

I/We Hereby Apply For Commercial Credit With Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd ABN 35 114 053 128 (Collectively Referred To As "Grove").

**Business Structure: (Please tick appropriate box)**

Pty Ltd Company

Partnership

Sole Trader

Public Company

Corporation as Trustee

Individual(s) as Trustee

Applicant Name

Trading Name

Business Address

Delivery Address

Phone

Mobile

Occupation of Business

Business Commenced / /

Date of Registration / /

A.C.N (if Company)

A.B.N

Affiliate or Parent Companies

Accounts Payable Contact

Phone No.

Accounts Payable Email (for invoices)

Accounts Payable Email (for enquiries)

Estimated Monthly Hire Requirement \$

Account Requested by

Position

**Owner/Partnership/Directors (If Sole Trader please supply copy of Drivers License)**

Full Names

Address

Phone

1.

2.

3.

4.

**Trust Details (If applicable)**

Name of Trust

ABN

Type of Trust: (please tick appropriate box)

Family/ Discretionary

Unit

Other  (Details: )

1.

2.

3.

4.

## Business History (For all directors, partners, trustees or sole trader)

Have any been declared bankrupt:

Yes

No

If yes, details:

Names of related or subsidiary companies or partnerships:

Have you or any of your related companies or partnerships ever enter into an agreement with Grove before?

Yes

No

If yes, details:

## References

Names

Address

Phone

1.

2.

3.

4.

5.

6. Hire Company

7. Bank

## Privacy Statement

The personal information submitted about the Applicant and about any guarantor/s will be used for the purposes associated with assessing the Applicant's commercial credit application and administering the commercial credit account. Grove's privacy policy details why Grove collects this personal information, who Grove may disclose it to, and the main consequences (if any) if Grove does not collect it. Grove's privacy policy also contains information about how affected persons may seek access to, or correction of, the personal information held about them, and Grove's complaint resolution procedures.

Grove's privacy policy is available by request to Grove and available on Grove's website.

## Terms: 30 days from date of Invoice

The Applicant hereby certifies that the foregoing particulars are correct to the best of its knowledge and acknowledge that all transactions will be subject to the conditions of trading attached which have been read, understood and agreed with.

Signature of Authorised Representative

Date

Full Name of Authorised Representative

Date

## Deed of Guarantee and Indemnity

**In favour of** Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd. ABN 35 114 053 128

**In consideration of** Grove Hire Pty. Ltd. and Grove Toilet Hire Pty. Ltd. ("Grove Hire") entering into the agreement with, (the "Hirer"), executed on or about the date of this Deed (the "Agreement") at the request of the Guarantor/s whose name and address is set out in the Schedule (each a "Guarantor");

**The guarantor guarantees** to Grove Hire the due, punctual and proper payment and performance by the Hirer of all and singular the monies terms and conditions contained in the Agreement then due and payable or which may become due and payable or which are otherwise to be paid observed and performed and;

**The guarantor indemnifies** (as a separate and additional liability) and agrees to keep indemnified Grove Hire Pty Ltd. and Grove Toilet Hire Pty. Ltd. against all loss damage costs and expenses suffered or incurred by Grove Hire as a result of any failure by the Hirer to pay the monies aforesaid or as a result of the liability of the Hirer under the Agreement being unenforceable in whole or in part through any lack of capacity, power or authority on the part of the Hirer or for any other reason (including, where the Hirer is a trustee, as a consequence of the Hirer acting in breach of trust) or as the result of any breach by the Hirer observing the terms and conditions referred to above and;

**The guarantor covenants** with and declares to Grove Hire as follows:

1. If at any time the Hirer defaults in payment of any monies due and payable or to become due and payable or otherwise to be paid by the Hirer under the Agreement, the Guarantor will immediately on demand by Grove Hire pay to Grove Hire the whole of such monies then due and payable or which may become due and payable or which are otherwise to be paid by the Hirer. Until fully paid and satisfied, such monies will bear interest at the Default Rate as defined in the Agreement.
2. This Guarantee and Indemnity is continuing and will not be wholly or partly discharged by the appointment of a receiver or receiver and manager or liquidator or provisional liquidator or the undertaking or other property and assets or any part thereof of the Hirer or any Guarantor or the liquidation of the Hirer or of any Guarantor if a Individual and Company of by the bankruptcy mental incapacity or death of the Hirer or any Guarantor if a natural person.
3. The Guarantor's liability is not prejudiced or affected by:-
  - a) the fact that the whole or any part of the monies payable by the Hirer may not be or may cease to be recoverable from the Hirer or from any other Guarantor or person or that the Hirer or any other Guarantor or person may be discharged from all or any of its obligations to pay such monies or any part of them for any other reason that that the same have been paid;
  - b) any payment whether by the Hirer or any other person which would reduce or operate in satisfaction or partial satisfaction of the Guarantor's liability hereunder to the extend of such payment where such payment is void or avoided for any reason (irrespective of when such avoidance operates) to the intent that such liability may be enforced to the amount thereof as it exists prior to such payment as if such payment had never been made;
  - c) the fact that any other person who was intended to execute this Guarantee, or otherwise to become a co-surety for the terms and conditions to be observed by the Hirer under the Agreement or any of them has not done so;
  - d) any variations whenever made of any of the terms, conditions or provisions contained in the Agreement whether or not such variation is made with the knowledge or consent of any of the Guarantors; or
  - e) the transfer or assignment of the benefit of this Guarantee to any person or corporation.
4. Grove Hire's rights under this Guarantee are additional to and will not merge with, be affected by, or affect any other securities or obligations now or subsequently held by Grove Hire from the Hirer or the Guarantor or any other person.
5. Grove Hire is not under any obligation to marshal in favour of the Guarantor any security held by Grove Hire or any of the funds or assets that Grove Hire may be entitled to receive or have a claim upon.
6. Neither the existence of any legal disability nor the granting of any time concession or indulgence to nor the making of any composition with nor the waiver of any breach or default by the Hirer nor the neglect or forbearance of Grove Hire to enforce the terms of the Agreement or those of this Guarantee will void or release or discharge this Guarantee.
7. Any security now or subsequently held by the Guarantor from the Hirer for the Hirer's obligation to indemnify the Guarantor against liability under this Guarantee will be held by the Guarantor in favour of Grove Hire, and at the cost of the Guarantor as security of the Guarantor's liability to Grove Hire and the Guarantor must upon request by Grove Hire deposit that security with or assign it by way of security to Grove Hire
8. The Guarantor will not compete with Grove Hire for any dividend or distribution in any winding up scheme of arrangement or official management of the Hirer or claim any set-off or make any counter-claim against the Hirer.

## Deed of Guarantee and Indemnity

9. All monies received by Grove Hire which are capable of being applied by Grove Hire towards payment of any of the money then due and payable or which may become due and payable or which are otherwise to be paid by the Hirer under the Agreement will be regarded as payments in gross and the Guarantor will have no right to claim the benefit of monies so received until Grove Hire has received the whole of the monies due or which may become due and payable or which are otherwise to be paid by the Hirer under the Agreement and until the same have been fully paid and satisfied.
10. Any demand or notice to be made by Grove Hire hereunder will be deemed to have been duly made and received by the Guarantor if and when given to any Guarantor or if and when posted addressed to any Guarantor at the place of abode or business in the Commonwealth of Australia last known to Grove Hire or if and when sent by facsimile to the number shown next to the Guarantor's name in the Schedule (or as otherwise advised in writing by the Guarantor). Any demand or notice made by mail will be deemed to have been received by the Guarantor on the second day after posting (excluding days on which no mail deliveries are normally made). Any demand or notice sent by facsimile will be deemed to have been received when a confirmation or transmission has been produced by the sending facsimile machine.
11. The Guarantor hereby acknowledges having given its consent to Grove Hire to:
  - a) disclose credit information about the Guarantor to a credit reporting body; and
  - b) obtain credit eligibility information about the Guarantor from a credit reporting body; and
  - c) use credit eligibility information about the Guarantor; and
  - d) disclose credit eligibility information about the Guarantor, for the purposes of Grove Hire;
  - e) assessing whether to accept the Guarantor as a guarantor for credit that has been provided to or may be applied for by the Customer; and
  - f) collecting overdue payments; and
  - g) reporting on payment defaults and personal bankruptcy and insolvency issues.
12. This Guarantee is governed by the laws of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that state.
13. In this document the expression "the Guarantee" means this Guarantee and Indemnity, the expressions of the "Guarantor" and "Assignee" includes their respective successors and administrators and permitted assigns, the expression "Individual and Company" includes its successors and assigns, the singular means and includes the plural, one gender means and includes the other genders, and where there is more than one Guarantor their obligations are joint and several. Terms defined in the Agreement have the same meaning when used in the Guarantee.

### Schedule to Deed of Guarantee and Indemnity-guarantor(s)

Name:

Name:

Address:

Address:

Telephone Number:

Telephone Number:

Executed as a Deed Poll on the

day of

20

Signed Sealed and Delivered by:  
(Print Name)

Signature:

In the presence of:  
(Witness)

Signature Guarantor:  
(Witness)

Signed Sealed and Delivered by:  
(Print Name)

Signature:

In the presence of:  
(Witness)

Signature Guarantor:  
(Witness)

## Applicant Privacy Acknowledgement and Consent

Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd ABN 35 114 053 128

### Credit information that may be provided to a credit reporting body

The Applicant has applied for or been granted a commercial credit account with Grove Hire Pty Ltd and Gove Toilet Hire Pty. Ltd. ("Grove Hire").

The Applicant, its partners and trustees acknowledge and agree that Grove Hire may give credit information about the Applicant to a credit reporting body before, during or after the provision of commercial credit to the Applicant, for the following purposes:

- to obtain credit eligibility information about the Applicant; and/or
- to allow the credit reporting body to create or maintain its records containing credit information and credit eligibility information about the Applicant.

The information that may be provided to a credit reporting body is limited to:

- identity information - the Applicant's name, any previous name/s and/or aliases, sex, current or last known address and previous two addresses, date of birth, name of employer, and drivers licence number;
- information requests – a statement that Grove Hire has sought information about the Applicant from a credit reporting body in connection with the Applicant's application for commercial credit;
- type of credit - the fact that the Applicant has applied for commercial credit and the amount;
- credit provider - the fact that Grove Hire is a current commercial credit provider to the Applicant;
- court proceedings information – information about any credit-related judgments made or given against the Applicant in court proceedings; and

### Acknowledgement

The Applicant understands that, even though the Applicant is transacting with Grove Hire in relation to a commercial credit account, the credit information and credit eligibility information used and disclosed about the Applicant will or may contain information about the directors or partners personal credit history and personal credit worthiness.

The Applicant also acknowledges that the information included in this application is true and correct.

Signing to be signed by the Applicant or all directors or partners of the Applicant.

Date:

Sole Trader:

Director/Partner:

Director/Partner:

- personal insolvency information – information about the Applicant that is entered on the National Personal Insolvency Index and which relates to the Applicant's bankruptcy or personal insolvency and/or debt agreements made or proposed by me.

### Assessment of Commercial Credit Application

The Applicant consents to Grove Hire obtaining credit eligibility information about the Applicant from a credit reporting body and/or from another credit provider to the Applicant, and conducting a search of the Personal Property Securities Register, and using such information for the purpose of assessing the Applicant's application for commercial credit.

### Collection of overdue payments

The Applicant consents to Grove Hire obtaining credit eligibility information about the Applicant from a credit reporting body and using and disclosing such information for the purpose of collecting payments that are overdue in relation to the commercial credit provided by Grove Hire to the Applicant.

### Disclosure to guarantor

The Applicant consents to Grove Hire giving credit eligibility information about the Applicant to a potential guarantor, for the purpose of that person considering whether to act as a guarantor or to offer their property as security for the commercial credit offered or provided to the Applicant.

The Applicant consents to Grove Hire giving credit eligibility information about the Applicant to a guarantor of the commercial credit offered or provided to the Applicant, for the purposes of keeping them informed about the guarantee and/or the enforcement or proposed enforcement of the guarantee.

## Guarantor Privacy Acknowledgement and Consent

Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd. ABN 35 114 053 128

### Credit information that may be provided to a credit reporting body

I am considering or have agreed to act as a guarantor of a commercial credit account with Grove Hire Pty. Ltd. and Grove Toilet Hire Pty. Ltd. ("Grove Hire").

I acknowledge and agree that Grove Hire may give credit information about me to a credit reporting body in connection with my role as a guarantor or potential guarantor of commercial credit, for the following purposes:

- to obtain credit eligibility information about me; and/or
- to allow the credit reporting body to create or maintain its records containing credit information and credit eligibility information about me.

The information that may be provided to a credit reporting body is limited to:

- identity information - my name, any previous name/s and/or aliases, sex, current or last known address and previous two addresses, date of birth, name of employer, and drivers licence number;
- information requests – a statement that Grove Hire has sought information about me from a credit reporting body in connection with my role as a guarantor or potential guarantor;
- type of credit - the fact that I am considering or have agreed to act as a guarantor for commercial credit;

- credit provider - the fact that Grove Hire is a current commercial credit provider to the entity I am guaranteeing;
- court proceedings information – information about any credit-related judgments made or given against me in court proceedings; and
- personal insolvency information – information about me that is entered on the National Personal Insolvency Index and which relates to my bankruptcy or personal insolvency and/or debt agreements made or proposed by me.

### Assessment of guarantor suitability

I consent to Grove Hire obtaining credit eligibility information about me from a credit reporting body, and conducting a search of the Personal Property Securities Register, and using such information for the purpose of assessing my suitability to act (or to continue to act) as a guarantor for a commercial credit account.

### Collection of guarantor payments

I consent to Grove Hire obtaining credit eligibility information about me from a credit reporting body and using and disclosing such information for the purpose of collecting payments that are overdue in relation to my guarantee of a commercial credit account.

### Acknowledgement

I understand that, even though I am transacting with Grove Hire in relation to a commercial credit account, the credit information and credit eligibility information used and disclosed about me will or may contain information about my personal credit history and personal credit worthiness.

I also acknowledge that the information included in this application is, to the best of my belief, true and correct.

Signing to be signed by the Guarantor.

Date:

Date:

Guarantor 1 – Print Name:

Guarantor 2 – Print Name:

Signature:

Signature:

## 1. Definitions

- 1.1 In this Agreement:  
"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended. "Agreement" means the agreement for the hire of the Equipment by the Owner to the Hirer. "Consumer" is as defined in the ACL and in determining if the Hirer is a consumer, the determination is made if Hirer is a consumer under this Agreement. "Equipment" means the items hired out by the Owner to the Hirer, including all portable buildings, containers, toilets, temporary fencing and accessory items. "Hirer" means any person, firm or corporation, jointly and severally if more than one, who hires the Equipment from the Owner. "Owner" means Grove Hire Pty. Ltd. (ABN 30 076 376 442 ACN 076 376 442) and Grove Toilet Hire Pty. Ltd. (ABN 35 114 053 128 ACN 114 053 128). "PPSA" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended. "Terms" means these Conditions of Trade.

## 2. Basis of Contract

- 2.1 The Terms apply exclusively to every Agreement for the hire of Equipment by the Owner to the Hirer and cannot be varied or replaced by any other terms without the Owner's prior written consent.
- 2.2 Any written quotation provided by the Owner to the Hirer concerning the proposed hire of Equipment is valid for 30 days and is an invitation to treat only.
- 2.3 Any terms in the Owner's quotation form part of the Terms and, if inconsistent, will prevail to the extent of the inconsistency.

## 3. Terms of Payment

- 3.1 Unless otherwise agreed, hire charges will commence from the time the Equipment leaves the Owner's premises (if collected by the Hirer) or from the time it arrives at the destination the Hirer specified (if delivered by the Owner) until termination of the hire of the Equipment in accordance with clause 13.
- 3.2 Hire charges will be based upon a twenty-four-hour period from the date specified on the delivery docket and will continue to accrue over weekends and public holidays.
- 3.3 The rate of hire charges will be as specified by the Owner from time to time and may be varied by the Owner at its sole discretion immediately upon giving the Hirer written notice. Variations will apply from the time of written notification of the variation to the Hirer.
- 3.4 Where the Owner provides notice of the kind referred to in clause 3.3, the Hirer may:
- (a) accept the increase and continue under the Agreement; or
  - (b) return the Equipment to the Owner, make payment of all amounts owed to the Owner, and terminate the Agreement.
- 3.5 The Hirer will pay a deposit if required by the Owner which will be forfeited to the Owner if the Hirer breaches this Agreement. Forfeiture will not affect any other rights of the Owner under this Agreement.
- 3.6 In addition to the hire charges specified by the Owner the Hirer will pay to the Owner the amounts of any GST, tax duty, levy, charge or other expense paid or payable by the Owner to any government of government authority in respect of the use of the Equipment together with the Owner's standard delivery and/or collection charges from time to time together with any expenses incurred by the Owner as a result of a breach by the Hirer of its obligations pursuant to the Agreement.
- 3.7 The Hirer agrees to pay the Owner's hire and other charges at the time and in the manner specified by the Owner or, if not specified within seven days of the date of the relevant invoice without set-off or demand. The Owner may at its option render invoices to the Hirer at the commencement or completion of the hire period or periodically throughout the hire period.
- 3.8 Unless otherwise agreed in writing, no relief from hire charges nor any claims will be allowed by the Owner for stoppages due to causes out of the Owner's control including, without limitation, bad weather or site conditions.

## 4. Payment Default

- 4.1 Where any amount becomes overdue all unpaid amounts which would become payable by the Hirer to the Owner at a later date, will immediately become due and payable by the Hirer to the Owner without the requirement of any written notice to the Hirer, and the Owner may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Hirer interest on any unpaid sum at the rate of 20% per annum;
  - (b) charge the Hirer for, and the Hirer must indemnify the Owner from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with this Agreement or to recover any Equipment;
  - (c) cease or suspend supply of any further Equipment to the Hirer.

- 4.2 The only discounts available to the Hirer will be those agreed in writing by the Owner. If the Hirer breaches this Agreement, then any discounts on any unpaid invoice is automatically revoked and the full price is payable for all hire charges from that time onwards.

## 5. Property and Risk

- 5.1 Ownership of the Equipment will at all times remain with the Owner.
- 5.2 No person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Owner's rights or these Terms.
- 5.3 The Hirer must not remove, deface or cover up any plate or mark affixed to the Equipment without the Owner's prior written consent.
- 5.4 Neither payment of compensation nor any other circumstances or event will amount to, constitute or result in any transfer of property or interest in the Equipment from the Owner.
- 5.5 The Hirer acknowledges that the Owner, its insurers or agents may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide to the Owner its insurers or agents all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Hirer shall indemnify the Owner its insurers or agents in relation to any action from trespass in the course of the Owner its insurers or agents reasonably exercising its right to inspect the Equipment.
- 5.6 This Agreement is personal to the Hirer and the Hirer will not:
- (a) assign or sub-contract its rights and obligations; or
  - (b) sell or offer for sale, assign, mortgage, pledge, lend or otherwise part with possession of the Equipment; or
  - (c) allow any other person to use or have possession of the Equipment; or
  - (d) allow any lien to be levied upon the Equipment whether for repairs or otherwise without the Owner's prior written consent, which may be withheld at the Owner's absolute discretion.
- 5.7 The Hirer will protect the Equipment against execution or seizure and will indemnify the Owner against all resultant losses (including any consequential losses), costs, charges damages and expenses (including any legal costs on a solicitor and client basis) incurred by the Owner as a result of a breach of this clause 5 by the Hirer.
- 5.8 The Hirer will maintain the Equipment on a daily basis in compliance with the Owner's requirements.
- 5.9 The Owner may assign or sub-contract its rights and obligations under this Agreement without notice to the Hirer.
- 5.10 The Hirer agrees that Equipment hired out by the Owner to, or at the request of, the Hirer shall be at the Hirer's risk immediately on delivery to the Hirer or collection by the Hirer.

## 6. Loss of or Damage to Equipment

- 6.1 If, once the Equipment has been collected from the Owner or delivered to the Hirer, the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details in writing of any such, loss, break down or damage. Notification shall not absolve the Hirer from its obligations under this Agreement to safeguard the Equipment.
- 6.2 In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall:



- (a) immediately stop using the Equipment;
- (b) take all steps necessary to prevent the Equipment from sustaining any further damage;
- (c) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment, and;
- (d) not repair or attempt to repair the Equipment without the Owner's prior written consent.
- 6.3** Subject to clauses 6.4 and 6.5, breakdowns or defects in the Equipment resulting from:
- (a) proper and ordinary use of fair wear and tear; or
- (b) the development of an inherent fault or a fault not ascertainable prior to commencement of the period of hire; may, at the Owner's option, either be repaired or the Equipment replaced at the Owner's expense. No charge will apply from the date of notice of breakdown until the repair or replacement of the Equipment.
- 6.4** If the Hirer is a consumer and the defect or breakdown cannot be remedied or is a "Major failure" as defined in the ACL, then nothing in this clause limits the consumer's rights under section 259(3) of the ACL.
- 6.5** If the Hirer is not a consumer and the repair is impracticable and replacement Equipment is not available, the Owner may terminate this Agreement and will not have any liability whatsoever to the Hirer for such termination or any consequences for breakdown.
- 6.6** If the Equipment is lost or damaged, and the loss of or damage to the Equipment is caused by the negligence, misdirection or misuse of the Hirer or its employees, agents or representatives or the breach of any term of this Agreement by the Hirer or its employees, agents or representatives, the Hirer shall be liable for the following:
- (a) any costs incurred by the Owner in repairing or replacing the Equipment; and
- (b) hire charges for the Equipment until the Equipment is repaired or replaces any other costs whatsoever incurred by the Owner as a result of the damage to or the loss of the Equipment.
- 7. Delivery and Transport**
- 7.1** Unless delivered by the Owner, the Hirer must arrange appropriate transport of the Equipment from the Owner's premises to its own.
- 7.2** If the Equipment requires transportation for repair or replacement, then cost of transport is born by the Owner unless the repair or replacement is due to damage or breakdown of the Equipment directly caused by the Hirer.
- 7.3** Any period or date for delivery of the Equipment stated by the Owner is an estimate only and not a contractual commitment.
- 8. The Hirer's Obligations**
- 8.1** The Hirer will:
- (a) pay all hire charges together with any other charges or amounts that may become due and payable to the Owner under the Agreement or these Terms;
- (b) upon delivery or collection of the Equipment immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment, the Hirer acknowledges that it has duly examined the Equipment and has satisfied itself as required. The Hirer acknowledges that it has not in any way relied upon the skill or judgment of any representations made by or on behalf of the Owner in respect of the Equipment, its purpose, use or performance and it has not made known, either expressly or by implication, to the Owner any purpose for which it requires the equipment;
- (c) use the Equipment in a skillful, proper, safe and prudent manner and only for the purpose and within the capacity for which it was designed and in accordance with all laws (including but not limited to environmental laws);
- (d) comply with any directions, instructions, specifications and recommendations as to the use of the Equipment given by the Owner;
- (e) hold all necessary licences and permits necessary for the storage, use and operation of the Equipment;
- (f) at its own expense clean, and keep and maintain the Equipment in good condition and repair, failing which, the Hirer will reimburse the Owner for any costs, claims, loss, damage, or expenses incurred by the Owner;
- (g) pay all costs associated with the cleaning of the equipment and all accessory items;
- (h) ensure that the Equipment is stored safely, securely and protected from theft, fire and distress;
- (i) not alter, modify, tamper with, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment or interfere with or modify the Equipment in any other manner;
- (j) be responsible for any damage, other than fair wear and tear, to the Equipment;
- (k) be liable for the cost of freight to retrieve Equipment that has been lost, stolen, abandoned or displaced for any reason;
- (l) comply at its own expense with all local authority, State and Federal laws, ordinances and regulations including in particular any occupational health and safety laws which may affect the Equipment while it is the possession of or being used by the Hirer;
- (m) not without the Owner's prior written consent keep or store in the Equipment or on or near any of the Equipment any volatile spirits or explosive goods or goods which are or may become dangerous, corrosive, highly combustible, offensive (including radioactive materials) or likely to encourage any vermin or pests. Any such goods stored in or near the Equipment may at any time be destroyed, disposed of, abandoned or rendered harmless by the Owner without compensation to the Hirer and without effecting the Owner's rights under this Agreement. The Hirer authorises the Owner to have unrestricted access to the Equipment for the purpose of exercising the Owner's rights under this clause;
- (n) supply the operator of the Equipment with all necessary manuals and instructions (both written and oral) necessary for the safe use of the Equipment.
- 9. Personal Property Securities Act**
- 9.1** For the purposes of this clause the terms used in this clause 9 have the same meaning as contained in the PPSA.
- 9.2** If the Owner determines that any Agreement for hire between the Owner and Hirer is or contains a security interest for the purposes of the PPSA, the Hirer must, at its cost and immediately upon the Owner's request:
- (a) do all things reasonably required (including execution of documents) to ensure the Owner has a continuously perfected security interest (as defined in the PPSA) created in the Equipment pursuant to any Agreement for hire. 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 the Owner to apply for registration of or give any notification in relation to the security interest;
- (iii) enabling the Owner to exercise rights in relation to the security interest;
- (b) procure from any person considered by the Owner to be relevant to its security position, such Agreements and waivers as the Owner may at any time require to ensure the Owner attains the highest-ranking security possible in respect of the security interest.
- 9.3** In circumstances where any Agreement for hire constitutes a PPS Lease, the Hirer acknowledges that it is the grantor and the



- Owner is the secured party holder of a Purchase Money Security Interest ("PMSI") by virtue of the Agreement for hire and the PPSA.
- 9.4 The Hirer must not, except with the Owner'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 Equipment, and whether to a provider of new value or otherwise.
- 9.5 Where permitted by the PPSA, the Hirer waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (removal of accession), 118 (enforcement of security interests in accordance with land law decisions), 121(4) (enforcement of security interests in liquid assets), 130 (disposal of collateral), 132(3)(d) (amounts paid to other secured parties), 132(4) (statement of account in respect of seized collateral), 135 (retention of collateral) and 157 (notice to grantors) of the PPSA.
- 9.6 the Owner and Hirer agree to contract out of and nothing in the provisions of sections 96 (retention of accession), 125 (disposal or retention of collateral), 129 (disposal by purchase), 142 (redemption of collateral) and 143 (reinstatement of security agreement) of the PPSA shall apply to the Agreement for hire.
- 9.7 To the extent permitted by the PPSA:
- (a) the provision of Chapter 4 of the PPSA which are for the benefit of the Hirer or which place obligations on the Owner will apply only to the extent that they are mandatory, or the Owner agrees to their application in writing;
  - (b) where the Owner has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 9.8 For the purposes of section 275(6) of the PPSA, the Owner and Hirer agree and undertake that any Agreement for hire and any information pertaining to the rental of the Equipment and details of the Equipment shall be kept confidential at all times. Neither party may disclose any information pertaining to any Agreement for hire or the rental of the Equipment, except as otherwise required by law or that is already in the public domain.
- 9.9 The Hirer hereby consents and appoints the Owner to be an interested person and the Hirer's authorised representative for the purposes of section 275(9) of the PPSA.
- 10. Exclusion of Warranties, Etc.**
- 10.1 Except as specifically set out in the Terms or contained in any express warranty provided with the Equipment, this Agreement does not include by implication 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 Equipment, or any contractual remedy for their failure.
- 10.2 If the Hirer is a consumer, nothing in these Terms restricts, limits or modifies the Hirer's rights or remedies against the Owner for failure of a statutory guarantee under the ACL.
- 10.3 If clause 10.2 does not apply, then other than as stated in the Terms or any written warranty statement, the Owner is not liable to the Hirer in any way howsoever arising under or in connection with the use of, storage or any other dealings with the Equipment by the Hirer or any third party.
- 10.4 The Owner 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 turn over, profits, business or goodwill or any liability to any other party, except to the extent of liability imposed by the ACL.
- 10.5 Subject to the ACL, the Owner will not be liable for any loss or damaged suffered by the Hirer where the Owner has failed to meet any delivery date or cancels or suspends the supply of the Equipment.
- 10.6 Subject to the ACL, the Owner's liability with respect to any claims arising out of this Agreement shall be limited, at the Owner's option, to:
- (a) replacement of the Equipment with similar Equipment; or
  - (b) termination of the Agreement and restitution of the amount of any hire charges paid with respect to any period for which the Equipment was inoperable.
- 10.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be so excluded, restricted or modified.
- 11. Release and Indemnity**
- 11.1 The Hirer is solely responsible for all risks relating to or arising from the selection, possession, use, operation, storage, control, and location (or displacement from the location for any reason) of the Equipment.
- 11.2 The Hirer must indemnify the Owner and keep the Owner harmless from all costs, actions, claims, demands, loss or damage (including all legal costs on a full indemnity basis) arising from or in connection with the Equipment or as a result of its selection, possession, use, operation, storage, control, or location (or displacement from the location for any reason), except where the Owner has failed to comply with a statutory guarantee under the ACL.
- 11.3 The Owner is not responsible for any property stolen from or damaged whilst in the Equipment or any property left in the Equipment after the Equipment has been returned to the Owner.
- 12. Theft and Damage Waiver**
- 12.1 If the Hirer chooses to take the benefit of the theft and damage waiver option the Owner agrees to waive its rights under this Agreement to claim from the Hirer any sum of money in excess of \$1,500 inclusive of GST or 15% whichever is the greater which arises out of any loss, destruction of or damage to Equipment which is caused by fire, storm, earthquake, collision, accident, theft or burglary, provided that in the case of theft or burglary the Hirer has supplied to the Owner satisfactory evidence that:
- (a) the Hirer has promptly reported the theft or burglary to the police and provides the Owner with a written police report;
  - (b) the Hirer co-operates with the Owner and provides the Owner with the details of the incident, including any written or photographic evidence required; and
  - (c) the Hirer has taken adequate and reasonable precautions to protect the Equipment against theft or burglary. As a minimum, the Hirer must keep the Equipment in a safe secure locked private compound when not in use.
- 12.2 The theft and damage waiver contained in clause 12.1 will not apply to loss of or damage to the Equipment in the following circumstances:
- (a) the loss or damage has arisen as a result of the Hirer's breach of the Agreement, or by the Hirer's fraudulent or negligent act or omission;
  - (b) loss or damage resulting from overloading, exceeding rated capacity, failure to maintain, misuse, abuse, or improper servicing of the Equipment.
  - (c) loss or damage due to mysterious disappearance of the Equipment;
  - (d) loss or damage caused by misappropriation or wrongful conversion of the Equipment by the Hirer;
  - (e) loss or damage by the use or operation of the Equipment in contravention of any of these conditions;
  - (f) loss or damage by the use or operation of the Equipment in violation of any law regulation or by-law;
  - (g) glass breakage;
  - (h) loss or damage occurring whilst the Equipment is being carried, located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - (i) loss or damage relating to weather, storm or flooding events that were reasonably foreseeable;
  - (j) loss or damage to accessories tables, chairs, sinks, toilet pans and systems. Markings or holes in portable building walls or roofs and other similar accessories and situations; or damage caused by exposure to any

corrosive substance, including any caustic, hazardous or toxic materials, cyanide, salt water or acid.

12.3 The Hirer acknowledges that nothing in this clause derogates from the Hirer's obligations contained in clause 8.

### 13. Termination of Hire

13.1 The Owner may at any time and in its unfettered discretion terminate the hire of the Equipment to the Hirer upon written notice, whereupon the Hirer shall immediately attend to any of the obligations remaining under this Agreement and make the Equipment available for collection.

13.2 Subject to any applicable statutory stay of proceedings, the Owner may immediately terminate the Agreement, upon notice if the Hirer:

- (a) default in payments of the hire charges or any other charges under this Agreement; or
- (b) fails to remedy, to the Owner's satisfaction, any breach of the Agreement (which in the Owner's reasonable opinion is able to be remedied) within 7 business days after being notified of the breach by the Owner; or
- (c) goes into liquidation or becomes subject of any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme of arrangement with its creditors; or
- (d) does or causes to be done or permits any act or omission which results in the Owner's rights in the Equipment being prejudiced or jeopardised, in the Owner's reasonable opinion.

13.3 The Hirer may terminate the hire of Equipment by providing reasonable notice and by:

- (a) delivering the Equipment to the Owner during normal working hours; or
- (b) notifying the Owner that the Equipment is ready for collection, provided that the Hirer keeps the Equipment safe and secure until collection. When notifying the Owner that the Equipment is ready for collection, the Hirer must obtain an "off hire" number, failing which the Hirer will not be deemed to have notified the Owner that the Equipment is ready for collection.

13.4 If the Equipment is returned to or collected by the Owner in a state which is unsatisfactory or in breach of the Terms then the hire period will be deemed to continue until the Equipment is in a state which is satisfactory to the Owner, or any breach of this Agreement has been remedied (whichever is the later). The Owner undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as is reasonably possible after the return or collection of the Equipment.

13.5 Upon termination, the Hirer must:

- (a) cease using or operating the Equipment and immediately comply with any directions given by the Owner;
- (b) pay all outstanding hire charges or other charges required under this Agreement to the Owner which are due and payable as at the date of termination;
- (c) return in good working order and condition the Equipment to the Owner and/or allow the Owner access to collect the Equipment; and
- (d) take all steps to mitigate its losses arising from the termination.

13.6 Upon termination of hire, the Owner is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner as his agent and authorizes and licences the Owner to:

- (a) enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated;
- (b) disconnect, dismantle and remove the Equipment whether or not it is affixed to the land or the premises, connected to property or equipment not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.

13.7 The Hirer releases the Owner from and indemnifies the Owner against any claims arising from removal and collection of the Equipment in accordance with the clause. Should the Equipment contain any property not owned by the Owner, the Owner shall

store that property for a period of 14 days from the termination of hire. The Owner may charge the Hirer reasonable storage fees for the storage of that property. Should the property not be collected at the expiry of 14 days after the termination of the hire of the Equipment the Owner may sell the property, and the Hirer releases the Owner from and indemnifies the Owner against any claims which any person may have directly or indirectly arising from the sale of the property or whether through negligence, sale at under value, sale of property owned by a third party or howsoever.

13.8 After termination of hire, and until the Equipment has been collected by the Owner, the Equipment shall remain the sole risk of the Hirer, and the Hirer will indemnify the Owner in respect of any loss of or damage to the Equipment in those circumstances and where an off hire number has been obtained but the Owner has not collected the Equipment.

### 14. Insurance

14.1 The Hirer will maintain at its own expense all appropriate policies of insurance for insuring itself, its property, third parties and their property against all risks arising from the presence or operation of the Equipment, including:

- (a) for all damage to or arising out of the hire of the Equipment in an amount not less than the full replacement cost of the Equipment howsoever occurring, unless the Hirer has taken the benefit of the theft and damage waiver option pursuant to clause 8 in which case such insurance policies need not cover the loss or damage specified in clause 12; and
- (b) for all third party and public liability risks in respect of the hire or use of the Equipment by the Hirer for not less than \$10 million for any one occurrence.

14.2 The policy must note the Owner's interest as owner of the Equipment.

14.3 The Hirer must, prior to the hire period and on the Owner's further request, provide evidence of insurance.

14.4 The Hirer must, on reasonable request, provide the Owner with all reasonable assistance and information necessary to enable the Owner to claim under any insurance policies.

14.5 If the Equipment is involved in any accident resulting in injury to persons or damage to the Equipment or other property, the Hirer must immediately notify the Owner by telephone and then confirm in writing to the Owner's office. The Hirer must not make any admission, offers, promise, payment or indemnity without the Owner's prior written consent. Any insurance monies recovered by the Hirer in respect of any risks specified in this clause 14 must be applied as reasonably directed by the Owner.

### 15. Director/s Guarantee/s

15.1 The Hirer acknowledges and agrees that its Director/s may be required execute the attached Deed of Guarantee and Indemnity, guaranteeing and indemnifying the Owner from any liability attaching to the Hirer pursuant to the Terms.

### 16. Customer Restructure

16.1 The Hirer must notify the Owner in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trustee within 7 days of the date of the change.

### 17. Force Majeure

17.1 For the purposes of this clause 17, a Force Majeure Event means an event beyond the reasonable control of a party including, without limitation, accident, acts of God, acts or threats of terrorism or war, breakdown, epidemic, pandemic, import or export or travel restrictions, industrial disputes, lockouts or strikes.

17.2 Subject to clause 17.3, neither the Owner nor the Hirer is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by a Force Majeure Event.

17.3 Nothing in this clause 17 operates to excuse the Hirer from any obligation to pay money to the Owner.

17.4 If a party is prevented from acting by a Force Majeure Event, that party must:

- (a) promptly notify the other party of the existence and expected duration of the Force Majeure Event;
- (b) take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event; and
- (c) subject to Clause 17.5, resume performance of the obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.

17.5 If a Force Majeure Event prevents performance of an obligation beyond a reasonable time, either party may suspend or terminate the Agreement by written notice.

## 18. Miscellaneous

- 18.1 The law of Victoria from time to time governs the Terms. 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.
- 18.2 This Agreement replaces and supersedes all other terms and conditions of hire, if any, previously in force between the Owner and the Hirer and no variation of these conditions will bind either party unless confirmed by the Owner in writing.
- 18.3 A notice or invoice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices or invoices sent by pre-paid post are deemed to be received upon posting. Notices or invoices sent by email or facsimile are deemed received on the confirmation of successful transmission.
- 18.4 The person signing this Agreement for and on behalf of the Hirer agrees with the Owner that he or she has the authority of the Hirer to make this Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person signing this Agreement failing to have such power and/or authority.
- 18.5 If this Agreement or any clause of it becomes void or unenforceable for any reason, then that part will be severed from this Agreement to the intent that all parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.
- 18.6 The rights and obligations of the Hirer and the Owner will continue and not be affected by termination of the hire of the Equipment. Termination of the hire of the Equipment will be without prejudice to any right of action already given to the Hirer or Owner in respect of any breach of this Agreement by the other party.
- 18.7 The parties acknowledge that this Agreement contains the entire Agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussions or representations. Any such conditions, warranties or representations are hereby expressly excluded.
- 18.8 Time is to be the essence of all obligations of the Hirer in this Agreement.
- 18.9 The Owner's failure to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under this Agreement at law, shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach of any of the Terms.
- 18.10 A statement in writing made up from the books of the Owner and signed by any director, secretary or credit manager of the Owner of the amount due or owing by the Hirer as at the date mentioned in that statement will be prima facie evidence that that amount is due and owing without it being necessary to produce any books or vouchers to verify the same.
- 18.11 Any credit accommodation granted may be withdrawn at any time for any reason without notice.
- 18.12 The Hirer acknowledges and agrees that its Director/s shall execute the attached Privacy Act Authorisation/Agreement to enable the Owner to check on the creditworthiness of the Director/s and the Hirer, for the purpose of this Agreement.

## Theft & Damage Waiver Cover

Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd ABN 35 114 053 128

Grove Hire Pty. Ltd. ABN 30 076 376 442 and Grove Toilet Hire Pty. Ltd. ABN 35 114 053 128 ("Grove Hire") offers its clients a Theft and Damage Waiver Cover on all hire items, covering the Hirer in the event of accidental damage or theft involving any portable building, container, toilet or accessory item on hire from Grove Hire.

Details of the theft and damage waiver cover, together with an acceptance form are attached for your completion. In the event that theft and damage waiver is not required, the hirer must have appropriate insurance policies to cover all costs associated with any theft of, or damage to, portable buildings, containers or accessories on hire from Grove Hire details required are as follows:

- Insurance Fund
- Policy Number
- Expiry Date

**The attached acceptance form must be completed and returned to the Head Office prior to delivery.**

If you require further information or clarification, please contact our hire department on 1300 30 80 11.

The cost of the cover is calculated at 15% of the hire rate, with excess on any one claim of 15% of the claim value or \$1,500 inclusive of GST, whichever is the greater.

### Terms and conditions of the damage waiver cover are as follows:

If the Hirer chooses to take the benefit of the theft and damage waiver option the Owner, being Grove Hire, agrees to waive its rights under the Grove Hire's Conditions of Trade to claim from the Hirer any sum of money in excess of \$1,500 inclusive of GST or 15% whichever is the greater, which arises out of any loss, destruction of or damage to a Portable Building, Container, Toilet or Accessories which is caused by fire, storm, earthquake, collision, accident, theft or burglary, provided that in the case of theft or burglary the Hirer has supplied to the Owner satisfactory evidence that:

- 1a) The Hirer has promptly reported the theft or burglary to the police; and
- 1b) The Hirer has taken adequate and reasonable precautions to protect the Portable Building, Container, Toilets, Temporary Fencing or Accessories against theft or burglary. As a minimum, the Hirer must keep the Portable Building, Container, Toilets, Temporary Fencing or Accessories in a safe secure locked compound when not in use.

2. In addition, the theft and damage waiver contained in clause 8.1 of the Grove Hire Pty. Ltd. and Grove Toilet Hire Pty. Ltd. Conditions of Trading will not apply to loss or damage to the Portable Building, Container, Toilet, Temporary Fencing or Accessories in the following circumstances.
  - 2a) Loss or damage resulting from overloading, exceeding rated capacity, failure to maintain, misuse, abuse, or improper servicing of the Portable Building, Container, Toilet, Temporary Fencing or Accessories;
  - 2b) Loss or damage due to mysterious disappearance of the Portable Building, Container, Toilet, Temporary Fencing or Accessories;
  - 2c) Loss or damage caused by misappropriation or wrongful conversion of the Portable Building, Container, Toilet, Temporary Fencing or Accessories by the Hirer.;
  - 2d) Loss or damage by the use or operation of the Portable Building, Container, Toilet, Temporary Fencing or Accessories in contravention of any of these conditions;
  - 2e) Loss or damage by the use or operation of the Portable Building, Container, Toilet, Temporary Fencing or Accessories in violation of any law, regulation or by-law;
  - 2f) Glass breakage;
  - 2g) Loss or damage to accessories, tables, chairs, sinks, toilet pans and cisterns. Markings or holes in Portable Building, Container, Temporary Fencing, Toilet walls or roofs and other similar accessories or situations; or damage caused by exposure to any corrosive substance, including any caustic, hazardous or toxic materials, cyanide, salt water or acid.
3. The Hirer acknowledges that nothing in this clause derogates from the Hirer's obligations contained in clause 5 or Grove Hire's Conditions of Trade.

## Theft and Damage Waiver Cover Acceptance Form

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Client:

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Date:

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Signature of Authorized Company Representative:

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### Insurance Details (To be completed if Theft & Damage Waiver Cover is not required).

Please provide Certificate of Currency in email.

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Client:

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Insurance Company:

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Policy Number:

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Expiry Date:

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Signature of authorized  
Company Representative:

Date:

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Name (Please print clearly):

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