terms,

**The Guarantor hereby :**

1. Agrees to guarantee to Luxton Plant the due and punctual payment of all money presently owing or any money that may be owing in the future by the Customer, in respect of the cost of goods or services hired by Luxton Plant to the Customer and any other sums payable by the Customer to Luxton Plant pursuant to Luxton Plant's Terms and Conditions of Hire of Plant (hereinafter collectively called "guaranteed money").
2. Agrees as a separate severable and additional covenant and obligation to indemnify and keep indemnified Luxton Plant from and against all losses, costs, charges and expenses whatsoever that Luxton Plant may suffer or incur in relation to the hire of goods or supply of services to the Customer and further agrees that each of the provisions hereinafter contained that applies or is capable of application to this Deed when it is construed as an indemnity will apply to the indemnity hereby given by the Guarantor.
3. Covenants, acknowledges and agrees as follows:
  - (a) The Guarantee hereby given is a continuing guarantee, the indemnity hereby given is a continuing indemnity and neither this Deed nor the said guarantee nor the said indemnity will be discharged in any way or be considered or deemed to be discharged in any way by any payment to Luxton Plant other than the payment to and acceptance by Luxton Plant of the whole of the guaranteed money.
  - (b) Notwithstanding that as between the Guarantor and the Customer the position of the Guarantor is that of surety only nevertheless as between the Guarantor and Luxton Plant, the Guarantor is liable hereunder as a principal and as a primary debtor for the payment of the guaranteed money.
  - (c) This Deed is valid and enforceable against the Guarantor and the liability hereunder of the Guarantor continues and may be enforced by Luxton Plant notwithstanding:
    - (i) that no steps or proceedings have been taken against the Customer;
    - (ii) any indulgence or extension of time granted by Luxton Plant to the Customer;
    - (iii) the death or bankruptcy or winding up of the Customer;
    - (iv) that payment of the guaranteed money by the Customer cannot be legally enforced against the Customer.
  - (d) The Guarantor will not compete with Luxton Plant for any dividend or distribution in the event of the Customer being declared bankrupt, going into liquidation or being wound up or entering any deed or scheme of arrangement or assignment or composition in respect of its affairs or its assets and liabilities.
4. The Guarantor hereby acknowledges having given its consent to Luxton Plant to obtain from a credit reporting agency a consumer credit report containing information about it for the purpose of Luxton Plant assessing whether to accept the Guarantor as a guarantor for credit that may be applied for by the Customer.
5. The term "Luxton Plant" includes its successors and assigns and the terms "Customer" and "Guarantor" include their respective executors, administrators and successors.
6. In this Deed the singular includes the plural and if there is more than one Guarantor to this Guarantee their obligations are joint and several.

**Executed as a Deed**

<p><b>Signed Sealed and Delivered on this _____ day of _____ in the year _____ By :</b></p>	
<p>The <b>First</b> Named above (Signed.) .....</p>	
<p><i>In the presence of (Name of Witness) .....</i></p>	<p><i>Witness (Sig) .....</i></p>
<p>The <b>Second</b> Named above (Signed.) .....</p>	
<p><i>In the presence of (Name of Witness) .....</i></p>	<p><i>Witness (Sig) .....</i></p>
<p>The <b>Third</b> Named above (Signed.) .....</p>	
<p><i>In the presence of (Name of Witness) .....</i></p>	<p><i>Witness (Sig) .....</i></p>
<p>The <b>Fourth</b> Named above (Signed.) .....</p>	
<p><i>In the presence of (Name of Witness) .....</i></p>	<p><i>Witness (Sig) .....</i></p>

TO: Luxton Plant Pty Ltd ("Luxton Plant")

**Credit information that may be provided to a credit reporting agency**

Luxton Plant may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- to obtain a consumer credit report about me/us, and/or
- to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers license number;
- my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount;
- the fact that Luxton Plant is a current credit provider to me/us;
- loan repayments which are overdue by more than 60 days, and for which debt collection has started;
- advice that my/our loan repayments are no longer overdue in respect of any default that has been listed;
- information that, in the opinion of Luxton Plant I/we have committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with my/our credit obligations;
- dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once.

**Assessment of Commercial Credit Application**

I/we agree that Luxton Plant may obtain a consumer credit report containing information about me/us from a credit reporting agency, and may conduct a search of the Personal Property Securities Register for the purpose of assessing my/our application for commercial credit.

**Disclosure to guarantor**

I/we agree that Luxton Plant may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or Luxton Plant keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

**Overdue payments**

I/we agree that Luxton Plant may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

**Exchange of credit worthiness information**

I/we agree that Luxton Plant may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency:

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of my/our credit facility with Luxton Plant where I/we are in default with other credit providers
- to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Privacy Act 1988 (Cth)**

I/we understand that under the requirements of the *Privacy Act 1988 (Cth)*, Luxton Plant will ensure that all credit and personal information obtained about me/us will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorised access, use, modification or disclosure and any other misuse. I/we also understand that such information will be made available for viewing or amendment by me/us upon request to Luxton Plant.

**Signing:** *to be signed by the Customer or all Directors, Partners or Trustees of the Customer.*

<p><b>Dated:</b></p>  <p>.....</p>	<p>.....</p> <p>Director / Partner / Trustee</p>	<p>.....</p> <p>Director / Partner / Trustee</p>
<p>.....</p> <p>Sole Trader</p>	<p>.....</p> <p>Director / Partner / Trustee</p>	<p>.....</p> <p>Director / Partner / Trustee</p>

Luxton Plant leases the Plant to the Hirer for the Hire Period pursuant to the Hire Contract and these Conditions.

## 1. Definitions

In these Conditions:

“**ACL**” means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

“**Conditions**” means these terms and conditions;

“**Commencement Date**” means the date specified in the Hire Contract;

“**Consumer**” is as defined in the ACL. In determining if the Hirer is a Consumer, the determination is based on whether the Hirer is a Consumer under the Hire Contract;

“**Damage Waiver Fee**” means an amount equivalent to 10% of all hire charges and Excess Hourly Charges levied on each hire invoice;

“**Demobilisation**” means the transport of the Plant to Luxton Plant's depot;

“**Duration**” means the Duration specified in the Hire Contract;

“**Excess Hourly Charge**” means the rate per hour applicable upon exceeding the Minimum Hours as specified in the Hire Contract;

“**GET**” means ground engaging tools, including all bucket teeth, cutting edges and hammer moils;

“**GST**” means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Hire Contract**” means the contract for hire of Plant by Luxton Plant to the Hirer, which specifies the specific terms of the hire, and which is governed by and incorporates these Conditions;

“**Hire Period**” means the Duration, unless extended in accordance with clause 2.3;

“**Hirer**” means a person identified as such in the Hire Contract, and its employees, executors, administrators and representatives;

“**Luxton Plant**” means Luxton Plant ACN 004 772 785, its executors, administrators and representatives;

“**Minimum Hours**” means the minimum number of hours charged per day or week as specified in the Hire Contract;

“**Mobilisation**” means the transport of the Plant to the Hirer's site;

“**Plant**” means all equipment and accessories supplied on hire by Luxton Plant to the Hirer, including all GET;

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth);

“**Related Entities**” mean any companies or persons that are associated entities of the Hirer within the meaning of the *Corporations Act 2001* (Cth);

“**Statutory Rights**” means all and any terms implied into the Hire Contract or otherwise conferred on the Hirer by statute or law including by the ACL;

“**Site**” means the location where the Hirer will operate the Plant; and

“**Taxes**” means any Federal or State, direct or indirect tax, duty or levy applicable to the Hire Contract including GST.

## 2. Basis of Hire

2.1 These Conditions apply to every Hire Contract and cannot be varied or supplanted by any other terms without Luxton Plant's prior written consent.

2.2 Any written quotation provided by Luxton Plant is valid for 30 days, and is only an invitation to the Hirer. Terms and conditions in the quotation form part of these Conditions and if inconsistent with these Conditions, these Conditions will prevail.

2.3 If the Duration ends and the Hirer keeps possession of the Plant with Luxton Plant's consent, the Hire Period is extended, subject to clause 2.4, until the date of return of the Plant to Luxton Plant.

2.4 If the Hire Period is extended under clause 2.3, Luxton Plant may revoke its consent at any time and the Hirer must return the Plant to Luxton Plant.

2.5 The Plant is hired without an operator or fuel.

## 3. Variation and Cancellation

3.1 The Hire Contract may be cancelled or suspended by Luxton Plant if for reasons beyond its control Luxton Plant is unable to supply the Plant for hire or repair or replace the Plant under clause 7.

## 4. Hire Charges and Other Charges

4.1 Charges for the hire of Plant exclude charges for Mobilisation, Demobilisation, freight, insurance, Excess Hourly Rate, GET, Damage Waiver Fee, and Taxes. These

additional charges will be separately itemised in the Hire Contract.

4.2 In addition to the amount payable for the hire of Plant, the Hirer must pay to Luxton Plant, any charges specified in clause 4.1 as being excluded from the Plant hire charges, and any amounts payable under clause 9.

## 5. Invoicing and payment

5.1 If credit is provided by Luxton Plant, payment for Plant and other charges must be made by the Hirer within 30 days from the date of Luxton Plant's invoice.

5.2 If credit is not provided by Luxton Plant, payment for Plant and other charges must be made in accordance with Luxton Plant's invoice before the Plant is dispatched or collected.

5.3 Payments made to Luxton Plant in accordance with clauses 5.1 or 5.2 above will only be accepted on receipt of cleared funds.

5.4 Any payment made to Luxton Plant by any Related Entities on behalf of the Hirer in respect of any of Luxton Plant's hire invoices are made with the Hirer's express authority and are deemed to be made on its behalf and for which valuable consideration has been given.

## 6. Hirer's Obligations

6.1 By entering into the Hire Contract, the Hirer expressly warrants and declares that it is solvent and that it will pay all hire invoices under the Hire Contract. Further, if the Hirer becomes insolvent at any time during the Hire Period, the Hirer must immediately return the Plant to Luxton.

6.2 The Hirer agrees that the Plant shall be at the Hirer's risk immediately on delivery to or collection by the Hirer and until returned to or collected by Luxton Plant. Subject to clause 9, the Hirer is liable to Luxton Plant for any loss or damage to or caused by the Plant or its operation and all costs incurred by Luxton Plant, including: the cost of repairing or replacing the Plant at the full new replacement cost for all Plant under two years old and at market value for all Plant over two years old; salvage costs; and loss of hire charges while the Plant is repaired or replaced.

6.3 The Hirer shall have no right, title, property or interest in the Plant and must not sublet, transfer, charge, encumber, dispose of or otherwise deal with any rights or interest in the Plant without Luxton Plant's prior written consent. The Hirer must do everything necessary to protect the rights of Luxton Plant and the Plant. The Plant is at all times the property of Luxton Plant.

6.4 Subject to clause 2.3, at the conclusion of the Duration, the Hirer must return the Plant to Luxton Plant.

6.5 The Hirer is responsible for:

- (a) safekeeping of the Plant during the Hire Period;
- (b) use of the Plant in strict conformity with Luxton Plant's specifications and relevant legislation and ensuring the Plant is not operated in a corrosive environment or in or on water or underground;
- (c) ensuring that the Plant is not moved from the Site, unless in an emergency, and for ensuring Luxton Plant is advised immediately afterwards;
- (d) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the Plant;
- (e) protecting the Plant against fire, theft, distress or seizure; and
  - (f) any damage, other than fair wear and tear to the Plant, including to panels, tyres or glass damage and vandalism.

6.6 In addition to its obligations under clause 6.5, the Hirer is also responsible for:

- (a) loading and unloading the Plant on Site;
- (b) maintaining of the Plant in good working condition;
- (c) daily checking and top ups of grease, lubricant and coolant of the Plant in strict accordance with Luxton Plant's instructions;
- (d) ensuring that the Plant is not operated for any purpose beyond its rated capacity or in a manner likely to result in undue wear;
- (e) ensuring that the Plant is not operated if it has become defective, damaged or is in a dangerous state;
- (f) immediately stopping use of the Plant and advising Luxton



Plant immediately if the Plant operates abnormally, unsafely, breaks down or fails to operate properly;

(g) ensuring that only the Hirer operates the Plant and the Plant is operated by a person qualified to operate the Plant; and

(h) the acts and omissions of persons operating the Plant.

6.7 The Hirer must allow Luxton Plant access to the Plant at all reasonable times and is responsible for providing safe and proper access and is liable for all loss or damage suffered by Luxton Plant as a result of the Hirer's failure or delay in doing so.

6.8 Luxton Plant will service the Plant with notice to the Hirer. If Luxton Plant is unable to access the Plant during business hours then Luxton Plant may charge the Hirer additional costs incurred in servicing the Plant outside business hours.

#### **7. Breakdown**

7.1 Breakdowns or defects in the Plant resulting from fair wear and tear may be repaired, or the Plant replaced, at Luxton Plant's expense and discretion. If repair is impracticable and if replacement Plant is not available, Luxton Plant may terminate the Hire Contract as provided in clause 3. The Hirer must not repair the Plant without Luxton Plant's prior written permission.

7.2 Notwithstanding clause 7.1 or any other term in these Conditions, the Hirer shall be responsible for wear and tear to GET and shall pay Luxton Plant the amount specified in the Hire Contract in respect of such wear and tear (or such other amount notified by Luxton Plant acting reasonably).

#### **8. Limitation and exclusion**

8.1 Except as stated otherwise in these Conditions, or as contained in any express written warranty provided by Luxton Plant in relation to the Plant or services, the Hire Contract does not include by implication or otherwise any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Plant or services or any contractual remedy for their failure.

8.2 To the extent permitted by law Luxton Plant's liability for a breach of Statutory Rights is excluded but to the extent that such liability cannot be excluded, is limited to one or more of the following, as determined by Luxton Plant: (in the case of goods) the replacement or repair of the goods, supply of equivalent goods or the payment of the cost of replacing or repairing the goods or supplying equivalent goods; and (in the case of services) supply of the services again or the payment of the cost of supplying the services again.

8.3 If the Hirer on-supplies the Plant to a Consumer and Luxton Plant is a 'manufacturer' under the ACL in respect of that on-supply, then to the extent permitted by law:

(a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption - payment of the amount specified in section 276A(1) of the ACL is the absolute limit of Luxton Plant's liability to the Hirer;

(b) if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption - payment of any amount required under section 274 of the ACL is the absolute limit of Luxton Plant's liability to the Hirer.

8.4 Other than as stated in these Conditions or any written warranty provided by Luxton Plant, and to the extent permitted by law, Luxton Plant is not liable to the Hirer in any way arising under or in connection with the hire, installation, use of, storage or any other dealings with the Plant or services by the Hirer or any third party.

8.5 Luxton Plant is not liable for any indirect or consequential losses or expenses suffered by the Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

8.6 The Hirer acknowledges that:

(a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Luxton Plant in

relation to the Plant or services or their use or application; and

(b) it has not made known, either expressly or by implication, to Luxton Plant any purpose for which it requires the Plant or services and it has the sole responsibility of satisfying itself that the Plant or services are suitable for the use of the Hirer.

8.7 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying:

(a) the Hirer's rights or remedies against Luxton Plant for failure of a statutory guarantee under the ACL; or

(b) the application of any State or Federal legislation applicable to the hire of Plant or supply of services which cannot be excluded, restricted or modified.

#### **9. Hirer's Liability**

9.1 Subject to specific terms set out in the Hire Contract to the contrary, and to the extent permitted by law, the Hirer will be liable all for losses and damages to the Plant caused by fire, storm, earthquake, collision, accident or theft in respect of the Hire Period.

9.2 Subject to clause 9.4, in order to limit the Hirer's liability in respect of any losses or damages pursuant to clause 9.1, the Hirer must pay the Damage Waiver Fee.

9.3 Subject to clauses 9.4 and 9.5, on payment of the Damage Waiver Fee pursuant to clause 9.2, the Hirer's liability under clause 9.1 will be limited to:

(a) \$7,500 in respect of any losses and damages in relation to any Plant weighing 5 tonnes or more; and

(b) \$3,000 in respect of any losses and damages in relation to any Plant weighing up to 5 tonnes;

9.4 Luxton Plant may grant the Hirer an exemption to the requirement to pay the Damage Waiver Fee only if:

(a) the Hirer provides Luxton Plant with a certificate of insurance covering the replacement value of the Plant and which notes Luxton Plant as a principal insured;

(b) the Hirer agrees and acknowledges that, for the purpose of ensuring quality and appropriateness of repairs, Luxton Plant must authorise and control any repairs to the Plant, at the Hirer's cost, resulting from damage for which the Hirer is responsible under these Conditions or at law; and

(c) the Hirer agrees to, and signs, an exemption form provided by Luxton Plant.

9.5 Notwithstanding clauses 9.2 and 9.3, the Hirer's liability will not be limited in accordance with clause 9.3 if in the reasonable opinion of Luxton Plant, the loss or damage to the Plant arises from or is caused by:

(a) a breach of these Conditions;

(b) the Hirer's negligent acts or omissions;

(c) improper use of the Plant;

(d) transporting, loading or unloading,

(e) lack of lubrication or other normal servicing of the Plant;

(f) overloading, exceeding rated capacity, failing to maintain the Plant, misuse, abuse or improper servicing of the Plant;

(g) artificial electrical current or exposure to any corrosive substance or environment; or

(h) use or location of the Plant in, on or over water, on bridges, vessels or structures of any kind.

9.6 The Hirer must promptly report any theft of the Plant to the police and Luxton Plant and provide Luxton Plant with written evidence verifying that report.

#### **10. Insurance**

10.1 The Hirer is responsible at its own cost for insuring itself, its property, and third parties and their property against all risks arising from the presence or operation of the Plant to the value of \$10 million.

10.2 If the Plant is involved in any accident resulting in injury to persons or damage to the Plant or other property, the Hirer must give immediate notice to Luxton Plant by telephone and in writing to Luxton Plant's office. The Hirer must not make any admission, offer, promise, payment or indemnity without Luxton Plant's prior written consent.

#### **11. Responsibility and Indemnity**

11.1 The Hirer is solely responsible for all risks relating to or arising from the selection, use and location of the Plant.



11.2 To the extent permitted by law the Hirer must indemnify Luxton Plant and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs) arising from or in connection with a breach of the Hire Contract (or these Conditions) by the Hirer.

## 12. Default

12.1 If the Hirer:

- (a) breaches any term of the Hire Contract (or these Conditions);
- (b) allows the Plant to be damaged or lost or the Plant is damaged or lost while under the control of the Hirer;
- (c) defaults in payment by the due date of any amount payable;
- (d) is an individual or trustee and dies or becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally;
- (e) is a corporation or partnership and it enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, has as a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up; or
- (f) in the reasonable opinion of Luxton Plant, the Hirer is likely to breach its obligations under the Hire Contract, THEN Luxton Plant may, without prejudice to any other remedy available to it and in addition to its other accrued or contingent rights, do any or all of the following:
  - (g) require immediate payment of all money which would become payable by the Hirer to Luxton Plant at a later date on any account, without further notice;
  - (h) charge the Hirer interest on any sum due at the prevailing rate prescribed by section 2 of the *Penalty Interest Rates Act 1983* (Vic) plus 4 per cent for the period from the due date until the date of payment in full;
  - (i) charge the Hirer for, and the Hirer must indemnify Luxton Plant from, all costs and expenses (including all legal and mercantile agent costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with these Conditions or to recover the Plant;
  - (j) charge the Hirer for the cost of repairing or replacing any lost, damaged or destroyed Plant;
  - (k) charge the Hirer for subsequent lost hire charges as a result of the Plant being lost, damaged or destroyed until the Plant is repaired or replaced;
  - (l) claim damages from the Hirer for breach of the Hire Contract or these Conditions (or both);
  - (m) cease or suspend for such period as Luxton Plant thinks fit, supply of any further Plant to the Hirer; and
  - (n) by notice in writing to the Hirer, terminate the Hire Contract so far as unperformed by Luxton Plant without effect on Luxton Plant's accrued rights under the Hire Contract.

12.2 On termination, the Hirer must immediately return the Plant. If the Hirer does not:

- (a) Luxton Plant is entitled to enter any premises of the Hirer where the Plant is suspected to be to repossess the Plant;
- (b) Luxton Plant will not be liable for any damage caused in relation to such entry and repossession; and
- (c) the Hirer must indemnify Luxton Plant from any liability to it or any third party in respect of any damage, proceedings, claims, demands, costs and expenses arising in connection with the Hirer's failure to return the Plant.

## 13. Personal Property Securities Act

13.1 For the purposes of this clause, the terms used in this clause 13 have the same meaning as contained in the PPSA.

13.2 If Luxton Plant determines that these Conditions are or contain a security interest for the purposes of the PPSA, the Hirer must, at its cost and immediately upon Luxton Plant's request:

- (a) do all things reasonably required (including execution of

documents) to ensure Luxton Plant has a continuously perfected security interest (as defined in the PPSA) created in the goods pursuant to any Hire Contract. This includes, but is not limited to:

- (i) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirements of the PPS legislation;
  - (ii) enabling Luxton Plant to apply for registration of or give any notification in relation to the security interest;
  - (iii) enabling the Luxton Plant to exercise rights in relation to the security interest;
- (b) procure from any person considered by Luxton Plant to be relevant to its security position, such agreements and waivers as Luxton Plant may at any time require to ensure Luxton Plant attains the highest ranking security possible in respect of the security interest.
- 13.3 If Luxton Plant determines that these Conditions constitute a PPS Lease, the Hirer acknowledges that it is the grantor and Luxton Plant is the secured party holder of a Purchase Money Security Interest by virtue of the Hire Contract and the PPSA.
- 13.4 The Hirer must not, except with Luxton Plant's express written consent, allow to be, or be liable to become, perfected or attached in favour of any person, a security interest in any of the Plant, and whether to a provider of new value or otherwise.
- 13.5 Where permitted by the PPSA, the Hirer waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 13.6 Luxton Plant and the Hirer agree to contract out of, and nothing in the provisions of, sections 96, 125, 129, 142 and 143 of the PPSA shall apply to these Conditions.
- 13.7 To the extent permitted by the PPSA:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Hirer or which place obligations on Luxton Plant will apply only to the extent that they are mandatory or Luxton Plant agrees to their application in writing; and
  - (b) where Luxton Plant has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 13.8 For the purposes of section 275(6) of the PPSA, Luxton Plant and the Hirer agree and undertake that these Conditions and any information pertaining to the rental of the goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the rental of the goods, except as otherwise required by law or as is already in the public domain.
- 13.9 The Hire hereby consents and appoints Luxton Plant to be an interested person and the Hirer's authorised representative for the purposes of section 275(9) of the PPSA.

## 14. Privacy

14.1 Luxton Plant is bound by the *Privacy Act 1988* (Cth). All personal information obtained in connection with the Hire will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the Australian Privacy Principles ("APPs").

14.2 Luxton Plant requires that the Hirer comply with the APPs in connection with any personal information supplied to it by Luxton Plant in connection with the Hire Contract.

## 15. Miscellaneous

15.1 The law of Victoria from time to time governs the Hire Contract and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.

15.2 Failure by Luxton Plant to enforce any of these Conditions shall not be construed as a waiver of any of Luxton Plant's rights.

15.3 If any part of these Conditions is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, that part (or parts) shall be severed from these Conditions without affecting the enforceability of the remaining parts.

15.4 A notice must be in writing and handed personally or sent by

facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received upon confirmation of successful transmission.

- 15.5 The words "include" and "including" mean "include without limitation" and "including without limitation" respectively.
- 15.6 A reference to a person includes a corporation, joint venture, association, government body, partnership and any other entity.
- 15.7 A reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it.
- 15.8 A reference to a clause is to a clause of these Conditions.
- 15.9 The Hire Contract will prevail over these Conditions to the extent of any inconsistency.