

7924 Goulburn Valley HWY
 Kialla. Vic. 3631.
 Australia.
 Ph. 0430155664
 ABN: 86 920 297 765



**APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE
 AGREEMENT MACHINES HIRE**

I/We (in this document "the **Hirer**") hereby apply for credit facilities from **BHS plant & Equipment Pty Ltd** ABN 86 920 297 765 (CAN 168 439 290) in accordance with the Credit Account Agreement set out below. ConX hire is a registered name under this company. In support of this application I/We submit the following information:

Date of Application:	
----------------------	--

HIRER'S DETAILS

<u>Head Office Information:</u>	
Entity Name:	
Trading As:	
Type of Entity: (please circle one)	Company Trust Sole Trader Other (specify)
Drivers Licence Number : (if Hirer is an individual)	
DOB (if Hirer is an individual):	
Entity Details: (for eg, if trust, please provide type of trust, name of trustee and trust name.	
ACN: (companies only)	
ABN:	
Telephone:	
E Mail :	
Mobile:	
Street Address:	
Postal Address:	
Machines to be release under	Purchase order / Written E-mail request

7924 Goulburn Valley HWY
 Kialla. Vic. 3631.
 Australia.
 Ph. 0430155664
 ABN: 86 920 297 765



**APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE
 AGREEMENT MACHINES HIRE**

<u>Accounts Payable Details:</u>	
Contact Name:	
Accounts Telephone:	
Accounts Email:	

TRADE REFERENCES: companies with whom the Hirer is currently trading. At least three req.

Name:		Telephone:		Email:	
Name:		Telephone:		Email:	
Name:		Telephone:		Email:	

CREDIT CARD DETAILS.

Name on the Card :	
Card Type :	Visa / Master
Card Number :	
Expiry Date : / (Month / Year)
CCV :	

CONX HIRE USE ONLY

Credit Check Completed:	Yes No	Approved:	Yes No
Credit Limit Approved:		Customer Advised:	Yes No
Notes:			

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

PAYMENT TERMS: 30 DAYS FROM INVOICE DATE

ConX Hire Standard Terms and Conditions

1. Definitions

In this document and any document forming part of the agreement:

- a) **Additional costs** means the fees for any additional goods and/or services.
- b) **Agreement** means this document and its terms and conditions for the supply of Equipment by ConX Hire.
- c) **Attachment** means any articles offered by us that can be installed on or to the Equipment at the Client's request as specified in Section B of this Agreement.
- d) **Client** means the individual or corporation who has sought to hire the Equipment from ConX Hire pursuant to this Agreement, the details of whom are set out in Schedule A.
- e) **Damage Waiver** means ConX Hire waiver of the rights to claim a remedy against the Client for damage or loss to the Equipment as specified and, on the conditions, set out in clause 11 of this Agreement.
- f) **Damage Waiver Surcharge** means an amount equal to 10% of the Hire Charge payable on an Invoice to which the parties have elected use the Damage Waiver.
- g) **Dry Hire** means the hire of equipment without an Operator.
- h) **Equipment** means all item or items specified in Section B of the Agreement, including any tools, tyres, accessories and parts supplied to the Client, any Attachments and any replacements of those items.
- i) **GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under this Agreement.
- j) **GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth)
- k) **Hire Charges** means the amount payable for the use of the Equipment as set out in Section C of this Agreement.
- l) **Hire Period** means for Equipment the period described in Section D of this Agreement.
- m) **Hour Meter** means the equipment in the Equipment which is used to measure the amount of use.
- n) **Invoice** means a statement of fees and charge issued from time to time by ConX Hire to the Client for the amounts payable under this Agreement.
- o) **Minor Damage** means any damage up to the value of \$3,000.
- p) **Off Hire** means machine no longer required.
- q) **ConX Hire** means ConX Hire Plant and Equipment Pty Ltd in its capacity as Trustee for the Boda Family Trust
- r) **PPSR** means the Personal Property Securities Act 2009 (Cth) and any associated or amending legislation or regulations.

2. Interpretation

In this Agreement, unless the context requires otherwise:

- a) The Singular includes the plural and converse also applies.
- b) A gender includes all genders.
- c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to this Agreement.
- f) Headings, are provided for convenience and guidance only, and shall not be taken to have any legal effect.
- g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision submitted for it and a regulation or statutory instrument issued under it.
- h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- i) A reference to *dollars* and \$ is to Australian Currency.

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

- j) All preferences to time are to Melbourne time.
- k) A reference to a party is a party to this Agreement. A reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns.
- l) Monitoring anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- m) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or relevant part of it.

3. Hire

- a) In consideration of the Client's payment of Hire Charges, Additional Costs and, if applicable the Damage Waiver Surcharge, ConX Hire agrees to hire the Equipment to the Client for the Hire Period on the terms and conditions set out in this Agreement.
- b) The Hire Period may be extended by agreement between the parties or by operation of this Agreement.
- c) The Client agrees and accepts all the terms and conditions as set out in this agreement.

4. Title

The Client acknowledges that:

- a) It is a bailee of the Equipment and nothing in this agreement passes title in the Equipment to the Client and the Client acknowledge that ConX Hire holds title in all of the Equipment during the Hire Period;
- b) Any replacement part, accessories or Attachments to the Equipment are ConX Hire' property, unless specified in writing by ConX Hire.
- c) The Client must not do anything or allow anything to be done to adversely affect ConX Hire' interest as owner of the Equipment.
- d) During the Hire Period, the Client accepts full responsibility for the safe keeping of the Equipment.

5. On supply etc.

The Client must not:

- a) Sell, lease, hire, rent, bail or give possession of the Equipment to any third party,
- b) Dispose of or assign its rights under this Agreement, or
- c) Permit any third party to hold any security over this Agreement or the Equipment.

The Client irrevocably indemnifies ConX Hire for any loss whatsoever that ConX Hire suffers as a result of the Client breaching this Clause ("on-supply").

6. Liability

- a) The Client is liable to ConX Hire for any loss suffered by ConX Hire and caused by Client's failure to meet its responsibilities in accordance with this Agreement and the Client agrees to indemnify and hold harmless ConX Hire for any loss whatsoever that ConX Hire suffers as a result of the Client breaching this Agreement.
- b) The Client is also liable to ConX Hire for any loss or damage to the Equipment, howsoever arising, during the Hire Period or any extension thereof. The Client also agrees that no such loss or damage to the Equipment or any part of thereof shall impair or otherwise limit any obligations of the Client or the rights of ConX Hire under this Agreement during the Hire Period or any extension thereof.
- c) Furthermore, the Client will be liable for and will continue to be charged Hire Charges until such time as the Equipment has been returned, replaced or repaired to a condition that is acceptable to ConX Hire.
- d) In the event of loss or damage of any kind whatsoever to the Equipment, the Client shall at its own cost and expense and at ConX Hire 's option (which must be exercised reasonably):
 - i. Repair the Equipment; or
 - ii. Replace the Equipment with like Equipment that is in good repair, condition and working order and pay all associated costs; or
 - iii. Pay to ConX Hire the replacement cost of the Equipment.

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

7. Damages

- a) Any damage to the Equipment must be brought to the attention of ConX Hire immediately by written notice to ConX Hire.
- b) Upon providing notice of damage to the Equipment, the Client must forthwith make the Equipment available to inspection by ConX Hire for ConX Hire to assess the damage to the Equipment.
- c) ConX Hire will supply a list of damage to the Client after their inspection of the Equipment and the Client will be required to make good the damage in accordance with Clause 6 hereof within a reasonable amount of time.

8. Indemnity

The Client indemnifies ConX Hire and must keep ConX Hire indemnified against all claims, actions, suits, demands, costs, expenses and losses whatsoever (including, without limitation, all legal costs on a solicitor and Client basis) in any way arising out of the use of the Equipment by the Client or its servants or agents or any other person whatsoever during the Hire Period or any extensions thereof.

9. Exclusions of Liability

- a) To the extent permitted by law, ConX Hire shall not be liable (whether before or after the expiration or termination of this agreement) for any loss or damage the Client suffers arising from or caused or contributed to or by ConX Hire negligence or the negligence of ConX Hire's servants or agents in relation to the performance of this agreement.
- b) Notwithstanding anything else contained in this Agreement, to the extent permitted by law, the Client and ConX Hire agree that the *Goods Act 1958* (Vic) and any provisions therein which may affect this Agreement are excluded and do not apply to this Agreement.

10. Insurance

- a) The Client is responsible for effecting and maintaining, for the whole of the Hire Period and any extension of the Hire Period and any additional period specified in this Agreement, insurance covering all loss and damage to the Equipment for a sum no less than the replacement value of the Equipment.
- b) The Client's insurance policy for the Equipment must:
 - i. Note ConX Hire's interest (and the interest of any financier that ConX Hire has disclosed) as the owner of the Equipment and loss payee in the relevant of damage to the Equipment.
 - ii. Cover the respective liabilities of ConX Hire and Client for personal injury, property damage (including to the Equipment), public risk and all losses arising from the use of the Equipment;
 - iii. Apply similar to any replacement Equipment; and
 - iv. Be approved by ConX Hire prior to the commencement of the Hire Period and not to be charged without our written consent.
- c) The Client must also:
 - i. Give a copy of the insurance policy to ConX Hire prior to the Hire Period. ConX Hire may demand a certificate of currency of insurance from the Client at any time;
 - ii. Keep the insurance policy fully paid, and ensure that nothing is done, or not done, to allow the insurance to lapse, be cancelled or to prevent the insurer from paying a claim;
 - iii. Direct the insurer to make all insurance payments for insurance claims held in relation to the Equipment direct to ConX Hire;
 - iv. If the Client receives payment from the insurer in breach of Clause 10 (c)(iii), the Client must hold any money paid on trust for ConX Hire.
 - v. Immediately notify us if insurance payment arising out of insurance over the Equipment is received or expected to be received;
 - vi. Be responsible for the payment of any excess or deductible relating to the insurances effected by the Client; where ConX Hire makes a claim under such policy, to the extent that ConX Hire determines that the Client or any of its personnel were responsible for the loss or damage; and
- d) If ConX Hire have agreed to provide a Damage Waiver in accordance with Clause 11 the insurance the Client is required to maintain and effect under this clause need not extend to the damage or loss expressly covered by the Damage Waiver.
- e) ConX Hire does not hold an Australian Financial Services licence and in accordance with the Corporations Act 2001 (Cth), shall not arrange or provide insurance for the Client.

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

11. Damage Waiver

If the Client agrees to pay the Damage Waiver surcharge and observe the terms and conditions of the insurance policy held by ConX Hire, a copy of which will be supplied to the client on request, ConX Hire offers a Damage Waiver which provides the Client with protection against certain type of damage in relation to the Equipment on the following terms:

- a) The Damage Waiver only applies in relation to the costs of repairs or replacement of Equipment due to Damage caused by third parties, fire, storm, collision, accident, theft or burglary, unless such types of damage is specifically excluded pursuant to this clause or this Agreement; subject always to the Client being liable for the first \$7,000 of any damage.
- b) The Client must maintain adequate precautions to safeguard the Equipment from the loss, theft or damage to the Equipment that may be covered by the Damage Waiver;
- c) ConX Hire providing a Damage Waiver in no way entitles the Client to, or implies the available of, compensation from ConX Hire for any liability incurred by the Client in relation to the use of the Equipment, or for any work being undertaken by the Client with the Equipment;
- d) This clause and the Damage Waiver will not continue to operate after the expiration of the Hire Period unless ConX Hire grants an extension in writing and any additional fees or costs as notified to the Client are paid;
- e) The Damage Waiver does not apply to any loss or damage to the Equipment that arises from:
 - i. Glass breakage;
 - ii. Graffiti' or
 - iii. Minor Damage.
- f) Notwithstanding the operation of the Damage Waiver, if the Equipment is lost, stolen or damaged, hire will continue to be charged until the Equipment has been replaced or repaired to a condition that is acceptable to ConX Hire.

12. Payment Terms

- a) ConX Hire will issue an Invoice for the Hire Charges each fortnight to the Client during the Hire Period and any extension thereof.
- b) The Client must pay the amount shown on each Invoice within fourteen (14) days from the date of the Invoice or such other period as ConX Hire has specified to the Client in writing or other arrangement made prior in writing.
- c) If the Client defaults on making any payment due under this Agreement within the time specified, the Client must pay the current penalty interest rate as fixed by the Attorney General under section 2 of the *Penalty Interest Rate Act 1983 (Vic)* per annum in interest on the amount due, calculated daily from the date of the default until the payment is made.
- d) If the default continues for more than fourteen (14) days, then:
 - i. ConX Hire may terminate this Agreement in writing to the Client; and
 - ii. The Client, irrevocably and to the full extent permitted by law, authorises ConX Hire to (without prior notice) do everything necessary to re-take possession of the hired equipment (including, without limitation, enter any property at which ConX Hire reasonably believes the Equipment to be located).
- e) ConX Hire is not liable to the Client for any loss whatsoever suffered by the Client as a result of ConX Hire exercising its right to re-take possessions of the hired equipment. Further, the Client indemnifies ConX Hire for any loss or liability whatsoever incurred by ConX Hire in exercising that right (including, without limitation, any liability to any third party for trespass or damage to property occasioned by ConX Hire exercising the right).
- f) The Client is liable to the ConX Hire for any costs and expenses (including commission payable to commercial or mercantile agents or a law firm) incurred by ConX Hire in recovering any unpaid amounts under this Agreement.

13. Stand Down

Must be notified before 10 am on the day with hour meter reading. A minimum of 4 hours will be charged at full rate if operator stood down without notice. No stand down on weekly rates.

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

14. Off Hire

Off hired machines must receive an off hire number from the office with hour meter readings or full charges will apply until back in yard.

15. Hour Meter

Hour Meter readings must be advised in writing to Head Office for the duration of the Hire.

16. Fuel

All Equipment is deemed to be delivered with a full tank and the Client agrees to return the Equipment at the end of the Hire Period or any extension thereof with a full fuel tank. Any fuel required to refill the tank at the end of the Hire Period or any extension thereof will be charged to Client's account.

17. Operator

It is the Client's responsibility to ensure that the operator is:

- a) Fully conversant with the Equipment and is aware of safe operating practices;
- b) The holder of all relevant licenses, permits, tickets and has knowledge of all statutory obligations.
- c) The Client indemnifies ConX Hire for any loss or damage suffered by ConX Hire by reason of the Client's failure to adhere to this Clause 17.

18. The Client

Is responsible for:

- a) Security of the Equipment (vandal and weather damage will be charged to the Client's account).
- b) Daily Servicing of the machine including checking all fluid levels, greasing, air cleaner checks and loose bolts or components and/ or fluid leaks. Report any problems immediately to ConX Hire to be rectified.
- c) GETs (ground engaging tools) are charged as percentage of wear to the Client's account using the formula (percentage of wear from hire period x replacement cost = back charge cost to Client's account). ConX Hire will note wear of GETs before the Hire Period commences and note difference on return.
- d) Cleanliness and appearance of the machine (cleaning costs are charged to Client's account)
- e) All Hired Plants are to be operated by experienced and qualified personal.
- f) Directing and monitoring the operator as to the work done any damage done to the property that may occur is the Client's responsibility.

19. No Representation

The Client acknowledges:

- a) except as contained in this Agreement no information, representation or warranty by ConX Hire, ConX Hire 's Agent or ConX Hire 's employees were supplied or made with the intention or knowledge that it would be relied upon by the the Client;
- b) in particular, and notwithstanding anything contained herein to the contrary, and not to limit any of the foregoing provisions, the Client acknowledges that the ConX Hire has not made any representation or warranty as to the ability for the Equipment to be used for any particular purpose or event, nor has the ConX Hire represented or warranted that the Equipment is free from any defect, infestation, contamination or dilapidation nor has the ConX Hire represented or warranted that the Equipment is free of rust, is watertight or waterproof, is fire resistant or fire proof or can be used in construction of any structure and the Client hires the Equipment as a result of their own independent inspection of the Equipment prior to accepting the Equipment
- c) except as contained in this Agreement no information, representation or warranty has been relied upon; and
- d) this Hire Agreement constitutes the entire agreement between the parties for the hire of the Equipment and supersedes all previous negotiations and agreements in relation to the Equipment hire.

APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

20. Tyres/Cutting edges

It is the responsibility of the client to fix or repair any flat or punctured tyres on the Equipment at the Client's cost and for the avoidance of doubt the Equipment is deemed to be delivered in a good working order at the commencement of the Hire Period unless the Client notifies ConX Hire of any outstanding damage in writing within 24 hours of the Hire Period commencement. The Client agrees that excess wear and tear (beyond reasonable wear and tear) or damaged tyres not repaired shall be charged to Client's account on pro rata basis including transport and fittings.

21. Inspection

The Client agrees to allow ConX Hire to enter its premises and inspect the Equipment from time to time during the Hire Period. The Client can also request to conduct a joint inspection of the Equipment with ConX Hire at the end of the Hire Period.

22. PPSR

- a) In this clause, all words appearing in quotations have the same meaning as they have in the PPSR.
- b) The Client must do all things (including provide ConX Hire with all details and data) necessary for ConX Hire to register a "financing statement" or a "financing change statement" under the PPSR with respect to any security interest" which this Agreement creates or provides for ("Security Interest"). The Client represents and warrants to ConX Hire that all details and date that it provides to ConX Hire for this purpose are true and correct.
- c) The Client is not entitled to possession of the Equipment until the Security Interest is perfected by registration on the Personal Properties Security Register
- d) If the Client makes any payment to ConX Hire, ConX Hire may apply the payment to satisfy any obligation of the Client to ConX Hire (whether the obligation is unsecured, secured by "security interest", or secured by "purchase money security interest"). ConX Hire may:
 - i. Apply the payment in any order or manner that it (in its absolute discretion) thinks fit; and
 - ii. Amend or re-apply any application made.
- e) With respect to the Security Interest and Equipment:
 - i. Sections 95, 121(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA are excluded to the full extent permitted by section 115 of the PPSA; and
 - ii. The Client waives the right under PPSA section 157 to receive notice in relation any registration event which relates to the equipment and is described in the registration as commercial property.

23. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegal or unenforceable provision here fore and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. Governing Law

The Agreement is governed by the laws of Victoria. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waive any rights to claim that these courts are an inconvenient forum.

25. Civil Liability Act 2002

The parties agree that Part 1F of the Civil Liability Act 2002 (VIC) is expressly excluded from application to this Agreement pursuant to Section 4A of that Act.

26. Entire Contract

The contents of this Agreement constitute the entire contract between the parties and supersede any prior negotiations, representations, understandings or arrangements between the parties regarding the subject of this Agreement whether orally or in writing.



APPLICATION FOR COMMERCIAL CREDIT ACCOUNT & MASTER HIRE AGREEMENT MACHINES HIRE

26. Counterpart/ Execution

- a) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- b) This Agreement may be executed by one or more of the parties, executing a counterpart, which may be a facsimile copy or scanned copy of this Agreement, and transmitting that executed counterpart by facsimile or email to the party or parties, which upon either the sender's transmission record indicating that the same was duly received without error, or the receipt by the other party or by one of the other parties of the executed Agreement by the sender, shall be taken as conclusive evidence of the execution of the Agreement by that party
- c) The parties covenant to be bound by this Agreement being executed in counterparts in accordance with this clause.

27. Acknowledgement

- a) ConX Hire Plant may charge or mortgage (a 'security') its interest in this Agreement and/or the machine/equipment in favour of a third party ('Security Holder') without the Client's consent.
The exercise of any rights by the Security Holder under a Security will not contravene any provision of this Agreement or constitute a breach, default, an event of default, a termination event or repudiation under this Agreement or entitle the Client to terminate this Agreement.

Executed by BHS Plant and Equipment pty and the Client as a binding Agreement:

**Signed for and on behalf of BHS plant, by
by authority of the**

signed for and on behalf of the Client,

PRINT NAME: -----

PRINT NAME: -----

SIGNATURE: -----

SIGNATURE: -----

DATE: -----

DATE: -----

>>> END <<<

PERSONAL GUARANTEE

In consideration of **BHS Plant and Equipment Pty Ltd T/as ConX Hire** granting credit terms;
I/we the undersigned agree with you as follows:

1. To Guarantee to you and to be otherwise answerable and responsible to you for the due payment by the Company for all plant and equipment rental, services, fees and charges rendered (or as applicable) so supplied by you to the Company on credit, as aforesaid.
2. This Guarantee is a continuing guarantee and shall extend and apply to invoices, that shall be rendered by you to the Company, its Agents, Nominees or Successors at law, and it is agreed that my/our liability under this Guarantee is joint, several and irrevocable.
3. You shall be at liberty without discharging me/us from liability hereunder to grant time or other indulgence to the Company in respect of the plant and equipment rental, services, fees and charges rendered by you to it as aforesaid and to accept payment from the Company in cash or by means of negotiable instruments and to treat the Company in all respects as though I/we were jointly with it as debtors to you, instead of being merely sureties for the Company.
4. That in order to give full effect to this Guarantee, should the Company fail or neglect to pay your lawful demand within 14-days, we declare that you shall be at liberty to proceed against me/us directly as Guarantors as though I/we are principal debtors and I/we hereby waive any of our rights as sureties which may at any time be inconsistent with the provisions of this my/our Guarantee.
5. I/we agree acknowledge having been given the opportunity by BHS Plant and Equipment Pty Ltd T/as ConX Hire to seek independent legal and financial advice prior to signing this Guarantee.

DIRECTORS

WITNESS

FULL NAME: FULL NAME:

TITLE: TITLE:

SIGNED: SIGNED:

DATE: DATE:

FULL NAME: FULL NAME:

TITLE: TITLE:

SIGNED: SIGNED:

DATE: DATE:

FULL NAME: FULL NAME:

TITLE: TITLE:

SIGNED: SIGNED:

DATE: DATE: