

This Credit Application (including Guarantee & Indemnity) shall be in respect of AK Evans Group Pty Ltd (ACN 646 172 358) ("AK Evans Group Australia").



Please return your completed Credit Application to:
ar@akevans.com.au; or
 PO Box 2021, South Hedland WA 6722

CUSTOMER DETAILS

ALL COMPANY APPLICANTS PLEASE COMPLETE

Registered Name of Incorporated Entity _____

ACN _____ Company Type: Public Private

Trading Name/Business Name (if any) _____ ARBN _____

ALL PARTNERSHIP/SOLE TRADER/TRUST APPLICANTS PLEASE COMPLETE (Delete as applicable)

Partnership/Proprietor/Trustee Name _____

Trading Name/Business Name (if any) _____

Does the Applicant trade as a Trading Trust? Yes No Type of Trust: Discretionary Unit
 (If yes, please provide a copy of the Trust Deed)

ALL APPLICANTS PLEASE COMPLETE

Date Business Commenced / / ABN _____

Business Segment: Agriculture Commercial & Manufacturing Engineering Construction

Events Maintenance Government Mining & Resources

Non Residential Construction Residential Construction Oil & Gas Other

Nature of Business/Main Business Activity _____ No of Employees _____

Postal Address _____ Postcode _____

Business Address _____ Postcode _____

Telephone (_____) _____ Web Address _____ Fax (_____) _____

Mobile Phone _____ Email Address _____

Contact Details

Sales primary Contact Name (Mr/Mrs/Ms) _____ Telephone (_____) _____

Accounts Payable Name (Mr/Mrs/Ms) _____ Telephone (_____) _____

Invoice Receiver Name (Mr/Mrs/Ms) _____ Telephone (_____) _____

Email _____

DETAILS OF (Please tick) DIRECTORS PARTNERS SOLE TRADER

Name in full _____ Date of Birth / /

Position/Occupation _____ Driver's Licence No _____

Residential Address _____ Postcode _____ Owned Renting

Name in full _____ Date of Birth / /

Position/Occupation _____ Driver's Licence No _____

Residential Address _____ Postcode _____ Owned Renting

Name in full _____ Date of Birth / /

Position/Occupation _____ Driver's Licence No _____

Residential Address _____ Postcode _____ Owned Renting

the purposes of assessing the application for credit, or in connection with any guarantee and to disclose such information to a credit reporting agency;

- (b) to give to a person who is currently a guarantor, or whom the Customer has indicated is considering becoming a guarantor, a credit report containing information about the Customer for the purpose of the Guarantor deciding whether to act as guarantor, or to keep the Guarantor informed about the guarantee. The Customer understands AK Evans Group Australia may disclose any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act;
- (c) unless otherwise prevented by law to collect from, store, use, disclose to or exchange with any of the parties named in clause 2.1(a) above or any Guarantors or other credit providers named in this Credit Application or named in a consumer credit report issued by a credit reporting agency, third party providers, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved with the collection of trade bills or the factoring of trade debt, information about the Customer's personal or commercial credit worthiness or business history in order to assess the Credit Application (including whether to accept as Guarantor any person signing), monitor the credit worthiness or withdraw credit facilities, notify of the Customer's default, issue trade bills, insure risk, process any payment instructions, direct debit facilities and or credit facilities requested by the Customer and or Guarantor/s to enable the daily operation of the Customer's Credit Account and collect overdue accounts; and
- (d) to the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to AK Evans

Group's solicitors or mercantile agents.

- 2.2 Unless otherwise prevented by law, the Customer consents to the use and storing of any personal information provided for the following purposes and any other purposes as shall be agreed between AK Evans Group Australia and the Customer from time to time:
- (a) the hire of equipment and associated services by AK Evans Group Australia;
 - (b) the marketing of hire services by AK Evans Group Australia or AK Evans Group Australia's agents, affiliated companies or contractors.
- 2.3 AK Evans Group Australia agrees that, in dealing with information disclosed to AK Evans Group Australia by the Customer pursuant to clause 2.1 and 2.2, AK Evans Group Australia will deal with that information in accordance with the Privacy Act 1988 (Cth).

3. Personal Property Securities Act

- 3.1 In consideration of AK Evans Group supplying the Equipment to the Customer, at the Customer's request, the Customer, by signing this Credit Application:
- (a) Grants to AK Evans Group a purchase money security interest (**PMSI**) in the Equipment as defined by the PPSA;
 - (b) Agrees that any of the Equipment or proceeds of sale of the Equipment coming into existence after the date of this Credit Application will come into existence subject to the PMSI granted in this Credit Application and the terms of this Credit Application without the need for any further action or agreement by any party;
 - (c) Acknowledges that the Customer has received valuable consideration from AK Evans Group Australia and agree that it is sufficient; and
 - (d) Agrees that the PMSI has attached and will attach to all Equipment supplied now or in the future supplied to the Customer, and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded in this Credit Application.
- 3.2 AK Evans Group Australia reserves the right to register a financing statement in respect of any Equipment supplied by AK Evans Group Australia to the Customer pursuant to this Credit Application, and in respect of which credit has been extended by AK Evans Group Australia to the Customer. The costs of registering a financing statement or a financing change statement will be paid by the Customer and may, where applicable, be debited against the Customer's credit account with AK Evans Group Australia.
- 3.3 The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under this Credit Application.
- 3.4 The Customer will promptly, on request by AK Evans Group Australia, execute all documents and do anything else reasonably required by AK Evans Group to ensure that the PMSI created by this Credit Application constitutes a perfected security interest over all Equipment supplied.

- 3.5 The Customer will not allow any person to register a financing statement over any of the Equipment supplied by AK Evans Group Australia without the prior written consent of AK Evans Group Australia and will immediately notify AK Evans Group Australia if the Customer becomes aware of any person taking steps to register a financing statement in relation to the Equipment.
- 3.6 The Customer will not allow the Equipment to become accessions or commingled with other Equipment unless AK Evans Group Australia has first perfected any security interest that AK Evans Group Australia has in relation to the Equipment.
- 3.7 If AK Evans Group Australia perfects any security interest that AK Evans Group Australia has in relation to the Equipment the Customer will not do anything that results in AK Evans Group Australia having less than the security or priority granted by the PPSA that AK Evans Group Australia assumed at the time of that perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage under the Transfer of Land Act 1893.
- 3.8 The Customer irrevocably grants to AK Evans Group Australia the right to enter onto the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if AK Evans Group Australia has cause to exercise any of AK Evans Group Australia's rights under the PPSA, and you will indemnify AK Evans Group Australia from any claims made by any third party as a result of such exercise.
- 3.9 AK Evans Group Australia and the Customer agree that nothing set out in the PPSA will apply to this Credit Application or the security under the Credit Application except where the provisions of the PPSA are paramount.

Signed on behalf of the Applicant by (Please tick)

DIRECTORS

PARTNERS

SOLE TRADER

AUTHORISED OFFICER

Signature

Print Name and Title

Signature

Print Name and Title

Signature

Print Name and Title

Office Use Only

AK Evans Group Australia

Account Manager



GUARANTEE, INDEMNITY & CHARGE ("GUARANTEE")

(This Guarantee, Indemnity and Charge relates to AK Evans Group's hire of Equipment from time to time to the Customer)

Name of Customer hiring Equipment _____ ACN/ARBN/ARSN

Trading as (if different from above): _____ ABN

This Guarantee, Indemnity & Charge is between AK Evans Group Australia (ACN 646 172 358) of 4b Trig Street, Wedgefield, South Hedland, WA, 6722 ("AK Evans Group Australia") AND the Guarantor/s stated below (the "Guarantor/s"):

(Name of Guarantor) _____ Date of Birth / / Drivers Licence No
of (Address) _____ ("Guarantor")

(Name of Guarantor) _____ Date of Birth / / Drivers Licence No
of (Address) _____ ("Guarantor")

TERMS OF GUARANTEE, INDEMNITY & CHARGE

The Guarantors hereby JOINTLY AND SEVERALLY AGREE with AK Evans Group Australia as follows:

- At the request of the Guarantor/s, AK Evans Group Australia have indicated that AK Evans Group Australia may at AK Evans Group's sole discretion:
 - hire Equipment under AK Evans Group Australia's Hire Agreement;
 - make available a certain limit of credit to the Customer; and
 - make available in the future a certain limit of credit to the Customer.
- The Guarantor/s give this Guarantee, Indemnity & Charge at the request of the Customer and in consideration of AK Evans Group:
 - providing or continuing to provide a line of credit for the Customer; and
 - refraining from immediately asking for payment of any amounts now owing by the Customer.
- The Guarantor/s unconditionally and irrevocably guarantee to AK Evans Group Australia the due and punctual payment by the Customer to AK Evans Group Australia of all monies at any time actually or contingently owing to AK Evans Group Australia by the Customer either alone or jointly or severally with others on any account (the "Guaranteed Monies"), including without limitation, by way of:
 - monies payable for Equipment hired, or to be hired by AK Evans Group Australia to the Customer;
 - interest;
 - costs and charges; and
 - indemnity or damages.
- The terms of this Guarantee shall apply to, and form part of, every Hire Agreement.
- If the Customer defaults in payment of the Guaranteed Monies, the Guarantor/s shall pay those monies on demand, by way of currency, to or as directed by AK Evans Group Australia in order to discharge the debt owed by the Customer in full.
- This Guarantee, Indemnity and Charge shall constitute a continuing guarantee and indemnity to AK Evans Group Australia for all Guaranteed Monies which are now or may from time to time be owing or remain unpaid.
- The Guarantor/s obligations under this Guarantee, Indemnity and Charge are primary obligations and are not ancillary or collateral to any other right or obligation. The Guarantor/s obligations may be enforced against the Guarantor/s without AK Evans Group Australia being required to take any action against the Customer whether by making a demand or under any security it may hold for the Guaranteed Monies.
- The liability of the Guarantor/s under this Guarantee, Indemnity and Charge is absolute and unconditional and it shall not be avoided, released or affected by anything at all which, but for this provision, might operate to relieve the Guarantor/s of any obligation in whole or in part, including without limitation:
 - entering into any transaction or arrangement, including an arrangement which increases the Guaranteed Monies, any extension of time, any waiver of release, which may be made or given between AK Evans Group Australia, the Customer, the Guarantor/s and anyone else;
 - any agreement between AK Evans Group Australia and the Customer becoming wholly or partly unenforceable;
 - our failure to give notice, or any other omission, mistake, delay or negligence on AK Evans Group Australia's part;
 - AK Evans Group Australia's refusal to hire further Equipment to the Customer;
 - the bankruptcy, winding up, liquidation or becoming insolvent under the administration of, or appointment of an administration to, the Guarantor/s, the Customer or any other person;
 - any change in the constitution, ownership, directors or management of the Customer;
 - AK Evans Group Australia compounding or compromising with or releasing the Customer or any Guarantor of this Guarantee, Indemnity and Charge or any other person or corporation whatsoever or the release, abandonment, variation, relinquishment, loss or renewal in whole or in part of any security asset or right held by AK Evans Group Australia;
 - the fact that any other person fails to become bound or ceases to become bound as surety in respect of the Guaranteed Monies;

- (i) if the Customer is the trustee of a trust, it acting beyond its powers under the trust; or
- (j) anything else which might prejudice or discharge any Guarantor's liability under this Guarantee, Indemnity and Charge.
9. Any payment made to AK Evans Group Australia and later avoided by the application of any statutory provision or legal or equitable principle shall be deemed not to discharge the Guarantor's liability and, that in such event, the parties hereto are to be restored to the rights which each respectively would have had if the payment had not been made.
10. Notwithstanding the fact that this Guarantee, Indemnity and Charge may have been intended or expressed to be executed and given by more than one person it shall bind each person who executes it from execution, notwithstanding that any proposed or contemplated party does not execute this Guarantee, Indemnity and Charge.
11. Until AK Evans Group Australia has received all monies due from the Guarantor/s to AK Evans Group Australia under this Guarantee, Indemnity and Charge, the Guarantor agrees:
- (a) in the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement, scheme of arrangement or other administration in insolvency of the Customer, that the Guarantor will not without AK Evans Group Australia's prior consent lodge any proof of debt or similar claim for any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for AK Evans Group Australia;
- (b) on AK Evans Group Australia's request, to lodge a proof of debt or similar claim in any such Administration and enforce any such security and to execute all such documents and do all such things as AK Evans Group Australia may require to enable AK Evans Group Australia to have and receive the benefit of or arising from any such proof, claim or security;
- (c) not to attempt or purport to be surrogated to AK Evans Group Australia;
- (d) to waive all rights as surety which are inconsistent with this Guarantee, Indemnity and Charge; and
- (e) that the Guarantor's liability under this Guarantee, Indemnity and Charge shall be that of principal debtor.
12. The Guarantor/s agree that a certificate issued by any of AK Evans Group Australia's authorised officers stating any monies owed by the Customer or Guarantor to AK Evans Group Australia (or any related body corporate) including monies due under this Guarantee, Indemnity and Charge, shall be conclusive evidence of such amounts owing by the Customer and each Guarantor.
13. All payments which a Guarantor is required to make under this Guarantee, Indemnity and Charge must be made without any set-off, counterclaim condition or deduction and are payable on demand by AK Evans Group Australia.
14. Each Guarantor hereby charges and creates in AK Evans Group Australia's favour a security interest in, for the payment of all monies due from the Guarantor to AK Evans Group Australia under this Guarantee, Indemnity and Charge, all the Guarantor's present and future beneficial interests in real property and all of the Guarantor's present and after-acquired property. Each Guarantor also agrees that on demand by AK Evans Group Australia, the Guarantor will immediately execute such mortgage or other instrument of security, as AK Evans Group Australia require, and against the event that the Guarantor fails to do so within a reasonable time register such instruments. Notwithstanding any other provision in this Guarantee, Indemnity and Charge each Guarantor irrevocably and unconditionally consents to lodgement by AK Evans Group Australia of a caveat noting the interest given by this charge, security interest, or any other mortgage or other instrument of security, on the title of any property of the Guarantor whenever AK Evans Group Australia so wishes.
15. The Guarantor/s unconditionally and irrevocably guarantee AK Evans Group Australia the due and punctual performance by the Customer of its obligations under each and every Hire Agreement.
16. The Guarantor/s agree to indemnify AK Evans Group Australia against any losses, costs, charges or expenses of any nature (including AK Evans Group Australia's solicitors' costs and disbursements on an indemnity basis of any litigation, arbitration or other alternative dispute resolution process between AK Evans Group Australia and the Customer or any Guarantor, or any commission paid or payable by AK Evans Group Australia to any commercial or mercantile agent) which it has incurred or incurs in the future: (a) as a result of the Customer's breach of any of the terms and conditions of the Credit Application or Hire Agreement; or
- (b) otherwise arising out of the business relationship between the Customer and AK Evans Group Australia; or
- (c) in connection with the preparation, enforcement or discharge of this Guarantee, Indemnity and Charge or further security requested under clause 13; or
- (d) otherwise arising under or in connection with this Guarantee, Indemnity and Charge.
17. Until such time as the Guaranteed Monies have been irrevocably paid in full, if the Customer is wound up, AK Evans Group Australia may prove for all monies which the Guarantor/s may have paid under this Guarantee, Indemnity and Charge and need not apply, in discharge of the Guaranteed Monies, any monies which it receives.
18. For the consideration mentioned above, the Guarantor/s unconditionally and irrevocably indemnify AK Evans Group Australia against any loss or liability which they may suffer because the whole or any part of the Guaranteed Monies are not recoverable from the Customer, and not recoverable from any Guarantor as surety, because of any default by the Customer in the performance and observance by the Customer of its obligations under any Hire Agreement, by reason of the Customer's insolvency or bankruptcy or by reason of the contract between the Customer and AK Evans Group Australia being void, voidable or unenforceable for any reason whatever, whether or not the circumstances were known to AK Evans Group Australia.
19. If, after AK Evans Group Australia applies any amount against any of the Guaranteed Monies, AK Evans Group Australia forms the view that AK Evans Group Australia is obliged to, or that it is reasonable to compromise and, make a payment in respect of the amount so applied by AK Evans Group Australia to any person under the law relating to bankruptcy, winding up or the protection or creditors, AK Evans Group Australia's right under this Guarantee, Indemnity and Charge will be re-instated, and will be the same in respect of the amounts as if the application or the payment or transaction giving rise to it, had not been made.
20. Service of any notice, demands, proceedings, summonses, suits or actions (together referred to as "Notice") upon any Guarantor herein may be effected by AK Evans Group Australia or AK Evans Group Australia's solicitors sending such process by prepaid post to the Guarantor's address shown above or to the last disclosed address of the Guarantor in any company search or business name search. Service shall be deemed to have been effected two business days after the posting of the Notice.

21. The Guarantor/s:
- (a) consent to AK Evans Group Australia affecting and maintaining a registration on the register (in any manner AK Evans Group considers appropriate) in relation to any security interest contemplated or constituted by this Guarantee, Indemnity and Charge and the Guarantor/s agree to sign any documents and provide all assistance and information to AK Evans Group required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest. The Guarantor/s waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge;
 - (b) undertake to:
 - (i) do anything (including executing any new document or providing any information) that is required by AK Evans Group Australia to register a financing statement or financing change statement or to ensure that AK Evans Group Australia's security position, and rights and obligations, are not adversely affected by the PPSA and that AK Evans Group Australia acquire and maintain a perfected security interest under the PPSA;
 - (ii) not register a financing change statement in respect of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge without AK Evans Group Australia's prior written consent; and
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the personal property which is the subject of a security interest contemplated or constituted by this Guarantee, Indemnity and Charge in favour of a third party without AK Evans Group Australia's prior written consent.
22. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Guarantee, Indemnity and Charge and the PPSA allows for the contracting out of provisions of the PPSA the following provisions of the PPSA will not apply and the Guarantor/s will have no rights under them, section 95 (to the extent that it requires the secured party to give notices to the grantor), section 96, section 117 (obligations secured by interests in personal property and land) section 118 (to the extent that it allows a secured party to give notices to the grantor), section 120 (enforcement of liquid assets), section 121(4), section 125, section 123 (right to seize collateral), section 130, section 132(3)(d), section 132(4), section 126 (apparent possession), section 128 (secured party may dispose of collateral), section 129 (disposal by purchase), section 134(1) (retention of collateral), section 135, section 142 and section 143.
23. Unless otherwise agreed and to the extent permitted by the PPSA, AK Evans Group Australia and the Guarantor/s agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Guarantor/s waive any right they may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
24. This Guarantee, Indemnity and Charge is a security agreement for the purposes of the PPSA and AK Evans Group Australia may apply amounts received in connection with a security interest contemplated or constituted by this Guarantee, Indemnity and Charge to satisfy obligations secured by that security interest in any way it determines in its absolute discretion.
25. The Guarantor/s agree to notify AK Evans Group Australia in writing of any change to details set out in this Guarantee, Indemnity and Charge, within 5 days from the date of such change.
26. The Guarantee, Indemnity and Charge and the construction and interpretation of it shall be governed by the laws of the State of Western Australia in force for the time being and from time to time, and the parties to this Guarantee, Indemnity and Charge irrevocably submit generally and unconditionally to the jurisdiction of the Courts of Western Australia in respect of all claims, proceedings and matters arising out of or in respect of this Guarantee, Indemnity and Charge.
27. In this Guarantee, Indemnity and Charge the following rules of interpretation apply unless the context otherwise requires:
- (a) "Guarantor" means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns;
 - (b) "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it and the following words in clauses 20 to 23 have the respective meanings given to them in the PPSA, financing change statement, financing statement, interested person, personal property, register, registration, security agreement, security interest and verification statement;
 - (c) words denoting the singular number includes the plural (and vice versa);
 - (d) any capitalised terms not defined in this Guarantee, Indemnity and Charge have the same meaning as set out in the Credit Application or the Hire Agreement;
 - (e) words denoting natural persons include bodies corporate and unincorporated and their permitted assigns (and vice versa); and
 - (f) references to any party to this Guarantee, Indemnity and Charge or any other agreement or instrument include the party's successors and permitted assigns.
28. By signing this Guarantee, the Guarantors consent to and authorise AK Evans Group Australia:
- (a) to obtain from a credit reporting agency a consumer credit report containing information for the purpose of assessing whether to accept the Guarantor/s as a guarantor for credit applied for by, or provided to, the Customer – until the credit covered by the Customer's application ceases;
 - (b) unless otherwise prevented by law, to obtain any information about any of the Guarantor's consumer or commercial credit or business history or its commercial activities or commercial credit worthiness from its bank or any other credit provider for the purposes of assessing whether to accept me/us as a Guarantor for credit applied for by, or provided to, the Customer and to disclose information to a credit reporting agency;
 - (c) unless otherwise prevented by law, to collect from, store, use, disclose to or exchange with any of the parties named in clause (a) above or other credit providers, third party provider, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved in the collection of trade debt, information about Guarantor/s personal or commercial worthiness or business history in order to assess the Credit Application (including whether to accept the Guarantor), monitor the credit worthiness or withdrawing credit facilities, notification of the Guarantor/s default, issues trade bills, insure risk processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer and/or Guarantor/s, an enable the daily operation of the Customer/s credit account and collect overdue accounts; and

- (d) the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to AK Evans Group's solicitors or mercantile agents.

LEGAL ADVICE

Each Guarantor acknowledges that:

- (a) The Guarantor has either:
- (i) AK Evans Group Australia sought advice if necessary as to the purport, effect and consequences of and obligations created by this Guarantee, Indemnity and Charge from a solicitor or barrister independent of AK Evans Group Australia; or
 - (ii) having had the opportunity to seek such advice, determined such advice was not necessary and that it understood the effect and consequences of and obligations created by this Guarantee, Indemnity and Charge, before executing this Guarantee, Indemnity and Charge; and
- (b) it enters into this Guarantee, Indemnity and Charge freely after considering such advice or electing not to obtain such advice.

DATED this _____ day of _____ Year _____

EXECUTED AS AN AGREEMENT by

Guarantor	_____	_____
	Name of Guarantor	Signature of Guarantor
In the presence of	_____	_____
	Name of Witness	Signature of Witness
Guarantor	_____	_____
	Name of Guarantor	Signature of Guarantor
In the presence of	_____	_____
	Name of Witness	Signature of Witness