

# CREDIT ACCOUNT APPLICATION FORM

Customer details			
Applicant type:	<input type="checkbox"/> Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Trader
Legal name:		ABN/ACN:	
Trading name:			
Trust name (if applicable):		Trust ABN (if applicable):	
Trading address:			
Postal address:			
Email invoices address:			
Telephone:		Email statements address:	
Contact person:		Title/Position:	
Date established:		Requested credit limit:	
Bank:		Bank address:	
BSB No:		Account No:	
Account name:			

Trade references: Name, Phone number, Email address	
1	
2	
3	

A completed *Credit Application Form* must be signed and returned by e-mail to [accounts@lincom.com.au](mailto:accounts@lincom.com.au) before a Credit Account will be opened.

## CONDITIONS OF CREDIT

The following terms of credit apply where the Company supplies goods or renders services on credit to the Customer:

1. In these terms:
  - a. "Customer" means the applicant named in the form above.
  - b. "Company" means each of the entities in the Lincom Group that supplies goods or renders services on credit to the Customer, or to whom a debt due from the Customer is assigned, from time to time.
  - c. "Lincom Group" means Lincom Pty Ltd ABN 81 064 383 848, Powerscreens Australasia Pty Ltd ABN 88 081 849 041, Lincom Pacific Equipment Pty Ltd ABN 37 090 881 511, Recycling Systems

- Australia Pty Ltd ABN 79 124 113 579, Lincom Equipment Rentals Pty Ltd ABN 29 098 990 919, Lincom Earthmoving Equipment Pty Ltd ABN 89 127 081 038, Morbark Pacific Pty Ltd ABN 15 140 558 765 and Thor Australasia Pty Ltd ABN 87 134 700 262, Lincom WA Pty Ltd ABN 23 662 476 600, LKEA Pty Ltd ABN 51 611 482 770.
- d. "Trust" means the trust named in the form above.
  2. The Company reserves the right at all times to suspend the supply of goods and services on credit to the Customer without having to give reasons for its actions to the Customer.
  3. The Company will provide monthly statements

of account to the Customer. If charges are in dispute, including pricing disputes, the Customer must raise a claim for the disputed amount, and pay the balance of the invoice by the due date.

4. Upon request, the Customer must provide to the Company a copy of its latest financial statements.
5. Credit facilities granted on the basis of information provided in this application are not transferable without approval of the Company.
6. If any of the following events occur, all amounts payable to any company in the Lincom Group (including any amounts not yet due) become immediately due and payable

despite any other agreement between any company in the Lincom Group and the Customer:

- a. breach by the Customer of these Conditions of Credit, or of any of the Conditions of Sale or Conditions of Hire, which are included in this application; the appointment of a receiver and/or manager, liquidator, administrator, other controller or trustee in bankruptcy to the Customer or any of its assets;

- b. any event which in the reasonable opinion of the Company would or may adversely affect the ability of the Customer to pay any amount to the Company;
  - c. the Customer fails to pay any amount due to the Company when it is due.
7. If the Company does not take any action to require immediate payment of any amount as a result of an event under clause 5, this does not constitute a waiver of the Company's right to do so at any time at its absolute and sole discretion.

- 8. If the Customer defaults in payment of any amounts due to the Company, the Customer must pay or reimburse the Company all costs associated with the recovery of monies owing by the Customer.
- 9. The Company may assign the Customer's debt at any time.
- 10. The Company may vary these conditions by agreement in writing with the Customer.

## PRIVACY ACT 1988 CONSENT

By completing this application, you consent to, if the Lincom Group considers it relevant to assessing your application for commercial credit, the Lincom Group obtaining from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by the Lincom Group.

You also agree to the Lincom Group obtaining personal information about you from other credit providers, whose names you may have provided for credit reference or that may be named in a credit

report, for the purpose of assessing your application for commercial credit with the Lincom Group.

You understand the information exchanged can include any information about your personal and commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act 1988 allows credit providers to give to or receive from each other.

If you fail to provide any information requested in any application to the Lincom Group for credit, or do not agree to any of the possible exchanges or uses

set out above, your application for credit may not be accepted by the Lincom Group.

This information may be given before, during or after the provision of credit to you. The Lincom Group may give any personal information about you to entities where it is required or allowed by law or where you have otherwise consented.

## ACKNOWLEDGMENTS AND SIGNATURE

I/We:

- a. hereby apply to establish a credit account with the Company;
- b. have received, read, and agree to be bound by the Conditions of Credit, and (for goods sold) the Terms and Conditions of Sale, (for goods hired) the Terms and Conditions of Hire, and/or (for services provided) the Terms and Conditions for the Provision of Services, which are included in this application;
- c. acknowledge that the Company reserves the right to issue special conditions of sale and/or hire from time to time (which may amend or supplement the Terms and Conditions of Sale and/or the Terms and Conditions of Hire), and I/we agree also to abide by those special conditions of sale and/or hire; and
- d. acknowledge that only the Company's Terms and Conditions of Sale, Terms and Conditions of Hire, and/or Terms and Conditions for the Provision of Services, and any special conditions of sale and/or hire (if applicable), apply to the provision of goods or services by the Company, and that any terms and

conditions of the Customer (including those that may accompany my/our order form) will not apply to the provision of goods or services by the Company.

I/We understand that a credit check will be undertaken as part of this application and that I/ We have read and understood the section entitled "Privacy Act 1988 Consent" above.

I/We certify that we are authorised to make this application and that all information supplied in this application for credit is correct and the Company can rely on the accuracy of the information.

If the Customer receives goods or services pursuant to these terms as a trustee, then I/We represent and warrant that: (a) it enters into these terms as trustee of the Trust and of no other trust, and for the benefit of the beneficiaries of the Trust; (b) it has accurately stated the name and any ABN of the Trust in the form above; (c) it is the only trustee of the Trust; (d) it has the power under the trust deed for the Trust to execute and perform its obligations under these terms; (e) all action required by that trust deed to authorize its execution and performance of these terms has been taken; (f) its execution and

performance of these terms does not contravene that trust deed; (g) no action is currently underway or pending to remove or replace it as trustee of the Trust or to appoint any new or additional trustee of the Trust; (h) it will supply to the Company upon request a copy of that trust deed, which discloses all the terms of the Trust, which terms have not been varied or revoked; (i) it has the right to be fully indemnified out of the funds of the Trust in respect of the obligations it incurs under these terms, and has not released, disposed of, or restricted its equitable lien over that trust fund; (j) the Trust has not been terminated and no action is pending to terminate the Trust; and (k) no vesting date for the trust fund has been determined.

I/We state that at the date of this application the Customer is able to pay debts as and when they fall due.

Where the Customer is a company, the signatures below constitute execution of this agreement in accordance with section 127 of the Corporations Act 2001 (Cth).

<b>All directors/partners/proprietors must sign below:</b>					
Full name:	Residential address:	Date of birth:	Drivers licence no.:	Signature:	Date:

# GUARANTEE AND INDEMNITY

In consideration of the Company agreeing to supply goods on credit to the Customer, the Guarantor(s) named below unconditionally and irrevocably guarantee to the Company the due and punctual payment of all monies which are now payable or may in the future become payable by the Customer to the Company for goods supplied from time to time by the Company to the Customer ("Guaranteed Monies") and it is further agreed as follows:

1. The Company is at liberty without notice to us at any time and without in any way discharging us from any liability hereunder to grant time, waiver, release or other indulgence to the Customer and to accept from the Customer payment by cheque or direct deposit.
2. This guarantee extends to include interest on any outstanding Guaranteed Monies and all costs associated with the collection of the Guaranteed Monies.
3. This is a continuing guarantee. It is not satisfied by the payment of money owing from time to time, but continues to cover money due to the Company by the Customer at any time.
4. The guarantee is not conditional on the Company supplying or continuing to supply goods to the Customer.
5. This guarantee is enforceable against us jointly and separately.
6. If the Customer does not pay the Guaranteed Monies to the Company in accordance with the terms applying from time to time between the Customer and the Company, then the Guarantor(s) agree to pay the Guaranteed Monies on the Company's demand, whether or not demand has been made on the Customer. A demand may be made at any time and from time to time.
7. The Guarantor(s) agree that the Company can seek credit information about us from credit agencies to assess whether to accept me/us as Guarantor(s) for this Customer.
8. This guarantee is not affected by the death or bankruptcy of the Guarantor(s).
9. Until the Company has received all of the Guaranteed Monies, the Guarantor(s) must not prove or claim in any liquidation, bankruptcy, composition, arrangement, or assignment for the benefit of creditors of the Customer, and must hold any claim the Guarantor(s) have and any dividend the Guarantor(s) receive on trust for the Company.
10. The Guarantor(s) indemnify and shall keep indemnified the Company against all liability or loss arising from and any costs, charges or expenses incurred in connection with the Guaranteed Monies not being recoverable from the Guarantor(s) or the Customer due to any circumstance whatsoever, as if they were the principal debtor.

### Guarantor 1:

Full name:	Address:
Signed:	Date:
Witness name:	Witness signature:

### Guarantor 2:

Full name:	Address:
Signed:	Date:
Witness name:	Witness signature:

### Guarantor 3:

Full name:	Address:
Signed:	Date:
Witness name:	Witness signature:

### For Internal Use Only

Trade references checked:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Account no:	
Credit limit:	\$	Approved by:	
Terms granted:		Date:	

# TERMS AND CONDITIONS OF SALE

## 1. DEFINITIONS

- a) "Agreement" means these terms, the Quote, any conditions of credit accepted by the Customer, and all other documents between the Company and the Customer relating to the sale of the Equipment that are stated to form part of the Agreement.
- b) "Business Day" means a day that is not a Saturday, Sunday or public holiday in Brisbane.
- c) "Company" means the Lincom Group entity or entities named in the Quote as the supplier of the Equipment, its representatives, administrators and successors, and where more than one, each and all of them jointly and severally.
- d) "Customer" means the party or parties named in the Quote as the "Customer", its representatives, administrators and successors, and where more than one, each and all of them jointly and severally.
- e) "Equipment" means the equipment supplied by a Company to the Customer including parts of equipment supplied from time to time.
- f) "ex Works" means out of the premises at 92 Potassium Street, Narangba, Queensland or such other premises advised by the Company to the Customer from time to time.
- g) "GST" means the goods and services tax under the GST Act.
- h) "GST Act" means A New Tax System (Goods and Services) Tax Act and includes other GST related legislation.
- i) "Lincom Group" means Lincom Pty Ltd ABN 81 064 383 848, Powerscreens Australasia Pty Ltd ABN 88 081 849 041, Lincom Pacific Equipment Pty Ltd ABN 37 090 881 511, Recycling Systems Australia Pty Ltd ABN 79 124 113 579, Lincom Equipment Rentals Pty Ltd ABN 29 098 990 919, Lincom Earthmoving Equipment Pty Ltd ABN 89 127 081 038, Morbark Pacific Pty Ltd ABN 15 140 558 765 and Thor Australasia Pty Ltd ABN 87 134 700 262, Lincom WA Pty Ltd ABN 23 662 476 600, LKEA Pty Ltd ABN 51 611 482 770.
- j) "Losses" includes all loss, damage (including consequential loss or damage), liability, claims, penalties, costs (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater) and expenses of any nature whatsoever.
- k) "Quote" means the document titled "Sale Agreement" under which the price for the Equipment is quoted to the Customer.
- l) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- m) "Sale Price" means the sale price of the Equipment, expressed in the Quote or other document between the Company and the Customer.

n) "Site" means the location to which the Equipment will be transported.

## 2. PAYMENT

- 2.1. The Customer must pay the Sale Price and deliver any trade-in together with existing registration and insurance (if any) to the Company, without set-off or counter-claim.
- 2.2. The Sale Price is due and payable in full on delivery of the Equipment or no later than 5 Business Days from the date the Company notifying the Customer that the Equipment is available for delivery, whichever is earlier.
- 2.3. The Customer must pay, in addition to the Sale Price, the cost of all modifications to the Equipment, mobilisation, demobilisation and commissioning of the Equipment as required by the Customer together with a reasonable allowance for profit and overhead.
- 2.4. If, before delivery of the Equipment to the Customer, there is any change in costs or circumstances beyond the control of the Company, the Company may increase the Sale Price by notice to the Customer.
- 2.5. The Customer may by notice in writing to the Company cancel this Agreement within 3 Business Days after receipt of the notice in clause 2.4, unless the Customer takes delivery of the Equipment under clause 6 or if such increase results from a change in any applicable tax or other additional cost set out in the Quote.
- 2.6. If GST is imposed on the supply of the Equipment and other supplies by the Company which are taxable supplies for the purposes of the GST Act, then unless the Sale Price is expressed in the Quote to be GST inclusive, the amount the Customer must pay is increased by the amount of the GST.

## 3. INTEREST ON LATE PAYMENTS

The Company may charge interest at 12% per annum calculated on a daily basis on all late payments.

## 4. TRADE-INS

- 4.1. If the Company has agreed to any trade-in by the Customer and, at the time of delivery of any trade-in to the Company:
  - a) the amount required to discharge any debt or security on the trade-in is more or less than the trade-in pay out shown in the Quote or other document between the Company and the Customer; or
  - b) a revaluation of the trade-in is necessary; or
  - c) the trade-in is not in substantially the same condition as at the date of this Agreement (excluding reasonable wear and tear)
  - d) the Company may:
    - e) adjust the balance of Sale Price payable; or
    - f) reject and return the trade-in to the Customer and require the Customer to

pay the balance of the Sale Price payable ignoring the price of the trade-in.

- 4.2. The Customer declares and warrants that:

- a) the trade-in is solely owned by it;
- b) the trade-in is unencumbered with any mortgage, bill of sale, hire purchase arrangements, lien, charge, any security interest under the PPSA or any adverse interest; and
- c) it is entitled to sell the trade-in without further consent of any person.

## 5. FINANCE

- 5.1. If this Agreement is subject to Customer obtaining finance and the Customer fails after having reasonably endeavoured to do so, the Customer may, within 5 Business Days of the agreed finance date, cancel this Agreement by written notice together with evidence satisfactory to the Company of its inability to obtain finance.
- 5.2. The Company must (at the Customer's cost) return any trade-in or monies paid, provided that the Customer complies with clause 5.1.

## 6. DELIVERY & TRANSPORTATION

- 6.1. The Customer must take delivery of the Equipment ex Works within 5 Business Days from the Company notifying the Customer that the Equipment is available for delivery.
- 6.2. The Customer is responsible for, must bear the risk of any damage to, and must pay the cost of all transportation of, the Equipment.
- 6.3. If the Company arranges for transportation of the Equipment to the Customer, it will not be responsible for any late delivery, non-delivery, or loss or damage occasioned from such transportation.
- 6.4. The Company must take reasonable steps to make the Equipment available for delivery on or about the estimated delivery date. The Company is not responsible for any delay or failure to do so. If the Company does not notify the Customer that the Equipment is available for delivery within 120 days after the estimated delivery date, the Customer may cancel this Agreement.

## 7. RISK

The Equipment is at the risk of the Customer ex Works whether the Equipment is delivered to the Customer under clause 6.1 or is delivered to the Customer under clause 6.3.

## 8. SITE PREPARATION

If the Company agrees to transport the Equipment to the Site, the Customer will, at its expense and prior to transportation of the Equipment, ensure that the Site is prepared as directed by the Company.

## 9. SAFETY & TRAINING

The Customer must comply with all safety and training requirements, howsoever arising, in connection with the Equipment. The Customer must not make any claim against the Company and further indemnifies the Company against any and all Losses

(including damage to person or property) arising from, or contributed to by, the Customer's failure to comply with such safety and training requirements.

## 10. RETENTION OF TITLE & OWNERSHIP

- 10.1. Title in the Equipment will only pass to the Customer once the Sale Price has been paid in full and the Company has received clear title to any trade-in.
- 10.2. If the Company accepts payment by cheque, that payment shall be deemed not to have been made until the cheque is cleared.
- 10.3. If the Equipment is transported to the Customer before payment is made and before title to any trade-in passes to the Company, the Customer shall have possession of the Equipment as bailee only, even if the Customer has a credit account with the Company and the Company may have sold the trade-in. Whilst bailee of the Equipment, the Customer must not part with possession of the Equipment and shall be responsible for any damage to or loss to it.
- 10.4. Subject to clause 4.1, title and property in the trade-in passes to the Company upon delivery to it.

## 11. PROCEEDS OF SALE

If the Equipment is resold, the Customer holds all of the book debts owed in respect of such sales and proceeds in respect of such sales on trust for the Company and must keep such proceeds of sale in a separate account and not mix such proceeds with any other funds. Such part of the book debts and proceeds are deemed to equal in dollar terms the amount owed by the Customer to the Company at the time of the receipt of such book debts and proceeds.

## 12. ALLOCATION OF FUNDS

The Company may at its discretion and in such manner as it determines allocate payments made by the Customer as payment for any Equipment supplied by the Company or any other amount that may be due to the Company or any other entity in the Lincom Group by the Customer.

## 13. SECURITY

- 13.1. The Customer grants a security interest in favour of the Company over all its present and after acquired property (including without limitation the Equipment) as security for any monies that may be owing by the Customer to the Company under this Agreement.
- 13.2. If requested by the Company, the Customer shall promptly and without undue delay execute any documents (including any new contracts or mortgages over real estate), provide all information required in order to complete a financing statement and comply with any other reasonable requests by the Company to ensure that the Company's purchase money security interest(s) and general security interest are perfected.
- 13.3. The Customer authorises the Company and its officers, jointly and individually, to execute any documents and do all acts as its attorney

for the purpose of registering a caveat over any real property of the Customer or to register on any other appropriate register the security granted by it under this clause over any assets of the Customer.

- 13.4. The Customer acknowledges that the Company holds a purchase money security interest in the following:
- Equipment supplied by the Company;
  - any Equipment supplied by the Company which have been manufactured, processed, assembled or commingled such that their original identity is lost;
  - all proceeds in relation to the Equipment referred to in 16(a) and 16(b) including money, accounts receivable and insurance proceeds; and
  - any goods for which any of the Equipment referred to in 16(a) and 16(b) have been exchanged or traded or that have been acquired in lieu of those Equipment, as security for the price payable by the Customer to the Company at any time for the Equipment supplied by the Company.

## 14. PPSA

- 14.1. The Customer shall immediately notify the Company in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement.
- 14.2. The Customer shall not enter into any security agreement with any other party that permits that party to register a security interest in respect of Equipment supplied by the Company or proceeds of those Equipment.
- 14.3. The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Company's security interests.
- 14.4. The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement.
- 14.5. For the purposes of the PPSA:

- where the Company takes possession of the Equipment upon default of the Customer, the Company may, should it choose to do so and without derogating from its rights under clause 10:
  - sell the Equipment by any means and at any time;
  - deduct from any proceeds of sale, all costs incurred in relation to the sale;
  - retain for its own use and benefit any part of the purchase price for those Equipment which remains outstanding; and
  - apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests; and

b) where there is a shortfall on any sale or attempted sale of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Customer.

14.6. For the purposes of the PPSA:

- where the Company takes possession of the Equipment upon default of the Customer, the Company may, should it choose to do so and without derogating from its rights under clause 10:
  - lease the Equipment by any means and at any time;
  - deduct from any lease charges, all costs incurred in relation to the lease;
  - retain for its own use and benefit any part of the purchase price for those Equipment which remains outstanding; and
  - apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests; and
- where there is a shortfall on any lease or attempted lease of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Customer.

14.7. The Customer waives its rights under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3) (d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to this Agreement or any supply of Equipment pursuant to this Agreement.

## 15. DEFAULT

- 15.1. If the Customer:
- Fails to pay any amount payable pursuant to this Agreement by the due date;
  - Otherwise fails to punctually observe and perform any of its fundamental obligations under this Agreement or any other agreement between the Customer and an entity in the Lincom Group,
- the Company may, subject to the terms of this Agreement, but without derogating from any other rights it may have, do any or all of the following:
- suspend deliveries to be made to the Customer;
  - terminate this Agreement;
  - terminate any other agreement between the Customer and the Company;
  - re-sell the Equipment;



- g) forfeit and retain any monies paid on account of the Sale Price and the trade-in up to 20% of the Sale Price as liquidated damages, or otherwise recover from the Customer an amount representing 20% of the Sale Price as liquidated damages, which the Customer agrees is a genuine pre-estimate of the Company's loss, such liquidated damages being without prejudice to the Company's right to recover from the Customer for loss or damage suffered in excess of that amount;
- h) sue the Customer for breach and recover from the Customer any shortfall from the resale the Equipment and the realised value of the trade-in;
- i) enter upon any premises where the Equipment is located and take possession of it and if necessary, dismantle it from anything to which it is attached. The Customer unconditionally and irrevocably authorises the Company, by itself, its representatives or agents, to exercise the Company's rights under this clause 14, and must do all things reasonably required by the Company in order for the Company to exercise those rights. If the Equipment is located on premises owned or controlled by a third party, then the Customer unconditionally and irrevocably directs and authorises that third party to grant access to those premises by the Company, its representatives and agents, for the purposes of this clause 14. The Customer waives and releases the Company from any liability for any damage or Losses occasioned by the repossession of the Equipment. Repossession does not constitute a waiver of any claim by the Company against the Customer under this Agreement.
- 15.2. The exercise of the Company's rights under this clause does not release the Customer from the obligation to pay any sum due to the Company or Lincom Group or discharge any other obligation of the Customer whether arising before or after the exercise of such rights.
- 16. TERMINATION**
- Without prejudice to any other rights of the Company, the Company may terminate this Agreement if:
- the Customer breaches this Agreement, or any other agreement with the Company, or any agreement with any other entity in the Lincom Group;
  - any event occurs which, in the reasonable opinion of the Company, would or may adversely affect the ability of the Customer to pay any amount to the Company;
  - the Customer fails to pay any amount due to the Company when it is due;
  - the Customer ceases, or threatens to cease, to carry on business; or
  - a receiver or manager, liquidator, administrator, other controller or trustee in bankruptcy is appointed to the Customer or any of its assets.
- 17. TERMINATION TERMS**
- 18. REALISED VALUE OF TRADE-IN**
- 18.1. The realised value of the trade-in means the amount for which the trade-in is sold by the Company to a genuine purchaser for value, less:
- any reasonable expenses incurred in disposing the trade-in; and
  - the reasonable cost of any repairs or improvements made by the Company to the trade-in.
- 18.2. Subject to the rights of the Company under this Agreement, if this Agreement is terminated and, at that time, any trade-in:
- remains the property of the Customer, the Company will (at the Customer's expense) return the trade-in to the Customer subject to the payment by the Customer of the reasonable cost of any repairs or improvements made by the Company to the trade-in; or
  - is no longer the property of the Customer, the Company will pay the Customer the realised value of the trade-in in full and final satisfaction of any claim the Customer may have against the Company in respect of the trade-in.
- 19. COMPLETION OF INFORMATION**
- At the date of this Agreement, certain information relating to Equipment (such as serial number, year of manufacture, stock number and registration number) may not be available and the Customer authorises the Company to complete relevant sections of this Agreement on receipt of such information.
- 20. WARRANTY POLICY**
- The Customer agrees to be bound by the warranty policy of the Company from time to time.
- 21. COMPANY'S LIABILITY**
- 21.1. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), all conditions, terms and warranties which are not expressly provided in this Agreement are excluded, and the Company's liability is limited (at the Company's election) to one of the following:
- replacing the Equipment; or
  - repairing of the Equipment; or
  - the cost of replacing the Equipment; or
  - the cost of repairing the Equipment.
- 21.2. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Company is not liable to the Customer for any Losses arising out of or in connection with the supply of the Equipment including, any negligent act or omission or misconduct on the Company's part.
- 21.3. Every exemption from liability and every defence and immunity of any nature applicable to the Company or to which the Company is entitled by this Agreement extends to the Lincom Group and to every employee or agent of any Lincom Group entity (including independent contractors) while acting in the course of or in connection with their employment or engagement.
- 22. INDEMNITY**
- 22.1. Without prejudice to any other rights or remedies of the Company, to the fullest extent permitted by law the Customer unconditionally and irrevocably indemnifies the Company from and against all Losses that the Company incurs in connection with:
- any breach or non-performance by the Customer of an obligation under this Agreement;
  - any negligence, wilful or unlawful act or omission by the Customer or any of its officers, employees, contractors, agents, or representatives in connection with the Equipment or this Agreement; or
  - repossession of the Equipment or enforcement of any security interest granted by this Agreement.
- 22.2. The Customer's liability to indemnify the Company under this clause shall be reduced proportionally to the extent of any act or omission of the Company that contributed to the relevant Losses.
- 22.3. The indemnities in this Agreement are continuing obligations and extend to all obligations under this Agreement.
- 22.4. The Losses for which the Customer indemnifies the Company may be recovered as a debt, and irrespective of whether or not the Company has paid or satisfied them.
- 23. WHERE CUSTOMER CONTRACTS AS TRUSTEE**
- 23.1. If the Customer enters into this Agreement as a trustee of a trust, then it represents and warrants to the Company that:
- it has accurately disclosed to the Company the name and (if applicable) ABN of the trust of which it is trustee (Trust);
  - it enters into these terms as trustee of the Trust and of no other trust, and for the benefit of the beneficiaries of the Trust;
  - it is the only trustee of the Trust;
  - it has the power under the trust deed for the Trust to execute and perform its obligations under this Agreement;
  - all action required by that trust deed to authorise its execution and performance of this Agreement has been taken;
  - its execution and performance of this Agreement does not contravene that trust deed;
  - no action is currently underway or pending to remove or replace it as trustee of the Trust or to appoint any new or additional trustee of the Trust;

- h) it will supply to the Company upon request a copy of that trust deed, which discloses all the terms of the Trust, which terms have not been varied or revoked;
- i) it has the right to be fully indemnified out of the funds of the Trust in respect of the obligations it incurs under this Agreement, and has not released, disposed of, or restricted its equitable lien over that trust fund;
- j) the Trust has not been terminated and no action is pending to terminate the Trust; and
- k) no vesting date for the trust fund has been determined.

## 24. GENERAL MATTERS

- 24.1. The Customer acknowledges that it has inspected the Equipment and confirms that it is fit for the purpose for which the Customer requires it.
- 24.2. If any of the provisions of this Agreement are unenforceable, void, voidable or illegal, then such shall be severed and the other

provisions of this Agreement remain in full force and effect.

- 24.3. Any failure or delay by a party in exercising a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the other party. The waiver of any right under this Agreement is only valid if made by notice in writing from the party waving that right to the other party. The waiver of a power or right is effective only in respect of the specific breach to which it relates and for the specific purpose for which it is given.
- 24.4. This Agreement shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.
- 24.5. The Customer declares that it has read this Agreement and agrees that this Agreement is the complete and exclusive statement of the Agreement between the parties, superseding any prior negotiations, representations, understandings, or arrangements made

between the parties regarding the subject matter of this Agreement whether oral or in writing.

- 24.6. The Customer must not assign this Agreement or any of its rights under it without the prior written consent of the Company, which the Company may grant or decline in its absolute discretion. The Company may assign or charge this Agreement, and any of its rights to any other part.
- 24.7. All notices and other communications provided for or permitted under this Agreement must be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to each party's respective contact details as set out in the Quote, or as otherwise notified by that party from time to time.

# TERMS AND CONDITIONS OF HIRE

## 1. DEFINITIONS

- a) "Agreement" means these terms, the Machine Rental Agreement, any conditions of credit accepted by the Hirer, and all other documents between the Company and the Hirer relating to the sale of the Equipment that are stated to form part of this Agreement.
- b) "Company" means the Lincom Group entity or entities named in the Machine Rental Agreement as the supplier of the Equipment, its representatives, administrators and successors, and where more than one, each and all of them jointly and severally.
- c) "Equipment" means machinery and equipment supplied by the Company to the Hirer for a fee pursuant to this Agreement, including parts of equipment supplied from time to time.
- d) "GST" means the goods and services tax under the GST Act.
- e) "GST Act" means A New Tax System (Goods and Services) Tax Act and includes other GST related legislation.
- f) "Hirer" means the customer named on the Machine Rental Agreement.
- g) "Lincom Group" means Lincom Pty Ltd ABN 81 064 383 848, Powerscreens Australasia Pty Ltd ABN 88 081 849 041, Lincom Pacific Equipment Pty Ltd ABN 37 090 881 511, Recycling Systems Australia Pty Ltd ABN 79 124 113 579, Lincom Equipment Rentals Pty Ltd ABN 29 098 990 919, Lincom Earthmoving Equipment Pty Ltd ABN 89 127 081 038, Morbark Pacific Pty Ltd ABN 15 140 558 765, Thor Australasia Pty Ltd ABN 87 134 700 262 and Lincom WA Pty Ltd ABN 23 662 476 600, LKEA Pty Ltd ABN 51 611 482 770.
- h) "Losses" includes all loss, damage (including consequential loss or damage), liability, claims, penalties, costs (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater) and expenses of any nature whatsoever.
- i) "Machine Rental Agreement" means the document titled "Machine Rental Agreement" containing the rental schedule for the hire of the Equipment by the Company to the Hirer.
- j) "Genuine or OEM Parts" means parts that have been manufactured by the manufacturer of the Equipment, by a third party authorised by the manufacturer to manufacture such parts, or otherwise by a third party strictly in accordance with the manufacturer's specification for such parts.
- k) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- l) "Site" means the location to which the Equipment will be transported.

m) "Terms" means these terms and conditions of hire.

## 2. SUPPLY OF EQUIPMENT

This Agreement applies to any or all dealings between the Hirer and each Company for the hire of the Equipment.

## 3. HIRE PERIODS AND CHARGES

### 3.1. Hire Periods:

Unless otherwise specified in the Machine Rental Agreement:

- a) the hire commences from the time and date the Equipment leaves the Company's premises;
- b) the minimum hire period is one week, comprised of a minimum of 30 hours per week;
- c) the maximum hire period is 360 days and can under no circumstances exceed this period. If no earlier end date is specified in the Machine Rental Agreement, and unless terminated earlier under these terms, the hire period will end on the date 360 days after its commencement date;
- d) the Equipment may be stood down for public holidays, rostered days off and when weather prohibits operation; and
- e) the Hirer agrees to make hourly meter readings in relation to the utilisation of the Equipment and confirm that information to the Company no later than 11:30am each Monday during the hire period.

### 3.2. Hire Charges:

The Hirer shall pay:

- a) the hire charges at the rates specified in the Machine Rental Agreement for the full hire period that the Equipment is out of possession of the Company, with a minimum monthly hire charge equivalent to:
  - i) 60 hours per calendar month, where hire rates are specified on an hourly basis; or
  - ii) 1 month, where hire rates are specified on a monthly basis,
- b) stamp duty and transportation costs to and from the Site and all other related costs as detailed in the Machine Rental Agreement; and
- c) any additional charges specified in the Machine Rental Agreement.

Except where the Company has agreed to grant a credit arrangement with respect to the hire of the Equipment, these charges must be paid in advance.

### 3.3. Third Party Transportation

The Company, at the request and expense of the Hirer, may arrange a third party to transport the Equipment to the Site.

## 4. HIRER'S RESPONSIBILITY

The Hirer agrees:

- a) to be responsible for performing all necessary actions, and to pay all applicable charges in the specified amounts or rates, for each of the responsibilities allocated to the Hirer under the Schedule of Hire Contract Responsibilities recorded in the Machine Rental Agreement;
- b) to operate the Equipment in accordance with all manuals, instructions, specifications, safety and training requirements, and directions of the Company;
- c) not to permit any person to operate the Equipment who has not received proper instruction and training in the operation of the Equipment or who otherwise is not competent to operate the Equipment;
- d) to maintain and service the Equipment on a regular basis and in accordance with the manufacturer's specifications and any manuals or instructions provided by the Company. The manuals must be returned at the same time as the Equipment, failing which the Hirer is liable, at the Company's discretion, to pay a charge to the Company to compensate the Company for its loss of the manuals and any costs of replacing them;
- e) not to use, or permit to be used, in using, maintaining, or servicing the Equipment, any parts that are not Genuine or OEM Parts unless expressly authorised to do so by the Company;
- f) not to cause or permit any loss or damage to the Equipment whether by the negligence of the Hirer or any persons under its supervision or control during the hire period or for any reason whatsoever
- g) not to alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- h) not to relocate the Equipment to another site without the prior express written authorisation of the Company;
- i) to clean the Equipment thoroughly upon completion of the hire at Hirer's own expense, failing which the Hirer agrees to pay to the Company a cleaning charge at the rate set by the Company from time to time; and
- j) at the conclusion of the hire period, or upon earlier termination of this Agreement, deliver up the Equipment to the Company clean and in good repair

## 5. INSURANCE

### 5.1. Insurance Risks

The Hirer must insure the Equipment against all usual risks and against physical loss or damage and keep public liability and property damage insurance for a minimum



of \$5,000,000 (or for such other amount as the Company reasonably requires) for all usual risks of Losses or damage to persons (including death) or property that may be incidental to the Equipment, its condition, use, operation or supply. The Hirer must provide to the Company on request a certificate of currency of insurance which states the sum insured, the excess, and, in respect of property damage insurance, notes the Company as an interested party.

#### 5.2. *Marine Transportation*

In the event that the Equipment is transported by sea, the Hirer must:

- a) effect and maintain marine transit insurance covering the full replacement value of the Equipment;
- b) provide to the Company a certificate of currency of insurance which states the sum insured, the excess, and notes the Company as an interested party; and
- c) on the occurrence of an insured event, immediately notify and pay to the Company the excess payable under the policy.

#### 5.3. *Application of Insurance*

All proceeds of any insurance policy effected by the Hirer under these Terms shall be paid to the Company in the event of loss or damage to the Equipment.

### 6. **OWNERSHIP**

The Equipment shall remain the property of the Company at all times. The Hirer is not entitled to sub-hire, sell, transfer, mortgage, charge or encumber the Equipment in any way, nor without the Company's prior written permission part with possession of the Equipment, nor assign the benefit of this Agreement.

### 7. **ALLOCATION OF FUNDS**

The Company may at their discretion and in such manner as they determine allocate payments made by the Hirer as payment for any Equipment hired by the Company or any other amount that may be due to the Company by the Hirer.

### 8. **PPSA**

#### 8.1. *Application*

This clause applies to the extent that the Hirer's hire of the Equipment constitutes a PPS lease (as that term is defined in the PPSA).

#### 8.2. *Security Interest*

The Hirer grants a security interest in favour of the Company over all its present and after acquired property (including without limitation the Equipment) as security for any monies that may be owing by the Hirer to the Company under this Agreement.

#### 8.3. *Execution of documents*

If requested by the Company, the Hirer shall promptly and without undue delay execute any documents (including any new contracts or mortgages over real estate), provide all information required in order to complete

a financing statement and comply with any other reasonable requests by the Company to ensure that the Company's purchase money security interest(s) and general security interest are perfected.

The Hirer authorises the Company and its officers, jointly and individually, to execute any documents and do all acts as its attorney for the purpose of registering a caveat over any real property of the Hirer or to register on any other appropriate register the security granted by it under this clause over any assets of the Hirer.

#### 8.4. *Purchase Money Security Interest*

The Hirer acknowledges that the Company holds a purchase money security interest in the following:

- a) Equipment supplied by the Company;
- b) any Equipment supplied by the Company which have been manufactured, processed, assembled or commingled such that their original identity is lost;
- c) all proceeds in relation to the Equipment referred to in clause 8.3(a) and (b) including money, accounts receivable and insurance proceeds; and
- d) any goods for which any of the Equipment referred to in clause 8.3(a) and (b) have been exchanged or traded or that have been acquired in lieu of those Equipment,

as security for any monies payable by the Hirer to the Company at any time for the Equipment supplied by the Company together with any other monies owing by the Hirer to any entity of the Lincom Group.

#### 8.5. *Hirer To Provide Information Required For 'Perfection'*

The Hirer shall immediately notify the Company in writing of any change in the Hirer's name and shall also provide all information required in order to complete a financing change statement.

#### 8.6. *Negative Pledge*

The Hirer shall not enter into any security agreement with any other party that permits that party to register a security interest in respect of Equipment supplied by the Company or proceeds of those Equipment.

#### 8.7. *Hirer Waives Right To Receive Verification Statement*

The Hirer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Company's security interests.

#### 8.8. *Hirer To Pay All Filing Fees For Financing Statement*

The Hirer shall be responsible for all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement.

#### 8.9. *Company May Sell And Recover From Proceeds*

For the purposes of the PPSA only and without derogating from the Company's rights under clause 6:

- a) where the Company takes possession of the Equipment upon default of the Hirer, the Company may, should it choose to do so and without derogating from its rights under clause 6:
  - i) sell the Equipment by any means and at any time;
  - ii) deduct from any proceeds of sale, all costs incurred in relation to the sale;
  - iii) retain for its own use and benefit any monies payable by the Hirer for that Equipment which remain outstanding; and
  - iv) apply any balance to monies owed by the Hirer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests;
- b) where there is a shortfall on any sale or attempted sale of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Hirer.

#### 8.10. *Company May Lease Equipment And Recover From Lease Charges*

For the purposes of the PPSA only and without derogating from the Company's rights under clause 6:

- a) where the Company takes possession of the Equipment upon default of the Hirer, the Company may, should it choose to do so and without derogating from its rights under clause 6:
  - i) lease the Equipment by any means and at any time;
  - ii) deduct from any lease charges, all costs incurred in relation to the lease;
  - iii) retain for its own use and benefit monies payable by the Hirer for that Equipment which remain outstanding; and
  - iv) apply any balance to monies owed by the Hirer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests;
- b) where there is a shortfall on any lease or attempted lease of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Hirer.

#### 8.11. *Opt-Out Of Enforcement Provisions*

The Hirer waives its rights under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal),

135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to this Agreement or any supply of Equipment pursuant to this Agreement.

## 9. LIABILITY

- 9.1. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), all conditions, terms and warranties which are not expressly provided in this Agreement are excluded, and the Company's liability is limited (at the Company's election), to the supply of the Equipment or any services again or the cost of having the Equipment or services supplied again.
- 9.2. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Company is not liable to the Hirer for any Losses arising out of or in connection with the supply of the Equipment, except to the extent that such Losses are caused by any negligent act or omission or wilful misconduct on the Company's part.
- 9.3. Every exemption from liability and every right, defence and immunity of any nature applicable to the Company or to which the Company is entitled by this Agreement extends to every employee or agent of the Company (including independent contractors) while acting in the course of or in connection with their employment or engagement.
- 9.4. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Company will have no liability to the Hirer in relation to any Losses caused by the Company's failure to complete the order or to deliver the Equipment as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Company's suppliers to supply necessary material or any other matter beyond the Company's control.

## 10. DAMAGES

### 10.1. Recoverable Costs

The Hirer must pay to the Company any costs, expenses or Losses incurred by the Company as a result of the Hirer's failure to pay to the Company all sums outstanding as owed by the Hirer to the Company including costs (on a full indemnity basis) incurred by the Company in enforcing any payment due.

### 10.2. Interest

The Company may charge interest at 12% per annum calculated on a daily basis and compounded on the last day of each calendar month on amounts not paid within the hire period.

## 11. INDEMNITY

- 11.1. Without prejudice to any other rights or remedies of the Company or limitation to any other provision of these Terms, to the fullest extent permitted by law the Hirer unconditionally and irrevocably indemnifies the Company from and against all Losses

that the Company incurs in connection with:

- a) any breach or non-performance by the Hirer of an obligation under this Agreement;
- b) any failure by the Hirer or any of its officers, employees, contractors, agents, or representatives to observe and comply with any manuals, instructions, specifications, safety and training requirements, and directions of the Company in connection with the Equipment and its use;
- c) any negligence, wilful or unlawful act or omission by the Hirer or any of its officers, employees, contractors, agents, or representatives in connection with the Equipment or this Agreement;
- d) loss of or damage to the Equipment during the hire period, however caused;
- e) claims in respect of injury to persons or property arising out of the delivery, servicing, storage, possession, or use of the Equipment by the Hirer or any persons under its supervision or control during the hire period; or
- f) enforcement of any security interest granted by this Agreement.

11.2. The Hirer's liability to indemnify the Company under this clause shall be reduced proportionally to the extent of any act or omission of the Company that contributed to the relevant Losses.

11.3. The indemnities in this Agreement are continuing obligations and extend to all obligations under this Agreement.

11.4. The Losses for which the Hirer indemnifies the Company may be recovered as a debt, and irrespective of whether or not the Company has paid or satisfied them.

## 12. UNION ACTION / PROTESTS

The Hirer will indemnify the Company against any union actions, claims, suits or demands and shall have no claim whatsoever against the Company resulting from such union actions, claims, suits and demands or any interference or protests that affect the Equipment or property on which the Equipment may from time to time be situated.

## 13. DEFAULT & TERMINATION

13.1. If:

- a) the Hirer fails to pay any amount payable pursuant to this Agreement by the due date;
- b) the Hirer breaches any fundamental term of this Agreement or of any other agreement between the Hirer and an entity in the Lincom Group;
- c) a receiver or manager, liquidator, administrator, other controller or trustee in bankruptcy is appointed to the Hirer or any of its assets; or
- d) the Hirer ceases, or threatens to cease, to carry on business,

the Company may, subject to the terms of

this Agreement, but without prejudice to any other rights or remedies it may have, do any or all of the following:

- e) suspend deliveries to be made to the Hirer;
- f) repossess any Equipment;
- g) terminate this Agreement;
- h) terminate any other agreement between the Hirer and the Company;
- i) claim from the Hirer, including by commencing proceedings, the balance of any monies owing to the Company by the Hirer;
- j) enter upon any premises where the Equipment is located and take possession of it and if necessary, dismantle it from anything to which it is attached, for the purposes of which:
  - i) The Hirer unconditionally and irrevocably authorises the Company, by itself, its representatives or agents, to exercise the Company's rights under this sub-clause (j), and must do all things reasonably required by the Company in order for the Company to exercise those rights.
  - ii) If the Equipment is located on premises owned or controlled by a third party, then the Hirer unconditionally and irrevocably directs and authorises that third party to grant access to those premises by the Company, its representatives and agents, for the purposes of this sub-clause (j).
  - iii) The Hirer waives and releases the Company from any liability for any damage or Losses occasioned by the repossession of the Equipment. Repossession does not constitute a waiver of any claim by the Company against the Hirer under this Agreement.

13.2. The Company may terminate this Agreement for convenience on one month's written notice to the Hirer.

13.3. The exercise of the Company's rights under this clause does not release the Hirer from the obligation to pay any sum due to the Company or Lincom Group or discharge any other obligation of the Hirer that has accrued or is intended to survive termination of this Agreement.

## 14. GST

14.1. Any reference in this clause 12 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

14.2. Unless otherwise stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

14.3. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration to be provided under this Agreement for that supply is increased by an amount equal to the amount of that consideration multiplied

by the rate at which GST is imposed in respect of that supply.

14.4. The supplier of a taxable supply must provide the other party with a tax invoice in applicable form.

14.5. Costs or expenses to be reimbursed or indemnified under this Agreement exclude any amount in respect of GST included in the costs or expenses for which an entitlement arises to claim an input tax credit.

## 15. WHERE HIRER CONTRACTS AS TRUSTEE

15.1. If the Hirer enters into this Agreement as a trustee of a trust, then it represents and warrants to the Company that:

- a) it has accurately disclosed to the Company the name and (if applicable) ABN of the trust of which it is trustee (Trust);
- b) it enters into these terms as trustee of the Trust and of no other trust, and for the benefit of the beneficiaries of the Trust;
- c) it is the only trustee of the Trust;
- d) it has the power under the trust deed for the Trust to execute and perform its obligations under this Agreement;
- e) all action required by that trust deed to authorise its execution and performance of this Agreement has been taken;
- f) its execution and performance of this Agreement does not contravene that trust deed;
- g) no action is currently underway or pending to remove or replace it as

trustee of the Trust or to appoint any new or additional trustee of the Trust;

h) it will supply to the Company upon request a copy of that trust deed, which discloses all the terms of the Trust, which terms have not been varied or revoked;

i) it has the right to be fully indemnified out of the funds of the Trust in respect of the obligations it incurs under this Agreement, and has not released, disposed of, or restricted its equitable lien over that trust fund;

j) the Trust has not been terminated and no action is pending to terminate the Trust; and

k) no vesting date for the trust fund has been determined.

## 16. GENERAL MATTERS

16.1. The Hirer acknowledges that it has inspected the Equipment and confirms that it is fit for the purpose for which the Hirer requires it.

16.2. Time is of the essence in respect of the Hirer's obligations under this Agreement.

16.3. If any of the provisions of this Agreement are unenforceable, void, voidable or illegal, then such shall be severed and the other provisions of this Agreement remain in full force and effect.

16.4. Any failure or delay by a party in exercising a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the other party.

16.5. The waiver of any right of a party under this Agreement is only valid if made by notice in writing from the party waiving that right to the other party. The waiver of a power or right is effective only in respect of the specific breach to which it relates and for the specific purpose for which it is given.

16.6. This Agreement shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.

16.7. The Hirer declares that it has read this Agreement (including all of its constituent parts) and agrees that it is the complete and exclusive statement of the agreement between the parties, superseding any prior negotiations, representations, understandings, or arrangements made between the parties regarding the subject matter of this Agreement whether oral or in writing.

16.8. The Hirer must not assign this Agreement or any of its rights under it without the prior written consent of the Company, which the Company may grant or decline in its absolute discretion. The Company may assign or charge this Agreement, and any of its rights to any other party.

16.9. All notices and other communications provided for or permitted under this Agreement must be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to each party's respective contact details as set out in the Machine Rental Agreement, or as otherwise notified by that party from time to time.

# TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

## 1. DEFINITIONS

- a) "Company" means any or all entities in the Lincom Group including Lincom Pty Ltd ABN 81 064 383 848, Powerscreens Australasia Pty Ltd ABN 88 081 849 041, Lincom Pacific Equipment Pty Ltd ABN 37 090 881 511, Recycling Systems Australia Pty Ltd ABN 79 124 113 579, Lincom Equipment Rentals Pty Ltd ABN 29 098 990 919, Lincom Earthmoving Equipment Pty Ltd ABN 89 127 081 038, Morbark Pacific Pty Ltd ABN 15 140 558 765 and Thor Australasia Pty Ltd ABN 87 134 700 262, Lincom WA Pty Ltd ABN 23 662 476 600, LKEA Pty Ltd ABN 51 611 482 770.
- b) "Customer" means the party or parties named in the Quote as the "Customer" or in the absence of any Quote, the party requesting the Services, and where more than one, each and all of them jointly and severally.
- c) "Equipment" means any machinery or equipment owned or in the possession of the Customer, which may include Equipment sold to the Customer by the Company.
- d) "GST" means the goods and services tax under the GST Act.
- e) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes other GST related legislation.
- f) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- g) "Quote" means a document provided by the Company to the Customer under which the Company's charges to render the Services is quoted to the Customer.
- h) "Services" means any repair or servicing of Equipment or other similar services provided by the Company at the Customer's request from time to time (including in connection with any sale of Equipment but not including any repair or service work provided in respect of a warranty claim).
- i) "Security Interest" has the meaning given in the PPSA. "Site" means the site on which the Equipment is located. "Terms" means these terms, and includes any quote and other document issued by the Company and the Customer relating to the provision of Services.

## 2. PROVISION OF SERVICES

- 2.1. These Terms apply to any and all dealings between the Company and the Customer concerning the provision of Services to the Customer, and any reference to the "Company" in these Terms shall be taken to the relevant Company that provides the Services.

## 3. CHARGES

- 3.1. The Company may supply to the Customer a Quote prior to rendering the Services. The Customer acknowledges that, where a Quote is provided, the quoted charges are based on information supplied or otherwise made available to the Company (including as a result of an inspection of the Equipment by the Company and subsequent diagnosis of any breakdown or malfunction). Any such quoted charges are best estimates only and do not constitute a fixed price offer. The Company reserves the right to amend the Quote at any time if additional costs are, or are likely to be, incurred by the Company in performing the Services (including without limitation any increase in the cost of parts or amount of labour required).
- 3.2. If a Quote is not provided, then the Company will provide the Services to the Customer on a "do and charge" basis. In such circumstances, the Customer accepts the charges as determined by the Company as fair and reasonable, which without limitation may include the cost of labour (based on the Company's usual labour rates charged from time to time, including any overtime rates), parts (at retail prices), transportation costs and costs of any sub-contractors, together with such profit margin or administrative fee as the Company deems appropriate.
- 3.3. Without limiting the above, the Customer agrees to reimburse the Company any and all costs of transporting the Equipment to and from the Site to the Company's premises or workshop (if in the Company's opinion it is necessary for the Services to be rendered off-Site), and any other third party costs such as crane hire or other contractor fees which the Company reasonably incurs in performing the Services (together with an administrative fee).
- 3.4. Unless otherwise agreed in writing or stipulated on any tax invoice, all charges must be paid within 7 days from the date of issue of a tax invoice by the Company to the Customer. Surcharges may apply to any amounts paid by credit card.
- 3.5. The Company may charge interest at 12% per annum calculated on a daily basis and compounded on the last day of each calendar month on amounts not paid within the time required by clause 3.4.

## 4. RISK

- 4.1. This risk in the Equipment will remain with the Customer at all times. The Company will not be responsible for any loss or damage to the Equipment while in transit.

## 5. WARRANTIES AND LIABILITY

- 5.1. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)):

- a) all conditions, terms and warranties which are not expressly provided in these Terms are excluded;
  - b) the Company is not liable to the Customer for any losses (whether direct or indirect and including without limitation any consequential loss, damages or injury, or loss of profits, contracts or revenue) arising out of or in connection with the supply of the Services (whether in contract, tort, statute or otherwise), except to the extent that such losses are caused by any negligent act or omission or wilful misconduct on the Company's part;
  - c) the Company's liability under or in connection with these Terms is limited (at the Company's election), to the supply of the Services again or the cost of having the Services supplied again; and
  - d) any express or implied term or condition which limits or excludes any term, condition, warranty or liability of the Company applies to the fullest extent permitted by law and must not be construed as excluding, qualifying or limiting the Company's statutory rights or remedies from breach of any express or implied term.
- 5.2. To the fullest extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to provide the Services a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Company's normal contractors or suppliers to supply necessary parts or goods or provide any services or any other matter beyond the Company's control.
  - 5.3. Every exemption from liability and every right, defence and immunity of any nature applicable to the Company or to which the Company is entitled by these Terms extends to every employee or agent of the Company (including independent contractors or sub-contractors) while acting in the course of or in connection with their employment or engagement.

## 6. GST

- 6.1. Any reference in this clause 6 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 6.2. Unless otherwise stated, all prices or other sums payable or consideration to be provided by the Company under or in connection with these Terms are exclusive of GST.
- 6.3. To the extent that any supply made by the Company under or in connection with these



Terms is a taxable supply, the consideration to be provided for that taxable supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that taxable supply and must be paid at the same time, subject to a valid tax invoice being provided.

## 7. SECURITY

- 7.1. If the Company renders Services on-Site, the Customer grants the Company a Security Interest in the Equipment the subject to those Services and the proceeds of that Equipment as security for monies payable by the Customer in respect those Services.
- 7.2. The Customer acknowledges that the Company has a lien over any Equipment in its possession in relation to Services rendered in respect of that Equipment but not paid for.
- 7.3. The Customer shall immediately notify the Company in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement.
- 7.4. The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Company's Security Interest.
- 7.5. The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement.

7.6. For the purposes of the PPSA only and without derogating from the Company's rights under this clause 7 or any other rights:

- a) where the Company takes possession of the Equipment upon default of the Customer, the Company may, should it choose to do so:
  - i) sell the Equipment by any means and at any time;
  - ii) deduct from any proceeds of sale, all costs incurred in relation to the sale;
  - iii) retain for its own use and benefit any monies payable by the Customer in respect of that Equipment which remain outstanding; and
  - iv) apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other Security Interests;
- b) where there is a shortfall on any sale or attempted sale of the Equipment, the Company may recover the shortfall from the Customer.

7.7. The Customer waives its rights under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal),

135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to these Terms.

## 8. GENERAL

- 8.1. The Company may sub-contract all or any part of the Services without giving notice to or obtaining the consent of the Customer.
- 8.2. If any of the provisions of these Terms are unenforceable, void, voidable or illegal, then such shall be severed and the other provisions of these Terms remain in full force and effect.
- 8.3. Any failure or delay by a party to exercise a power, right or remedy pursuant to these Terms does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the other party.
- 8.4. The waiver of any right of a party under these Terms is only valid if made by notice in writing from that party to the other party. The waiver of a power or right is effective only in respect of the specific breach to which it relates and for the specific purpose for which it is given.
- 8.5. These Terms shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.